

## MY LAW AND MODERNIZATION JOURNEY

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### INTRODUCTION

History is always written backwards, from the present to the past. Most of the time, this sequence remains hidden in the historical narrative of any given existential experience. In this chapter, I will start by analyzing how I see, today and in retrospect, the historical and political context of the Law and Modernization Program [L&MP]. I will then move to analyze my journey at Yale University in the early 1970s. It will be evident how the turbulence and the excitement of the latter analysis reproduces in a foggy and messy way the greater clarity and assertiveness of the first analysis. Social and political history has a double existence: as macro-history of the large-scale societal forces that shape the social and political processes at national and transnational levels; and as micro-history of individuals and communities as they express their creativity within such processes, managing resources and resistances, opportunities and constraints, often partly or totally unaware of the macro-history of which they are part. The two levels of history do intersect and influence each other in unfathomable ways, but each one has its own dynamic and neither level in isolation can tell the whole story of history.<sup>2</sup> I will conceive the personal journey of the different participants in the L&MP as micro-history, and so as inserted in specific ways in a macro-history, the post-World War II period, Cold War and US international politics, particularly concerning its historically privileged region of influence, Latin America. Even though I will mainly focus on the micro-level history, in the first section I will briefly mention the main facets of the macro-history as I understand it.

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### LAW AND MODERNIZATION IN CONTEXT

In the post-World War II period, under the influence of US social scientists, the idea of development became a central topic of sociological research in Latin America and elsewhere. Development was then derivative from the theory of modernization basically produced in the US. (Frank, 1966; Escobar, 1995; Gilman, 2003). According to della Faille,

in sociology, modernization theory emerged from diversified theoretical currents that attempt to explain the inequalities between nations by looking at systemic social factors. Modernization theory views cultural referents as delays in the transformation of societies that are anchored in their traditions. Very popular

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<sup>2</sup> See Burckhardt (1979); see also Mills (1959).



among policy makers until the end of the 1960s, this evolutionary theoretical framework significantly marked the relations between the United States and Latin America. During these years, functionalism and Weberian sociology contributed to thinking about the reduction of inequalities between nations as well as topics within Modernization theory. The fields associated with Modernization theory are: means of communication, cultural reception of technology, the fight against corruption, and state reform, in addition to more micro-sociological subjects such as attitudes toward human reproduction (2013: 156).

Since the end of WW II, the US has launched four global wars: against communism, illegal drugs, terrorism, and corruption. None of these has been a regular war or conducted with the main purpose of solving the problems underlying its explicit targets. They have been the different ways of guaranteeing the hegemony of US geopolitical and economic interests as global conditions change. Accordingly, they have all been conceived as perpetual wars. In most cases, perpetuating (if not fomenting) the problem has been the best way of “solving” it. In the immediate post-WW II period (1945-1952), the focus was on the war against communism. Counterinsurgency and development aid were the main weapons to fight this war. When compared with other regions of the world (Western Europe, India, Korea, Japan and Southeast Asia), Latin America received very little development aid “for the negative reason that the region was considered relatively secure from Soviet invasion or subversion and, therefore, a low priority in United States global policy.”<sup>3</sup> At that time, the main weapon deployed in the continent was counterinsurgency and military manipulation to oust any reformist democratic government that might be less friendly to US interests (as the CIA organized a coup against democratically elected President Jacobo Arbenz Gusman in Guatemala, in 1954). The mobilization of public funds for development aid in Latin America started in late 1950s with Eisenhower. Imbued with an over-optimistic view of US society, Walt Rostow was the main academic defender of a strategy based on the idea that the nations of the Third World shared the priorities and values of US liberalism.<sup>4</sup> This strategy became the main weapon of intervention with John Kennedy. The Cuban Revolution of 1959 endowed it with a sense of urgency: somewhat surprisingly, there was a communist threat in Latin America. In his Inaugural Address Kennedy proclaimed: “[T]o our sister republics south of our border, we offer a special pledge – to convert our good words into good deeds – in a new alliance for progress – to assist free men and free governments in casting off the chains of poverty” (January 20, 1961). From the very beginning, the new US interventionism in the continent faced the dilemma that, while promoting change, it might induce instability which, in turn, would invite “subversion by communist

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<sup>3</sup> Tulchin (1988,8).

<sup>4</sup> See Rostow and Millikan (1957). However, according to Rostow (1965), counterinsurgency and development aid should be deployed together.



agents.”<sup>5</sup> This explains why the development aid (Alliance for Progress) would be launched almost simultaneously with military and counterinsurgency aid (Project Camelot, full name: “Methods for Predicting and Influencing Social Change and Internal War Potential”).<sup>6</sup> A convergent intervention project, also launched by Kennedy in 1961, was the Peace Corps, aimed at mobilizing US college student volunteers “to counter the growing revolutionary tide in the Third World” and the stereotypes of the “Ugly American” and “Yankee Imperialism.” According to many analysts, the Alliance for Progress did not really get off the ground because of both internal opposition and a lack of interest on the part of target countries, passive recipients of the Alliance initiatives.<sup>7</sup> After the failure of the invasion of the Bay of Pigs (for Cubans, the triumph of the battle of Playa Girón), the focus of US intervention was on stability and counterinsurgency. The objective of democracy promotion vanished completely. Indeed, it was never a genuine objective given its subordination to the unquestioned defense of US interests (a “US friendly regime”). This explains why the democratically elected president of Dominican Republic, Juan Bosch, was brought down in 1963 by a military coup with US support; the following year, a decade after Arbenz of Guatemala, the same happened to João Goulart, the democratically elected president of Brazil.<sup>8</sup> The military in Brazil had no intention of restoring democracy, as the succession of Institutional Acts (AI) clearly shows (the most vicious being the AI 5 of 1968). At the end of the 1960s, “the United States was seen by many people in the hemisphere not as a force for change, reform, and democracy, but as a counter-revolutionary power, a reactionary force in hemispheric affairs.”<sup>9</sup>

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<sup>5</sup> Tulchin (1988,15). Albert Hirschman warned in 1963: “To advocate reforms in Latin America without tolerating, accepting, and sometimes even welcoming and promoting the only kinds of pressures which have proven effective in getting reforms is to risk being accused of hypocrisy and deception” (1963, 260).

<sup>6</sup> On the Project Camelot, see Galtung (1967).

<sup>7</sup> For a review of the literature, see Tulchin (1988). For the more recent period, see León-Manríquez (2016).

<sup>8</sup> See Parkinson (1974); Black (1977); Parker (1979); and Stepan (1979) (2015).

<sup>9</sup> Tulchin (1988, 30). Voicing the US national security perspective, Alfred Stepan (a Yale professor at the time of L&MP) expressed an alarming view: “The proliferation of world political power – and the greater assertion of small countries – has meant the end of de facto U.S. hegemony in the Caribbean. Thus, the Nicaraguan revolution in 1979, with its possible implications for El Salvador, Honduras and Guatemala, the explosive situation in the newly independent East Caribbean ministates such as Grenada, the uneasy relations between the United States and Jamaica and Guyana, have all increased U.S. security concerns in what used to be considered ‘mare nostrum.’ But as U.S. interests in Latin America grow, many of our traditional instruments of foreign policy in the Hemisphere are disappearing or becoming obsolete. In the mid-1950s, for instance, virtually every country in Latin America had a U.S. military assistance program, and modern arms came largely from the United States. By 1979, on the contrary, so few countries had significant military assistance programs that the number of U.S. military personnel in all of Latin America had fallen from 800 in 1968 to 100” (1979, 660).

From the mid-1960s onwards, the law and development programs funded by the US in the continent had nothing to do with democracy promotion. Indeed, the political nature of the regimes in which they were launched was conspicuously ignored. Such programs were oriented to those areas of law that US economic interests considered particularly relevant, such as economic law (property law, investment law), the judicial system, and criminal prosecution. With some variation, the general objectives of similar programs remained the same in the following decades. In the 1990s, I studied the case of Colombia, where US-funded law programs were almost exclusively oriented to strengthening criminal prosecution, modeling it on the US model.<sup>10</sup> In the first two decades of the twentieth first century, US legal (and illegal) intervention has expanded in the case of Brazil to train not only prosecutors but also judges. It has culminated in the pathetic and infamous criminal persecution of the ex-president Lula da Silva (the operation Lava-Jato) conducted by a judge trained in the US with “legal evidence” provided directly (and illegally) by the US Justice Department. This US-supported criminal scheme has been exposed and dismantled, but the adverse consequences for Brazilian democracy are by now tragically evident. Between the 1960s and 2000s, therefore, there is continuity rather than discontinuity in US intervention in the continent.

### GROWING UP AT YALE<sup>11</sup>

I graduated in law at the University of Coimbra (Portugal) in 1963. In 1963-64 I did post-graduate work at the Free University in the then West Berlin, specializing in criminal law and philosophy of law. From 1965 to 1969, I was an assistant professor at the Coimbra Law School, having meanwhile returned to West Germany for a short period to prepare a comparative law study at the Max Planck Institut in Freiburg i. Breisgau. In 1969, I went to the US to get a doctorate at Yale University. My original intention was to prepare a doctoral dissertation on the insanity defense.

When I left Portugal, I was a frustrated legal scholar. Having refused to participate in the money machine of law practice usually engaged in by law professors – by writing well paid opinions (*pareceres*) on important cases, that is, on cases involving important (powerful) people or groups – I had not found intellectual satisfaction in the established science of law, that is, in legal dogmatics, as it was called in Europe, or jurisprudence, as it was called in the common law world. Actually, by that time I had stopped considering legal dogmatics a science in any reasonable sense. To my mind, the scientific study of law had to be organized from a perspective external to law. Such a perspective I then found in psychiatry and psychology. It was broad enough to include questions of legal philosophy,

<sup>10</sup> See Santos and Villegas (2001); and Santos (2020, 370-420).

<sup>11</sup> This section is a slightly edited version of part of the “natural history” of my sociological research in the US and Brazil, published in Luckham (ed.) (1981, 261-289).



with which I was well acquainted (guilt, free will, etc.). At the time, due to the opposition of the Portuguese fascist and colonial regime to the development of the social sciences, I could not select the sociological perspective as an alternative. My stay in Germany was not of much help in this regard; German law schools were then actively opposed to the social science approach to law. After the Nazi trauma and Carl Schmitt's highly politicized conception of law as an instrument of the Sovereign, Hans Kelsen was on the rise, then complemented by a growing interest in legal reasoning.

Politically speaking, when I left Portugal I was a very moderate leftist. Making my way up from a working-class family, I had always been haunted by the fear of being prevented, for political reasons, from fulfilling the family's dream that I become a lawyer, the first one in the family. The Berlin period contributed only partly to my political clarification. Though I organized colloquia against the fascist regime and its colonial policy and discussed such topics with the members of the SDS (Sozialistischer Deutscher Studentenbund) who later were to become the leaders of the student movement in Germany, I was at the same time traumatized by my daily contact with the Stalinist regime of Walter Ulbricht in the Democratic Republic of Germany.<sup>12</sup> Confronted with crude forms of intellectual control (such as the Havemann affair<sup>13</sup>) and with political repression, and unable to conceive of the regime as a degenerate form of socialism, I was prevented from developing a coherent socialist political attitude.

When I arrived in the USA, the student movement was finally breaching Yale. It was a period of political consciousness and anti-establishment radicalization: Vietnam, the Cambodia invasion, Kent State, the Chicago Seven, the Black Panthers trial in New Haven, *The Greening of America* by Charles Reich (a Yale law professor), teach-ins, the first students' strike in Yale's history, professors on trial for their racist behavior in student-controlled courts. It was also the period in which the "invasion" of the Law School by the social sciences was reaching its peak, so much so that when I was swept up by the social sciences' epidemic and decided to specialize in the field of sociology of law I didn't feel the need to abandon the law school for the sociology department.

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

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<sup>12</sup> I was then crossing the Wall every week to visit my girlfriend in East Berlin.

<sup>13</sup> On the Havemann affair, see Hirschman (1993) and Macrakis and Hoffmann (1999).

dictatorship in Brazil (1964-1985 and particularly vicious after Institutional Act number 5, December, 1968) brought about with the active complicity of the US; Salvador Allende's tragic experience in Chile (1970-1973), killed by a military coup orchestrated by the CIA; and the Portuguese revolution of 25 April 1974, which ended 48 years of a civilian dictatorship inspired by Mussolini's fascism and one of the longest colonial regimes. They were very different personal experiences. I was immersed in the Brazilian when I went to Brazil to conduct my field research (beginning of 1970); my contact with Chile was indirect, through narratives of exiled democratic politicians I met during my stays at Ivan Illich's center in Cuernavaca; Portugal was not only direct but also intensely participatory.

Sociology of law at Yale was studied under the (dis)joint guidance of socio-legal lawyers, on the one hand, and sociologists, on the other. The former based their teaching either on anthropology of law (Rick Abel) or on Weber's sociology of law (David Trubek). The sociologists tended either to adopt a somewhat crude behaviorist and positivist position (Donald Black); or to be over-eclectic in their approach to law (Stanton Wheeler). In any case all were trapped by the need to gain respectability inside the law school. Dave Trubek and Rick Abel sought tenure; Donald Black wanted a tenure-track position; Stan Wheeler came with tenure. The competition and rivalry between sociological lawyers and sociologists were hardly disguised. The former criticized the latter for not knowing enough law and the latter criticized the former for not knowing enough sociology. There was some measure of cooperation and even complicity among them, if for no other reason than that they all felt somewhat marginal to Yale's elitist mission.

Institutionally, the center of the sociology of law was the ambitious Law and Modernization Program.<sup>14</sup> The seminar on law and modernization, taught by

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<sup>14</sup> As this Program's organizers described its objectives and focus: "Modern laws and legal institutions may be essential to the modernization of developing societies. But despite the belief that law reform is essential for developing nations and growing evidence that effective change through law is an extraordinarily complex process, little systematic research has been undertaken on the role of law in modernization. Although some social scientists have recognized the importance of legal systems in development, they have not been sufficiently interested to explore thoroughly the operation of legal institutions. At the same time, academic lawyers have generally emphasized the conceptual problems of the legal systems of developing countries while focusing only peripherally on related economic, political and social issues. Little joint work has been attempted by lawyers and social scientists. To help fill this gap in research and teaching, the Law School of Yale University has instituted a Program in Law and Modernization. The Program will support theoretical research as well as empirical studies of the social, political and economic dimensions of the legal systems of specific developing societies, of legal barriers to change, of cross cultural comparison of the interaction of legal systems and modernization and of strategies of planned social change in specific societies. Empirical research focuses on legal systems in developing counties, but the Program will also support work on basic legal and social science theory necessary to further comparative study of law in society. Empirical research is currently underway on East Africa, Brazil and India." Taken from a public relations brochure, this quotation does not explain the L&MP, its real objectives and underlying strategies, its conditions and

David Trubek, the director of the Program, was the platform for exciting discussions on law in society. The aggressive Yale style of discussion I found most congenial. Compared with the feudal intellectual relations at Coimbra Law School, the liberal free market of ideas was an intellectual liberation.

The study of sociology was combined in my case with a process of political radicalization. Exposure to the Vietnam War, American imperialism in Latin America, and the social inequalities and political corruption inside American society counteracted the effect Ulbricht's regime in East Germany had produced in me and thus became the objective conditions from which a radical critique of both capitalism and imperialism could develop.

It was in this intellectual and political context that, early in 1970, I applied for a Law and Modernization grant to do research in Brazil, after having read on the announcements board that the Program was funding research on legal services for the poor in Brazil. I had always wanted to go to Brazil, the promised land of both my grandfathers' stories in my childhood. Besides, the research topic sounded "leftist" and seemed adequate for a critical theory of law and society I was seeking. Finally, I knew that in order to establish my credibility as a social scientist I should start by doing empirical research. All my energies were devoted to an almost obsessive reading on general sociology, sociology of law, and anthropology of law. My sociological training became crucial at the time, mainly because I thought that the analytical tools developed by bourgeois science (as I started calling the science done and taught at Yale) could be used outside their "natural setting" in a radical critique of capitalist society. The political contradictions of established social science were then clearer to me than its relative theoretical shallowness and methodological poverty.

The further into established social science I moved while preparing my research project, the more I became an outsider. A vacuum was created which Marxism gradually (and never fully?) filled. An early manifestation of this intellectual process was the complex experience of conflicting identification I underwent while reading the empirical and theoretical writings in my chosen field.

Sometimes I read the material from the perspective of the social scientist – the view from the top, adopting, as a consequence, the persona of the subject of science. On other occasions, on the contrary, I embraced the view from the bottom, identifying myself with the "victim," the object of science. As my research continued the latter identification became dominant. The more credible I became as a subject of science the deeper I experienced myself as an object of science. In an Alice-in-Wonderland fashion, I climbed out of the rabbit hole. This was due to the fact that the bulk of my reading was on social anthropology and basically on

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limitations. But it reveals its ideological background, which is also relevant for the purposes of this paper. At the time, there was at Yale another research group on sociology of law/criminology, directed by Stan Wheeler.



research done by British anthropologists in Africa and American anthropologists across the “Third World.”

I gradually became conscious of the imperialistic nature of bourgeois social science. Coming from a “peripheral” country – probably not peripheral enough to be an interesting target for social scientific *hubris* – I could witness, while reading the material, the development of my own scientific (and political) underdevelopment. But besides the political content (and the political form, as I came to conclude much later) of such studies, what struck me most was that they sounded like false, magnificent networks of misinterpretation, monuments of trained and specialized ignorance. I became as arrogant vis-à-vis these studies as only a newly converted Christian could be. My legitimacy was grounded on untrained knowledge emerging from sheer experience. My revolt was the revolt of the object against the subject. And when the object revolts against the subject, he tends to claim to be a super-subject, in this case, a super-scientist. Indeed, I added a new goal to my original motives for undertaking research in Brazil: to demonstrate through my empirical research how wrong American legal anthropologists and legal sociologists were in their analysis of law in “the Third World.” The immoderation of my ambition was the counterpart of my resentment. And it could not stop there.

As I said before, the Law and Modernization Program centered on two areas: dispute settlement studies and studies of law and modernization or development (synonyms, from the perspective of the students). A suffocating Weberian atmosphere dominated the latter. The political project underlying law and development studies was hardly questioned by sociological theory. There is nothing wrong in presenting law as a positive factor of development so long as the latter is specified and contrasted with alternative types of social transformation, such as social revolution, in which law usually functions as an inhibition. However, revolution was taboo, the *non-dit* of dominant discourse on law and development. Revolution was Cuba, haunting US foreign policy since Kennedy with subversion and the end of “regional stability”: an imminent threat to US economic and geopolitical interests.<sup>15</sup> Under such circumstances, law and development studies were bound to overemphasize the positive role of law – an ideological bias in favor of lawful social transformation and against revolutionary processes. And thus they became, whatever the intentions of their proponents, little more than a rhetoric of legitimation which could be appropriated by the more liberal factions of the national bourgeoisies in both the US and the “Third World.” In the case of Brazil, law and modernization scholars – having abandoned the attempt to “civilize” the military dictatorship entrenched in power since 1964 with active American support

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<sup>15</sup> See Mills (1960).



– were trying to create the institutional conditions for a bourgeois civilized society, stable enough to offset the revolutionary potential created by the dictatorship.<sup>16</sup>

One of the privileged areas of the “war on poverty” was research on legal services for the poor. I read extensively on legal aid in America and visited some offices in the New Haven area. I even attended a meeting on law and poverty organized in Chicago by that champion of social transformation through law, the American Bar Association. Given the differences in scope and political intent among legal aid projects, I soon retreated from my initially overoptimistic view of them. Nevertheless, I was impressed by the socialist conviction of some of the activists working in the more advanced projects. Indeed, it was in view of their activities that I came to anticipate a rather negative picture of legal aid for the poor in the Latin American context. Only a democratic regime with a stable class support – non-existent in Latin America – could allow the oppressed classes to be taught to use law to promote their rights and defend against arbitrary rule without thereby undermining the institutional foundations of class domination and State power. Though this line of reasoning proved later to be somewhat simplistic I was unable to control my arrogance and promised myself that my research would bear witness to the ideological bias underlying law and development studies. In the following decade, Ronald Reagan's attack on legal services confirmed that even core capitalist societies may not tolerate the (minimal) challenges of law reform cases launched by legal aid lawyers.

When I began field research, my sociological background comprised two convergent ill-integrated areas of interest: dispute settlement/informal justice and access to law/legal aid. I tried, at first, to unify them under the rubric of “attitudes of the poor towards law,” but the naïve conceptualization of law underlying such a topic dissolved as I became more conscious of the class content of the official legal system in Brazil. Gradually my research project emphasized dispute settlement because it seemed scientifically more fruitful.

Shortly after I applied, my research grant was approved and I left for Brazil. I spent several months in Rio Janeiro doing participant observation in a big squatter settlement (*favela*) I called Pasargada (from a poem by the Brazilian poet Manuel Bandeira) to hide its identity, since revealing it would endanger the people with whom I worked, in light of the dictatorship's surveillance of “subversive activists” operating in the favelas. The real name of the favela was Jacarezinho. I have described elsewhere (Santos, 1995: 124-249) the incidents of my research, as well my traumatic encounter with the Ford Foundation office in Rio.

## REALITY CHECK AND THEORY BUILDING

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<sup>16</sup> Though I did not question the personal honesty of the scholars involved, some of them good friends, I could never understand their naiveté and blindness vis-à-vis the objective conditions of the historical process they were living through in both the US and Latin America.

Back in the US and deprived of the daily contact with the *favela*, my field notes gradually became my main means of recovering the past. The “data” began then to emerge from what had been a total experience, in no way reducible to data. As if science, like Phoenix, arose from the ashes of passion. But the open space thereby created for scientific development was shaken to the roots by a particular event.

It so happened that, almost by chance, I learned that the L&MP was, like many others throughout the country, funded by USAID. This was a great shock to me and to some of the other foreign graduate students. It had never occurred to us to ask about that, and in retrospect I felt naive and stupid for having thoughtlessly assumed that the generous money involved could come from nowhere. This innocence, however, was not an “innate” personality trait but rather the result of my scientific socialization in a country (Portugal) where the social sciences had been banned for many years, so that whatever research was conducted seemed to be dominated by pre-capitalist relations of scientific production, inside which the researcher could credibly be seen as an autonomous producer of science. I personally had never questioned that ideological assumption. In my years at Coimbra Law School, I always felt like an autonomous producer of legal science, who was paid to teach but not to do research. Probably, this fact also accounted for the contrast between my strong, outraged reaction and the reaction of other leftist students from “more developed” countries. The latter were more prepared to accept the facts cynically and exploit them to their own advantage.

My previous scientific background and socialization also accounted for the fact that I framed the issue as an ethical question, leaving in the penumbra the material base of the scientific process in which I was involved. Accordingly, my moral outrage was directed at the patient director of the Program, David Trubek. My central criticism was that he should have let us know from the start about the financial structure of the Program. The director, a good friend, was puzzled and offended by my reaction. In his opinion, one should accept as a given that social science today cannot be pursued without funding. Thus, the question becomes the conditions imposed by the funding institution; it makes no difference whether such an institution is Yale University (which gets its money from investments and alumni donations) or the Ford Foundation (whose money derived from Henry Ford) or the State Department (funded by taxpayers). And Dave took great pains to show me that no strings had been attached to the funding. I was even given a copy of the funding agreement.

I was not really convinced and kept thinking that the source of the funding had been hidden from us in order to avoid our reactions. Long discussions then took place both with the director and other Yale professors involved in the Program, on one side, and foreign graduate students and scholars, on the other. We were a very heterogeneous group in terms of both our countries of origin and our intellectual interests, but most of us shared left-wing political attitudes and a critical stance vis-à-vis American imperialism (a word that by then was becoming common among

us to define US foreign policy). After much discussion, we were able to clarify our views on the imperialistic use of the social sciences and to define our position vis-à-vis the Law and Modernization Program. Firstly, we contended, established social science in advanced capitalist societies reproduces, in a very specific way, the structure of class domination both internally and internationally, and the Program was part of this process. Secondly, such reproduction, far from being limited to the political use of scientific results, involves the theoretical apparatus of social science, the methodological tools, the conceptualization of social reality, and probably even the epistemological foundations. Thirdly, under such circumstances, the question of the strings attached to the funding of specific research projects is misleading, since it confines the question of political determination to the realm of scientific results. Nevertheless, it plays an important role insofar as it establishes the conditions under which liberal ideology about science claims credibility within the dominant mode of science production. Fourthly, the ideology of liberalism is internally contradictory, and it is through its contradictions that radical science may establish its practice in class societies. In other words, the residual autonomy granted to the scientist by bourgeois science may be used to build up a radical alternative to bourgeois science itself. Since we had been granted liberal scientific autonomy inside the L&MP in that we had freely chosen our research topics (if within the explicit limits of the Program) and no one had controlled our scientific results or pressed us to produce policy recommendations, the conditions were present for us to convert our moral outrage against scientific imperialism into a purposeful scientific and political project.

My serious theoretical training started then. In fact, this was the second layer of theoretical training, since the first one had been completed before I conducted the field research (namely micro-theories of dispute settlement). The second layer consisted of Marxist macro-theories of law and/in society. A few of us started reading and discussing Marx in a more systematic way, and a kind of counter-course on the Marxist analysis of imperialism was organized. In the basement of the law school we regularly discussed *Kapital*. Two of us followed the only “official” course on Marxism offered then by Yale and taught by Leon McBride. As I was convinced that Hegel’s logic was more important than anything else in understanding the roots of Marx’s dialectical method, I also attended a seminar on Hegel’s logic taught by John Finlay – a distinguished Hegelian teaching his last year before retirement – and spent a great part of the semester reading *The Science of Logic* (Hegel, 2010). The second layer of theoretical training occurred during my next three years at Yale, while writing the dissertation and travelling once to Brazil and twice to Cuernavaca (Mexico), where I became the close friend of a radical intellectual-- an Austrian Catholic priest, punished by the Vatican, who for years had run the parishes of poor neighborhoods in New York City and Puerto Rico. I am referring to Ivan Illich. These were gloriously crazy years, which, among other things, made me a workaholic for years to come. At Ivan Illich’s institute, CIDOC

(Centro Intercultural de Documentación) I taught a seminar on law and revolution in 1972 with a French sociologist and philosopher, André Gorz.

The subsequent theoretical clarification made it easier for me to distinguish between the institutional set-up and the people who ran it. The latter respected my feelings, tolerated my occasional arrogance and eventually became my best friends. How to integrate the new theoretical developments with the empirical data from my research in Brazil was much more difficult. One such problem was explicitly political: the fear that my research data, once out of my control, might be put to an imperialistic use. Today, this almost obsessive fear seems quite disproportionate in view of the nature of the data themselves. But at the time my anxiety was only relieved by changing names, numbers, and locations so as to prevent the identification of the community and carefully selecting the data I would use in the analysis – which meanwhile had expanded into a doctoral dissertation on sociology of law.<sup>17</sup>

In the light of the new position I had taken on bourgeois science as a possible instrument of imperialism, my data changed their political and scientific status or nature. The most interesting data for my original theoretical purposes became the most politically delicate and were eliminated from the analysis. For instance, though I was familiar with the oppositional clandestine, anti-fascist activities inside the community, I would not describe them, regardless of their relevance to understanding the operation of the community legal system, which constituted my research topic. Indeed, I had to exercise a double control over my data, since Pasargadans had provided me with information they would have withheld from someone fitting their stereotype of a US social scientist.<sup>18</sup>

The priority given to political criteria in the selection of the data was ambitiously conceived as part of the anti-imperialist struggle at the level of social science. The implementation of such a priority, however, was a recurrent source of psychological stress which, at times, led to paralysis. In one sense, I knew too much to be able to write; but in another (particularly when comparing my usable data with the data my friends in the Program were using), I knew too little to be able to write a publishable paper.

In view of the nature of my theoretical development after my field research was completed, the data “suffered” several deconstructive and reconstructive

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<sup>17</sup> The dissertation was *Law Against Law: Legal Reasoning in Pasargada Law*, published by Ivan Illich at CIDOC, Cuernavaca, Mexico, in 1974. A much shortened and revised version was published as “The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada” (Santos, 1977).

<sup>18</sup> Santos (2021). Many years later I dedicated the Portuguese publication of my dissertation to Irineu Guimarães, one of the most important communist leaders in the community, who became my closest friend and with whom I had long hours of conversation. His legal business in the favela was a very humble shoe repair shop located in the poorest neighborhood of Jacarezinho (Santos 2021).

transformations, which were also made possible by the transgressive methodology I had adopted in the field. This process, however, involved a double integration of theory and data. On one hand, my transgressive methodology had been based on a “spontaneous,” hidden, undeveloped, and largely “intuitive” transgressive theory. As I developed the latter, it became necessary to reconstruct not only the data but also the methodology by which they had been gathered. The transgressive methodology had to meet the transgressive theory at a higher level of coherence. The temporal structure of this process was very complex, since the theoretical development undertaken in the present called for an imaginary (but nonetheless real) continuation of the field research based on the written record according to an enlightened transgressive methodology. The record thus became the record of the past (as written) and of the present (as rewritten).

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

In the first paper I wrote on my research, I tried to develop a theory of the evolution of State legislation on *favelas*. The theory sought to explain how Brazilian State intervention was not intended to solve the structural problem of urban squatter settlements but had rather tried to control the social tensions arising from the persistence of this problem. This theory, which I called the negative dialectics of law, was my first attempt to offer a radical alternative to the law and development theories: I proposed a theorization of law as an obstacle to social change (Santos, 1971). More on this below.

In subsequent drafts of my doctoral dissertation I tried a fuller integration of dispute settlement, legal pluralism, and Marxism without ever fully succeeding. This failure was due to many reasons. Firstly, there was no coherent Marxist theory of law in society. Marx’s fragmentary references to law are exclusively concerned with the State legality of modern capitalist societies; there was virtually no Marxist theorization of “informal” “unofficial” legality in capitalist societies, legal pluralism, or law in pre-capitalist social formations. Secondly, though I found the legal anthropological theories of dispute settlement increasingly unattractive for their failure to locate communities in their broader political context, I remained

committed to a detailed analysis of community legality, which I felt could lead me to much broader sociological insights. Such a strategy, however, collided with an emphasis on legal pluralism, the ground upon which I had chosen to build a Marxist theory of Pasargada law.

Through much trial and error, I reached an unstable compromise. I commenced by analyzing dispute settlement and prevention patterns through a study of legal rhetoric, which seemed to be the most adequate strategy to unveil the basic structure of Pasargada law – and then analyzed legal pluralism whenever this helped to illuminate the operation of legal rhetoric in Pasargada. The resort to legal rhetoric also symbolized my personal revenge against the elitist training in legal philosophy I had received in West Germany. Indeed, I tried to apply the most sophisticated philosophical reconstructions of highly developed continental legal systems and legal dogmatics to a socio-legal context which, from the continental point of view, was an illegal setting of marginal and deviant groups living on the fringes of society.

At the same time, the situation of legal pluralism was conceived in Marxist terms as an unequal exchange between a dominant (official) and a dominated (unofficial) legal system, reproducing class relations and conflicts in Brazilian society. But I failed to theorize the impact of this legal pluralism on the operation of legal rhetoric in Pasargada law. The failure was partly due to the tension between a general, structuralist conception of law in society and a constructivist conception of law as an operational device in dispute settlement. The compromise reached at the time becomes evident in the following section.

### THE DIFFICULT BIRTH OF A MARXIST THEORY OF LAW

In 1971, my intensive Marxist formation began bearing fruit in the realm of law. I wrote a Working Paper for the L&M Program titled *Law against Law* (Santos, 1971). The title was indicative of the preeminence given to the notions of conflict and contradiction in the field of law and society. In 61 pages, I presented the prolegomena of a Marxist theory of law, the theory of the negative dialectics of law.<sup>19</sup> It was based on two hypotheses. The first stated that “In general there is nothing inherent to a social problem that makes it more or less suitable or unsuitable to its translation or conversion into a ‘legal problem.’ By legal problem I mean a problem that has been subjected to the ordering matrix of available legal models, that will be processed through recognized legal procedures and the solution of which will be considered a ‘legal decision’ however questionable its content may be. The ways in which the ‘legal aspects’ of a given social problem are selected and the extent to which those aspects reach in depth the nuclear existence of the problem depend on a variety of factors: cultural, political and socio-economic factors...[T]he extent to which a social problem becomes a legal problem depends

<sup>19</sup> The designation of the theory may bear some influence of Horkheimer’s and Adorno’s *Negative Dialectics*. See Adorno (1973); and Horkheimer and Adorno (1999).

on the type of 'legal solution' which society is prepared to provide. A social problem is left outside the legal system when society is not prepared to provide any legal solution." I added that the "synthetic conversion" was not a translation since "[w]hen a social problem becomes a legal problem, it becomes, to a certain extent, a new problem, not only a new legal problem but also a new social problem... This, however, should not be interpreted as implying from my part the recognition of the great ability of the legal system to induce social change. On the contrary, I am very much aware of the limitations of the law in this respect and this will be made clear in the course of the discussion of the second hypothesis" (Santos, 1971: 1-8).

The second hypothesis stated that "although things *in general* happen in the way hypothesized by the first hypothesis, there are, however, certain social problems, problems that we may call 'basic' or 'structural,' whose conversion process does not fit *a priori* the general model. By 'basic problem' I mean a problem that by its very magnitude and complexity is directly connected, in its premises, with the foundations upon which a given social system is based so that to question the premises amounts to questioning the foundations themselves. It is a problem that 'belongs' to the structure of the society in such a way that a radical challenge to its existence or 'mode' will produce a radical disruption of other basic sectors of the social structure" (Santos, 1971: 10). After some caveats on the notion of structure, I described the second hypothesis: "the 'structural problems' can never be totally absorbed by the legal system and therefore cannot be 'solved' within the framework of a 'legal solution.' The unspoken assumption here is that the official legal system is a constitutive, but subordinate, part of a given social, political, and economic structure that makes up a given society. Being so, the legal system can never threaten the existing structures in a radical way... the 'structural problem' is a kind of multicephalous iceberg which appears at the surface of the social life under different disguises and with differential intensity or visibility. Those 'disguises,' or 'sub-problems,' are the social disturbances or 'social tensions' that will be detected in society. They constitute the 'superficial' level of the existence of the structural problem. But this level is the only one in which the legal system can operate with reference to such problem. The legal intervention will be directed to reduce the 'social disturbance' or 'social tension.' To the extent that it will be successful in that, the legal system will be able, in the short run at least, to reduce the structural problem in its social visibility, to suppress it, to keep it under control, but never to solve it. The dialectical process will become evident if we take into account the notion of creative synthesis (or conversion) referred to in the first hypothesis and that here takes place at the 'superficial level' – the level of the 'disguises' or 'sub-problems.' Precisely because of the recreated forces at this level, a given synthetic conversion (that is, a legal intervention directed to reduce a specific social disturbance or social tension) may lead – in the same process through

which it reduces tension at one point of the superficial level – to an increase of tension at another point of the same level. If this occurs, a new intervention of the legal system might be required and, in fact, might take place. However, since the legal system is ab initio alienated from the ‘existential level’ of the problem and ‘degraded’ to its ‘superficial level,’ there is no guarantee that the new synthetic conversion will not be circular in its effects—and that is why I call this process a process of negative dialectics.” (Santos, 1971: 10-12)

Even though Karl Marx is never mentioned, this was the draft of a Marxist theory of law. Why was Marx not named? For two reasons. As I noted above the intellectual environment of the L&MP was Weberian. It took me some time to appreciate Max Weber in all his complexity. In particular, I did not know at the time that Weber saw all his work as an implicit dialogue with Marx, saying at the end of his life that it would be impossible to understand the twentieth century without reading Marx. This ignorance was not David Trubek’s fault. The fault was that of Talcott Parsons, who had translated Weber from the German in ways that eliminated all traces of Marxian thinking and concepts. Only much later, the biases of Parsons’s translation became known and denounced in the US (in Germany they were known all along).<sup>20</sup> I don’t remember having discussed this paper with any of my professors. I was already seen as a radical student, with a German-English (that is, highly abstract) style of writing and an interest in German philosophy of law (particularly legal reasoning). David Trubek (my main supervisor) read the first draft of the dissertation, into which this WP was integrated, and raised no objection. David Trubek was a genuine liberal, a precious quality that I came to value more and more in the following years, particularly during my thirty-five years at

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<sup>20</sup> The most prominent exponent of structural-functionalist sociology, with its politically conservative bent, was Talcott Parsons, who turned Max Weber into the major alternative to Karl Marx. Only many years later was Parsons’s presentation and translation of parts of Weber’s *Wirtschaft und Gesellschaft* (Economy and Society) called into question, particularly concerning Parsons’s choice of terms that tended to downplay Weber’s concern with social conflicts while overstating the topic of norms and order in society. It is common knowledge that Parsons shocked his German colleagues by insisting that Weber’s major contribution to sociology had nothing to do with the sociology of law. Since sociology of law was my primary interest at the time, I first approached Weber as a sociologist of law. A striking example is Weber’s crucial concept of “*stalhartes Gehäuse*,” which appears in Parsons’s translation of *The Protestant Ethic and the Spirit of Capitalism*, as well as in later translations, as “iron cage.” By his concept, Weber meant to define the human condition as subjected to bureaucratic capitalism, i.e. under total confinement, even though a confinement created by itself. Thus, a correct translation could never resort to “iron,” which is not a human creation, but rather to “steel” (Stahl), a man-made alloy. We might even surmise that what Weber intended his phrase to evoke was Marx’s concept of “alienation.” See Baehr (2001). Another telling example of Parsons’s intentions is his translation of “*Herrschaft*” as “authority,” not “domination.” This mistranslation, by erasing the sense of imposition, diluted the strength of Weber’s concept and created a maze of confusions with other Weberian concepts, such as “*Macht*,” “*Zwang*,” and “*Gewalt*.” See Greven (2004). The bibliography on the problems of translating Weber’s works is huge. See, for example, Sica (1984); Dreijmanis (2020).



University of Wisconsin-Madison law school, and as I witnessed American society sliding slowly but steadily toward ideological conservatism and the political right. David Trubek's tolerance was, however, not the rule at Yale. The second reader of my dissertation was Leon Lipson, a professor of comparative and international law and a specialist in Soviet law. He was a fierce anti-communist, which at the time also meant anti-Marxist. He read the draft, and the Marxist character of my legal theory could not escape him. We had a long discussion. Consistent with the fake liberalism prevalent at Yale at the time, he said "had nothing against Marx" but simply thought that "Marx was not relevant to my dissertation" on dispute settlement and sociology of law, topics that had nothing to do with Marxism. He strongly advised me to eliminate the chapter. I insisted on keeping my basic theorization but eliminated the chapter. A dangerous concession? Probably. Nonetheless, I saved Marx for the last sentence of the dissertation (see below). I returned to the theory of the negative dialectics of law a few years later in a paper on law and community published in a book edited by Rick Abel (1982).

### **BUILDING A SCIENTIFIC COMMUNITY**

My theoretical resistance to what I understood as the dominant intellectual paradigm of the Program did not demand a chapter on a Marxist theory of law. The dissertation was entirely organized on the basis of a conception of society as social conflict (at the time, a code word for critical sociology) and with the explicit purpose of giving voice to the oppressed social groups in such conflict by analyzing their views on law and legality. Following another core idea of critical sociology, I purported to be objective but not neutral. All of us critical students were greatly influenced by Howard Becker's 1967 article, suggestively titled "Whose side are we on?"<sup>21</sup>

The intellectual environment was very exciting and the discussions always very lively. For someone like me, coming from the hierarchical and reverential world of European universities, this was a blessing. All of us seemed to be progressives, the only separation being between foreigners and US students. The latter were engaged in a radical critique of the American legal tradition, while for those of us knowing nothing of American law (and in my case, coming from a continental law tradition) such radicalism was arrogantly and unjustly viewed as varieties of the same American imperialism. But sweet and convivial personalities like Richard Schwartz, Charles Black, Stanton Wheeler or Joseph Goldstein (who understood the anxieties of a foreign student better than anyone else) made us forget all about imperialism and enjoy the barbecue and beer.<sup>22</sup>

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<sup>21</sup> For a good review of this article see Liebling (2001).

<sup>22</sup> I will never forget that on our way to Denver in the summer of 1970 to take a crash course on social sciences methods, Tom Heller introduced me to what would become one of my favorite drinks: root beer.

As a result, and aside from the incident of the chapter on the Marxist theory of law, I wrote my dissertation with no constraints from my supervisor and in a free and friendly environment. The focus on dispute settlement was crucial to engage in debates and theory construction in many different socio-legal contexts. The official legal systems in the different countries were at the most a dependent variable in our studies. A very exciting scientific community was thus emerging. I remember lively debates with Rick Abel, Laura Nader, and Bill Felstiner. Donald Black, a legal sociologist recently hired, was an arch-positivist and our debates were invariably confrontational.

The conclusion of my dissertation reveals with clarity the strength and the novelty of the scientific community we were building. I reproduce it as a document that only survives in the full version of the dissertation published in Cuernavaca by Ivan Illich.

*Conclusion of law against law: legal reasoning in pasargada law*

“If I were allowed to engage in the archeology of scientific knowledge as transmitted in written form, I would say that the ‘conclusions’ at the end of any study or book were invented to give the author an opportunity to misread and misinterpret his own work – thus setting the example for his critics – as well as to embark in wishful thinking as a compensatory device for the inevitable frustrations of any scientific undertaking; particularly one with theoretical ambitions. I will not forfeit this opportunity.

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1) It has been recently said that “Unlike jurisprudence ... sociology of law abjures problems of a normative character; unlike sociology of law, jurisprudence bypasses the ordeal of concrete description” (Black, 1971: 1110). If this distinction were to be conceived as denoting a natural division of ‘labor’ and thus a scientific dilemma, I, as a citizen, would consider pleading for the banishment of legal sociological studies as a waste of resources. My plea would, of course, be ultimately quixotesque because, in such case, no resources, private or public, would be allocated for such studies. I have, however, proposed that the dilemma is an ideological one: keeping norms out of the sight of social conditions and social conditions out of the sight of norms enables the *status quo* to perpetuate itself along the only real (and unscientific) path of social life, the path where norms and social conditions become dialectically related. In my study I have tried to show that, at least, whenever the focus is on legal reasoning and legal argumentation, the distinction between ‘problems of normative character’ and ‘concrete description’ breaks down.

2) In a socially stratified society different and competing ideas or definitions of legality are likely to be found. In such a case situations of legal pluralism may develop, such as the one comprising the Brazilian official legal system and



Pasargada law-ways. Given the youth of the field and the scarcity of empirical material, I have not been able to develop a general theory of legal pluralism – a task to be taken up later. The idea of legal pluralism has been mostly developed in the context of some African countries where the confrontation between an imported European legal system and the native law-ways have been studied primarily in terms of cultural differentiation. My study shows that situations of legal pluralism may also develop in complex societies with high degrees of social stratification, particularly when the irresponsiveness of the official law, official courts, and official lawyers to the interests and needs of the low classes is coupled with the relative stability and autonomy (in terms of internal organization) of the communities predominantly populated by such classes.

3) Whenever the two or more legal systems are in contact, different feedback mechanisms between them may be detected. The operations of such mechanisms are likely to reveal hierarchical relations among the different systems. In my study, I have conceived of the official legal system as the dominant or strong element of the pluralistic situation because it influenced more the Pasargada legal system than was influenced by it.

4) In societies such as Brazil, dominated by the European legal science and legal philosophy, the sociological finding of situations of legal pluralism challenges the 'truth content' of the accepted principle of the unity of the legal system. It also challenges the liberal principle of the equality of all before the law. Traditionally, this principle has been challenged on the basis that people from different social classes are treated differently by the *same* legal system. In a legal pluralistic context, the challenge is taken to a deeper level: to the level at which the 'sameness' of the legal system breaks down completely.

5) In their study on legal contacts and social stratification, Albert Reiss and Leon Mayhew (1969: 309-318) have concluded that, against the middle-class belief, the poor do not have less legal problems; they have different legal problems. This thesis seems to be correct only within the framework of a unitarian official legal system; it is likely to be falsified in a context of legal pluralism within the same society. In Brazil, for instance, the bulk of the legal cases of the poor handled by the official law and court system are cases of alimony and child support. In Brazil, these cases are typical of the poor; members of the other social classes are most frequently involved in other kinds of cases. However, once we enter Pasargada and analyze Pasargada law ways, we see people involved in legal relations, such as property transactions, which in their formal structure have very strong similarities with the legal relations that within the official legal system are typical of non-poor classes.

It can be furthermore suggested that in a class society there are certain types of socio-legal relations to which the poor can have access only on the condition that the status of illegality be imposed upon such relations by the official legal system. Under certain circumstances it is possible that alternative definitions of legality will emerge (see the inversion of the *grundnorm* on landed property).

6) This study shows that law can be fruitfully analyzed independently of the idea of the State and of the organized sanctioning power. Such analysis is best suited to unravel the topic-rhetorical structures of legal reasoning and legal argumentation and the variability they allow for in the context of other social factors within and without the dispute processing context.

The broad definition of law followed here makes it impossible to test the empirical observations of this study against propositions advanced in other studies in which narrower definitions of law have been followed. For instance, Richard Schwartz, for whom legal control is “control which is carried out by specialized functionaries who are socially delegated the task of intra-group control”, has concluded in his study of two Israeli settlements that the likelihood of legal control arising at all in a given sphere is “a decreasing function of the effectiveness of informal controls” (Schwartz, 1954: 473). Similarly, Donald Black, for whom law is State (official) law, concluded in his study on the social organization of arrest that, “over time the drift of history delivers proportionately more and more strangers who need the law to hold them together and apart. Law seems to bespeak an absence of community, and law grows even more prominent as the dissolution of community proceeds” (1971: 1108).

In terms of my own conceptualization and empirical findings, these neo-evolutionary propositions would have to be transformed into correlations about different kinds of law in different social conditions. For comparative purposes, then, it may be useful to reformulate Schwartz's and Black's propositions in the way proposed by Felstiner: “Formal dispute settlement process will be used to the extent that less formal process is ineffective” (Felstiner, 1971: 33). If one considers the Brazilian official legal system as ‘more formal’ and Pasargada law-ways as ‘more informal,’ then some of my data suggest that, in situations of legal pluralism, this proposition can be falsified by its counter-proposition: less formal dispute settlement will be used when more formal dispute settlement is ineffective.<sup>23</sup> The feedback mechanisms between the two legal systems and the constant reformulations and reevaluations of relative efficiency makes it possible for the proposition ‘to work in tandem’ with its counter-proposition.

If the proposition is formulated in evolutionary terms and if the emergence of the Pasargada law is due in part, as suggested here, to the inefficiency of the official

<sup>23</sup> See Felstiner (1971: 38). See also Van der Sprenkel (1962).

legal system and the social conditions it reflects, then it is legitimate to conclude, contrary to Schwartz and Black, that under certain circumstances the likelihood of informal (unofficial) law arising at all in a given sphere is a decreasing function of the effectiveness of the formal (official) law. Consistently with my epistemological and methodological position, I do not discuss conceptual preferences unless in terms of their usefulness to discover and to analyze the empirical material at hand. The broad concept of law followed in my study fitted best both my theoretical and my analytical purposes. Besides, such concept seems to have: a 'social durability' that other and narrower concepts lack. Law as defined in my study is the law that will survive the eventual withering away of the State as propounded by the Marxist theory of society" (Santos, 1974: 571-577).

## CONCLUSION

On the dark side, the L&MP was part of an imperialist project focused on US economic geopolitical and national security interests. Beyond the surface of official declarations, the funders of the program were little concerned with the rule of law and even less with democracy. When the program was funded, in the mid-1960s, the dominant mood in the power headquarters was already characterized by a compulsive rejection of any autonomous political initiative, no matter how democratic, and an obsession with national security, increasingly centered on the stability of US multinational investments in the continent. The situation deteriorated as the decade advanced, which explains why progressive scholars like the directors of the L&MP would be gradually estranged from elite institutions and find themselves ultimately in a condition of self-estrangement.

Then as now, academics coming from outside the core of the world-system to participate in these types of programs will have to play the game. Most of them are eager to do so (even while knowing that it is a political game) either because they share its objectives or because they view it as a financial investment for future career gains (most common among lawyers). Others, like myself and many of my fellow students in the L&MP, see the game as a contested terrain that allows for contradiction and points of leakage through which it is possible to carry out one's academic work with mental reservation and while preserving integrity.

On the bright side, the L&MP as a project-in-action, and thanks to its directors, allowed us to build a scientific community, a sense of being part of a plural, independent, free and collective endeavor that was leading to a new field of the social sciences. There was an overflowing excitement that inscribed itself forever in our personal and academic lives. How else can one explain that shortly after I had finished the dissertation, Rick Abel, then editor of the *Law & Society Review*, would publish a 121-page long article of mine summarizing my thesis? (Santos, 1977: 5-126).<sup>24</sup> How else can one explain that, after leaving Yale for the University of

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<sup>24</sup> Rick and I did a final revision of the article on the long train ride to Madrid from Barcelona, where we had attended a meeting of the European Group for the Study of Deviance and Social Control

Wisconsin-Madison, David Trubek would do so much to bring me over at least one semester a year, which I am still doing to this day? How could it be surprising that Dave Trubek and Rick Abel would remain two of my best US friends?

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on the memorable occasion of the first celebration of Diada Nacional de Catalunya after the death of Franco.



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