Latin American Critical Legal Movements
Brazil, Argentina and Colombia (1960-1990)

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Latin America went through years of great political agitation between the early sixties and the late eighties. Those times were hard on democracy. Leftist movements openly opposed not only the governments but also the constitutional institutions of the time. The State –and the law, which sustained it- were seen as the source of all social problems. Faced with such criticisms, traditional parties and their spokesmen entered a period of confusion and political indecision. They wanted to establish strategic alliances with spokesmen of the opposition. However, traditional parties were reluctant to the revolutionary measures desired by the latter; they were only willing to accept reforms to the existent situation.

In some countries, the military power took advantage of this situation by seizing power with the support of certain sectors of the bourgeoisie, who were worried about the prevailing instability and the overestimated danger of a socialist revolution. In the militaries' opinion, society was the source of all problems, and these problems needed to be confronted in order to save the State, which would in turn be able to save society. This is how began a period of military interventions and repression, which had never before been seen in the region.

Democracy's discredit came along with law's profound crisis. Militaries utterly disowned the most elemental legal and constitutional norms. As a result, critics to power concluded that law was nothing else than a domination instrument in the hands of oligarchs and aimed at subduing the people.[1]

In this essay, we will study the critical legal movements that emerged during those times in three Latin American countries: Brazil, Argentina and Colombia. In the first par, we will briefly describe the main characteristics that distinguish these critical legal movements from one and another. By pointing out the differences among them, we by no means pretend to suggest that they did not share any

[1] This did not only happen in Latin America. In the United States and Europe, important critical legal movements emerged, which had certain influence in Latin American intellectual developments (*See*, for instance Unger 1986; Arnaud 1981; Miaille 1976).

common traits. On the contrary, as we will argue in the second part, these critical legal movements were similar in many ways. We will analyze these similarities as a means of identifying the limitations they faced. This should create a sense of awareness so that future critical legal movements do not repeat the mistakes of old ones.

I. CRITICAL LEGAL THOUGHT IN ARGENTINA, BRAZIL AND COLOMBIA

Although inspired by a common conception of law and power, critical legal movements that emerged in Argentina, Brazil and Colombia between the 1960s and the 1990s had different traits. These differences can be explained by the particularities of each country's context, and by the nature of the authoritarian political regime in power during these years. In this section, we will first describe the relation between law and political power that has traditionally existed in Latin America; we will then turn to the explanation of the differences that the continental critical legal movement acquired in each of the three countries.

A. The conception of power

In Latin America, as well as in continental Europe and particularly in France, codification supposed not only identity between law and rights, but also between the sovereign political power and law. In the early XIXth Century, in the middle of political instability and social upheavals, codifiers wanted to spread the political perception of being governed by one law and one political power. Consensus on the central importance of legislation and legal doctrine grew among law professors and politicians; they all felt the need of articulating a system of political and legal values from which a new national unit and a new concept of citizenship could be built. Legal custom and judicial decisions were not very functional to these

intentions.[2] What they needed was a new political rhetoric, and they found it in the idea of codification.

In France, the reduction of law to political power through the concept of sovereignty is also associated with the subordination of liberalism to democracy that took place at the end of the French Revolution. Political leaders taught that liberty would be naturally fulfilled by means of political participation.[3] No more was needed. Legal procedures and the Rule of Law were not autonomous from the general will expressed through political representation. Law and political power were in a relation of identity. Under this vision, it seemed difficult to criticize political power through law; criticism of political power implied criticism of law. Thus, critical perspectives could very hardly strengthen or support the strengthening of State institutions.

What consequences did this political and legal culture had for the critique of law?

In France, as well as in Latin America, the writings of Rousseau - interpreted by Sièyes - did not leave much room for political critique through law.[4] If, as Rousseau said in the Social Contract, "… the General Will is always right and always tends to the public good…"[5], under which ground could law, the product of this general will, be criticized? According to Article 4 of the *Déclaration des Droits de l'Homme* as included in the 1793 Constitution, "The law is the free and solemn expression of the General Will; it is the same for all, whether it protects or

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[2] The tradition of common law is rooted in the medieval conception of the *mixted constitution*, according to which the law belongs "to the folk, or the people, almost as if it were an attribute of the group or a common possession by which the group was held together" (Sabine) {Fioravanti, 1999 #1526}. The timely permanence of facts created a presumption according to which they were lawful and right. Legal culture is therefore founded in common sense; not in general principles. This is why common law is and has always been there, and thus has to be discovered and adapted permanently {Legrand, 1999 #1507}. Nothing is created; everything is adapted. Law is like a theatrical play, in which each character has a role and plays it according to the script that has been assigned to him. "Immanent to a historical process in virtue of which a community is itself constituted – says pierre Legrand - the Common law takes the form of social solidarity". (Legrand, p. 41).

[3] Since the end of the XVIIth century, England was a liberal State, founded on the Rule of Law and on representative procedures. Democracy was delayed up until the XIXth century, when the aristocratic power moved back by the extension of the political vote. According to Pierre Rossanvallon, "(t)he French revolution aimed, on the contrary, at carrying out the two stages at the same time, liberal and democratic. As a result, "there was a fundamental confusion between the criticism of privileges, and the rejection of all the intermediate bodies" {Rosanvallon, 1988 #1527}

[4] That is the reason why it has been so difficult to introduce the control of constitutionality of laws in France.

[5] Rousseau, Jean Jacques. AÑO. Du Contrat Social III, *Oeuvres completes*, Paris: Gallimard, col. La Pleiade, p. 371-372.

punishes....".[6] If sovereignty is a single expression and law its manifestation, the critique of law only has meaning from an external perspective that calls into question the social contract itself. Legal critique entails the re-foundation of society; it questions the current institutional environment and calls for new political institutions.

Whereas in England and USA the term *law* related to political power and did not necessarily imply the notion of *right,* in Europe terms like *droit, recht, diritto, derecho*, had a larger meaning, including that of legal rights. This is why critics in Europe tended to get rid of the law in order to protect rights, which were considered rather as social rights, not as legal rights.

In Latin America, the normative changes introduced by independence did not create a new legal or political reality. The radical change that is usually told in traditional history manuals did not happen. Legal and political reforms were accommodated to the new necessities imposed by independence (as it was the case with Spanish law, when it was adapted –through the derecho indiano – to colonial interests). Imported ideas and institutions were tailored to the economic and cultural conditions in which social hierarchy, political caudillismo and authoritarianism dominated.

The popular awareness that this legal adaptation favoured the interests of the dominant political elite fashioned an instrumental legal culture that perceived not only law but also rights as being one of the central elements of political domination. Since the legal system was seen as not having autonomy from political power, critical legal studies were not abundant – at least up until the middle of the sixties - and the few law professors who adopted a critical view were interested in a political theory power, being the law one of its expressions, rather than in a critical legal theory.

B. Trends in Latin American critical legal movements

The fact that France and Latin America share a similar conception of law and power has facilitated the importation of critical legal ideas from Europe into Latin America and, in the same logic, has hindered the reception of critical legal ideas from the United States. This is why some ideas of the *Critique du Droit* movement, which developed in France during the late seventies, were adopted and

[6] Cita?

transformed in Latin America,[7] whereas ideas from the CLS, which developed in the United States during the same period, did not have any impact. This is surprising if one takes into consideration that, in terms of publications, authors, seminars, and meetings, CLS and Law and Society movements were much more significant.[8] It is much more surprising if one realizes that the influence of the *Critique du Droit* movement might have been greater in a country like Argentina than it was in France itself.

More generally, most of the ideological background that inspired critical movements in Latin America came from Marxism, particularly from authors like Althusser and Poulanzas, rather than from legal thought. Further more, the contribution of the *Critique du Droit* movement can be evaluated as an effort to understand law from a Marxist perspective. In spite of this common background, each national movement was shaped by the context in which it took place. The next sections analyze these particularities, by looking into each country's sociopolitical, and then describing the critical legal ideas developed therein.

1. Argentina

a) Sociopolitical Context

The Argentinean political history after World War II was characterized by the tension between populism of civil governments and authoritarianism of military governments. That tension cannot be fully understood without making reference to José Domingo Perón, populist and military at the same time, who ruled Argentina in two periods. He had previously been Secretary of Labor of the military government -which obtained power in 1943-, but during his first period (1946-1955) he ruled in collaboration with labor unions. During his government, labor peace allowed the advancement of economy and the development of a policy of social inclusion and protection of the most vulnerable, which was worth Perón –and his wife Evita's- idolatry from the low and middle classes. Perón was overthrown by the military in September, 1955.

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[7] Several *Critique du droit* books published in France were then translated and published in Argentina, Brazil and Colombia. See, for instance,…

[8] Nevertheless, it is important to acknowledge that *Critique du Droit* was able to renew the tradition of legal critique, which was shaped by the Free Law Movement during the 20s and was interrupted after the WW II.

Although Perón was able to widen the State's capacity of social intervention, these achievements began to weaken during the following governments. The obtained autonomy of the State from traditional elites, and especially from the so-called corporations –the church, labor unions, and the army-, was not strong enough to prevent certain subordinate groups from capturing the State and using it for their own benefits.[9]

By the end of his first government, Perón left the country in the middle of political effervescence. Popular demonstrations did not cease, labor instability predominated, and popular unease –including that of the elites- grew.[10] Frondizi, a radicalist close to Peronism who governed until 1962, was succeeded by Arturo Illia, who in his turn was overthrown by the anti-Peronist faction of the army in 1966. The new military regime suddenly started attacking students and labor unions, which were seen as the generators of a revolutionary agitation.[11] However, this repression did not last long. In May of 1969 the so-called "cordobazo" took place, in which thousands of students and workers took over the city of Córdoba and, only a few days after, was the army capable of submitting them. In that way, a long series of popular protests was inaugurated, which were promoted not only by students and teachers, but also by the recently created guerrilla movement of the "montoneros".

The emblematic figure of ex president Perón –who, in exile, never stopped giving instructions to his cadres - was not easy to dismiss from the collective imaginary and particularly from the working class. That is why, in one way or another, military governments between 1955 and 1966 had to negotiate with workers, and particularly with the exiled leader. Moreover, militaries had to accept Perón's return in 1973, and his return to power some months later. He was in power until his death, two years after.

In the middle of economic crisis and political chaos, once again militaries burst into power on March 24, 1996, this time to develop an appalling repression, which was carefully planed by the army's leadership and left around 30 thousand

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[9] This is what neoinstitutionalist studies denominate "inverted institutionalism". On this, *see* Sikkink, Kathryn. 1993. *Las capacidades y la autonomía del Estado en Brasil y Argentina. Un enfoque institucionalista*, 32 Desarrollo económico 128, p. 551.

[10] During Frondizi's government, there were 32 military claims, and the government accepted each one of them. *See*, Luis Alberto Romero, COMPLETAR, p.144.

[11] According to Luis Alberto Romero, militaries saw in University the typical place of communist infiltration. "It was considered that protests in claim for more budget were an illustration of subversive gymnastics". *Id.*, p. 170

forcedly disappeared people, most of them city youngsters of 15 to 35 years of age.[12]

It is calculated that 26% of the 9 thousand disappeared documented by the Sábato report came from universities -20% students and around 6% professors-, and 30% were young workers.[13] This shows the importance that University had in the regime's opposition.

In the middle of this atrocious repression, Argentineans were trapped in fear and paranoia. Society started to patrol itself and to use a series of practices of reciprocal control. According to Guillermo O'Donnell (1984), these practices prove the importance of authoritarian features in Argentinean society, which in turn explain the amazing easiness with which militaries' slogans and repressive actions took place.

At the beginning of the eighties, with an economy in the border of chaos, militaries followed a route of discredit, whose most crucial moment was the Malvinas War. A year and a half later, Raúl Alfonsín assumed Presidency, after winning elections as a member of the radical party. Initially, the new democratic government was greatly supported by civil society, which allowed it to initiate a campaign in defense of institutions and against past abuses. However, during his second government, fearing a new military coup d'etat, Alfonsín decided to issue two legal instruments aimed at bringing about criminal immunity for the militaries who had committed atrocities, which generate great division among the Argentinean society.

b) Critical legal movement in Argentina

It is possible to identify the period between 1960 and 1990 as a classic epoch of the theory of law in Argentina. Two prolific streams of thought led this boom of legal thought: the so-called Egologic school of law, incarnated in the ideas of Genaro Carrió, and the Analytical school, represented by Carlos Alchourrón and Eugenio Bulygin. During that period also emerged great law theorists who created

[12] The National Commission on Disappearance of people (CONADEP), created by President Raúl Alfonsín, documented nine thousand cases. However, there is no register of many other cases. This is why human rights NGOs talk about 30 thousand disappeared people.

[13] CITA?

their own way of thinking, such as Ambrosio Gioja, Sebastián Soler, Roberto Vernengo, Ernesto Garzón Valdés and Carlos Nino. Many texts of these authors and schools were read in law faculties in Mexico, Brazil, Colombia, Uruguay and Peru.[14] During that period, there was not a single legal community that could be compared to that of Argentina in terms of quality and productivity.

However, very few of what these classical authors wrote can be considered critical legal thought; not even the work of Ernesto Garzón Valdés, probably the most interdisciplinary and independent of all these classics. In effect, although many of these theorists adopted a political critical perspective of the massive violation of human rights that took place during the military dictatorship, they did not traduced this perspective into a critical theory of law, or even of the State.[15]

In contrast, the critical theory of law movement that emerged in Argentina during the same period had the law and theories aimed at explaining it –especially positivism- as its main targets of critique. Although not very numerous, the members of this movement made a quite interesting attempt to develop an alternative and critical epistemological theory of law.[16]

The antecedents of this movement are found in the seventies decade, when Enrique Marí, Alicia Ruiz, Carlos María Cárcova and Ricardo Entelman, four professors at the University of Buenos Aires, started taking the first steps for developing a new stream of critical theory of law. Marí was the oldest and wisest, and so the rest started to read and work with him.[17] Marí published his first book in 1974. He also worked in some collective works with the others. Particularly, in 1975 they organized an international congress onlegal philosophy at Belgrano.

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[14] The existence of an editorial industry that was relatively more developed than in the rest of the continent facilitated the diffusion of Argentinean legal ideas. Editorial industries such as Depalma, Abeledo-Perrot, Astrea and Albatros enabled the wide diffusion of works throughout the continent. *See*, for instance, Carlos Cossio and his egologic theory of law (Cossio 1946, 1963); Carlos Alchurrón and Eugenio Bulygin and the analytical theory of law (Alchourrón and Bulygin 1971; Bulygin 1961), Genaro Carrió (Carrió 1962, 1971); Carlos Santiago Nino (Nino 1973); Roberto Vernengo (Vernengo 1971); Luis Warat (Warat 1969) (Warat and Entelman 1970).

[15] For example, Nino had a positivist theory of law both before and after the dictatorship, which was not critical to law or the State. Moreover, after the dictatorship, Nino supported President Alfonsín's law proposals that sought to put an end to criminal investigations against ex members of the army who had committed atrocities during the dictatorship. These proposals were based on the government's theory of the two devils, according to which, during the dictatorship, repression was not only the State's responsibility because it had fought a war against communism. This was clearly not a critical view of the State.

[16] Carlos Miguel Herrera, young follower of the critical legal movement in Argentina. Interviewed on February 2007, Bogotá.

[17] *Id.*

The four academicians were members of Leftist political parties and, for that reason, had to leave the country when repression started.[18] It was not until 1982 that they met and started working together again, once universities reopened in 1983. In 1986, they organized a philosophy congress in Córdoba, where the idea of their critical theory of law as a school of thought starting taking shape.[19] Indeed, they all presented papers on critique of law, which were characterized by their criticisms against positivism. The zenith of the movement took place between 1986 and 1989.[20]

Thus, the original members of the movement, and soon other younger followers, started developing a critical theory of law, which drew upon Neo-Marxism and other legal theoretical sources, as well as other disciplines –such as psychoanalysis. Among the movement's theoretical sources, there are the Italian Alternative Use of Law movement –with Ferrajoli as its most famous integrant-, the *Critique du Droit* movement –with Miaille as its main exponent-, and other French authors of different orientations like Foucault, Bachelard, Lacane, Légendre, etc..[21] However, far from reproducing the ideas of these authors, the Argentinean critical legal movement combined their different proposals and interpreted them in an eclectic and theoretical way, which -in the words of Carlos Cárcova[22]- better suited the heterodox Argentinean context.

Some have argued that this eclectic reading and combination of such different theories showed a lack of rigor and precise knowledge of the studied concepts.[23] In contrast, others believe that this was the only Latin American critical movement that was doing critical theory and not political activism at the time.[24] Be as it were, the result was the creation of quite an original critical legal perspective, which, aiming to understand not only the functioning of law but the structure in which it

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[18] *Id.* Ruiz, Cárcova and Entelman were political activists and members of the Popular Revolutionary Alliance (APR, in Spanish) party, which, at that time, had a very strong relation with the communist party.

[19] *Id.*

[20] Herrera's interview, *Ob. Cit.*

[21] Carlos María, CÁRCOVA. *Notas acerca de la Teoría Crítica del Derecho*, COMPLETAR. See also Alicia E.C. Ruiz, "La ilusión de lo jurídico. Una aproximación al tema del derecho como un lugar del mito en las sociedades modernas", *Crítica jurídica* No. 5, pp. 161-168.

[22] Cárcova, *Ob. Cit.*.

[23] In that sense, Fernando Rojas, former member of Colombia's critical legal movement of the 1970s and 80s who currently works for the World Bank. Interviewed July 7, 2006, Washington.

[24] Herrera's interview, *Ob. Cit.*

was inserted, tried to synthesize the perspectives of different social disciplines to create an alternative theory of law.

The importance of psychoanalysis, and its articulation with Marxist ideas, is a very specific attribute of the Argentinean critical legal movement. They proclaimed that law was a discursive practice with a deep ideological content, which was functional to the actual distribution of power in society. This functionality did not come only –nor even mainly- from coercion, but from law's capacity of constructing social reality (false representation) and, in particular, of producing an imaginary representation of human beings and the relations between one and other. This representation hid structural and hierarchical power relations, maintained power hegemony and legitimated the *status quo* of domination, even when it adopted the most arbitrary forms.[25]

According to Ruiz, the whole process of producing this false representation of reality was made possible by the continuous use of fiction and myth in legal discourse, such as judicial independence, individual autonomy, equality among men, collective knowledge of the content of law and consensus towards its application. These produced the illusion of a non-conflictive society ruled by a fair law, and the naturalization of existing power relations. As a result, according to Marí, most of the real meaning of legal discourse could only be apprehended in its omissions or silences, in that which was not said, its hidden discourse.[26]

Although these authors were highly critical of the concept of law itself, some of them sustained that legal discourse also provided a space of resistance for the creation of a counter-discourse against oppression.[27] But even for those who acknowledged some place for social emancipation through law, this possibility was theoretically accepted but void in legal practice. Their interest was neither in legal doctrine nor in legal practice, but in theory of law and even in philosophy.[28] For that reason, the Argentinean critical legal movement remained rather isolated from the social movement that led the political struggle for the protection of human rights in the post-transition. Indeed, even if some of its members were political activists against impunity, they kept their theoretical developments apart

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[25] Ruiz, *Ob. Cit.*, p. 163.

[26] Enrique Marí. AÑO.*"Moi, Pierre Rivière..." y el mito de la uniformidad semántica de las ciencias jurídicas y sociales. Papeles de filosofía (...para arrojar al alba)*. CIUDAD: Biblos.
Ruiz, *Ob. Cit.*

[27] Ruiz, *Ob. Cit,* p. 168; Cárcova, *Ob. Cit*.

[28] Cárcova used to say that Marí was not a real jurist but a philosopher. Entrevista Herrera, *Ob. Cit.*

from their political life.[29] Moreover, due to their high abstraction, their ideas were never popular among or used by committed activists, some of who considered them esoteric or irrelevant for their cause.[30]

But the critical legal movement was not only isolated from political activism and practical discussions, but also from mainstream legal thought of the time. As a result, its members were marginal and marginalized within law faculties in which they worked. They were very few, and they developed theoretical ideas that were closer to philosophy than they were to legal theory. Moreover, these ideas harshly criticized other types of legal theory, which were not critical. This resulted in them being marginalized by their colleagues at University of Buenos Aires, who at some point even tried to restrict Marí's entrance as a titular professor, although he satisfied all the needed requisites.[31]

The marginality of Argentinean critical legal thinkers was probably the consequence of the marginality that law itself had in their theoretical explanations. For legal critics in Argentina, political critique of power was more important than a critical understanding of law. As Carlos Miguel Herrera puts it, "critical theory of law ended up being more critical than theory".[32]

The movement started weakening soon after its creation. Indeed, most if its members –except from Marí- did not write much on the subject.[33] Besides, in the last years of the 80s, they found it difficult to keep up with collective works, because of tensions among them and the fact that some started working in different things.[34] Short after, they were finally dispersed, to the point that, in the 90s no one talked about critical theory of law anymore.

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[29] *Id.*

[30] Rojas' interview, *Ob. Cit.*

[31] In contrast, Nino was accepted as professor in that very moment. Marí contested the decision and, after a bit of scandal, was later able to enter the post. Herrera's interview, *Ob. Cit.*

[32] *Id.*

[33] According to Herrera, this was what Marí most reproached Ruiz, Cárcova and Entelman. Herrera's interview, *Ob. Cit.*

[34] There was especially a personal tension between Marí and Cárcova because of University's post issues. However, being his wife, Ruiz supported Cárcova and, as a result, both they got distant. As for the different works they engaged in, Ruiz became judge, Entelman got sick and Cárcova was in charge of his lawyer's studio. *Id.*

2. The Brazilian case

a) Sociopolitical Context

Just like in Argentina, for half of the XXth century, Brazil was dominated by militaries and particularly by populist governments. The case of Getulio Vargas is especially illustrative of this situation. Like Perón in Argentina, Vargas exercised power in two periods (1930-1937 and 1951-1954), received power from the militaries and was loved and idolized by the Brazilian people. However, Vargas' influence was more important and lasted longer than Perón's.[35] He did not only achieve great material transformations in the country's infrastructure and the people's life conditions. He also created a strong, autonomous and specialized bureaucracy, which does not have an equal in any other South American country.[36]

Governors who came after Vargas tried to limit the State's autonomy, but only had partial successes. In contrast with the Argentinean case, the State's apparatus maintained its strength and managed to operate as referee of different political and social tendencies. Between 1956 and 1960,

President Juscelino Kubitschek, who supported Vargas' work, achieved important advancements in terms of economic development and institutional consolidation. However, as happened in many other Latin American countries, social movements got strong and labor stability lost ground (Maiwaring, Viola, and Cisminsky 1985). It was then when the military coup d'etat took place in 1964. The military stayed in power until 1984.

Those twenty years of military power were characterized by the restriction of liberties and the repression of the popular movement.[37] However, Brazilian military excesses cannot be compared to those in Argentina, neither in quantity nor in levels of atrocity. This difference has multiple explanations, among them, the better and wider training of Brazilian officers, which brought them closer to State's technocracy and allowed them to undertake successful development

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[35] Problems faced by Brazil and Argentina were different. According to Maiwaring et. al., while Argentina faced a marked factionalism that produced enormous instability, Brazil's main problem was elitism and social hierarchies. (On this, *see* (Maiwaring, Viola, and Cisminsky 1985); (Da Matta 2002).

[36] In the strengthening of the Brazilian State the famous Administrative Department of Public Service (DASP in Portuguese) played a key role. It was created during the Vargas administration, with the purpose of creating a technocratic elite within the State, capable of being independent from traditional parties and groups of power (Sikkink 1993).

[37] On this, *see* (Iglesias 1999; Maiwaring, Viola, and Cisminsky 1985).

policies. On the other hand, social opposition to military power was weaker in Brazil. Indeed, not only were working and student movements less radical, but also the peasant movement had the same or even more importance than they did.

As a result, the Brazilian opposition movement was more disperse and complex – even geographically- than the Argentinean. The workers movement's moderation can be partly explained by the redistributive effects of economy's and especially industry's acceleration that took place since the middle if the 70s. As for the students' movement, its weakness can be explained by the fact that Brazilian military governments made access to university for the middle class substantially better, with the purpose of supplying posts in public administration. As José Eduardo Faria puts it, "(i)n this way, the militaries search, in an implicit way, to negotiate the loyalty of new students' generations to the regime, in Exchange for diplomas" (Faria and Campilongo 1999).

b) The critical legal movement

Similarly to the Argentinean case, it is possible to trace the emergence of Brazil's critical legal movement in the dictatorship, which began by a *coup d'etat* that took place in 1964.[38] Indeed, before this date there were no radical critical conceptions of law and State institutions, for social mobilization and leftist forces were interested in modernization and economic development, rather than in confronting the content of law or the authority of the political power.[39] Critical conceptions thus arouse in the middle of the dictatorship.

The Brazilian critical legal thought is, by far, the most productive, influential and important of all Latin American critical legal movements. Brazilian publications, authors, debates and even schools of critical legal thought are quantitatively much

[38] Marcelo Gomes Justo and Helena Singer. 2001. "Sociology of Law in Brazil: A Critical Approach", *The American Sociologist*, pp. 11-24, p. 12.

[39] Jose Reinaldo De Lima Lopes, Brazilian academician who was part of the critical legal movement. Interviewed July 6, 2006, Baltimore.

more significant than in the rest of the continent.[40] The best expression of this is the reflexivity of legal thought: only in Brazil is it possible to find publications and debates assessing their own critical legal thought.[41] Furthermore, only in Brazil is there a critical legal consciousness of belonging to one common tradition.

In 1963, professors Joaquim Falcao and Cláudio Souto founded the first graduate program of sociology of law in the Pernambuco Federal University (Souto y Souto, 1977). In 1972, the government made the sociology of law course mandatory in all law faculties. During the seventies, there were two groups especially interested in developing a legal critical perspective. The first group was the Latin American Association for the Teaching of Law (ALMED, in Portuguese), led by Luís Alberto Warat, professor at the Santa Catarina Federal University, which applied semiotics and psychoanalysis to law. The second group was led by Roberto Lyra Filho of the Brasilia University, who used dialectic-materialistic and humanistic approximations to law.

In the following years, these groups created the "New Brazilian Legal School" (Junqueira, 1993). Also, due to the work of some politically active professionals, groups of "legal consultants" and "popular legal counsels" were formed. The most important group was the Institute for Popular Legal Support (AJUP, in Portuguese), created by Miguel Pressburger in Rio de Janeiro. These consultant groups aimed at consolidating an alternative use of law, and saw in law an emancipatory mechanism.

It is also important to mention the so-called "sociology of violence", which originated as a means to understand the increase of military repression. Between 1979 and 1983, the economic policy of the regime intensified social conflicts,

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[40] These are some of the most representative authors of the movement: Affonso Cesar Pereira; Alberto do Amaral Junior; Amilton Bueno de Carvalho; Antonio Carlos Wolkmer; Antonio Rodrigues Freitas jr.; Celso Fernández Campilongo; Claudio Souto; Edmundo de Arruda Jr.; Eduardo Carrion; Eliane junqueira; Horacio Wanderlay Rodrigues; Joaquim Falcao; Jose Eduardo Faria; Jose Reinaldo de Lima Lopes, Luis Alberto Warat; Paulo Segio Pinheiro; Roberto Aguiar; Roberto Lyra Filho; Serio Adorno; Wanda Lemos Cappeler. And these are some of the most outstanding research centers of the time: the Center for the Study of contemporary culture (CEDEC, in Portuguese), which in the eighties was known for its research on human rights, labor law, collective conflicts, urban violence and judicial power (*see* Lamounier, Weffort, and Soares 1981); the Briazilian Center of Analysis and Planning (CEBRAP, in Portuguese), which in the 70s dealt with urban criminality and law's efficacy, and in the 80s carried on a wide study on prisons in Sao Paulo; the University Institute of Research of Rio de Janeiro (IUPERJ, in Portuguese), known for Wanderley Guilherme dos Santos' brilliant essays on social policy and the works of Luis Werneck Vianna on labor law's contradictions; the Institute for Social Medicine and Criminology of Sao Paulo (IMESC, in Portuguese), directed by Sergio Adorno, did important research on criminal law and criminology. (COMPLETAR)

[41] *See*, for instance, Wolkmer, Junqueira, Faria, Campilongo, Souto, amon others. (COMPLETAR)

especially the agrarian conflict, as a consequence of policies of economic adjustment aimed at paying the country's debt. The regime had "control agencies", which arrested, tortured, repressed and disappeared artists, intellectuals, academicians, students and union workers. Repression awoke a great interest in the sociolegal study of violence, in particular in the study of prisons.

But the type of opposition to the military regime in Brazil brought about a type of legal critique that was quite different from that carried out in Argentina. The relative success of Brazilian militaries –especially in economic and bureaucracy matters- allowed them to be, at the same time, more efficacious and moderate in repression against social movements. In contrast to their Argentinean colleagues, most popular leaders did not question the State itself, but rather the military regime. In that sense, law was not identified as being a pure and simple expression of the military regime, but as something relatively autonomous from political power, which could even favor popular causes in certain events.

In general terms, this made legal critique in Brazil not only more moderate and reformist than in Argentina, but also more interested in law's content, as a mechanism that could be used in struggles against power. In the middle of the 70a, many lawyers began defending popular causes, "using ambiguous and contradictory elements of positive law with the aim of a liberating praxis" (Faria and Campilongo 1999) p.15.

The fundamental complaint of social movements against the law focused on its logical-formal rigidity. Norms were seen as falsely neutral ad insensitive towards the less favored social classes. The political character of legal technique, which dominated the State and law faculties, was denounced (Wolkmer 1995). Brazilian critics were, and still are, strongly influenced by Marxism. However, that did not annul their interest in law, and particularly the alternative use of law.

The interest of social movements' leaders in legal struggles was facilitated by the emergence of certain judicial activism in the law levels of justice, who were pressured by popular demands –particularly those of peasants regarding land. Judges then began interpreting law in a more flexible and consequentialist way, in order to respond to popular claims (Faria and Campilongo 1999). Thus, an implicit alliance among popular lawyers, activist judges and sociolegal academicians was formed, which made legal critique come near not only legal technique, but also

social movements (Maiwaring, Viola, and Cisminsky 1985).[42] In this sense, it is possible to say that the Brazilian critical legal movement of the time was closer to sociolegal critique done in the United States in the same years than to the French *Critique du Droit* movement or to what the Argentineans were doing.

But to speak of a Brazilian critical legal movement shadows the diversity of positions and objectives of critical legal actors. Even though the different critical theoretical tendencies in Brazil shared the common objective of criticizing law's ideological character, traditional legal theories that justify it, and even the educational system through which it is taught, they did not have a common theoretical tendency or epistemological perspective.[43] Moreover, rather than defending solid theoretical conceptions and arguments, according to Jose Reinaldo De Lima Lopes, the politically engaged authors who criticized the law and the State "borrowed" concepts and ideas from foreign theoretical movements, only in order to be able to prove their points and justify their appreciations.[44]

The plurality of perspectives and the multiplicity of authors pertaining to Brazil's critical legal thought between 1960 and 1990 can be organized from a geographic point of view, which somehow overlaps a theoretical approach.

The first group is located in the University of Sao Paolo. The pioneer in critical legal studies in this university was Tercio Sampaio Ferraz Jr., who created, during the seventies, the "zetetic" movement, aimed at questioning the internal logic of legal dogmatic by a functional analysis inspired in the works of Luhmann and Viehweg.[45] In the 1980s and even in the 1990s, this functionalist proposal was continued in a much more open and flexible way, by authors as Jose Eduardo Faria, Jose Reinaldo de Lima Lopes and Celso Campilongo in the same university. José Eduardo Faria - student of Ferraz Jr.- is probably the most prestigious and well known sociolegal scholar in Brazil. Drawing upon a wide spectrum of theoretical approaches – form Max Weber, to Michel Foucault and Karl Marx –, Faria has produced a very large and thoughtful work, which includs reflections on law and ideology, judicial system, symbolic legal violence, social and economic

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[42] According to Elian Junqueira, Brazilian sociolegal production assumes that the judicial power is in crisis –high functioning costs, slowness if processes, etc. As a result, it does not only analyze strategies for redefining the role of the "Etat-Providence", but also "the modalities of incorporation of social actors in rhe administrarion of their conflicts" Eliane Botelho Junqueira, « La sociologie juridique brésilienne à travers le miroir », *Droit et Société* 22 (1992), p. 434.

[43] Wolkmer, *Ob. Cit*. p. 77.

[44] Lopes' interview, *Ob. Cit.*

[45] Wolkmer, *Ob. Cit*., p. 91.

rights, law and globalization, etc.[46] Two of Faria's disciples have acquired notoriety over the last decades. One of them is Celso Fernandez Campilongo. His work is mostly linked to a systemic understanding of law based on Nicklas Luhmann's work.[47] The other is Jose Reinaldo de Lima Lopes, who has a large academic production on legal philosophy and legal history.[48]

A second group is constituted around the idea and practice of *Direito alternativo*. They developed a research line oriented towards the transformation of society through political action and institutional instances. Currently, this is probably the most active and promising critical legal trend in Brazil. The group has beneficiated from the activism of the so-called "Alternative Judges" (magistrados alternativos) that began right after the military regime.[49] Once democracy was restored, alternative judges had a very active participation in the post-graduate program of the Santa Catarina Federal University (UFSC, in Portuguese). Two journals published their ideas: *Contradogmaticas* and *Revista Sequencia*. At the beginning of the 90s, the group of altenative judges, in alliance with professors from the UFSC, created the Alternative Law Movement, in which Edmundo Lima Arruda Jr.[50], Horacio Wanderley Rodrigues[51] and Antonio Carlos Wolkmer[52] have played a very important role.

A third group is located in the University of Pernambuco (UFPE, in Portuguese) in Recife. In that University, there are two notable researchers. One is Marcelo Neves[53], who has developed a theory of the legal system based on Niklas Luhmann. His explanation of Brazilian constitutionalism from a systemic perspective is of particular interest. The other author is Joao Mauricio Leitao Adeodato, who has a very wide interest on legal philosophy and legal theory.[54]

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[46] *See*, for instance, (Faria 1988, 1995, 2000, 1996).

[47] *See*, for instance, (Campilongo 1989, 1997).

[48] *See*, for instance, (Lopes 1988, 2000, 1994, 2004).

[49] This movement came out of the Association of Judges of the State of Rio Grande do Sul (AJURIS, in Portuguese), who's leader was Amilton Bueno de Carvalho.

[50] (Arruda 1988, 1993).

[51] (Rodrigues 1993).

[52] (Wolkmer 1995; Wolkmer 1994, 1988).

[53] *See* (Neves 1994, 1988).

[54] *See*, for instance, (Adeodato 1989, 1992, 1997).

The previous is not the only possible classification of critical legal movements in Brazil. Luciano Oliveira Oliveira (1999) organizes critical visions of law that emerged in the 70s in three groups: 1) the radical critics who, inspired in Marxism, celebrate the end of bourgeois law. 2) The defenders of the alternative use of law, who propose to use the existing judicial order to realize emancipatory practices in favor of the poor 3) Those who, based on legal pluralism[55], defend the idea of an alternative law.[56]

Eliane Junqueira identifies three dominant tendencies in Brazilian sociolegal literature: 1) the critique of the Brazilian State's bureaucratic patrimonialism, and particularly of traditional judicial practices of interpreting public things as if they were private[57], by analyzing them through Weber's ideal types. 2) The critique of the liberal legal model, which emerged at the end of the 70s with a concern regarding collective interests, and identified an alternative use of law or alternative ways of solving conflicts[58] by social movements, derived form resistance strategies of popular sectors. 3) The critique of State law as oppressive law, a stream separated from the Marxist rigid conception of law, which understood law (the other law, its alternative use) as a step for transforming social order from within the institutions, according to an insurrectional law of oppressed classes.[59]

Finally, it is possible to distinguish legal sociology done by lawyers from that done by sociologists. The former were concerned with legal education and law as an institution; the latter, more interdisciplinary, were especially concerned with the sociology of violence (Junqueira 1993; Souto 1979) Souto y Souto, 1997); (Gomes Justo and Singer 2001).

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[55] The concept of legal pluralism emerged in Brazil in 1979, when Boaventura de Sousa Santos conducted an empirical study of the *favelas* of Río de Janeiro (Santos 1977, 1997, 2001). Santos then worked with Joaquim Falcao, Alexandrina Moura and Affonso Pereira in a study of law occupation in Recife. Fancao and Santos used the concept of legal pluralism as way to understand the way in which "popular legal counsels" appropriated the official legal system to hel Recife's occupants. According to these authors, the lawyers' strategy of defense was a political choice.

[56] These authors are part of the "New Legal School" of Lyra Filho, or of the Insurgent Law" of Miguel Presburger. The latter was very strong during the political movilization of the 80s. Alternative law recognizes social conquests in the judicial system and the possibility of including new rights in favor of the subordinated classes.

[57] *see* Lenin Nequete, *O Poder Judiciario no Brasil a partir da independencia*, Porto Alegre, Salina, 1975.

[58] Tercio Sampaio Ferraz, "O direito e o inoficial: ensaio sobre a diversidade de universos jurídicos temporal e espacialmente concomitants", in Joaquim Falcao (org.), *Conflito de direito de propriedade: inasoes urbanas*, Río de Janeiro, Forense, 1984.

[59] *See* the publications of organizations such as ILSA (Institute of Alternative Legal Services) and AJUP (Institute of Popular Legal Support).

The previously described classifications show that there were a great number of Brazilian authors that subscribed to critical legal thought between the 1960s and the 90s. They were also very pluralistic in terms of professional affiliation and ideological background. Probably the most salient characteristic of this movement is its capacity to convoke people from social movements, universities, tribunals and lawyers' offices. In contrast to Argentina – and, as we will see, to Colombia - law professors in Brazil had a common cause against legal formalism that, in a sort of complicity, was shared by social activists and judges, thus making the frontier between academic thought and political struggle rather diffuse. This kind of plurality is manifested in the combination of theory and practice.

3. The Colombian case

a) Sociopolitical Context

While populist governments were winning in Argentina and Brazil, Colombia was going through a civil war, as a consequence of the struggle between the two traditional parties: liberalism and conservatism. That war was originated in 1948, ended in 1952 with a military coup d'etat that lasted until 1957, and left 300 thousand deaths. In both Argentina and Brazil, populist regimes benefited alliances between the State and subaltern classes. In contrast, in Colombia, the history of social struggles is a history of distances between their leaders and State institutions.

The Colombian civil war ended with an agreement between the two traditional parties, denominated the National Front[60], which was able to stabilize the country and to regularize the functioning of elections, trough a system of power alternation between them. Nonetheless, this was achieved at a high prize. Firstly, the absence of political competition between traditional parties reduced the political system to clientelism and drastically diminished democratic participation in elections. Secondly, the harsh military treatment of the peasantry that participated in the civil war led to the creation of guerrilla groups, just like happened in other Latin American countries. Thirdly, the almost permanent use of the state of siege, as replacing the military regime, produced the creation of an institutionality that was hermetical from a political point of view, and an anomaly from a constitutional and democratic point of view.

[60] el acuerdo consistió en que los partidos se turnaban cada cuatro años en el poder

From the three previously mentioned effects, only the third –a militarization of the democratic regime- is specific to the Colombian case. In other countries, control and even elimination of social protest was achieved through the establishment of military regimes. In contrast, in Colombia repression was done through democratic institutions, attenuated by an almost permanent state of siege and by the political doctrine of reason of State. [61] In these circumstances, the legal ambiguity of the exception and the priority of criminal and war matters over political and social matters created an institutional imbalance that benefited public order policies and those in charge of executing them. The relaxation of democratic controls –and particularly of judicial control- as a civil remedy to avoid the fall of the military regime degraded democratic mechanics and drastically reduced incentives to socially mobilize through institutional channels.

In other countries of the subcontinent the difference between the military regime and democracy allowed for emancipatory practices connected to democratic referents. Meanwhile, the military degradation of Colombian democracy reduced emancipatory political attempts to subversive spaces, and made denounces of human rights violations committed by State agents extremely difficult. In the 80s decade, while Latin American military regimes engendered their own antidote of social movements that would reestablish democracy, in Colombia, the democratic regime was as degrading as the military option, in such a way that illegal options –subversion and dirty war- started gaining territory, in detriment of the traditional political activity.[62]

Besides, the constitutional exception of almost permanent states of siege has been dreadful for the configuration of a strong and institutionalized political opposition in Colombia. In fact, the state of siege was the formula that political elites used to confront popular protests, which were very frequent during the 60s and 70s. This formula prevented the country from falling into a military regime, but also from having a real democracy. In Colombia, repression was done by "democratic" institutions, at least in the formal sense. This weakened social mobilization and made political opposition – from both the left and the right- move away from the democratic discourse, with the purpose of clearly differentiating themselves from the State and government.

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[61] This political ideology existed throughout Latin America; it was known as the Doctrine of National Security, and supported military action to protect the State against communist subversion, which supposedly was present in all social spaces. On this, *see* XXX, chapter 4, p. 25.

[62] According to Alejandro Reyes, the failure of agrarian reform and the government of President Turbay's attacks against social mobilization allowed guerrilla groups to capitalize repression to their favor. During Turbay's government the number of guerrilla ighters went from 1000 to 4000 (*El Tiempo*, Sunday 17 de 1999).

The hybrid nature of the Colombian regime –a formal democracy with an almost permanent state of siege- blocked the alternative of both a material democracy and a full military regime. Just as subversion was interpreted by the left as a necessary ilegal exit from a blocked democracy, dirty war was interpreted by its promoters as a necessary ilegal exit from a blocked military regime.

b) Legal critique

The Colombian critical legal experience between the 1960s and the 1990s differed from the Brazilian and Argentinean: not only did the Colombian critical legal thought remain marginal in both number and impact in theoretical developments and political discussions, but it also did not emerge in a context of an explicitly authoritarian political regime, but in a democracy, at least in the formal sense.

A few authors, such as Victor Manuel Moncayo, Fernando Rojas, German Palacios, Gilberto Tobón and Eduardo Rodríguez, were part of the Colombian critical legal movement of the examined period[63], and were considered, both in academic spaces and in society in general, as radicals. This situation not only made them be a rather isolated minority, but also submitted them to permanent threats to their life, given the constant –and many times unproven- allusions to their relations with leftist guerrilla groups.

The origins of this critical legal movement are found in universities students' meetings and groups during the 1960s and 70s[64], which allowed for public and private universities' students to gather and discuss different subjects. As Fernando Rojas argues, these gatherings were the result of a search for a space for community building. In these meetings, the students of the public Universidad Nacional insisted on learning Marxism, and so it was that, for 3 years, once a week, students not only of law but of many other disciplines gathered to analyze in great detail foreign texts of critical theory of law, State and capitalism, such as Miaille's, Simmel's and Holloway's.

The product of these meetings was a newborn critical movement, which was in the desperate search of theoretical sources that could be applied to the country's situation, by means of establishing relations with different critical legal

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[63] Wolkmer, *Ob. Cit.*, p. 67; Rojas' interview, *Ob. Cit.*

[64] Rojas' interview, *Ob. Cit.*

movements around the world. According to Rojas, this "intellectual detour" was way too long, and its levels of abstraction created a distance between the movement and Colombia's situation.

That is why, by the end of the 70s, this critical movement started a fusion with social movements, and tried to unify its theoretical pretension with political struggle. Although the human rights discourse provided a common cause for the creation of a larger community of critics of law, this fusion was not so easy, given that there seemed to be a communication barrier between Colombia and critical legal movements from other countries, as well as between Colombian crits and other social movements. This was so because of the radical content of the Colombian critical legal discourse, which defended the idea of law as a mechanism for domination, therefore believed the political struggle could not be reduced to reformism, and even thought of democracy as a product of capitalism -and, thus, as a negative thing-.[65]

The content of legal critique in Colombia between the 1960s and the 1990s depended on the type of law, and especially of constitutional law, that dominated Colombia during that period. The hybrid nature of the Colombian political regime –between democracy and military regime- was designed with the complicity of law and particularly of constitutionalism. It was legal norms that created and justified the Colombian legal engender of the time. Legal critics' skepticism regarding law's emancipatory potential derives from this. Legal norms were seen as mere instruments of domination.

However, it is hard to maintain interest in law –even a critical interest- in face of such desqualification. That is why in Colombia, as happened in Argentina, the critics always faced a tension between their legal profession and their political activism. They considered themselves lawyers and law professors, but they neglected law as a useful mechanism for the political struggle. This tension was even more acute when, in the late 1970s, many of the Colombian legal critics created the Latin American Institute of Alternative Legal Services (ILSA, for its Spanish initials), which aimed to be a center for the alternative use of law and for the transformation of the legal profession, with a special emphasis on human rights protection.[66] Under the direction of Fernando Rojas – who studied in

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[65] *Id*..

[66] ILSA's main objectives were: the redefinition of the lawyer's role and the end of his or her hierarchical and dominating position; the relationship between alternative legal services, legal education and popular organization; the need of popular participation in the creation of law; the defense of solidarity, participation and social justice as values, etc.

Wisconsin – ILSA was a very active NGO during the 80s, not only in Colombia but also in Latin America.[67] ILSA gathered a group of lawyers working in poorer quarters. Some of them also worked as professors in the National University.

As such, there seemed to be a profound contradiction between the idea -defended by most of ILSA's creators- of law as a tool of domination, and the possibility of using it for emancipatory practices and social change. In fact, this use could end up being functional to law and could even provide it with legitimacy. This paradox, which Fernando Rojas called schizophrenia[68], was never fully resolved. The paradox was not only institutional, but personal: Fernando Rojas and Victor Manuel Moncayo had a sort of double professional life. They were legal activists in ILSA, but they were also prestigious commercial lawyers, who worked with an orthodox legal doctrine in the world market.[69] Moreover, most of the law professors who worked in ILSA ended up teaching political science, and abandoning any reflection on legal critique.

Anyway, ILSA was a space for the consolidation of a wider critical perspective than that provided by the initial Marxist students' movement, because it did not have the pretension of a common theoretical ground, but rather of a variety of theoretical and political critical perspectives. Nonetheless, this never prevented internal tensions and ruptures to take place, which, always hunted by the violent threats to life of ILSA's members, ended up in the dispersion and radical change of life of many members of the critical legal movement.

4. CONCLUSIONS

It is possible to find some common explanations to the emergence of the three critical legal movements previously studied. According to Cárcova -one of the main exponents of the Argentinean critical legal movement-, the distant antecedents of critical legal movements not only in Argentina but in Latin America in general, can be traced to three different events: firstly, the investigations financed by the United States' law and development programs, which resulted in criticisms to traditional theoretical constructions regarding law and in the search for new theoretical and disciplinary tools adequate to give account of the relations

[67] ILSA published El Otro Derecho, a very well known legal journal also Publisher in English as Beyond Law. They also organized several international encounters and seminars on alternative law…..(FALTA)

[68] Rojas' interview, *Ob. Cit.*

[69] Rojas' interview, *Ob. Cit*; Víctor Manuel Moncayo, Interviewed in 2007.

between law and social contexts. Secondly, the special emphasis given to law by neo-Marxist thinkers like Poulantzas and Althusser, in contrast to the marginal place it occupied in Marxism, which provided critical thinkers with a rich theoretical arsenal to critique law. Thirdly, the raise to power of leftist Salvador Allende in Chile, which brought about an urgent need to conceptualize an unprecedented pacific transition to socialism.[70]

But the differences among these movements are also notorious. Argentinean and Colombian critics coincide in their adoption of a radical and skeptical discourse regarding law, in their interest in the big picture offered by political theory, and in the creation of a type of legal critique that was not interested in the technical matters of legal dogmatic. They are also similar in their difficulties to connect their theoretical reflections to their political practices, and in their emergence in a context of judicial passivism. However, these two movements were very different in both their purposes and activities. While the Argentineans were obsessed with creating a critical epistemology of law, Colombians were more interested in criticizing law than in creating a solid theory of law. In that way, the Colombian critics' political commitment was much more evident in their articles and discussions, which brought as a result less rigorous theoretical constructions and a final predominance of political activism over theory.

In contrast, in Brazil, the critical legal movement s more interest in the empirical study of the relation between law and social reality.[71] Its reflections were not only limited to political theory, but made incursions in legal and sociolegal theory, and many incorporated technical-legal reflections to their critique. Furthermore, in Brazil, the disciplinary configuration of the movement's actors was much more pluralist and did not restricted itself to lawyers; an effort was made to connect theoretical reflections with political practices, and critics even worked with progressive judges with a relative degree of success.

How can these differences be explained? We suppose here that ideas prevailing in a given social field – in this case the legal or the socio-legal field – are not only the product of authors or debates among them. Ideas are always embedded in a given social context with some given material conditions (Bourdieu 1986). A comparative sociolegal assessment of the authors, debates and movements in the

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[70] *Id.*

[71] Según Eliane junqueira, una particularidad de la sociología jurídica brasileña, y que de paso marca una diferencia con la sociología jurídica europea, es que en Brasil, la producción de estudios empíricos supera ampliamente en cantidad a aquellos puramente teóricos. Eliane Botelho Junqueira, « La sociologie juridique brésilienne à travers le miroir », *Droit et Société* 22-1992. pp. 433 – 445.

field of law must keep in mind the complex connection between, on the one hand, the relative autonomy of legal discourses that struggle to appropriate symbolic capital and, on the other, the social and political context in which these discourses succeed or fail. Only thus can it be explained why certain ideas, authors, or movements are accepted, while others are rejected and not considered in certain contexts (García Villegas 2006) A comparative approach is also the only way to gain an understanding of how these ideas are or are not received in other countries, and to what extent the contexts of their production and reception have an influence in the way they are perceived, used and transformed (Nelken 2001; López 2001).

Keeping in mind this complex web of connections, I think we can avoid what Lawrence Friedman has termed the "internalist school"[72] - that is, the temptation to explain the evolution of a discipline, in this case, law, by tracing the vicissitudes of its arguments, movements, ideas - but also the economistic approach that reduces legal thought to the economic context in which it arises.[73] That is why, in order to understand and explain the differences of the critical legal movements that we have described, it is important to incorporate a consideration of the social and political contexts in which they emerged.

First, it is important to note that the State's legitimacy crisis lived by the three countries had different meanings and scopes. In Argentina and Colombia, there eas a profound crisis, which involved not only members of the government of the time, but State itself, law in general an even democratic ideas. Argentinean and Colombian legal critics of the time rejected –although for different reasons- the possibility of negotiating with the regime, and proposed a radical transformation of both political power and law.

In contrast, in Brazil, the political regime's lack of prestige was never as generalized among the critics. Some had a revolutionary vision, which implied the abandonment of a bourgeois law and its replacement by another law –which was never precisely defined-, while others had a reformist vision of law and accepted it could be used in some potentially emancipatory ways. The fact that there were progressive judges who defended an alternative use of law created a more complex vision of the State. Things were not always seen in black and white. That is why there was much more debate and discussions on the way law should be interpreted and valued.

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[72] According to Friedman (1989: 10), this perspective "looks at law as the lawyer or jurist looks at law".

[73] This reductionist view includes both orthodox Marxism as well as the current perspectives represented in law and economics. In the articulation of these two levels I am basically relying on the work of Pierre Bourdieu. CITA.

Thus, the more law and the political regime lacked prestige, the more radical legal critic became. This is what happened in Argentina because of an opprobrious military regime, and in Colombia because of law's abuses in justifying a hybrid political regime.

Second, the radical character of legal critique came along with, on the one hand, a lack of interest in technical aspects of law and in sociolegal research and, on the other hand, with the creation of a political theory of domination in which law was only a part. Both Brazilian and Colombian legal critics were more interested in the theory of power than in legal theory. For them, law's explanation was outside law itself –in economic structures- and, thus, their interest in law was epistemologically subordinated to their interest in political power.

Third, in Brazil, the greater links between social movements and legal critics prompted an interest in legal theory coming from other disciplines, and particularly from sociology, which certainly enriched the critical movement and widened the range of its criticisms. In contrast, in Argentina and Colombia there were only lawyers among the critics. In Argentina, the existence of a long legal theoretical tradition permitted the establishment of some important connections between legal theory and philosophy and psychoanalysis. In Colombia, law professors and lawyers were the protagonists of the critical legal movement, and they did not relate much to other disciplines different from law and political science.

Fourth and last, the greater development and inclusive nature of Brazilian universities –as compared to Argentinean and Colombian universities- allowed for a much more open reception of critical ideas coming from legal sociology and theory of law in both Europe and the United States. This helped to give more complexity and more explicative capacity to critical developments in regards to what was happening in the country during those years.

Bibliography

Adeodato, Joao Mauricio Leitao. 1989. *O Problema da Legitimidade*. Rio de Janeiro: Forense universitaria.

———. 1992. Para una conceituacao do Direito Alternativo. *Revista de Direito Alternativo* 1:157-74.

———. 1997. *Filosofia do Direito*. Sao Paolo: Saraiva.
Alchourrón, Carlos, and Eugenio Bulygin. 1971. *Introducción a la metodología de las ciencias jurídicas y sociales*. Buenos Aires: Astrea.
Arnaud, A-J. 1981. *Critique de la raison Juridique*. Paris: LGDJ.
Arruda, Edmundo Lima de. 1988. *Introducao ao Idealismo Juridico*. Sao Paolo: Julex Livros.
———. 1993. *Introducao a la Sociologia Jurídica Alternativa*. Sao Paolo: Academica.
Bourdieu, Pierre. 1986. The Force of Law: Toward a Sociology of the Juridical Field. *Hastings Law Journal* 38 (5):814- 853.
Bulygin, Eugenio. 1961. *Naturaleza jurídica de la letra de cambio*. Buenos Aires: Abeledo-Perrot.
Campilongo, Celso Fernandes. 1989. Magistratura, sistema Jurídico e Sistema político. In *Direito e Justicia. A Fucao Social do Judiciario* edited by J. E. Faria. Sao Paolo: Atica.
———. 1997. *Direito e Democracia*. Rio de Janeiro: Max Limonad.
Carrió, Genaro. 1962. *Hart: derecho y moral. Contribuciones al análisis*. Buenos Aires: Depalma.
———. 1971. *Algunas palabras sobre las palabras de la ley*. Buenos Aires: Abeledo-Perrot.
Cossio, Carlos. 1946. *La plenitud del Ordenamiento Jurídico*. Buenos Aires: Losada.
———. 1963. *La toría egológica del derecho*. Buenos Aires: Abeledo-Perrot.
Da Matta, Roberto. 2002. *Carnavales, malándros y héroes* México: Fondo de Cultura Económica.
Faria, Jose Eduardo. 1988. *Eficacia juridica e violencia simbolica. O direito como instrumento de transformacao social*. San Pablo: Universidad de San Pablo.
———. 1995. El poder judicial en Brasil: paradojas, desafíos y alternativas. *El Otro Derecho* 20.
———. 2000. Economía y derecho: en el cruce de dos épocas. *El Otro Derecho* 24.
———, ed. 1996. *Direito e globalizacao economica: implicacaos et perspectivas*. Malheiros: Sao Paolo.
Faria, Jose Eduardo, and Celso Fernandes Campilongo. 1999. *A sociologia jurídica no Brasil*. Porto Alegre: Sergio Antonio Fabris Editor.
García Villegas, Mauricio. 2006. Comparative Sociology of Law: Legal Fields, Legal Scholarship, and Social Sciences in Europe and the United States. *Law & Social Inquiry* 31 (2):343-383.
Gomes Justo, Marcelo, and Helena Singer. 2001. Sociology of Law in Brazil: A Critical Approach. *The American Sociologist*.

Iglésias, Francisco. 1999. *Breve Historia contemporánea del Brasil*. México: Fondo de Cultura Económica.

Junqueira, Eliane. 1993. *A sociologia do Dirito no Brasil, Introducao au Debate Atual*. Rio de Janeiro: Lumen Juris.

Lamounier, B. , F. Benavides Weffort, and Maria Victoria Soares. 1981. *Directo, Ciudadania e Participacao*. Sao Paulo: T.A. Queiroz.

Lopes, Jose Reinaldo de Lima. 1988. *Direito, Justicia e Utopia*. Rio de Janeiro: AJUP/FASE.

———. 1994. En torno do Direito Alternativo. *Revista de Informacao Legislativa, Senado Federal* 21.

———. 2000. *O Direito na Historia; Licoes introdutorias*. Sao Paolo: Max Limonad.

———. 2004. *As Palavras e a Lei*. Sao Paolo: FGV.

López, Diego. 2001. Comparative Jurisprudence, Law School, Harvard, Cambridge.

Maiwaring, Scott, Eduardo Viola, and Rosa Cisminsky. 1985. Los nuevos movimientos sociales, las culturas políticas y la democracia: Brasil y Argentina en la década de los ochenta. *Revista Mexicana de Sociología* 47 (4):35-84.

Miaille, Michel. 1976. *Une Introduction Critique au Droit*. Paris: Maspero.

Nelken, David, ed. 2001. *Adapting Legal Cultures*. Oxford: Hart Publishing.

Neves, Marcelo. 1988. *Teoría da Inconstitucionalidade das Leis*. Sao Paolo: Saraiva.

———. 1994. *A constitucionalizacao Simbolica*. San Pablo: Academica.

Nino, Carlos Santiago. 1973. *Notas de introducción al derecho*. Astrea: Buenos Aires.

O´Donnell, Guillermo. 1984. *Y a mí qué me importa? Notas sobre sociabilidad y política en Argentina y Brasil*. Buenos Aires Centro de Estudios de Estado y Sociedad - CEDES.

Rodrigues, Horacio Wanderlei. 1993. *Ensino Juridico e Direito Alternativo*. Sao Paolo: Academica.

Santos, Boaventura de Sousa. 1977. The Law of the Oppressed; The Construction and Reproduction of Legality in Pasargada Law. *Law & Soc. Review* 12.

———. 1997. Pluralismo jurídico, escalas, bifurcación. In *Conflicto y Contexto*, edited by I. Ser. Bogota: Tercer Mundo - Instituto Ser - Colciencias - Programa de Reinserción.

———. 2001. El paisaje de las justicias en las sociedades contemporáneas. In *Caleidoscopio de las justicias en Colombia*, edited by B. d. S. Santos, Mauricio Garcia Villegas. Bogotá: Uniandes - Siglo del Hombre.

Sikkink, Kathryn. 1993. Las capacidades y la autonomía del Estado en Brasil y Argentina. Un enfoque institucionalista. *Desarrollo Económico* 32 (128): 543-574.

Souto, CLaudio. 1979. Sociology of Law in Brazil. *Luso-Brazilian Review* 16 (1): 53-66.

Unger, Roberto. 1986. *The Critical Legal Studies Movement*. Cambridge: Harvard University Press.

Vernengo, Roberto. 1971. *La interpretación literal de la ley y sus problemas*. Buenos Aires: Abeledo-Perrot.

Warat, Luis. 1969. *Abuso del derecho y laguna de la ley*. Buenos Aires: Abeledo-Perrot.

Warat, Luis, and Ricardo Entelman. 1970. *Derecho al derecho*. Buenos Aires: Abeledo-Perrot.

Wolkmer, Antonio. 1988. *Constitucionalismo e direitos sociais no Brasil*. Sao Pablo: Académica.

———. 1994. *Pluralismo juridico. Fundamentos de una nova cultura no direito*. Sao Pablo: Alfa-Omega.

Wolkmer, Carlos Antonio. 1995. *Introducao ao Pensamento Juridico Critico*. Sao Pablo: Academica.