

SOCIOLOGY OF LAW IN BRAZIL: THE RECENT YEARS

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I. INSTITUTIONALISATION AND IMAGE

1.1 Sociology of law inside and outside Brazilian universities

The sociology of law continues to encounter difficulties of insertion inside Brazilian universities. However, favorable signs of the sociological knowledge of law are already discernible. But these signs are frequently located outside universities, above all in research.*

In fact there is already a considerable amount of socio-juridical empirical research being carried out under the influence of non-university entities such as the Brazilian National Council of Scientific and Technological Development (CNPq). This Council does not even belong to the Brazilian Ministry of Education but to the Ministry of Science and Technology. Although its financed research projects are mainly executed by University teachers, the Council is in itself dedicated specifically to promote scientific investigation.

During a certain period the CNPq's Law Committee has intensively fostered socio-juridical research and graduate studies on the sociology of law. However, most recently, the CNPq, in its Law representation, seems to be much more inclined to promote traditional juridical studies.

But the CNPq has the possibility of continuing to foment, through its sociological Committee, socio-juridical investigation.

Another example of a non-universitarian entity fostering the sociology of law in Brazil is the ANPOCS (National Association of Graduate Studies and

* The data of the present inquiry were partly obtained through questionnaires sent to the Directors of Law Schools and to socio-juridical researchers.

Research in Social Sciences). Although formed by Brazilian teachers of university graduate programs, it is not in itself dependent on any university. The ANPOCS has a Committee which is specifically dedicated to "Law and Society", which has been considerably active concerning socio-juridical research projects.

In the last few years the Department of Political Science at the Joaquim Nabuco Foundation of Recife – another non-university research institute of the Brazilian Ministry of Culture – has also developed empirical studies on the sociology of law. The same is true with regard to the Department of Research and Documentation of the Order of the Lawyers of Brazil.

In spite of the mentioned signs of a better insertion of the sociology of law in Brazilian universities, the socio-juridical specialization continues to be evaluated in a negative way by the majority of both jurists and sociologists inside universities in Brazil. The former keep on considering the sociology of law as "sociology" while the latter continue to consider it as "law". Thus neither these jurists, nor these sociologists consider themselves involved with the sociology of law and are inclined to consider it not especially important. Such an image formed by strangely opposed viewpoints has prevented a greater expansion of the sociology of law inside Brazilian universities.

One could state that the role of the sociology of law inside Brazilian universities is both teaching and researching, while outside them its role is almost solely connected with research.

In the last ten years the number of empirical researchers on the doctoral level in the sociology of law has increased somewhat in relation to the almost complete lack of development of the previous decade (apparently not exceeding a half dozen doctors then). However there has been in the last ten years a considerable increase in the number of empirical researchers on the master's degree level in the sociology of law. These Masters are either predominantly sociologists or jurists in their graduate studies. With regard to their undergraduate education they are, almost all, jurists.

Although not presenting a Master's or Doctor's program in the sociology of law, the initial model for Brazilian graduate studies in the field was the Division of the Science of Law of the former Institute of Sciences of Man of the Federal University of Recife, a Division founded in 1963, which was dedicated specifically to socio-juridical theory and research – including fundamental research – and to the formation of researchers in the specific domain of the sociology of law.

With the absorption of this Institute – in virtue of the federal legislation of the University Reform – by a new Institute of Philosophy and Human Sciences (now the Center of Philosophy and Human Sciences), the socio-juridical activities of the Division of Science of Law were included in 1970 in the Master's Program of Sociology of that Center, coming to constitute one of its areas of concentration: that of Social Control. This area is recently named Sociology of Law and constitutes one of the three areas of the Master's Program of Sociology.

About ten years ago a professor of the former Division of the Science of Law initiated the teaching of juridical sociology at the Master's Program of Law of the Federal University of Pernambuco. A few students of this Program

presented their Master's Dissertations on the sociology of law and two of them based their work on empirical research.

The sociology of law's theoretical tradition began in Brazil outside universities. As early as 1922, there arose in the country a notable work of juridical sociology, *The System of Positive Science of Law*, by Pontes de Miranda, a jurist who never was a teacher at any university.

The research tradition of the sociology of law in Brazil began outside universities as well: the first empirical investigation of the country (on the social receptivity to an agrarian law for the State of Pernambuco) was accomplished in 1960 by Cláudio Souto under the sponsorship of the Joaquim Nabuco Institute for Social Research of Recife (now called "Fundação Joaquim Nabuco").

In Brazil, the classical work of juridical sociology is Pontes de Miranda's previously mentioned book *System of Positive Science of Law* (a second edition appeared in 1972). This book's position is one of substantive scientific rationality regarding law, avoiding both Weber's technical rationalism and Ehrlich's "socio-spontaneism" — but without denying a great importance to unconscious juridical elaboration (Pontes de Miranda, 1972: *passim*).

After this book by Pontes de Miranda the Brazilian sociology of law does not present, in general, a preoccupation with a most general theoretical perspective, although Brazilian sociologists of law have shown a considerable concern with theory, but this frequently from a marxist and less general perspective.

Brazilian books entitled "Sociology of Law" that have been published or republished in the last decade are no longer philosophical, however are rather written with the didactic preoccupation of divulging the discipline (an initial step in this didactical direction was a work by Cláudio Souto, published in 1968, a book already based on theoretical empirical research).² Thus the works by Celso Antonio Pinheiro de Castro (1979: *passim*), F. A. de Miranda Rosa (1981a: *passim*), a book that has reached many editions, Nelson Nogueira Saldanha (1980: *passim*), Cláudio Souto and Solange Souto (1981: *passim*).

José Eduardo Faria's book entitled "Juridical Sociology" is a collection of previous published or presented articles and essays with a common concern with the crisis of law and political praxis (Faria, 1984: *passim*).

Miranda Rosa's and Souto and Souto's books present a fully sociological perspective, even from the point of view of their references to empirical research. Souto and Souto's work contains theoretical field researches that these authors have carried out in Cologne, Germany in 1965 and 1970. Furthermore their book, although didactical, tries a most general theoretical explanation.

In a socio-juridic dialectical-critical perspective, Roberto Lyra Filho wrote an essay on the so-called dogmatic science of law, defending a juridic science without dogmas (Lyra Filho, 1980a: *passim*). Felipe Augusto de Miranda Rosa published an essay of critical socio-juridic reflections on law, justice and ideology (Miranda Rosa, 1980: *passim*). João Baptista Herkenhoff prepared a modern book on the theory of law interpretation and application, in a socio-juridical perspective (Herkenhoff, 1986: *passim*).

Cláudio Souto (1978: *passim*) has also published an essay explicitly

concerned with the connection between the sociological theory of law and forensic practice. The same author has published in the last decade some articles specifically dedicated to general theoretical sociology of law (Souto, 1977:1-29, 1979b:309-324, 1981a: 158-171, 1981b:181-190, 1982:323-341, 1983:7-20, 1985:3-19, 1986:353-368, 1987:1-24).

Cláudio Souto and Joaquim Falcão have published a book of readings on the Sociology of Law (Souto and Falcão. 1980: *passim*). Miranda Rosa has organized two socio-juridical collections, one on law and social conflict and another on law and social change (Miranda Rosa, 1981b: *passim*, 1984a: *passim*).

1.2. Teaching the sociology of law in Brazil

In Brazil the teaching of the sociology of law began on the undergraduate level in 1964 at the College of Law of the Catholic University of Pernambuco in Recife (founded in 1959). Since then up to the present time the sociology of law has been an obligatory course at that law institution.

On the graduate level the discipline of the sociology of law started to be taught as early as the second semester of 1963, as an obligatory Course in the Division of the Science of Law, of the former Institute of the Sciences of Man of the University of Recife, today called the Federal University of Pernambuco.

Consequently, in this year and in that Division one finds the effective beginning of the regular teaching of the sociology of law as an autonomous discipline in the Brazilian university.

In the Federal University of Pernambuco the sociology of law, besides being an obligatory discipline for the area of concentration "Sociology of Law" of the Master's Program of Sociology, is an elective unity at the Master's Program of Law.

Moreover, at the Federal University of Pernambuco, the discipline has been offered, since the first semester of 1986, as an elective course on the undergraduate level at the Law School. It is interesting to note that this absorption of the discipline on the undergraduate level by the traditional Law School of Recife (founded in 1827) was only possible due to a very strong student movement in favor of its admission.

At the no less traditional Law School of the University of São Paulo (founded exactly at the same time as the Law School of Recife), the discipline of sociology — which is obligatory, by decision of the federal government, for the juridical courses of the country — contained topics of sociology of law. Presently the sociology of law is taught by the Department of Philosophy and General Theory of Law of the University of São Paulo both on graduate and undergraduate level, respectively as an elective and as an obligatory discipline.

A number of other Brazilian universities offer courses on the sociology of law.

At the Pontifical Catholic University of Rio de Janeiro (PUC-RJ) the sociology of law has been connected, as an obligatory discipline, since 1972, with the Master's Program in Law. However, in 1982 the discipline was

disactivated on the graduate level, but is expected to function again soon, as an elective course. On the undergraduate level the sociology of law is presently offered in the PUC-RJ both in the Departments of Juridical Sciences (as an obligatory discipline) and of Sociology and Political Sciences.

Also in Rio de Janeiro, but on the undergraduate level, the discipline has the tradition of being taught in the law courses of the Gama Filho University (as an elective subject) and at the Bennett and Estácio de Sá Schools of Law (as an obligatory subject).

At the National University of Brasília's Department of Law of the College of Applied Social Studies the discipline began to be given in 1973 as an elective course on the graduate level open to both law and social sciences students. In this University the discipline under the title "Law and Society" became obligatory for the Master's Program in Law.

Presently the Federal Universities of Alagoas and of Juiz de Fora (the latter in the State of Minas Gerais) offer sociology of law in their undergraduate law courses as an obligatory discipline. The undergraduate law course at the University of Caxias do Sul (State of Rio Grande do Sul) includes sociology of law as an elective discipline.

Still on the undergraduate level the law schools of Marília (State of São Paulo), of the West of Minas (State of Minas Gerais) and of the University of Passo Fundo (State of Rio Grande do Sul) offer the discipline Sociology of Law. In these law schools the discipline is obligatory.

The sociology of law is also offered on the undergraduate level in the law courses of the Federal Universities of Rio Grande do Norte and of Paraná (in this latter University the discipline is obligatory, while in the former it is elective). On the graduate level (Master's Program) it is taught as an obligatory discipline in the Center of Juridical Sciences of the Federal University of Santa Catarina.

Moreover, the undergraduate study of law at the Federal University of Espírito Santo presents "Sociology Applied to Law" as an obligatory discipline connected to the Department of Sociology.

In the Federal University of Rio Grande do Sul the Department of Social Sciences offers in the Master's Program in Anthropology the discipline "Law and Society" as an elective course.

In the last ten years there has been, therefore, a clear increase in the teaching of sociology of law in Brazil compared with the previous decade.

In the Federal University of Pernambuco and in the Catholic University of Pernambuco, the same professor initiated the teaching of the sociology of law within a perspective more theoretical than applied. It can be said that Recife's model of teaching was and continues to be above all a theoretical model, with the course oriented from a general and basic point of view: it deals fundamentally with the social composition of law, with scientific-empirical knowledge of justice and equity, with law and the coercible forms, with law and social change and with law and society.

On the other hand the model of teaching the sociology of law in the Pontifical Catholic University of Rio de Janeiro has been, since its inauguration, above all an applied one, in harmony with the initial emphasis on law and

development or on business law of the respective Master's courses. In its beginning this model concentrated mainly on the sociological perspectives of the legal proceedings. Now it deals specifically with the access to justice as a research problem.

A former teacher of the Master's Program of Law of the Pontifical Catholic University of Rio de Janeiro became a teacher of the sociology of law at the Federal University of Pernambuco. This added to the teaching of sociology of law in Recife a neat applied perspective which was a valuable complement to its predominately theoretical approach.

Through such an addition it was possible to prepare in the sociology of law graduate students of the Master's Program of Sociology who become researchers at the Department of Political Science of the Joaquim Nabuco Foundation (Recife), which has contributed with legal sociologists to both public and private research projects, especially to public ones.

The Catholic University of Pernambuco promoted in 1985 a course of specialization in Public Law, offered to law teachers, judges, public attorneys and lawyers in which a particular emphasis was attributed to the sociology of law.

1.3. Sociology of law in Brazil and the media

In Brazil there is no significant relationship between the sociology of law and the media.

On one hand it is rare that findings from the sociology of law inside and outside universities be made public through newspapers, magazines and television. On the other hand, teaching and researching the sociology of law in Brazil seldom uses bibliographical references to the media. As a rule, this would not be considered scholastically elegant.

However, at the Division of the Science of Law, of the former Institute of the Sciences of Man of the University of Recife, there was, for a period of about three years, an intense divulging of the Division's socio-juridical activities in the local press. But this was due to the accidental fact that two students of the Division were also professional journalists.

The socio-juridic research activities of the Department of Political Science of the Joaquim Nabuco Foundation (Recife) profit from the intimate connection between the Foundation and the media.

João Baptista Herkenhoff, a researcher and a former judge, had some of his socio-juridical perspectives spread through the press of the State of Espírito Santo.

II DOMINANT TENDENCIES

2.1. The relationship between theory and research in Brazilian sociology of law with regard to theoretical and epistemological models of general sociology and legal science

Brazilian sociology of law is as yet not significantly concerned with the problem of a general theoretical causal explanation. It has been clearly more descriptive than explicative.

Thus an approach such as that of D. Black in the United States, who searches for general explicative propositions in the sociology of law,³ had practically no repercussion on Brazilian authors. Socio-juridic studies in Brazil have been mainly didactical or almost always merely empirical, not going beyond description and sectorial hypotheses.

They have been more connected with teaching than with theory. And they have been more research-oriented than theoretical.

Brazilian sociology of law is, for instance, especially satisfied with assimilating Ehrlich's important but somehow romantic concept of the living law, that is, "the law which dominates life itself even though it has not been posited in legal propositions";⁴ and with applying such concepts to guide several empirical researches on popular law in Brazil.

Theoretical explanation of concrete hypotheses, when it exists, as a rule does not exceed applied perspectives, as for example those inspired in Marx's and critical theorists' studies about capitalism.

In Brazil there is an influential socio-juridic approach combining Ehrlich's and Marx's theoretical and epistemological models, with the result that such an approach rejects the legal science's theoretical positivistic model which identifies law and State. On the other hand, the logical-positivistic epistemological model is far less popular among Brazilian sociologists of law than the marxist epistemological dialectical model.

If the influence of Ehrlich's ideas led most Brazilian sociologists of law to avoid a complete identification of law with State, a socio-juridical jusnaturalism, as that of Selznick⁵ in the United States, has not been significant in Brazil. That is, the legal science's jusnaturalistic theoretical model has not been directly influential in Brazilian sociology of law.

In a more recent model of legal science, that of the German jurist Viehweg, the formal science of law becomes less formal by emphasizing the situation.⁶ Nevertheless the influence of this model is not significant among Brazilian sociologists of law.

A concern with most general causal explicative propositions is almost always absent in sociology and in the sociology of law in Brazil. An exception is however to be found in C. Souto (1976a: 43-62, 1984: *passim*, 1986:353-368, 1987: *passim*) and in C. Souto and S. Souto (1981:122-139, 169-181 and *passim*). There is here in common with Black the concern regarding rigorous propositions at a high level of abstraction, but no approval of Black's positivistically restricted perspective that law is simply governmental social control and that "value judgments cannot be discovered in the empirical world".⁷

2.2. The sociology of law and neighbouring disciplines in Brazil

The relationship between the sociology of law and criminology is

traditional in Brazil. For instance, one of the most important Brazilian criminologists and criminal law professors, the late Roberto Lyra, was, himself, one of the first Brazilian sociological authors.

His son, Roberto Lyra Filho, recently deceased, intensified the relationship between criminology and the sociology of law. Lyra Filho was initially a criminologist with a critical approach: his book "Dialectical Criminology"⁸ presented a lucid socio-juridical perspective on the relationship between law and crime. More than a decade ago, however, Lyra Filho became a professor of philosophy and sociology of law, teaching this discipline both on the undergraduate and graduate levels at the University of Brasília.

The development of Roberto Lyra Filho's dialectical-critical philosophy and sociology of law in Brazil was very intense, in the last years, not only through his teaching and writing, but also through many conferences held in the country's main cities. He denounced vigorously the formalism and alienation of the dogmatic perspective of law and acquired a considerable number of followers amidst a younger generation of Brazilian lawyers. (Lyra Filho, 1980a: *passim*, 1980b: *passim*, 1981a: *passim*, 1981b: *passim*, 1982: *passim*, 1983: *passim*, 1984a: *passim*, 1984b: *passim*). Among these disciples José Geraldo de Sousa Júnior is the most dedicated (Sousa Júnior, 1984: *passim*).

José Eduardo Faria, a teacher in the area of Philosophy of Law and General Theory of Law of the University of São Paulo, connects similarly a philosophical and critical perspective with his teaching of the sociology of law in the USP (Faria, 1986:39-76, 1987: *passim*).

Another teacher of sociology of law in the USP, Benedicto Motta, studies critically a philosophical and socio-juridic approach in Marx's thought (Motta, 1978: *passim*).

Luiz Fernando Coelho, professor of philosophy of law at the Federal University of Paraná, connects a critical theory of law with the relationships between law and society, aiming at a social science engaged in the construction of society (Coelho, 1983: *passim*).

Tércio Sampaio Ferraz Jr., professor of law in the USP, links the social philosophy of law and juridic sociology in a book on "the social function of the juridic dogmatics" (Ferraz Jr., 1978: *passim*).

Concerning empirical research, the traditional name connecting criminology and sociology of law in Brazil is that of Maria Teresa Miralles, a Spanish scholar who lived in Rio de Janeiro for several years and researched intensively on deviant behavior a little more than a decade ago. Her research projects were entitled as follows: "Attitudes of Judges of Criminal Courts in Guanabara" and "Attitudes and Perceptions of the Delinquent Woman". For a brief report of these research projects, see Souto 1976b:72, 1979a: 65, Souto and Souto, 1981: 60; Miralles, 1979:187-204; Miralles, Sösekind, Pierrick de Sá, Soares de Araújo, s/d: 97-114, 176-178 and *passim*.

More recently João Baptista Herkenhoff (of the Federal University of Espírito Santo's Law (School) has carried out research on "Crime, Treatment Without Prison" in order to determine the effects of not putting people in prison. This exploratory research was made by means of documentary analysis

and interviews between 1983 and 1986. It intended to verify whether persons released from prison, or that were not put in prison, under certain conditions, in a period of ten years (1970-1980), in the First Criminal Judgeship ("Vara") of Vila Velha, State of Espírito Santo, came to be condemned or prosecuted again (about 200 cases were analysed). The research intended to verify as well aspects of the socio-familiar life of these persons. According to the research's data, in the group of imprisoned persons the occurrence of a new prosecution is about three times greater than in relation to non-imprisoned persons (Herkenhoff, 1987: 15, 19, 22, 36, 75-77 and *passim*).

Édna del Pomo de Araújo, a teacher at the Department of Social Sciences of the Federal Fluminense University (State of Rio de Janeiro), researches currently on the common (not political) released prisoners as a stigmatized minority with political consequences (power relations concerning judiciary, police and penitentiary institutions being analysed). Her research project entitled (provisionally) "Power and Danger: the Penal Egress" is referred to released prisoners of the penitentiary system of the State of Rio de Janeiro and employs as research techniques interviewing and case study.

Sérgio França Adorno de Abreu, who teaches sociology at the University of São Paulo, investigates, together with Eliana Bordini, "Recidivistic Men, Obstinate Institutions: the Reincidence in the Penitentiary of the State of São Paulo". The research's empirical universe is constituted by all the prisoners who obtained freedom from 1974 until 1976 ($n = 256$). The observation was carried out until november 1985, with identification of recidivistic and nonrecidivistic persons. Biographical data through documentary analysis and the life story technique are used. The hypothesis that now is being verified is that the penal technology causes recidivism. Sérgio Abreu works also, in collaboration with Rosa Maria Fischer and by means of historical-sociological documentary analysis, in an "Analysis of the Penitentiary System of the State of São Paulo: The Managing of Socially Marginal Men" (comprising the period between 1950 and 1985).

Maud Fragoso de Albuquerque Perruci, a jurist of the Federal University of Pernambuco, carried out exploratory research on the Female Penal Colony of Pernambuco, Recife, investigating all the 32 condemned women of this institution by means of interviews and case studies. The research's main conclusion is that more than half of the imprisoned population studied had already suffered some disciplinary penalty, which would signify the narrowness of prison norms and their application. On the other hand, the frequency of penalties would suggest that penalty, as a rule, do not intimidate the imprisoned women, since previous social control was not efficacious either (Perruci, 1983:21, 140-141 and *passim*; 1979:42-51, 305-314 and *passim*). The investigation concluded as well that "the socio-economic causes predominate largely" in the female criminality studied.

Ronivalva de Andrade Melo Nogueira, Bachelor of Law and Master of Social Service of the Federal University of Pernambuco, considers penitentiary disciplinary practice and social welfare work in her research project entitled "The Power of Punishing and its Equilibrists", which studies, based on the

elaboration of the penitentiary code of the State of Pernambuco, the participation, concerning the code, of the technicians of social welfare work. Fifty six prisoners from two penitentiaries (Barreto Campelo Penitentiary and Itamaracá Agricultural Penitentiary) were investigated by means of formal and informal interviewing (life stories) and of a questionnaire.

With regard to the sociology of law and anthropology, the connection between these disciplines is made by Roberto Kant de Lima, of the Fluminense Federal University (Niterói, Rio de Janeiro), who is a legal bachelor and anthropologist.

The same connection is also made by the anthropologists Robert Weaver Shirley and Cláudia Fonseca, of the Federal University of Rio Grande do Sul. Their current research is directly linked to the socio-juridic tradition of investigating popular law and for this reason will be described later on.

Kant de Lima presently researches "Juridical-Political Culture and Models of Social Control: The Criminal Proceeding in a Comparative Perspective". The juridical discourse is seen as part of the social thought of Brazilian and American society (the jury in the United States and in Brazil is taken as a central problem). This research in progress is the second part of a comparative investigation between police and judicial activities in Brazil and in the United States, the first part of which resulted in Kant de Lima's doctoral thesis (1986, Harvard) in Anthropology, entitled "Legal Theory and Judicial Practices: Paradoxes of Police Work in Rio de Janeiro City" (cf. Kant de Lima, 1983:89-116).

Related to the sociology of law and economic law, there is in Brazil a research tradition linked to graduate studies of the areas "Law and Development" and "Economic and Business Law", respectively of the Pontifical University of Rio de Janeiro and of the School of Business Administration of the Getúlio Vargas Foundation of São Paulo.

In fact, shortly before the last decade empirical investigations combining the sociology of law and economic law were relatively frequent, as one can see from the following titles: "Institutional Structures and Development" (Joaquim Falcão and Fanny Tabak, Rio de Janeiro), "Legal and Economic Aspects of the Brazilian Small Business" (Ary Bouzan, Antônio Angarita Silva and Alcídio Prado, São Paulo), "Traveling Salesmen, Store Salesmen, and Commercial Representatives - A Systematic Study of the Legal Regulation" (Cid José Sitrângulo, São Paulo), "Study of the Tributary System for Capital Gains and Losses" (Ary Oswaldo Mattos Filho, São Paulo), "Societies of Open Capital" (Paulo Sá, Rio de Janeiro), "The Participation Company" ("A Sociedade em Conta de Participação") - Its Tributary Implications (Laércio F. Betiol, São Paulo). For a brief report of these research projects, see Souto, 1976b: 70-72, 1979a: 60-61, 65-66.

Eros Roberto Grau, a law teacher at USP, presently studies "The Normative Power in Economic Law" and is critically concerned with the exercise, power, of the normative function. Washington Peluso Albino de Souza, Professor of Economic Law at the Federal University of Minas Gerais, is interested in a socio-juridic perspective (Souza, 1983:127-150).

As to the connection between the sociology of law and psychology,

the seminar "Law and Social Change", held at the University of the State of Rio de Janeiro (August 18 and 19, 1983), combined the investigation of the courts' decision-making as an "indicator" of social change, with a concern with Minor's Law and studies on the psychology of the minor (Miranda Rosa, 1984 a and b: 11-15 and *passim*).

With regard to history and social-scientific problems concerning law, Nelson Saldanha wrote on the historical understanding of legalism (Saldanha, 1977: 10, 13-20, and *passim*).

Ronaldo Antônio da Maia de Farias, a law teacher at the Federal University of Pernambuco, researched on "The Monastic Benedictine Code, an Authentic Example of Living Law" by means of documentary analysis and participant observation linking the sociology of law and history (Farias, 1980: *Passim*).

In the above mentioned socio-juridical seminar on "Law and Social Change", the historian Gizlene Neder was engaged in developing a project on "The Social History of Law" between 1890 and 1930 (Neder, 1984:85-92). This interest in a social history of Brazilian law is also taken up by Joaquim Falcão, associate professor of the sociology of law at the Federal University of Pernambuco, who presently works on "The Social History of Law in Latin America" (XIX and XX centuries) and on a "Memoir of the Present Brazilian Constituent Activities", this latter project in collaboration with Elizabeth Sösekind.

In a similar historical-social vein, Eliane Junqueira, who teaches the sociology of law at the Pontifical University of Rio de Janeiro, is concerned with a project on "Social Control in Latin America" which analyses criminal legislation in colonial Brazil with regard to the indian and the black slave, considering the worker's legal-criminal situation in a later period.

Aurélio Wander Bastos, of the Rui Barbosa House ("Casa Rui Barbosa"), currently researches on the "Evolution of the Juridical Teaching in the Republic", and Luciano Oliveira, of the Joaquim Nabuco Foundation, studies the history of the "Movements in Defense of Human Rights in Brazil".

Pertaining to the relation between sociology of law and political science, some research projects are presently being developed in Brazil, such as: "Social Rights and Liberal Democracy", which studies the dialectic character of social legislation: the legalization of the exploitation of the labour force and, at the same time, the limitations imposed on this exploitation (Eduardo Kroeff Carrion, a political scientist of the Federal University of Rio Grande do Sul): "The Juridical Discourse and the Ideology of Common Interest", that seeks to study critically the juridic discourse, incorporating reflections from semiology and political theory (Elza Antonia Pereira Cunha, a teacher of the Law School of Bauru, State of São Paulo); "Economic Law and Political Imagination in Brazil", a research project which studies domination through law in two distinct political conjunctures in Brazil, with attention given mainly to the thought and discourse of Serzedelo Correia – political-administrative decentralization: implantation of the Republic – and of Roberto Simonsen – centralization: strengthening of the National State (Gisálio Cerqueira Filho, a sociologist of the Pontifical University

of Rio de Janeiro. Cf. Cerqueira Filho, 1987: 103-119).

A critical socio-juridic perspective on juridic dogmatics is found in José Cláudio Baptista (1981: *passim*), José Florentino Duarte (1982: *passim*), Mirian de Sá Pereira (1982: *passim*), Ivo Dantas (1985: *passim*), Aloísio Surgik (1986: 111-127) and José Reinaldo de Lima Lopes (1987: 45-58).

III SOCIOLOGICAL KNOWLEDGE OF LEGAL INSTITUTIONS: RESEARCH MADE AND CURRENTLY IN PROGRESS

With reference to Brazilian socio-juridical research, everything indicates that it was in Pernambuco that the first empirical investigation of the country was accomplished. This applied research project studied the social receptivity of an agrarian law proposed to the state of Pernambuco.⁹

However, the first Brazilian institution to dedicate itself systematically to research on the sociology of law was the former Institute of the Sciences of Man of the University of Recife, founded in 1963 with one of its divisions, the Division of Science of Law, dedicated specifically to empirical socio-juridical research and to the graduate level formation of researchers in this field.

In Brazil, fundamental, disinterested empirical research is practically nonexistent. The exceptions are two exploratory research projects conducted by Brazilians but carried out in Cologne, Federal Republic of Germany, respectively in 1965 and 1970.¹⁰

In recent years no fundamental socio-juridical empirical research has been done in the country. However, a project of research of applied sociology of law (entitled "Academic Social Change and Juridic Mentality") was carried out and had a general-theoretical explanation. In the past decade, as far as we know, only nine research projects were completed (including three projects linked to the School of Business Administration of the Getúlio Vargas Foundation of São Paulo). In the present decade the number of research projects has increased.

The following empirical studies of the sociology of law have been completed in Brazil in the last ten years:

1) *The Judiciary Function in the Interior*. This is an applied research (based above all on interviews) carried out in the State of Espírito Santo by João Baptista Herkenhoff (a law teacher at the Federal University of Espírito Santo). Its object is basically "the representation of the communities of the interior concerning the judge and justice", as well as the "ideas and fundamental values" of the judges, including the problem of the "adaptation of the national law (. . .) to the reality of life in the interior". The research verified that the judges are conscious that such an adaptation may and must be done. Notwithstanding this, in general, the judges were no less conservative than the lay respondents from the interior (Herkenhoff, 1977: XI-XII, 146-148 and *passim*).

2) *Água Branca, a Study of a Living Law*. This is an empirical investigation by means of interviews *in loco* (in Água Branca, State of Alagoas) and is inspired

by the "distinction between the law of the people and the law of the jurists", trying to "verify which is the law effectively practiced (. . .) that which the people practices and feels as law." The research was coordinated by Professor José de Oliveira Ascensão, then teaching the discipline General Theory of Law in the Master's Program of Law at the Federal University of Pernambuco (the investigation was drafted with some assistance from the professor of the sociology of law of the same Master's Program). The research concludes that the juridical order investigated is one essentially based on good will, and not on formal relations (Ascensão, 1978: 13-14, 5-6, 16, 97 and *passim*).

3) *Some Ways of Socially Behaving and their Images in Urban Brazilian Society (Social Reactions to Deviant Behavior)*. This research was carried out in Rio de Janeiro city by F. A. de Miranda Rosa, Teresa Miralles and Gisálio Cerqueira Filho from 1975 until 1977 and it refers to the relationship between the social reaction to some ways of acting and the degree of importance of the norm or socio-cultural value that control those ways of acting. The persons investigated were on one hand teachers at the intermediate level (1,509), on the other hand recidivistic prisoners (154). Teachers were chosen because they transmit society's cultural values. The prisoners belong chiefly to low social strata. Interviewing based on a questionnaire was carried out, and the questions sought to gauge the reaction to many types of deviant behavior. According to the researchers, though the discussion of the research's results may reveal significant aspects, the analysis of the questionnaires showed "the presence of extremely contradictory elements, which render difficult a clear perception of the social image" investigated (Miranda Rosa, Miralles, Cerqueira Filho, 1979: 6, 10, 14, 17-18, 45-48, 54-56, 145-161 and *passim*).

4) *"Judiciary Power and Residents Associations in Rio de Janeiro"*. This research, carried out in 1983 by José Ribas Vieira and Eliane Junqueira, teachers of the Master's Program in Law of the Pontifical University of Rio de Janeiro, had as its main objective to gauge the degree of knowledge and utilization, by residents' associations, of the juridic means of collective defense. Questionnaires were applied in an association of middle class residents (of Laranjeiras) which revealed the lack of knowledge of and the distance between the citizens and the judiciary power. Attempts to put into action this power by the association of residents in Laranjeiras, Gávea and Jardim Botânico were also registered, with analysis of the difficulties of popular mobilization and of the effective results obtained. Legislative and administrative proposals attempting to achieve a greater approximation between civil society and legislative and judiciary powers in Rio de Janeiro city were also studied.

5) *Collective Citizenship and Justice*, a research carried out by Luciano Oliveira and Affonso Pereira, of the Joaquim Nabuco Foundation (Recife), aiming at demonstrating that access to justice in Brazil is sensibly hindered by an old individualistic conception of legal proceedings. The research's sample is constituted by ecological, labor and consumer conflicts reported by the press in three Brazilian capitals (São Paulo, Rio de Janeiro and Recife) in 1983 and case studies of some of these conflicts investigated their relationships with official decision-making instances. The research's data suggest that it is necessary

to augment the capacity of absorption and decision-making of social conflicts by the judiciary power, and that, with regard to the executive power (administrative justice), it would be convenient to render possible a greater social participation in and social control over its deliberative proceedings.

6) *Lawyers in Brazil*. This is a national report in connection with a group of the International Sociological Association which studies the sociology of the legal profession. This applied research by Joaquim Falcão utilizes secondary data, surveys, historical documents and interviews and begins by describing what lawyers legally are in Brazil (their education, their competence, their associations, etc). Then it compares this legalistic perspective of the Brazilian lawyer with what a Brazilian lawyer actually is.

The preliminary results are the following: a) at least half of the Brazilian law graduates do not practice law. This means that law schools in Brazil perform other educational and cultural functions besides preparing legal professionals. b) The great majority of Brazilians has no access to courts whatsoever for cultural, economic and legal reasons. This means that lawyers do not have a monopoly of the dispute settlements in Brazil; on the contrary they play a quite small, although dominant, role, when the whole of social disputes are considered. c) Brazilian law graduates, lawyers included, are strongly committed to the western ideal of the rule of law and liberalism as their main ideology, but the legal practice is controlled by legal formalism (legal dogmatics) as its dominant legal theory. This means that legal professionals have helped to implement most of the authoritarian legislation that still shapes the day-to-day life of Brazilian citizens (see Falcão, 1984a: 135-184, who refers to previous studies on the Brazilian lawyer).

7) *His Excellency, The Police Commissioner*. This is an applied empirical research carried out by Luciano Oliveira, of the Joaquim Nabuco Foundation (Recife), which studies the judgment of petty interindividual litigation of people belonging to the lower classes, such as occurs in police stations of Greater Recife – and its relation with the official legal system.

The empirical material is basically formed through the direct observation of police performance in 15 cases and through the reading of those cases registered in five police stations where the research was made. The police's judging performance is described as marked by rapidity and informality, but in some of its aspects it hurts the dignity of the human being.

The research was presented as a Master's dissertation in sociology to the Federal University of Pernambuco (Oliveira, 1984:V and *passim*).

8) *Councils of Dispute Settlement ("Juntas of Conciliação") in Judgment*. This is an applied empirical research carried out by Ester Maria Aguiar de Souza, a teacher of the Department of Social Sciences of the Federal University of Pernambuco, which studies the performance of Labor Justice, analysing critically the common sense idea that this Justice always favours the worker. The research investigated a sample of 360 labour proceedings obtained from an universe of 97,733 labour proceedings decided by the Regional Labor Court, Recife, in 1974 and 1981. It was presented as a Master's dissertation in sociology to the Federal University of Pernambuco (Aguiar de Souza, 1984:*passim*).

9) *Conflicts of Property in Recife*. This is an applied research by Joaquim Falcão, Alexandrina Moura and Affonso Pereira in connection with the area "Sociology of Law" of the Master's Program of Sociology of the Federal University of Pernambuco and the Joaquim Nabuco Foundation, Recife. Case studies, questionnaires and interviews were employed and nine events of invasion of non-productive urban property by populations of middle and low income, which occurred in Recife metropolitan area between 1963 and 1980, were analysed. The research concludes that the juridic treatment of the conflict abandoned several times the civil code's conception of private property in such a manner that, "neither the legal order has authority to impose its conception of property right, nor the informal juridic 'order' has force to substitute the legal order." (Falcão, 1984b:98). The investigation observes also that in Recife, at the end of the seventies and beginning of the eighties, the predominant manner of acquiring property, quantitatively speaking, was through urban invasions — which are due to the fundamental necessity of having where to live (Falcão: 1984b: VII, VIII, XII, 80, 85-86, 94-98 and *passim*. This research was amplified empirically by new data obtained by Boaventura de Sousa Santos, Alexandrina Moura and Affonso Pereira with a related theoretical-critical treatment by the former: cf. Santos, 1984: 5-6 and 1-77).

10. Ivelise Arruda Figueiredo de Araújo, a Master of the Master's Program in Law of the Federal University of Pernambuco, based her final dissertation on an exploratory research entitled "*The Effectiveness of the Consequence in the Feeling-Idea of Justice*". The basic hypothesis was that "there is in the conscience of the people the necessity that the norm's consequence be effective", which would be "one of the essential elements of the idea of justice" (Araújo, 1985: 40).

A questionnaire concerning law, justice, crime, criminals and punishment, was read to common persons, including illiterates. In an intentional way, 10 residential quarters of Campina Grande city, State of Paraíba, were chosen and 200 persons of both sexes, between 25 and 30 years of age, belonging to high, middle and low socio-economic levels were aleatorily chosen and investigated.

The research's data confirm the hypothesis to such an extent that many persons accept enthusiastically the execution of unpunished criminals made against the law by taking the law into one's own hand (almost always with sadism). No one admitted the existence of justice without the effectiveness of the punishment or reward announced by the norm. (Araújo, 1985:34-40, 57-61 and *passim*).

11. *Legalization of Urban Land and Legal Changes, Case Studies in Recife, Brazil*, a research made by Alexandrina Saldanha Sobreira de Moura, a law teacher of the Federal University of Pernambuco. This study analyses urban policies in Recife, and the legal changes that have occurred in the context of the struggle of low-income people for housing. Redemocratization in Brazil led the state to seek to meet an old demand of squatters by initiating a process of legalization of urban land titles. Three low-income settlements where legalization occurred were studied with an emphasis on historical origins, socio-economic conditions and popular organization around urban issues. However,

the squatters did not play an important role in making decisions about their land tenure rights. The process of legalization, thus, affirmed democratic symbols but has, so far, led only to peripheral legal changes which do not challenge the core concepts of private property.

The study aims at relating the squatter question to the neo-Marxist theories of state law and urban politics (Moura, 1986: *passim*).

12. *Academic Social Change and Juridic Mentality*. This is an applied empirical research carried out through a questionnaire by Cláudio Souto, Solange Souto and Dietlinde Hartel (all of the Department of Social Sciences of the Federal University of Pernambuco), with the sponsorship of the CNPq. The research's main objective is to gauge the relationship between the education in the two principal undergraduate law courses in the State of Pernambuco and social change (especially social change of an academic character). The statistical universe of the research was all the senior law students of the Federal University of Pernambuco and of the Catholic University of Pernambuco present in their classes when the questionnaire was applied. According to the main research's data, the above mentioned law courses form above all a conservative and non-modern juridical mentality. The research tries to link its data with a general theory of social distance (that of C. Souto, 1976a: 43-62, 1984: *passim*, 1987: *passim*). The research's preliminary results (with their theoretical explication) are already published (C. Souto, 1986:197-213).

Other research projects on the sociology of law are presently in progress in the country. These projects include the following:

- 1) "Law, Solution of Conflicts and Social Change" (F. A. de Miranda Rosa, sociologist of law of the University of the State of Rio de Janeiro), with two simultaneous and integrated lines of study: the court's dominant way of deciding as an indicator of social change and the evolution of Minor's Law (see Miranda Rosa, 1984b: 19; cf. 17-22 and 1984a: 25-36).
- 2) "Access to Justice" (José Ribas Vieira and Eliane Junqueira, law teachers at the PUC-RJ), a descriptive research project financed by the CNPq and carried out by means of interviews principally with reference to the Associations of Residents of Rio de Janeiro and including mainly: a) analysis of the production of a spontaneous law in a "favela" (the slums) in Rio de Janeiro; and b) study of the new formal ways of access to justice: public civil action and judgment of small causes (lawsuits). The research project comprises therefore the analysis of alternative institutional forms (court of small causes, defense of consumers) and non-institutional mechanisms (association of residents, lynching, police, etc) of conflict resolution.
- 3) "Juridic-Legal Images of the Female Body in the Brazilian Northeast" (Erinalva Medeiros Ferreira, teacher of the sociology of law at the Federal University of Alagoas), a research project which tries, by means of the analysis of forensic processes and interviews with "guilty" women, to investigate the universe and/or worship of male ideology inside the legal and judicial systems.
- 4) "Judgeships ('Varas') of Family and Crime on the Campus of the Federal University of Espírito Santo", a research project being carried out by Jader Ferreira Guimarães and Geraldo Simões, of the Law School of this University,

in order to verify the functioning of such judgeships on campus as *sui generis* instruments of law teaching and the opinion of law professionals, law students, and the community in general as to the work developed by the judgeships.

5) "Law, Custom, and Rural Society" (Margarida Maria Moura, anthropologist of the University of São Paulo), a research project based in the interior of the State of Minas Gerais (Vale do Jequitinhonha) which studies the oral codes in the judicial processes regarding conflicts of rural land and rural work and analyses the written codes concerning these topics, making use of syndical and judiciary documents in litigation involving workers and farmers. The research project, by means of field research (interviews and participant observation), tries to gauge "the tense relation between official law and customary law, which is magnified in situations of acute social crisis".

6) "Juridic Practice and Ideology" (Ronaldo Porto Macedo Jr., graduate student of Philosophy of the University of São Paulo), a research project based on the decisions of the Brazilian Federal Supreme Court with reference to the application of decree-laws ("decretos-leis") in tributary matters. It studies the relations between social, political and economic change and the interpretation of law.

7) "Police according to Popular Opinion" (Affonso Pereira and Luciano Oliveira, Joaquim Nabuco Foundation, Recife), a research project using questionnaires with a stratified sample centered on Recife city, which investigates the perceptions that the different social strata have of the police and methods of fighting violence.

8) "Judicial Demands and Forms of Conflict Resolution" (José Augusto de Souza Rodrigues and Eliane Botelho Junqueira, jurists of the PUC-RJ), a research project which examines juridic assistance to "favela" (slum) residents of the Morro da Coroa, Santa Teresa (Rio de Janeiro) with two objectives: a) a comparison between the actual demand and the potential one, by means of a questionnaire applied simultaneously to the clients of the local juridical assistance service (Model Legal Office Bento Rubião, of the Order of Lawyers of Brazil, Rio de Janeiro sectional) and to a sample of the slums residents; b) analysis of informal agencies of conflict mediation which are alternatives to the state judicial bodies.

An hypothesis was that the association of residents would be the privileged *locus* of the community's conflict resolution. However, the data, obtained through questionnaires and interviews, have revealed a situation of juridical pluralism with the coexistence of state actors – police and the judicial power – and non-state actors – the association of residents and drug associates. The secondary role of law courts and other agencies oriented toward consensus implied emphasis on the ideology of force – the law of the strong – in both state and parastatal social control.

This research project is linked to the Department of Research and Documentation of the Order of Lawyers of Brazil, section of the State of Rio de Janeiro, a Department which is directed by Eliane Junqueira and in which José Augusto Rodrigues is the research coordinator.

9) "Juridical Teaching" (José Ribas Vieira and Eliane Botelho Junqueira,

law teachers of the PUC-RJ and others), a research project aiming at diagnosing the juridical teaching at the Pontifical Catholic University of Rio de Janeiro by means of questionnaires applied to a sample of teachers and students of its Department of Juridical Sciences. This research project is also connected to the Department of Research and Documentation of the Order of Lawyers of Brazil, section of the State of Rio de Janeiro.

10) "Authoritarian Juridical Theories and their Influences on the Processes of Legitimation of the State" (Dupuy Antônio Côrtes, jurist of the Federal University of Santa Catarina), a research project utilizing documentary analysis which aims at elucidating the formation of an authoritarian juridical thinking that served to legitimate the Brazilian authoritarian regime of the last two decades. Moreover, the investigation seeks to detect how the myth of juridic neutrality conflicts with the liberal premise by means of this authoritarian thinking.

11) "Bachelors in Law and the Labor-Market in Brazil" (Edmundo Lima de Arruda Jr., law teacher of the Federal University of Santa Catarina), a research project using case study that tries to investigate the "crisis of professional identity" of bachelors of law in São Paulo in 1982. High levels of underemployment and unemployment, low levels of pay, significant degrees of dissatisfaction, frustration, and lack of prestige in the juridic professions have been studied, together with structural and conjunctural reasons that may permit an explanation of this situation of "anomy".

The research's sample was taken from the bachelors of law in São Paulo because in this city "the phenomenon reveals signs of paroxysm". The sample included the traditional Law School of the University of São Paulo (founded in 1827, 300 bachelors per year) and a private, recent law school (1,100 bachelors per year).

12) "Legal Order X Social Change: the Judge's Formation" (José Eduardo Faria, of the University of São Paulo's Law School), a research project that aims at identifying through documentary analysis the type of doctrinaire formation of Brazilian judges, their ideological profile and the way in which they have learned how to handle new problems that are not resolvable within the spirit of the codes in force.

13) "Juridic Ethnography of Urban Workmen's Quarters in Porto Alegre" (Robert Weaver Shirley and Cláudia Fonseca, anthropologists of the Federal University of Rio Grande do Sul), a research project that is directly connected with the socio-juridic tradition of investigating popular law and is based on the assumption that a plurality of juridical culture (formal and informal systems of law) exists in the cities regarding both civil law (family, property) and criminal law matters. It investigates the patterns of informal law in the largest area of urban invasion in Porto Alegre, including more than 12,000 families. The project studies Residents Associations, Umbanda groups and deviant groups. The research techniques are participant observation and extensive interviews with the community's members. Techniques of social history (examination of juridic files and libraries of Porto Alegre) are also employed in order to apprehend the historical sources of popular law.

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NOTAS E REFERÊNCIAS

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- University of Recife, see W. D. MacDONALD, "Legal Education and Research in Brazil", in Association of American Law Schools, *Foreign Exchange Bulletin*, VI, Number 2, 1964, pp. 8-11 and José Maria FRANCO, "El Estudio del Derecho y de las Instituciones Legales en Latinoamérica", in *As Ciências Sociais na América Latina*, Centro Latino-Americano de Pesquisas em Ciências Sociais, São Paulo, s/d, p. 346. See Also: Cláudio SOUTO, "Sociology of Law. A New Perspective in Brazilian Legal Education", *Archiv für Rechts – und Sozial-philosophie*, vol. 1972 LVIII/2, pp. 237-251.
- 2 Cláudio SOUTO, *Fundamentos da Sociologia Jurídica*, Recife, Faculdade de Filosofia da Universidade Católica de Pernambuco, 1968.
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 - 4 Eugen EHRlich, *Fundamental Principles of the Sociology of Law*. Trad. Walter L. Moll, New York, Russell and Russell, Inc., 1962, p. 493
 - 5 Philip SELZNICK, "The Sociology of Law", in *Sociology Today*, Robert K. Merton, Leonard Broom and Leonard S. Cottrell, Jr. (eds.), New York, Basic Books, Inc., Publishers, 1959, p. 124.
 - 6 Theodor VIEHWEG, *Tópica e Jurisprudência*, trad. Tércio Sampaio Ferraz Jr., Brasília, Departamento de Imprensa Nacional, 1979, pp. 101-104.
 - 7 Donald BLACK, "The Boundaries of Legal Sociology", cit., pp. 1096, 1092; *The Behavior of Law*, cit., p. 2.
 - 8 Roberto LYRA FILHO, *Crimonologia Dialética*, Rio de Janeiro, Editor Borsoi, 1972, *passim*.
 - 9 This research was conducted by Cláudio Souto in 1960 under the sponsorship of the Joaquim Nabuco Institute for Social Research of Recife. The research report was published in "Estudos Universitários, Revista de Cultura da Universidade do Recife", I, July-September 1962, pp. 24-44.
 - 10 These research projects were conducted by Cláudio Souto and Solange Souto and named "The Feeling and the Idea of Justice" and "Social Change and Law". Both projects had in Germany above all the collaboration of the Alexander von Humboldt Foundation and that of the Gerhard Kegel directed Institute for Foreign and International Private Law at the University of Cologne. For a report of these researches, Cláudio SOUTO and Solange SOUTO, *Sociologia do Direito*, Livros Técnicos e Científicos-Editora da Universidade de São Paulo, Rio de Janeiro, 1981, pp. 149-168 and 182-211.