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# THE POLITICS OF INFORMAL JUSTICE

VOLUME 2

## Comparative Studies

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# Law and Revolution in Portugal: The Experiences of Popular Justice after the 25th of April 1974

BOAVENTURA DE SOUSA SANTOS

> Would it be wise to imagine that a social movement the causes of which lie so far back can be checked by the efforts of one generation? Can it be believed that the democracy which has overthrown the feudal system and vanquished kings will retreat before tradesmen and capitalists?
>
> (Tocqueville, 1954: ix)

## INTRODUCTION

In 1974 and 1975 Portuguese society underwent a revolutionary crisis, in the course of which many popular movements emerged. They differed as to social objectives, strategy and tactics, organizational strength, degree of control by formal political organizations, etc. But they had a common class composition: The urban or rural working class (or occasionally the peasantry) allied themselves with radicalized sectors of the urban petty bourgeoisie. Because these movements arose in a revolutionary crisis, all of them questioned the legitimacy and challenged the hegemony of the capitalist state. They shared a more or less systematic critique of the mechanisms of social production and reproduction in the capitalist society and created social practices in which more or less radical alternatives were offered.

In a revolutionary crisis the question of legality becomes one of the most pervasive social questions. This is so, first, because the crisis itself originates through an action that is illegal from the point of view of the former regime, which is thereby partially or totally overthrown. Such "original" illegality be-

comes a basic political and ideological datum that structures the praxis of the classes and class fractions involved in different (and often opposing) ways. Furthermore, in a period of acutely intensified class struggle the several classes and class fractions will offer different, and sometimes antagonistic, conceptions of legality—such as democratic versus revolutionary legality—and no one class or class fraction is powerful enough to impose its own conception upon the others. These diverse conceptions of legality are not equally distributed across legal fields, nor do they preclude the existence of areas of legal consensus. The divided universe of law remains a common reference point for the social classes involved in the struggle.

Whenever the revolutionary crisis takes place in a capitalist society, the greater the antagonism among the different conceptions of legality, the lower the probability that social contradictions will be handled at the level of their surface structures (i.e., as social tensions) and hence the lower the probability that the negative dialectics of the state will function (see Santos, 1982: 251). To the extent that social contradictions cannot be dispersed through the mechanisms usually available to the capitalist state, the individual legal controversies whose insulation from class conflict had been made possible by the bourgeois legal forms and practices will be reevaluated in terms of their class content and location in the social struggles. As the state is deprived of its externality vis à vis social and economic relations, it is converted into just another center of social power among many (*Ibid.*). In such circumstances obedience to its laws and acceptance of its legal conceptions tends to become a question of tactics, not only for the revolutionary classes but also for all other classes. Depending on the intensity of the revolutionary crisis, the breakdown of the state monopoly of legal power may affect most of the state apparatus, in which case the situation may be described as one of dual power, in the sense that there are at least two conflicting centers of social power struggling for hegemony. Indeed, this situation has characterized the most important revolutionary crises of the modern age.[1] In less fundamental revolutionary crises, and in prerevolutionary crises, the breakdown of the state may touch only a portion of its apparatus, and even there it may be more or less profound. In this situation, dual power is restricted to the particular apparatus, and the consequent political impact depends upon the specific location of that apparatus in the structure of political domination. The several centers of social and political power in a situation of dual power generate different social and political practices in which divergent conceptions of legality are incorporated. These become the legitimating theories behind the exercise of power and

[1]For analyses of dual power in different revolutionary contexts, see for France, Soboul (1958); for Russia, Anweiler (1958), Ferro (1967: vol. 1, p. 89ff.; vol. 2, p. 22ff), Trotsky (1967: 251ff.), and Lenin (1970: 48ff., 55ff.); for Germany, Broué (1971: 161ff.); for Spain, Broué and Témime (1961: 103ff.); and for Latin America, Mercado (1974); for Portugal, Santos (1979: 151ff.). For a critical view of dual power strategy in the socialist movement, see Poulantzas (1978).



may perform other more "practical" functions, such as repression and facilitation. Conceptions of legality are never the exclusive feature of formal political organizations. Indeed, a situation of dual power is likely to occur to the extent that such conceptions are appropriated by the masses in the social movements they more or less spontaneously generate.

In the present chapter I will analyze the phenomenon of popular justice as it occurred in Portugal during the recent revolutionary crisis. It is legitimate to speak of a popular movement despite the small number of cases and the active participation of formal political organizations. Before I proceed, a conceptual clarification is needed. The concept of popular justice has been used in the most diverse social and political contexts. It has denominated all or part of the administration of justice in precapitalist societies, as in the Portuguese *ancien régime* in which three types of justice coexisted: royal justice, seigneurial justice, and popular justice. It has referred to the numerous forms of popular participation in the administration of justice in the democratic capitalist countries, such as neighborhood tribunals and juries. It has designated the "exceptional justice" established by fascist regimes to eliminate their political enemies, such as Hitler's *Volksjustiz*. It has been applied to all or part of the administration of justice in state socialist societies. Finally, the concept of popular justice has been used to characterize the initiatives taken by the masses in revolutionary or prerevolutionary crises in response to, and usually in conflict with, the official administration of justice, as in the French Revolution, the Paris Commune, the Russian Revolution, Chile in 1970–1973, and Portugal in 1974–1975.[2]

For the purposes of the present chapter I will limit the concept of popular justice to the last of these situations. Historical analysis of the most important revolutionary crises in modern times leads us to a concept of popular justice in which the following elements tend to be present. It is class justice; that is, it appears as justice exercised by the popular classes parallel to or in confrontation with the state administration of justice. It embodies alternative criteria of substantive legality or at least alternative criteria for the interpretation and enforcement of preexisting legality. It is based on a concrete notion of popular sovereignty (as opposed to the bourgeois theory of sovereignty) and thus on the idea of direct government by the people. Consequently, it requires that judges be democratically selected by the relevant communities and act as representative members of the masses, who are autonomously exercising social power. It operates at a minimum level of institutionalization and bureaucratization (a nonprofessionalized justice with very little division of legal labor and immune to systematic rationality). Rhetoric tends to dominate the structure of the discourse mobilized

[2]Indeed, it has been used in yet other contexts, and the quest for a "true" popular justice still stimulates much discussion; see the debate between Brady (1981a, 1981b) and Longmire (1981a, 1981b).

in the processing and settlement of conflicts. Formal coercive power may or may not exist, but when it does it tends to be used in interclass conflicts for the punishment of class enemies, whereas educative measures tend to be favored in intraclass conflicts. In sum, popular justice in a revolutionary crisis is a form of "revolutionary law in action," the embryo of a new power structure, though popular justice is less comprehensive than revolutionary legality since it is restricted to revolutionary actions that directly confront the judicial decision-making apparatus of the state.[3]

What have generally been considered instances of popular justice in Portugal do not satisfy that concept in the way it has been defined here. Even if the concept is thought of as an ideal type that concrete historical instances can only approximate more or less, some of the cases mentioned in this chapter barely meet the criteria. Nevertheless, I include them because they point in the direction of the appropriation of judicial justice by the popular classes. They also reflect the revolt of these classes against the official apparatus of justice, which, under cover of the separation of powers and the principle of legality, not only failed to keep pace with the revolutionary process but also tried to slow its advance, thus neutralizing the practical effects of the victories obtained by the revolutionary forces.

I will begin by describing the cases. I will then elaborate on the social and political conditions that made them possible. Finally, I will analyze their strategic and tactical value in light of the revolutionary objectives to which they more or less consciously pointed.

## THE EXPERIENCES OF POPULAR JUSTICE

Popular justice in Portugal after the 25th of April 1974 involved a broad range of actions varying in political scope, in the degree and kind of popular mobilization and internal organization, and in the level of confrontation with official justice. As a descriptive strategy, the whole range of cases and situations may be grouped in two categories: the struggle for the redefinition of criminal justice and the struggle for the right to decent housing. Within each category I will begin with a brief narrative of those cases that relate more remotely to the concept of popular justice and will then concentrate my analysis on the most representative instances.

[3]The institutional forms of popular justice may not differ significantly between revolutionary and nonrevolutionary situations. Where they do differ is in their linkages to larger sociopolitical movements, the level of mass mobilization, their class composition, and their relationship to the state. Popular justice in a nonrevolutionary situation, though ultimately independent from the state, tends not to confront it directly but leads, at most, to what I call complementary or nonconfrontational dual power; see Santos (1979: 162).



### The Struggle for the Redefinition of Criminal Justice

The cases described here display a profound distrust for the state administration of justice and its agents. Such an attitude is not rare among the popular classes in capitalist societies. But in a revolutionary crisis it tends to be dramatized through collective actions of a kind that in a nonrevolutionary situation (and certainly in Portugal prior to April 25, 1974) would lead to immediate repression. Furthermore, this negative attitude of distrust is accompanied by the positive collective energy to create an alternative production of justice, however embryonic, in a more or less open confrontation with the state administration of justice. Traces of such a social movement can be found in popular vigilance against crime, as in the case of a small town in the north of the country in July 1974 that decided to organize an armed militia with pickets on duty at night after concluding that the Republican National Guard (GNR),[4] had failed to protect the community against increasing property crime. The embryo of an alternative may also be found in popular autonomous investigations of crime. In one case, which took place in a small village in November 1975, the alleged crime had been committed in 1969 when a rural worker was found dead in a well. The villagers never accepted the explanation, offered by the police and the local doctor, that the man had committed suicide but believed, instead, that he had been killed by the GNR agent stationed in the village. In view of the passive attitude of the criminal court, the villagers started to organize and people began to point to the GNR agent as the murderer. A few months later the agent committed suicide. In a plenary assembly (*plenário*) of the village the people decided to create an investigating committee to uncover the whole truth.

In other cases the focus is on the dramatization of the attitude of mistrust toward bourgeois justice, and the alternative remains a mere slogan. In September 1975 a large group of industrial workers, shouting demands for popular justice, invaded and searched the police headquarters in Oporto in an attempt to seize a landlord who, the previous day, had murdered one of his tenants, another industrial worker, after the latter had refused to pay a rent increase. In June 1975, in the town where the anniversary of the GNR murder of the communist rural worker, Catarina Eufemia, was being celebrated, a rural worker, walking by the house of a large landowner (*latifundiário*), cried out several times: "Death to the PIDE," "Death to the Fascists," "Long live liberty." Feeling threatened, the landowner took the case to the local GNR headquarters, where he apparently had good friends, and the worker was indicted for the crime of threats and defamation. There were popular demonstrations on behalf of the defendant and against the GNR. Because of the "emotional climate" the case was transferred

[4]The Republican National Guard functioned as the police in rural areas and was much hated by the rural workers.

from the local court to the criminal court in Lisbon. On the date set for the trial dozens of supporters of the defendant filled the courtroom, crying, "Down with the fascist laws," "Popular Justice." Because the defendant and his witnesses were absent, the trial was postponed twice.

None of these cases, taken in isolation, represents revolutionary legality. But two attributes must be taken into account. First they were recurrent—a fact of particular significance in a country that for fifty years had been ruled by a fascist regime and thus by an authoritarian ideology that demanded unconditional reverence for and submission to the state apparatus. Second, the cases took place in a social context in which other more radical confrontations with bourgeois legality and justice were made possible.

The first popular tribunal ever organized in Portugal, and also the best known, was that in which José Diogo was tried. José Diogo Luis, a rural worker (tractor driver), thirty-six years old, married and the father of three children, born and still living in the municipality of Castro Verde (Alentejo), was arrested by the GNR on the afternoon of September 30, 1974, and charged with having stabbed a big landowner with a knife a few hours earlier. The victim, Columbano Libano Monteiro, age seventy-eight, also a resident of Castro Verde, was taken to the hospital and died twelve days later. According to the autopsy his death was caused by peritonitis resulting from the wound and by heart failure. After having been indicted for murder by the criminal court of Ourique, José Diogo had to await trial in the municipal jail of Beja since bail is denied in such cases according to Criminal Procedure Code article 291–2(a).

There were no eyewitnesses. Interrogated by the police, José Diogo declared that he had been working for Columbano for the past three months and had been fired the previous week. He had gone to Columbano's house that day with the sole intention of asking to be rehired because he badly needed money. A woman who lived in Columbano's house, when questioned by the police, declared that she had run upon hearing Columbano's cry for help and had seen him in José Diogo's arms; the victim told her right after the crime how the defendant had attacked him. The woman also declared that she had heard that after the crime the people of Castro Verde had collected 500 escudos and offered them to the defendant's wife, promising her another 500 in the event of Columbano's death.

In a letter written in prison and addressed to the Association of Ex-Political Anti-Fascist Prisoners (AEPPA), who had meanwhile selected three of their lawyers to defend the prisoner, José Diogo tells how it all happened. After stating that he has been a (Marxist-Leninist) communist for many years, and after denouncing both bourgeois official justice and those who had become communists only after the 25th of April, José Diogo describes the *latifundiário* Columbano as the "biggest enemy of the people in the region of Castro Verde."

He then goes on to list his accusations against the rich man, at length and in detail. Columbano is accused of a lifetime of despotic behavior, torturing the rural proletariat of the area both physically and psychologically, subjecting them



for many years to forms of domination and exploitation so cruel that they can be compared only to slavery. Columbano is accused of beating his employees brutally—"Once the fascist hangman grabbed one of his servants by the ears and raised him in the air, making the poor wretch cry with pain and fear"—denouncing his workers as communists to the political police (PIDE-DGS), with whom he was on very good terms, forbidding his workers to drink water from the wells in his estates—"thus this hangman used to torture his poor slaves, compelling them to bring bottles of water from home"—and exacting from the people in general the utmost subservience, casually striking those whose behavior toward him he considered less than respectful, such as failing to take off their hats when he passed.

According to another of José Diogo's accusations, simply because one of his servants, who was also his tenant, resisted Columbano's order to move to another of his estates, the "hangman" had all the servant's things thrown out on the street in the middle of the night, heedless not only of the servant but also of his wife and three small children. Columbano was at his most tyrannical and cruel, José Diogo insists, during his fourteen years as mayor of Castro Verde. For example, when a municipal road was being built, Columbano assigned the workers in such a way that each would be working as far from his home as possible—"just to torture them."

After his accusatory portrayal of Columbano Libano Monteiro, José Diogo speaks of his own experiences leading to the crime:

> I worked for that hangman as a tractor driver for three and a half months during threshing and haying time . . . from sunrise to sunset, including Sundays and holidays without any extra pay, on the contrary, he was paying me ten escudos less than the salary established by the union. . . . He was always watching us and telling his friends that we would do nothing if he were not there. . . . He even wanted to forbid me to smoke because, he said, I would then be wasting his time, but I didn't obey, I would have been a coward if I did, for it is completely unbearable for a man to be working all day for 12 or 14 hours without stopping every once in a while for five minutes to smoke a cigarette, after all that heat and dust, sitting on the thresher under the scorching sun with no shade, no nothing.

José Diogo goes on with his vivid description of the hard work in the fields, "the fascist always behind me, watching me, sneering at the slave from inside his car." The relations between employer and employee became still worse when José Diogo decided to remind Columbano of his rights, invoked the newly established collective bargaining contracts and other labor laws, and spoke of the overthrow of fascism by democracy.

> Then the fascist beast would look at me as if he wanted to eat me and say: "a man respects the laws when he wants to, if he doesn't he shits on them." And he would say: "don't you know that democracy is shit?" And he would go on abusing the workers and the union and the new government and praising his friend Salazar.

As José Diogo says in his letter," this class struggle" went on until one day the landowner fired the tractor driver because he refused to obey an order that would have resulted in hours of overtime work. "That was his opportunity for revenge." José Diogo lost his job and his family's bread.

A week later need drove José Diogo back to Columbano who, he knew, needed a tractor driver.

> I walked up to his gate and asked his permission to talk to him and he allowed me to go into the garden. . . . As I was walking toward the hangman I didn't even think of taking off my cap. . . . The fascist hangman wouldn't even let me speak at all. . . . He called me stupid and worse names because I hadn't taken off my cap, though we were outside in the open air. He grabbed me, trying to throw me out forcefully, striking me, seizing me violently by the arms and making them bleed with his nails. . . . I then lost control of myself and stung the fascist with my pocket knife in self-defense against his claws.

I have reproduced José Diogo's account at length because Columbano's behavior toward the rural proletariat was not atypical and reveals the nature of the relations of production that were dominant in Alentejo before the 25th of April and the agrarian revolution. As will be seen later, José Diogo's description of Columbano was fully confirmed by many other rural workers of the area. Indeed, a spontaneous popular movement of solidarity with José Diogo soon began to take shape in Castro Verde. The first expression was the money that was immediately raised to help José Diogo's family, as mentioned earlier. These expressions of solidarity were responsible for what the state attorney would later call "the emotional climate around the case," which led him, a few days before the date of the trial (May 1975), to apply for change of venue from the court of Ourique (which had original jurisdiction).

The case was transferred to the criminal court in Lisbon and the trial rescheduled for July 8, while José Diogo remained in prison. In a public statement, the AEPPA condemned all this as revealing

> the class character of the bourgeois laws and courts that keep José Diogo in prison while the murderers of the PIDE and the Spinolist conspirators are set free. If in fact there is an "emotional climate" it is nothing more than the expression of the popular feelings about this story and trial: the peasants' hatred of the *latifundiário*, a close friend of the PIDEs' and their solidarity with a class brother.

The solidarity movement was being actively supported by a few political organizations of the revolutionary left, which tried to transform the Diogo case into a broad political movement against bourgeois legality and in support of the notions of popular democracy and popular power then under discussion in the Assembly of the delegates of the Armed Forces Movement (MFA)[5]. The radio,

[5]The Armed Forces Movement overthrew the Salazar regime in 1974.



the press, and television made the Diogo case known all over the country (a film was produced, but its exhibition was banned at the last minute).

Then the Supreme Court, again at the request of the state attorney general and upon the same grounds, granted an exceptional motion for another change of venue. The case was moved to the town of Tomar and the trial date rescheduled for July 25. The AEPPA denounced this, too, as a "deliberate political decision," since the process was being transferred to "a region of the country where the reactionary forces have lately been acting with increasing violence" and "where a climate hostile to the defense" could easily be created. Before the new trial date was set, José Diogo's lawyers contacted the MFA to suggest that the armed forces intervene in favor of a trial in Lisbon, or preferably in Ourique, and that José Diogo be granted bail.

In a petition to the Lisbon court the lawyer for Columbano's sister, in turn, asked that the trial be postponed. He denounced the political forces

> that transformed a common crime—committed without any ideological motivation, as can easily be seen by simply reading the charges and the defendant's own declarations—into a heroic act against the *latifúndio* and against fascism. . . . To legitimize Diogo's crime is, to our mind, a regression . . . back to vendetta. . . . The classless society, surely, cannot be reached by granting the citizens, or some citizens, the right to stab one another.

The lawyer concluded by requesting a trial by jury (recently reestablished after the overthrow of the Salazar regime), which he considered the only legitimate form of popular justice. And when the date of the trial was not changed, the lawyer declared, in another petition, that he would not be present at the trial. "A trial under the present circumstances will not be a trial but a theatrical farce. The result of such a farce can never be justice; it will necessarily be a *simulacrum* of justice."

A big rally, organized by the political forces that supported José Diogo, was held in Tomar on the date of the trial. According to the *Expresso* reporter, close to 1000 people, mostly rural workers from Alentejo and industrial workers from Lisbon, jammed the area in front of the courthouse. But the official trial did not take place for the simple reason that the defendant, although awaiting trial in prison and therefore "at the disposal of the judicial system," was not brought to court, and the judges ignored both his whereabouts and the reasons for his unavailability. Two hours later the presiding judge read the court's decision: The trial was postponed until October 1; considering that the defendant could not be held responsible for the situation, since he was in prison, he was granted bail, which was set at 50,000 escudos (about $1,000). Radio appeals were made to raise the bail. In three hours almost twice that amount had been collected through contributions by private citizens and workers' and residents' commissions.

At the same time, and while they were still in the courtroom, members of the AEPPA suggested an immediate trial of José Diogo by a popular court, i.e., a jury

composed of twenty workers democratically elected by those present. The suggestion was accepted, and the jury was selected, composed of eight industrial workers representing eight workers' commissions, ten representatives of the people of Castro Verde, and two members of the AEPPA. During the trial, which took place on the steps of the official court building, the popular court heard the witnesses for the defendant, who fully confirmed José Diogo's description of Columbano, presented earlier in the chapter. Twice the court asked the audience if anybody wanted to testify in favor of Columbano; there was no response. The court then adjourned, and twenty minutes later the sentence was read to the hundreds of people assembled. The jury considered:

> that the constitution of this popular court, given the exceptional circumstances that surrounded this trial in Tomar, is entirely correct and just; [but taking into account] that the popular courts must assume the form of assemblies of popular masses so that all the people may participate in them, the popular jury will submit their decision to the popular assembly of Castro Verde for ratification.

The jury's sentence was:

> to condemn posthumously the *latifundiário* Columbano for the oppression and exploitation of the people of Castro Verde and to consider him an enemy of the people of Alentejo; to consider that José Diogo committed no crime though in the jury's opinion his act was an individual act, even if excused in view of the circumstances mentioned in the documents read and heard in this popular court.

Finally, the jury decided to send the text of the sentence to the Assembly of the MFA, meeting that day (July 25, 1975).

## The Struggle for the Right to Decent Housing

Hundreds of thousands of families live in slums and squatter settlements in and around the two major cities of Portugal—Lisbon and Oporto—and are often at the mercy of unscrupulous landlords and subletting profiteers. As might be expected, the problem became much more serious with the intensified industrialization process of the 1960s.

The house occupation movement began right after the 25th of April 1974. Hundreds of families who lived in the slums around Lisbon (*bairros da lata*) occupied the newly built state and municipal apartment complexes, some of them still under construction. In the "normal times" of the overthrown regime those homes would have been distributed, through a slow and complicated bureaucratic process, to middle- or low-middle-income families. Though such apartments were considered to be "social housing" or "low cost public housing,"



the fixed rents were always too high for those who lived in the *bairros da lata*. Though the occupation movement started spontaneously and initially lacked organization, soon commissions of slum residents were created to structure the movement, to control and defend the occupations, and to fight against opportunism.

The movement was soon extended to include the occupation of vacant houses that were privately owned. In other instances, groups of tenants decided to stop paying rents that they considered to be exhorbitant. When eviction notices were received the tenants refused to leave the houses; when the police or the armed forces were called upon to intervene the residents offered resistance and sometimes managed to stay. The provisional government recognized the bad housing conditions of the working class but considered the occupations illegal. In September 1974 a decree was passed ordering all landlords to list their vacant houses within four months. Most landlords evaded the law.

Despite military and police repression, the occupation movement continued to expand. By the beginning of 1975 it had become a national movement. Some organizations of the revolutionary left started supporting it and even engaged in several occupations in order to set up popular clinics, cultural centers, nursery schools, etc. The major political parties, including the Socialist and the Communist parties, condemned the occupations as "anarchistic" and "adventurist."

In March 1975 some of the eviction proceedings were suspended. In April a new law was passed legalizing all the existing occupations (with certain conditions and exceptions) and forbidding any new ones. But this new law was not enforced, and the occupation movement continued to expand. The residents' commissions proliferated and took an increasingly active role in house occupations. Some commissions, however, were against the occupations because of their illegality. A similar divergence developed inside the law enforcement agencies. While the regular police continued to repress the occupants, the COPCON (Armed Forces Operational Command of the Continent, under the command of Otelo Saraiva de Carvalho) supported them and helped them to stay in the occupied houses.

In the meantime landlords sued the occupants, and there were many trials in October 1975, creating a direct confrontation between the popular movement and the official court system. The first occurred during the rally in front of the courthouse, organized by the secretariat of the revolutionary residents commissions of Lisbon, on the occasion of the first trial of an occupant. Dozens of demonstrators invaded the court building with cries of: "Popular courts yes, bourgeois courts no!" "This case belongs to the people!" "Only the people can try the people!" Although the occupant's lawyer maintained that the defendant had the right to remain in the house even under bourgeois law, the demonstrators refused to recognize the jurisdiction of the court and wanted the judges to sign a statement declaring their lack of authority to try similar cases. They demanded

that the occupant's case be handed over to the secretariat of the revolutionary residents' commissions. When the court clerks refused, the demonstrators invaded the court offices and took the papers with them. The judge considered that the dossier had been stolen, and criminal proceedings against the demonstrators were initiated. In the opinion of the secretariat of the revolutionary residents' commissions, there had been no theft: "What happened was that the case was transferred from the bourgeois court to the popular court."

In October and November 1975 the secretariat of the revolutionary residents' commissions organized popular courts in Lisbon and its suburbs. I have selected the case of Maria Rodrigues, who was occupying a house illegally, in violation of the April law mentioned earlier. Her landlady sued, and she was to be tried early in November. Under the law she could be imprisoned for up to two years and, of course, evicted. In an attempt to halt the enforcement of the official law and prevent a great many other trials, evictions, and prison sentences, the secretariat of the revolutionary residents' commissions organized a boycott of the trial of Maria Rodrigues in the official court, calling for a rally in front of the courthouse on the trial date.

Although the judge had already decided not to conduct the trial under the circumstances, he sent for the defendant. Members of the residents' commission of the area where she lived showed up in her place and declared, "She will not be taken from among the people." The judge then decided to discontinue the proceedings and postpone the trial until December, whereupon the people's representatives announced their decision to try Maria Rodrigues before a popular court that same day, in the inner courtyard of the official building, and invited the judge, the lawyers, and all the other officials to attend it. But the magistrates preferred to watch the events from the windows of the building.

The popular jury was composed of twenty-eight delegates of several residents' commissions. For a couple of hours people spoke about the housing question, denouncing the landlords' parasitic greed for profit and calling for self-defense committees against the ruthless exploitation of such profiteers. Maria Rodrigues told of her own experience: "They beat me. I had to go to the hospital for treatment and then I had a miscarriage. They killed the twins I was bearing." She had been in the eighth month of her pregnancy.

Finally the sentence was read:

> The popular tribunal in session today, November 4, 1975, at the Lisbon courthouse, decides the following in accordance with the will of the people here present:
>
> 1. To consider the landlady a speculator, an exploiter, and an oppressor of the people and as such an enemy of the people.
> 2. To consider the landlady's friends as fascists and enemies of the people.
> 3. To have all these fascists submitted to a popular tribunal as soon as the workers seize power.
> 4. To consider Maria Rodrigues acquitted and fully entitled to the house she is now occupying.



## POPULAR JUSTICE IN THE CONTEXT OF THE PORTUGUESE REVOLUTION

The events and situations described in the preceding discussion and considered as an embryonic social movement toward popular justice must be analyzed and evaluated in the light of the sociopolitical context in which they occurred—the Portuguese revolution.[6] This began as a military revolt led by a sizable group of democratic and antifascist young officers, who were eager to put an end to the colonial war. In relation to the political project at home the program of the MFA was straightforward despite its generalities: immediate destruction of the fascist features of the state apparatus, elections for a constitutional assembly where parliamentary democracy would be restored, political pluralism and autonomy for working-class organizations, and an antimonopolist economic policy aimed at a more equitable distribution of wealth. Concerning the colonial question, however, the program was rather ambiguous. It called for a political settlement in a large Portuguese space. Such ambiguity was the inevitable consequence of the fact that the young officers had felt compelled to compromise with Spinola who, aside from Costa Gomes, was the only general who had had conflicts with Caetano's regime. To compromise was then considered important, not only to minimize the possibility of resistance by some military units loyal to the old regime but also to avoid any attempt at a unilateral declaration of independence by the white population in the colonies, particularly in Angola.

Spinola clearly represented the interests of monopoly capital, whereas the young officers of the MFA, from the start, were granted a tremendous popular support by the working class and large sectors of the petty bourgeoisie. This popular mobilization (economic *and political* strikes broke out throughout the country) was instrumental in bringing about Spinola's total defeat, as well as the neutralization of the rightist elements inside the MFA and the political radicalization of its more leftist elements. This fact, plus the firm rejection by the leading liberation movements of any Spinola-type solution for the colonial question, were the main preconditions for what would become the most remarkable decolonization process of modern times—a decolonization process almost totally free from neocolonialist features.

The qualitative changes in the political process took place after March 1975 when Portuguese society underwent a revolutionary crisis: extensive nationalization of the industry, total nationalization of the banking and insurance system, land seizures in Alentejo, house occupations in large cities, workers' councils, self-management in industrial and commercial enterprises abandoned by their

[6] It is possible, even probable, that future historians will deny the Portuguese experience of 1974–1975 the status of a true revolution, as they have done with the German revolution of 1918. In this and the following six paragraphs I draw upon my earlier account (1979: 156–158).

former owners, cooperatives in industry, commerce, and agriculture, neighborhood associations, people's clinics, and cultural dynamization in the most backward parts of the country. None of these measures, taken individually, challenged the capitalist foundations of society or the class nature of state power. However, all these measures taken together—along with the internal dynamics of working-class mobilization and of popular initiative, the generalized paralysis of the state apparatus, and the developing conflict within the armed forces—did indeed bring about a revolutionary crisis. But on no occasion was there a situation of dual power conceived of as a situation of "global confrontation" between "two dictatorships." Although a full analysis of this fact is still to be made, it seems to me that one of the major causal factors lies in the very nature of the events that led to the revolutionary crisis. It all started as a *military* revolt, that is, a revolt from above, originating within the state apparatus itself. The aim was to destroy "the fascist state power," but indeed only the most explicitly fascist features of the state were destroyed, such as the political police, political courts and prisons, the one-party system, and paramilitary fascist militias. The state apparatus was otherwise kept intact, with its fifty-year heritage of authoritarian ideology, recruitment, training, and practice. Though under popular pressure there were some purges of personnel in public administration and industry, they were rather limited in number, often opportunistic, and, in some crucial sectors of the state apparatus, such as the administration of justice, virtually nonexistent. In any case, purges were always restricted to personnel and never reached the structures of state power. As to the two branches of the repressive state apparatus—the police (PSP and GNR) and the armed forces—the situation was even more striking. Since the police offered no resistance to the young officers of the MFA, there was no need to dismantle or even restructure the organization; only the top officers were replaced. As to the armed forces, they were shaken to their roots, but precisely because the revolt originated in their ranks and the political process was kept under military leadership, the armed forces felt globally relegitimated and postponed any profound internal restructuring. This explains, among other things, why the soldiers' committees appeared very late in the process and without internal dynamics.

In sum, the state apparatus, once cleansed of its distinctly fascist features, did not collapse but rather suffered a generalized paralysis. Because the political events had started inside it, it was "relatively easy" to bring about the paralysis of the bourgeois state power. In this sense there was no bourgeois rule. But neither, and for similar reasons, was there proletarian rule. In this connection the role played by the major working-class parties—Socialist (PS) and Communist (PCP)—must be mentioned briefly. Having gained considerable influence in the state apparatus and inside the armed forces after March 1975, the PCP, the only political organization worth the name, looked suspiciously on the spontaneous mobilization and creative organizations of the working class, both at the point of



production and at the point of reproduction. Under the mystifying argument that the enemy had already been destroyed by the nationalization of monopoly capital and that the sector of the MFA then in power would, if supported, carry out the class interests of the proletariat, the PCP always favored policies inside the state apparatus and rejected as adventurist the idea of revolutionary legality and popular power. The Socialist party, of recent formation and heterogeneous composition, resented the influence of the Communists in the state apparatus and rejected as authoritarian any political form but parliamentary democracy. Drawing its support from the bourgeoisie and sectors of the petty bourgeoisie and working class who resented the power politics and the arrogance of the Communists, the Socialist party soon became the opposition party *par excellence*. As in Germany in 1918, the Socialists became the leading party in a broad coalition of bourgeois and conservative political forces that, as the recent developments reveal, subsequently managed to subordinate them.

The same process that had rapidly achieved the suspension or neutralization of bourgeois rule had, at the same time, prevented proletarian rule from emerging in its own name. This was less a situation of dual power than a situation of dual powerlessness, a situation that was resolved in favor of bourgeois rule in November 1975. Indeed, one of the striking features of the Portuguese revolution was to demonstrate that the bourgeois state may undergo a generalized paralysis for an extended period of time without leading to a collapse. On the contrary, it remains intact as a kind of reserve state, only to be reactivated if, and as soon as, the relations of forces change in its favor.

Within the global situation of dual powerlessness I have just described, restricted forms of dual power emerged in specific areas of social life and in specific sectors of the state apparatus. One such situation occurred within the judicial apparatus and assumed the form of popular justice. It is hardly surprising that the most significant instances of popular justice took place in the period between March 11 and November 25, 1975. House occupation started right after the 25th of April 1974, but at the beginning it lacked both organization and political focus. It was a spontaneous, immediatist movement inspired by the desire to find decent housing without questioning the foundations of a society that had consistently denied the people the right to adequate living conditions.

After March 11 the residents' commissions increased in number, became more powerful and active, and began to think of themselves as political instruments, as the embryos of a radically new power structure—a power organized from the bottom up; a power at the service of the oppressed classes; in short, a popular power. This was possible because the now-radicalized revolutionary process had made the class nature of the state into a practical question.

Since the question was raised but not solved, however, the revolutionary residents' commissions and all other organizations of popular power (workers' commissions, soldiers' commissions, village councils, etc.) could aim no further

than the creation of pockets of dual power, that is, counterpowers opposed to the state power. The José Diogo case and all the most significant instances of popular justice take place in this context. They frame the question of power in a specific way: as a question of legality. The class struggle in which they are involved manifests itself as a struggle for the definition of legality. And indeed one of the crucial discussions of the period centers around the dichotomy: democratic legality versus revolutionary legality.

In order to understand the scope and the precise terms of this discussion it is necessary to take into consideration the sociology of the legal structure and the legal profession prior to the 25th of April. The following analysis will sometimes contrast the Portuguese and the Chilean experiences, for two reasons. First, the question of legality was also important in Chile under President Allende (though it was posed in very different terms, as we will see later in the chapter). Second, the discussion of strategy and tactics among the different political organizations during the Portuguese revolutionary crisis often used the Chilean case as a reference point.

Whereas the Popular Unity (UP) coalition in Chile inherited a liberal democratic state and a democratic tradition, the movement of April 25 inherited a corrupt, fascist-type state and a tradition of brutal repression against the working class. This distinction is extremely important in understanding the differences between the class struggles in the two countries both before and after the political changes under analysis. In Chile the UP could invoke many progressive laws (concerning labor, land reform, state intervention in the economy, etc.), which were the result of years of successful pressure by the working class and its allies on the liberal democratic state. Though enforced only selectively, if at all, they produced contradictions inside the bourgeois legal order, and such contradictions, which had remained more or less dormant for many years, retained their explosive potential until a political agent emerged from the intensification of the class struggle.

The authoritarian legal order in Portugal was, in a sense, more coherent than the Chilean legal order since capitalist domination of the state demanded that no concessions be made to the working class and its allies. Corporatist labor legislation denied the existence of class struggle, and a highly complex and efficient repressive apparatus maintained social harmony. The working class was subjected to brutal repression both in industrial cities and in the countryside (particularly in Alentejo). Political police, military and paramilitary forces, shock police, special labor courts, political courts, political prisons, and a national legislative assembly totally controlled by the fascist party—these were some of the direct instruments of political repression under the Portuguese version of fascism.

In Portugal, as in Chile, the core liberal legal institutions—the courts—limited themselves to applying the laws, even unjust ones, as mandated by the theory of the separation of powers embedded in the civil code. In actual fact the



judges had lost the limited independence granted them by the liberal state tradition. There were two main reasons for this, aside from the repressive environment that affected everyone except those who directly benefited from it. On the one hand, the judges often served in special courts subjected to strict political control and burdened with very low status. On the other, the system of promotion in the judiciary was partially based upon the judge's loyalty to the social and political institutions of the regime, as this was reflected in his decisions. The higher the judicial level, the more political the criteria for promotion became. Everything pushed the judge toward passivity and routinization. And indeed, with some exceptions, the judiciary tended to attract the less successful law graduates. The better students went into politics or teaching, or became lawyers or legal advisers in big companies.

Because they enjoyed professional autonomy, lawyers tended to become active in politics. The democratic opposition to the Salazar regime recruited some of its best leaders among lawyers. But in recent years, as the last Lawyers Congress (1972) fully demonstrated, the future of the profession had become a source of worry. According to some, its traditional autonomy was being eroded by the growing practice of seeking retainers from large corporations and some government departments. Though lawyers as a class favored the protection of civil and political rights, only a few were willing to defend people accused of political crimes and threatened with trial in the political court. Although it expressed a concern for equal access to justice, the bar association—whose internal democracy was strongly questioned for many years—never managed to organize the efficient delivery of free legal services.

Law school teaching was generally very conservative, providing the social and political institutions of the regime with intellectual support and scientific sophistication. Law professors, most of whom had never practiced law, cultivated highly theoretical discussions of legal dogmatics and legal philosophy, which were sometimes an alibi, whether or not conscious, for social aloofness and political passivity. This rendered law teaching irrelevant to the solution of the concrete legal problems that practitioners (lawyers and judges) confronted in their everyday professional lives.

Besides being responsible for the drafting of legal codes, law professors most often participated in the legal life of the nation by giving highly paid expert opinions on cases involving monopoly capital or wealthy families. Given this scientific–ideological environment, the few progressive law professors found it difficult to reconcile their professional skills with their political activities. It is no surprise that law schools never organized legal services for the poor, never promoted the sociological study of law, and never fought for an interpretation of the law more favorable to the interests of the oppressed classes.

This brief synopsis indicates why the question of legality was raised differently in Chile and in Portugal. In Chile under Allende, the question of legality

centered around the struggle for the progressive enforcement of progressive laws already on the books. At this level the class conflict was fought as a conflict between rival and contradictory interpretations of the law. Prestigious lawyers, putting their professional skills at the service of the oppressed classes, explored all the minutiae of the bourgeois laws in order to build a convincing argument before the courts. This also explains why the official court system was widely used as an arena for class struggle: The possibility of new, revolutionary laws was virtually precluded because the legislature was controlled by the bourgeoisie.

In Portugal, on the contrary, the question of legality centered around the destruction of the fascist state, revocation of the laws that most directly "justified" the repression of workers and their allies, and the enactment of new laws that would pave the way toward the democratization of the state. This means not that inequality before the law was greater in Portugal because there were almost no progressive laws on the books, but rather that the principal question was the creation of a new legality and not the interpretation of existing legality. This explains why the courts played a very insignificant role in Portugal, aside from their decisive ideological function as a symbol of "civilized interaction." The struggle for a new legality was fought inside the MFA, inside the provisional government, inside the Constitutional Assembly after April 25, 1975, and on the streets. A situation such as I have described tended to unleash popular forces that could easily escape from the control of the new political leaders. In Portugal, unlike Chile, there was a rupture with the political system, a global rejection of a form of political domination. Such a broad political change was favorable to a process of social radicalization even if the *capitães* (captains') movement began as a democratic (not socialist) movement.

At first, the question of a new legality was conceived by the MFA as the question of respect for democratic legality. The argument for democratic legality went as follows: There was no reason to believe that all legislation in force during the fascist regime was fascist in nature and hence must be ignored by the people. On the contrary, once the fascist state had been dismantled and the legislation directly responsible for fascist repression revoked, all remaining legislation continued in force, to be applied by the courts and obeyed by the people. If not, the very foundations of harmonious civilized life would be undermined, and the end result would be anarchy. All necessary readjustments would occur through new legislation to be produced by the political organs legitimized by the people. One of the pillars of democratic legality was thus guaranteed. The other was respect for the courts and their agents. True, judges had been robbed of their independence under fascism, but they had also been its victims. Now that the special courts had been abolished, the conditions were created for "redignifying" the judicial system and the legal profession. A first and important step in this direction would be popular compliance with judicial decisions.

The idea of democratic legality had a definite appeal in a country that had



suffered almost fifty years of dictatorial rule. But there were some problems. First, there were areas (labor, for example) where fascist legislation had been revoked but not replaced. A legal vacuum was created that could only be filled by popular initiative. In such cases the question was not one of legal or illegal behavior but rather of alegal behavior. Second, to resort to laws that, though not "directly fascist," reflected a period of latent class struggle in which the bourgeoisie exercised its powers with little restraint, and to apply them in a period of political liberation and intensifying class struggle, would require a degree of repression that was incompatible with the very democratic, antifascist nature of the 25th of April movement. Third, when new laws were actually passed they tended to lag behind the rhythm and the radicalization of the popular movement, as evidenced by the law on house occupations (April 1975). Consequently, such laws were not enforced.

All these factors taught the popular movement that both the old and the new legislation reflected class interests and that, in practice, the principle of respect for democratic legality deprived the oppressed classes of initiative in a class struggle that was being fought with increasing intensity. The radicalized sectors of the popular classes therefore started opposing the idea of democratic legality with the idea of revolutionary legality.

The growth of the idea of revolutionary legality was a long process that reached maturity only after March 11, 1975. Before that, the political aims of the popular movement were far from revolutionary. In the house occupation movement, for instance, the objective was decent housing, and it was precisely in the resistance to eviction orders that the movement became conscious of itself and underwent a process of radicalization. When eviction orders were met with resistance the police would be called, but whenever the popular movement was strong enough the police would retreat and avoid violence. In such cases the armed forces could be counted upon to support the police. But the military also would retreat, though probably for different reasons, if the popular resistance encountered were sufficient to require violent repression. The police, haunted by a past of ruthless brutality, suffered from a kind of "guilt complex" and were very sensitive to being reminded of the earlier times. They knew that they were being closely scrutinized by the public and carefully followed a strategy of minimum risk. Under the circumstances, nonintervention was more attractive to the highly bureaucratized police corps. The armed forces, on the other hand, had become the symbol of popular liberation, and the demonstrators frequently reminded them of that. At the time, this alone was powerful enough to prevent them from acting according to the rules they had learned in the barracks before the 25th of April. Moreover, the hierarchy of command was not as effective as it had been in "normal times," and the repressive orders of the high command were often ignored or circumvented by the operational officers. Thus, even though the repressive forces maintained their internal cohesion, they were uneven in their behavior, which de-

pended on the strength of the popular movement. This was quite disturbing to the "normalcy" to which the court system aspired. The lack of predictability in the execution of court decisions was a destabilizing factor and made the judges defensive, to the point where they often avoided deciding (e.g., by postponing the trial).

After March 11, when bourgeois domination was questioned in practical terms, the situation changed qualitatively. The dialectical relation between the MFA and the popular movement led to a further radicalization of both, and the revolutionary process entered a new stage. Both the destruction of the old power structure and the idea of a radically new society left the ghetto of leftist theories and became part of the political struggle. The substantial radicalized sectors of the popular classes, both urban and rural, decided to take greater political initiative in the struggle for final liberation. In addition, whereas the MFA had previously assumed the role of a third party in the class struggle, important segments of it now sided with the popular classes.

The impact on official justice could not have been greater. Court decrees, such as evictions were consistently ignored. The COPCON troops, when asked to intervene, not only refused to enforce court orders but also protected the occupants against attack. In some instances the troops even participated actively in new house occupations. For the oppressed classes, this was revolutionary legality opposed to democratic legality.

Otelo Saraiva de Carvalho summarized the idea of revolutionary legality better than anyone else: "We, the COPCON, are almost an illegal organ because we ignore the Penal Code. We act according to good sense . . . we know nothing about the Penal Code. . . . We must put the Penal Code on the shelf and assume a purely revolutionary attitude." Contrasting revolutionary and democratic legality, he said: "There are no limits on revolutionary legality but those imposed by good sense and revolutionary coherence. . . . Experience tells us which are the good measures and which the bad. We then eliminate the bad ones and make new laws on the basis of the good ones." Asked about the criterion for the distinction between good measures and bad, Otelo answered: "The benefit for the workers. If the working class accepts our measures that means we are on the right path."

In order for any modern state system of justice to function adequately, it must be supported by a disciplined, subservient, cohesive, and efficient repressive structure. In Portugal after March 11 that structure collapsed. The contradictions leading to its collapse were found both between different law enforcement agencies and within each one. When the police were about to execute a court order the people would call the COPCON, which, invoking military precedence, would force the police to retreat. But the actions of the COPCON were themselves inconsistent. Given the increasing politicization of the troops, their manner of intervention often depended on the political ideology of the commanding officer.



The contradictions in the executive agencies of official justice were inevitably reflected in the courts and the legal profession. Similar cases received divergent legal treatment depending on the degree of popular pressure exerted. Even within a single case successive measures were often contradictory because of the amount of popular pressure at the time they were decided. For example, in the José Diogo case the Ourique judge refused to grant bail, but the Tomar judge reversed this decision in view of popular pressure and the exceptional circumstances surrounding the case.

The José Diogo case served to dramatize the "crisis of the legal system" and brought to a climax the discussion of the question of legality. The bar associations of both Lisbon and Oporto considered the events in Tomar to be the product of a delirious mob. They felt that irrational mass behavior and the vile insults directed against the judiciary sought to undermine democratic authority and thus create a climate of anarchy and open the way for a new dictatorship. The Tomar judge was criticized for having yielded to popular pressure.

Diogo's lawyers, on the other hand, thought that the judge's decision had been very progressive in giving full consideration to the exceptional circumstances of the case. And indeed it was rather unusual that the defendant, though in preventive detention and therefore at the disposal of the state, failed to appear, and even the judge did not know the reason. The breakdown of the legal order could be read in the judge's response when the press asked about the whereabouts of the accused: "I know as much as you do. We called the prison and were told that he would not come, but nobody knows who gave the order. . . . We know nothing else and are truly chagrined."

The Association of Judicial Magistrates drew the attention of the state to the urgent need to promulgate new laws. Judges had also been the victims of fascism, it said, and nothing was being done to restore their independence and dignity. Because no new laws had been passed, the judges were forced to apply the old legality with the well-known consequences. The state attorneys also challenged the state through their radical union, although with a different emphasis: "Either the courts are changed or we will serve as legal advisers in popular courts. We do not want to go on supporting the bourgeois legality through a structure that must be destroyed immediately."

The internal cohesion of the legal system was deeply shaken. State authority was in danger. For very different reasons the major political parties were concerned about the erosion of state authority. They favored either democratic legality or the new legality being produced by the organs of sovereignty established by the movement of the 25th of April. Respect for this legality was considered to be the only guarantee that the revolutionary forces would not be adulterated by adventurers and would reach their objectives. Their position was that the popular classes should avoid embarking upon anarchic behavior, such as the exercise of popular justice, which was thus stigmatized. The only acceptable

form of popular justice was the jury system (recently reintroduced) or any other form of popular participation in the administration of justice, as long as it was integrated into the official institutional apparatus. Otherwise, in the words of the socialist leader in the Constitutional Assembly, popular justice would be a cloak for barbarism and the lynch law, as had happened during the Nazi regime in Germany. In the Constitutional Assembly only the UDP (Democratic Popular Unity, a Marxist–Leninist organization) applauded the cases of popular justice.

The José Diogo case was simply the tip of the iceberg. As already mentioned, the popular movement was being radicalized on different fronts: Workers took over factories that had been abandoned or neglected by their proprietors; land was occupied in Alentejo; houses were occupied in big cities. When the eviction cases brought by urban landlords reached trial, the revolutionary residents' commissions prepared a political response: an active boycott of the trial followed by popular justice. The dilatory tactics of the judges were also a political response. Legality was explicitly a political, not a legal, question. The confrontation between democratic legality and revolutionary legality (which generated complex, and even strange, class alliances on both sides) was, to a great extent, a class struggle and thus an important component of the revolutionary process itself.

## AN EVALUATION OF POPULAR JUSTICE IN THE REVOLUTIONARY PROCESS

The experiences of popular justice can be evaluated not in the terms of the reactions of the official legal system and its agents, which were predictable, but only in the light of the revolutionary process as a whole. The most significant experiences of popular justice after March 11, 1975—the Diogo case and popular tribunals in the house occupation cases—were always understood by their participants as embryos of popular power that, in a transitional phase, would constitute a parallel power or counterpower. They therefore evaluated their experiences against these political objectives.

In the José Diogo case both the lawyers for the defendant and the popular jury were fully aware of the exceptional nature of the popular court, as shown in the text of the sentence reproduced earlier in the chapter. A regular popular court should have a jury democratically elected by the popular assembly of the relevant community, Castro Verde in this case. Since this procedure had not been followed, the popular jury of Tomar took responsibility for seeking ratification of their decision by the popular assembly of Castro Verde in the shortest possible time. The exceptional procedure was not the result of a whimsical, irrational decision made on the spur of the moment. One of Diogo's lawyers recognized and justified the exceptional character of the popular court in a press interview:



"When the bourgeoisie resorts to exceptional courts—trying the case in Tomar and not in Ourique where the events had occurred and the court had original jurisdiction—it is only just that the people also resort to exceptional forms of justice."

In order to respect the adversary principle that both parties are entitled to present and defend themselves in court, the popular jury had asked the audience, more than once, whether someone wanted to take on Columbano's defense. The "disrespect" shown for this basic principle was the main criticism leveled at the popular court by the lawyer for Columbano's sister. It was more a political than a legal criticism because the lawyer, from the beginning, had refused to participate in the "theatrical farce" of Tomar.

The popular court, on the other hand, viewed Diogo's conduct from a revolutionary point of view. His act was considered "an individual act," that is, a nonrevolutionary act, since revolution is characterized by collective, not individual, violence. His act was not fully justified; it was merely excused in view of extenuating circumstances in the case. Diogo had acted almost in self-defense, and if his behavior had been excessive, it was understandable once the personality and the prior conduct of the victim toward the workers were taken into consideration. José Diogo's violent act was nothing compared to the constant violence of Columbano.

In the Maria Rodrigues case, on the contrary, as in all the cases of house occupation, the defendant's conduct was entirely justified in the eyes of the popular court in terms of any progressive concept of social justice. As long as there were houses without people, it was unjust that there were people without houses. The occupant's action, though individual, was revolutionary collective action because it was part of a movement. The occupant's right to stay in the occupied house could be weighed only against comparable rights asserted by other members of the community. This balance of rights was possible only in the popular courts since the bourgeois courts had refused to recognize the occupant's rights.

Popular courts are thus revolutionary instruments, instances of parallel power or counterpower in a state undergoing a more or less generalized paralysis.[7] The

[7]A closer analysis reveals that the relationship between popular and official courts was not the same in the different instances of popular justice. Lawyers played a much more important role in the Diogo case than they did in the house occupation cases. In the former, they were active in both courts, participating in the popular proceedings but also asking the official court that the accused be granted bail. Nevertheless, both the Diogo and the Maria Rodrigues cases, however poorly organized as forms of popular justice, point toward a revolutionary legality and a revolutionary legal form. The general features of the concept of popular justice presented in the introductory section of this chapter are specified and made concrete in the embryonic alternative these cases offer to state justice. The normative boundaries of the cases are transformed so that the class content of the dispute—always mystified by bourgeois legality—becomes apparent. The object of the dispute is thus immensely

correct analysis of situations of parallel power or counterpowers requires that the strategies of each actor be considered. The revolutionary forces that supported popular justice chose a strategy of "direct confrontation with the bourgeoisie and bourgeois justice." To play by the rules of bourgeois legality would have meant class collaboration with all its trappings. If Diogo had been tried in the official court, it is conceivable that a good defense could have been made (using legal concepts such as self-defense, necessity, etc.). If he had not been acquitted, he would probably have gotten a light sentence. Similarly, before the popular jury was convened, Maria Rodrigues's lawyer had claimed that his client had the right to stay in the occupied house even under bourgeois law. His words met with the following answer by one of the demonstrators: "They grant us the right today but will take it away tomorrow."

In a strategy of confrontation there is no place for a "progressive interpretation" of bourgeois law. And indeed, during all these months, there was no significant effort by progressive lawyers to explore the contradictions between the old laws and the new and to put these contradictions at the service of the oppressed classes.

The revolutionary forces were probably aware of the risks of a strategy of confrontation but thought that the final collapse of the bourgeois state and the bourgeois legal order was imminent and that every effort should be aimed at accelerating that process. It was of particular interest in that it dramatized the capacity of popular organizations to disrupt what should have been one of the most stable state apparatuses, according to liberal political theory. It was widely known that an intense struggle was taking place inside the MFA, which was therefore sensitive to external pressure. Popular justice would strengthen the bargaining positions of those groups that favored a socialist program based on the structures of popular power.

expanded and the gap between the "real" dispute and the processed dispute—characteristic of bourgeois legal process—is eliminated. Moreover, the class relations in the dispute are inverted. The popular jury, organized on the basis of class position rather than abstract citizenship, assumes responsibility for doing justice on behalf of the oppressed classes; accordingly, the defendant in the state court becomes the plaintiff in the popular court and vice versa. The effect of isolation—also characteristic of bourgeois justice—disappears since both parties come to court not as abstract individuals but rather as class members. The trial form is retained; however, not only is the jury structure changed but the rules defining the relevant issues also are completely subverted. The actions of José Diogo and Maria Rodrigues are contextualized in the history of class struggle in Alentejo and in the urban ghetto, respectively, and are evaluated differently in the light of their different meanings in that struggle. There is no strict distinction between substantive and procedural issues; the question of the fairness of the trial is mediated by the recognition that the dispute as brought to court is the tip of the iceberg, a small detail of a much broader class struggle in which the class enemy can never be presumed not guilty. There is neither professional monopolization of the legal process nor technical expropriation of legal language and discourse.

The preceding discussion is taken from my earlier account (1979: 159).



On the other side, the bourgeoisie (or rather the state bureaucracy, which was the organic, but relatively autonomous, representative of a bourgeois rule that was temporarily paralyzed) and the other social forces momentarily allied to it in the defense of official legality followed a very different strategy: They avoided open confrontation and sought to minimize the practical effects of all attacks, keeping the legal system as intact as possible and ready for action in the better days they hoped would come. Not many progressive laws were passed. Cases were not solved; trials were merely postponed. Whereas the revolutionary forces saw the postponement of trials as the neutralization and paralysis of official justice, the state bureaucracy saw it as the best way to keep the cases under control in a period of intense (though probably short-lived) class struggle. This was a covert strategy, which could therefore go unnoticed and thus evade the vigilance and resistance of the enemy.

This strategy also involved some risks. If popular courts were to proliferate, they would become a "hangman's noose" around the neck of the official legal system. Persistent disrespect for the judges and excessive leniency in dealing with demonstrators could produce deep and irreversible traumas in the legal structure. But in fact, the attacks on the courts were restricted to the big cities, and popular courts were held only in Lisbon and its suburbs. Besides, there were signs that this stage of the class struggle would not last long and would soon be replaced by one more favorable to respect for democratic legality.

These were the strategies. Their success or failure depended upon their integration into the overall struggle, and thus on the correctness of their concrete analysis of social reality. Struggles around the judicial system tend to be considered "secondary" in view of the subordinate place that the legal structure occupies in the system of political domination of the capitalist state. But this is not the case when the "main" contradictions are fought through "secondary" contradictions. When such a "travesty" occurs, the judicial system is subjected to specific "vibrations" and "pressures," such as those resulting from important lawsuits involving either significant economic interests of the bourgeoisie or the activities of principal agencies of public administration.

In Portugal, during the period under analysis, the struggle around the court system was truly secondary since, as mentioned earlier, no important cases were brought to court. Lawyers were even known to have advised their clients to wait for better times. Given the specific characteristics of the revolutionary process, the main contradictions were fought through and within the armed forces. After a period of open confrontation the struggles reached a climax on November 25, 1975. The military group in support of popular power suffered a total defeat. The COPCON was dissolved, and Otelo Saraiva de Carvalho was arrested and sent to a military prison. Respect for democratic legality was easily and rapidly restored. The legal apparatus was at hand and ready to be used. Once the "emotional climate" surrounding the cases had disappeared they could be processed and tried

"according to the law." In March 1976 Maria Rodrigues was found guilty and forced to leave the house she occupied and, on top of that, ordered to pay damages of 1500 escudos to the landlady, as well as all court costs. Early in June 1976, the criminal court of Lisbon ordered the police to hunt down José Diogo, who had failed to come to court on the trial date. Once the COPCON had been dismantled, the repressive forces recovered their internal cohesion and the police could become more "persuasive" in executing court orders.

In March 1976, a widely publicized conference of the bar association in Lisbon concluded that house occupation was a crime, through "convincing and subtle legal arguments." In the same month, lawyers who kept defending occupants in the courts were threatened with disciplinary action by the bar association. Eviction orders became more and more frequent. Organized resistance became increasingly difficult and only rarely successful. Pressure upon the government was fruitless. Responding through the press to the demands of a rally organized by house occupants, the minister for housing and urban affairs said, "We are governed by the rule of law and our democratic State respects the separation of powers. The Government cannot interfere with the judicial function."

Did popular justice arm or disarm the popular classes? Would it have been better to use the weapons of democratic legality? Post factum explanations are always too easy, which probably is why they constitute the bread and butter of "revolutionary theoreticians." It would be simple, for instance, to say that popular justice was always meant to be part of a larger program of popular power, and therefore the latter alone should be the object of evaluation. But this is a formal explanation and thus explains very little. It also neglects the fact that many revolutionary groups still held erroneous and dangerous conceptions of the relation of strategy and tactics, so that the most commendable strategic choices might have been ruined by ill-conceived tactical actions. I shall therefore focus my analysis on the experiences of popular justice and evaluate the strength of the revolutionary forces supporting them. The strategy of the revolutionary forces revealed a strength made out of weakness, whereas the strategy of official justice revealed a weakness made out of strength. The best evidence for this is the successive postponements of trials. The popular jury could force an entry into the official court *house* in a spectacular fashion, but popular intervention never managed to penetrate *inside* the official dossier and procedures.

But the weakness of the strategy is structural and (leaving aside the Diogo case for the moment[8]) its results clear when we contrast the land occupation movement in Alentejo with the house occupation movement in the major cities. I will discuss the following aspects: organization (leadership and mobilization), the enemy (class nature and relations), and the object of the struggle (land, housing).

The land occupation in Alentejo almost from the very beginning had a more

[8]Diogo's case involved an isolated act; it was not a revolutionary action even for the popular court.



unified revolutionary leadership provided (for good and for bad) by the Portuguese Communist party. In contrast, house occupations began as a scattered movement and, though gradually organized, were never subordinated to a unified leadership.[9] As mentioned earlier, the movement split after March 11 into those residents' commissions that chose the path of democratic legality, looking for support from the traditional structures of local government, and the revolutionary residents' commisssions that dominated the movement in Lisbon. It should also be noted that the house occupation movement took place in large cities with a past of democratic opposition to fascism and where the ideological predominance of the petty bourgeoisie reinforced the appeal to democratic legality. This ideological factor generated resistance to the revolutionary activity even among the occupants themselves. But on the other hand, the ideological influence of the radicalized petty bourgeoisie was also responsible for the extreme radicalism of some of the decisions of the revolutionary commissions. I have already referred to the quixotic, almost clownish, demand that the court formally declare its incompetence to try occupation cases. In the Maria Rodrigues case, the popular decision was that the occupant should not only keep the room she had occupied but also be given the whole house, and the landlady herself should be evicted. When the residents' commission tried to enforce its decision the resistance of the community became apparent, and even some members of the commission felt that they were transforming "the aggressor into a victim" and recognized that a retreat would be sensible.

Popular mobilization faced additional difficulties related to the object of the struggle. In Alentejo the big estates and farms had brought the rural workers together in both their workplaces and their residences. They lived and socialized together in the same struggle against the landowners. These factors favored a rapid and strong popular mobilization. In the house occupation movement, by contrast, the people were scattered all over the city. Even if they lived in the same slum, they soon spread themselves out to different houses and areas. The greater the concentration of occupants in a given area, the easier the mobilization for struggle.

It should be added that whereas the popular classes fought for the right to work in land occupations, they fought for the right to a residence in house occupations. The former fight related to the very core of capitalist domination—the relations of production—whereas the latter related to the conditions for the

[9]I am far from thinking that a unified leadership can be achieved only through a party structure, much less one organized along Leninist lines. Such a structure is probably implied in Brady's call for "a strong, disciplined and revolutionary party" as the precondition for "the unification of popular justice action" (1981b: 184). The belief that unified leadership of the revolutionary movement was possible without bureaucratic centralism and party dictatorship was central to the thought of Rosa Luxemburg, and her reflections on this are still relevant today; see Kitschelt and Wiesenthal (1979).

reproduction of labor power. This difference played an important role in mobilization since the political consciousness of the land occupation movement (its causes and its objectives) was greater. Finally, the enemies confronted in the two cases had different class characteristics. In Alentejo the struggle was fought against the rural monopolistic bourgeoisie who, by their wealth, their style of life, and their repressive behavior toward the workers, had long ago been recognized by the people as their implacable enemies. On the other hand, the house occupation movement was directed against a much more complex and heterogeneous enemy—sometimes the state, sometimes middle levels of the bourgeoisie, and sometimes even the petty bourgeoisie. Under such conditions mobilization was much more difficult.

The relation sought to be established with the enemy was also very different. In the land occupation movement the enemy had to be destroyed, its power reduced to nothing: The land was expropriated, and the farms became cooperatives and collective units of production. In the house occupation movement there was no question of destroying the enemy but only of reducing his power: In most cases the houses were not expropriated; their owners were only compelled to rent them. A permanent relationship was to be established between the occupant and the landlord, one that was not necessarily conflictual.

In retrospect, and despite recent attacks on the agrarian reform, the land occupation movement was much more successful than the house occupation movement. But it would be intolerable self-righteousness to tell the house occupants post factum what they should have done. They could argue that the path of legality would not have led them very far either, as the experiences of democratic legality after November 25 prove. It is conceivable, however, that if pressure had been exerted toward enacting new laws and signing leases, it would have been more difficult subsequently to deprive the popular classes of the right to decent housing.

On the other hand, all false radicalism (the manifestation of which is triumphalism) is dangerous in any revolutionary process because it does not respect the rule of parsimony, which should always be applied in threatening the enemy. This danger was particularly great in the Portuguese case. Although (or precisely, because) the courts were not the arena for any important struggle during the crisis, they performed a decisive ideological function as the main guarantor of social stability and civilized interaction. The relevance of this function was symbolized by the reluctance of most of the political forces emerging from the 25th of April 1974 to intervene in the judiciary. (Indeed, as mentioned earlier, beyond the elimination of the political courts no political measures were taken, such as the purges common in other sectors of public administration.) Threats against such a sensitive area of political domination could easily have created panic, not only among the dominant classes but also among the less mobilized sectors of the popular classes, unless they had been backed by a credible, widely



accepted, counter-hegemonic ideology and a set of political and organizational alternatives minimally structured around clearly defined strategic objectives. This, as we know, was not the case.

## REFLECTIONS

This chapter is the condensation of a tension between social scientific analysis and political evaluation. The tension is anchored in the author's social practice as both a social scientist and an active political participant during the revolutionary crisis; it cannot be eradicated by any epistemological magic wand. Indeed, this tension permeates all social scientific work but tends to be particularly intense when (*a*) the social process analyzed is recent; (*b*) it constitutes a rupture with a previously established order; (*c*) it has involved an extremely high level of social participation; and (*d*) it tends to be evaluated by all intervening social and political forces in strategic terms, that is, in terms of future struggles.

In such conditions the scientific text is likely to be saturated by more or less explicit evaluations and therefore calls for a corresponding reading. The epistemological Gordian knot is that political evaluation is never a mere retrospective prediction, particularly when the social process under analysis and evaluation is a revolutionary crisis. Indeed, scientific prediction—which positivistic social science collapses into explanation—is always a prediction of possible alternatives within established and unquestioned structural limitations; in this sense it is always a prediction of the past. In this framework, a revolutionary crisis is an excluded alternative, and as such it cannot be predicted, though it can and must be explained. But once it has occurred, and as it develops, both the antirevolutionary *and* the revolutionary forces tend to analyze the revolutionary course in predictive rather than in explanatory terms, that is, they tend to analyze the revolution in nonrevolutionary terms. This has to do with the dominant conceptions of social revolution and social reform and of the distinction between them, which lead the revolutionary forces to struggle to seize the existing (authoritarian) power and forms of power rather than seek to transform such power and develop new forms of power in which the autonomous participation of the popular classes is guaranteed.

In this context the social scientist's struggle to explain is a political as much as a scientific struggle. Because explanation is always future oriented, hesitation in the analysis is in part, at least, the product of a perplexity about strategy. Such perplexity is not likely to be attenuated once the crisis is over. Revolutionary crises provide us, at the most, with negative knowledge: We know more about what is not to be done. But, contrary to commonsensical evidence, the more we know about what is *not* to be done, the less we know about what *is* to be done. Indeed, the only shred of positive knowledge about revolutions is that—to bor-

row from Catholic theology (appropriately in the case)—all revolutions are virgins, but none conceives without sin, even in the country of Our Lady of Fátima.

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