

# Tradition and Diversification in the Uses and Definitions of the Law:

## A Proposed Analysis

**Fabiano Engelmann**

Federal University of São Carlos, Brazil

This article aims to carry out a sociological survey of the Brazilian legal field in the 1990s. To this end, the relationship between the diversification of the legal sphere and the legitimisation of definitions of the Law in Brazil over the course of the 1990s were investigated. The close match between the differentiation of the teaching of the Law, as a place for producing definitions of legal problems, and the mobilization of certain uses of the legal profession and of the careers of State during this period was analysed. This relationship allows one to gather the emergence of the academic career as a space for the production of specific conceptions and uses of the Law. This process is intimately linked to the repositioning of jurists in the sphere of power in Brazil, after the changes in the country's political landscape that have their institutional expression in the promulgation of the 1988 Constitution.

Key words: Sociology of the legal field; teaching of the law; social diversification of jurists; Brazil 1988 Constitution.

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## Introduction

This article intends to propose a scheme of analysis that contributes to a better understanding of the patterns involved in the structuring of the Brazilian legal field as it takes shape after the country's political democratisation. Three main axes will be approached as a starting point in the construction of this framework for analysis. The first relates the expansion of postgraduate teaching in Law to the production of "social" definitions and methods of interpretation for legal knowledge. The second analyses the relationship between the jurists positioned in the careers of State and the political world. Lastly, the third axis suggests routes for the analysis of the phenomena related to the transposition of collective political causes to the legal space, whose protagonists are the so-called *cause lawyers*.

On these terms, one may try to understand the emergence of the conditions and possibilities of use of the Law as a tool of social transformation to the detriment of the tradition of jurists engaged in the preservation of the social order. A comparison between the Brazilian case and those of Europe and the USA also contributes to the construction of this scheme of analysis.

### University Teaching as a Place for the Production of “Alternative Law”

The discussion of “the social” within legal careers represents a set of positions taken up on definitions of the Law constructed on the basis of appropriations from Sociology and Philosophy of Law. The debate on “Alternative Law” or on “the alternative use of the Law” has a central role in laying the groundwork for the legal doctrine produced around these disciplines. In this sense, Sociology of Law or Legal Sociology, as much as the set of philosophical underpinnings that put at issue the definitions of Justice, State and Law, figure as resources in the hands of jurists who present themselves as “critics” of the traditional jurists in the legal sphere. In the field of doctrinal battles, the latter base their definitions on the interpretation on codified legal repertoires, claiming the autonomy of legal science in relation to Sociology.

The origin of the expression “alternative” at the level of the Judiciary dates back to judges’ movements in Italy and Spain in the 1970s<sup>1</sup>. In the Italian case, it is attributed to the mobilizations carried out by the judges’ associations that emerged after the fascist period, especially in the late 1960s (Andrade 1996). Among the main resources used by the “critical” or “alternative” jurists for their legitimisation in the legal sphere is the management of postgraduate academic titles, especially Ph.D.s, within the Brazilian university legal teaching space in the 1990s. The relative scarcity of academic titles on the part of Law lecturers and an increasing demand for this due to a Ministry of Education policy conjuncture relating to the certification of degree courses, are factors to be considered in the analysis of the rise of marginalized agents in this space.

Jurists with more academic titles are the majority, both in the management of degree and, principally, of postgraduate courses, and in the teaching committees and councils of the Ministry of Education and the OAB (Brazilian bar association). Equally, the institutional demands for masters and doctors in Law courses have created tensions with the standard of the bachelor-lecturer, invariably with origins in the world of legal practice, hence forcing a relative increase in the level of professionalism of the teaching activity.

With regards to intellectual production, the space occupied by jurists who hold Ph.D.s and are teaching professionals is associated to the expansion of a set of repertoires and definitions of legal doctrine, and of a certain type of academic research. These jurists who became professionals teaching at university level are responsible for a kind of intellectual production that takes place in the relatively autonomous space of postgraduate courses and is characterised by an ambivalent relationship with the world of legal practice.

The process taking place in postgraduate courses, of making legal problems become issues, such as “social issues”, involving the interpretation of the Law or the new public rights, implies new hierarchies for legal disciplines. Traditionally mastered themes, less prestigious themes, start standing out. The use of Sociology increases as an interdisciplinary aid in laying the groundwork for definitions involving themes connected to the new public rights. This appropriation of the social sciences occurs within both a more empirical perspective, through the incorporation of field research tools, and a more ideological perspective, through the use of concepts to buttress the critique of traditional jurists and their forms of using the judicial space.

On these terms, the Sociology of Law that emerges on these bases legitimises a series of themes related to a certain profile of activist jurists, such as human rights, social rights, access to justice and criminology. Along the same lines, it proposes “alternative” redefinitions of more traditional disciplines such as Civil Law or Civil Process Law, specialisation themes linked to more conservative jurists.

Philosophy of Law legitimises itself as a modernizer in providing the foundations for these definitions through the formalization and translation into legal language of jurists’ critical and social positions. In this sense, the use of several concepts imported from the most varied philosophical systems, notably those related to hermeneutics, contribute to a “sophisticated” re-founding of the doctrinal repertoires that may be mobilised in confrontations between jurists.

Invariably, a larger intellectual investment in Sociology corresponds to the discipline’s reduced prestige within the competitive space of jurists. For example, one may include in this case Criminal Law and Labour Law, which may be taken as disciplines that use the social sciences to a greater extent. The main aim of the “sociologisation” is to bring closer together the Law and the reality of socially dominated groups, redefining the criteria of decision in a “social” or “critical” sense in relation to the uses championed by the traditional segments.

According to Dezalay (1992), in the American case, the doctrinal wars encompass conflicts between groups formed within the legal space. The relative “autonomisation” of the setting of these struggles in a university space maintains a dubious relationship with the “practical” world, as in the case of the protest movement in the American *legal realist* tradition, already in the late 1940s. The author demonstrates how American Sociology of Law initially carried with it the critique of positive Law and of formalism and that, subsequently, it became a professional move. In the universe of positions taken up, “Sociology” figures as an importation of concepts and methods from the social sciences to legal practices, legitimising a “critical methodology” in the interpretation of norms. In this sense, there constitutes itself a legitimate counter-position that dominates the debate between the “formalists” or “positivists” (linked to tradition) and the “criticals”. In other words, those who affirm “the absolute autonomy of the legal form in relation to the social world” and those who “conceive of the Law as a reflex or utensil at the service of the dominant” (Bourdieu 1986) oppose one another. In the American case this phenomenon also in-

volves the *Law and Society* movement, to a certain extent the successor of the *legal realist* critical jurists. The *Law and Society* movement emerged in the late 1960s and was responsible for a range of “critical” reflections on the space of the traditional US Law schools. In this movement, led by Law professors, the relative “autonomisation” of the university teaching space in relation to the world of practical careers also gets discussed.

Vaucher (2001) emphasises the fact that the success of these “scientific enterprises” making “critiques of the Law” and producing socio-legal works were intimately linked to the creation of a “socio-legal research market” from 1950. In this case, the research was funded by private foundations and government agencies, particularly on issues of access to justice and the war on poverty.

In the Brazilian case and in the French case<sup>2</sup>, Legal Sociology and the Sociology of Law, as well as providing the basis for the “critique” of the legal tradition, serve to bring “social” themes to the judicial space. This occurs both within postgraduate courses and in the growing use in other social spheres of the knowledge related to these disciplines. Among the cases that represent these uses, one may cite the mobilisation of the judicial space by various types of social movements and NGOs involving the legal framing of political and “social” causes.

Among the most representative cases, one might mention the Alternative Law movement that emerges from the mobilisation of a group of judges and the networks of lawyers who work on collective causes closely linked to social movements and NGOs. In the latter case, the advocacy of NGOs in defence of human rights, environmental rights, children’s and adolescents’ rights, women’s rights and the MST (Rural Landless Workers’ Movement) are worthy of note.

Also worth highlighting is a range of studies dealing with the crises of the Law. These appear in expressions of concern with the “mediocrity of legal teaching”<sup>3</sup> and with the “socio-professional identity crisis of bachelors in Law in Brazil.”<sup>4</sup> The focus of these works is the devaluation of the traditional bachelor, especially his/her transformation into a salaried worker, and the inadequacies of Law school curricula in relation to the social reality and the reality of legal practice.

Table 1 illustrates the emergence of this literature that invests simultaneously in the redefinition of the conceptions of the disciplines related to the traditional universe of jurists, of the methodologies of legal teaching and of the conceptions of the functions and roles of legal careers.

The positions taken up in Ph.D. theses and congress talks, as well as in the teaching committees both of the Ministry of Education and of the OAB, make possible the opening of a new space for the action of these agents. The establishment of relationship networks and the investment through these spaces involves, at the same time, the production on the crisis of the Law as a legitimate object of study (diagnosis) and the specialisation to resolve it, represented by the formulation of proposals for solutions.

One is talking about the production of one more expertise (in legal education) that is legitimised simultaneously in the university world (postgraduate courses, by means of

theses) and in the world of the “practicals”, through the monopoly of the evaluation of the competences of bachelors of Law by the OAB, and at the Ministry of Education, which legitimises the expert teaching committees.

On these terms, the analysis of the differentiation of the space for the production of “social” views of the Law and of the “critique” of the legal tradition is intrinsically linked to the rise of a group of jurists socially unconnected to the major families that invest in the intellectual production of that critique and reconvert such products in the opening up of several spaces in the 1980s and 1990s. This took place as much in the State sphere, in the teaching committees of the Ministry of Education and the OAB, as in the private space of the teaching of Law at university level.

TABLE 1

**Books identified with the “alternative view of the Law” published between 1991 and 1995 by the São Paulo-based publishing house Editora Acadêmica, which ceased to exist in the late 1990s**

Book/Publication	Author(s)	Print-run	Published in	Sold out in
Juiz Alternativo e Poder Judiciário	Lédio Andrade – judge – Santa Catarina state – Ph.D. in Law	2.000	September, 1991	October, 1991
Lições de Direito Alternativo, 1	Various authors, Edmundo Arruda Jr. (ed.) – professor at the Federal University of Santa Catarina (UFSC)	2.000	September, 1991	October, 1991
Lições de Direito Alternativo, 2	Edmundo Arruda Jr. (ed.) – professor at UFSC	1.600	September, 1992	October, 1994
Magistratura e Direito Alternativo	Amílton B. Carvalho – judge – Rio Grande do Sul state	3.000	May, 1992	October, 1994
Ministério Público e Direito Alternativo	Antonio Alberto Machado – professor at the State University of São Paulo (UNESP) – Marcelo Pedroso Goulart – public prosecutor – São Paulo state	3.100	May, 1992	
Introdução à Sociologia Jurídica Alternativa	Various authors, Edmundo Arruda Jr. (ed.) – professor at UFSC	2.000	March, 1993	
Direito Alternativo na Jurisprudência	Amílton B. Carvalho – judge – Rio Grande do Sul state	3.000	September, 1993	
Lições de Direito Alternativo do Trabalho	Edmundo Arruda Jr. – professor at UFSC	1.700	November, 1993	
Ensino Jurídico e Direito Alternativo	Edmundo Arruda Jr. – professor at UFSC	1.950	November, 1993	
Razão e Racionalidade Jurídica	Edmundo Arruda Jr. – professor at UFSC	2.100	April, 1994	
Revista de Direito Alternativo, 3	Amílton B. Carvalho – judge – Rio Grande do Sul state – review director	2.000	October, 1995	
Lições de Direito Alternativo Civil	Silvio Donizete Chagas (ed.) – director of Editora Acadêmica	2.000	May, 1994	
Lições Alternativas de Direito Processual	Horácio Wanderley Rodrigues (ed.) – professor at UFSC	1.000	November, 1995	

Source: Andrade (1996), complemented.

An indication of the positioning of the “critical jurists” in the university space may be gathered from an analysis of the authors who took part in the compilation that guided the reform of legal curricula in 1994, which resulted from a set of diagnoses on legal teaching in Brazil. To a large extent, the group of the “critical jurists”, who have more academic grounding, got organized through the postgraduate programme of the Federal University of Santa Catarina, which has a major presence in these committees, as a starting point. The space of the teaching committees, as table 2 illustrates, facilitates the re-conversion of the “critical” and “alternative” academic production, and highlights the authors as specialists in the generation of new parameters for the evaluation of the curricula and structures of legal teaching.

TABLE 2

<b>Group of jurists that produced the compilation of texts Ensino jurídico, diagnósticos, perspectivas e propostas, organized by the OAB committee of “experts in teaching” in 1992</b>		
<b>Name</b>	<b>Institution</b>	<b>Title of the article</b>
José Ribas Vieira	Fluminense Federal University (UFF) / Catholic University of Rio de Janeiro (PUC-RJ)	Desafios e Prioridades para a Reforma do Ensino Jurídico no Brasil
Marília Muricy	Federal University of Bahia (UFBA)	Notas sobre a Ciência e o Ensino do Direito
Álvaro Melo Filho	Federal University of Ceará (UFCE)	Currículo Jurídico – Um Modelo Atualizado
Luciano Oliveira	Federal University of Pernambuco (UFPE)	Ilegalidade e Direito Alternativo: Notas para Evitar Alguns Equívocos
Paulo Lopo Saraiva	Federal University of Rio Grande do Norte (UFRN)	A OAB e o Ensino Jurídico
<b>Horácio Wanderley Rodrigues</b>	<b>Federal University of Santa Catarina (UFSC)</b>	Ensino Jurídico para Que(m)? – Tópicos para Análise e Reflexão
<b>Leonel Severo Rocha</b>	<b>Federal University of Santa Catarina (UFSC)</b>	A Racionalidade Jurídica e o Ensino do Direito
<b>Luiz Alberto Warat</b>	<b>Federal University of Santa Catarina (UFSC)</b>	Confissões Pedagógicas diante da Crise do Ensino Jurídico
<b>Antonio Carlos Wolkmer</b>	<b>Federal University of Santa Catarina (UFSC)</b>	Crise do Direito, Mudança de Paradigmas e Ensino Jurídico Crítico
Roberto Rosas	University of Brasília (UnB)	Avaliação dos Cursos Jurídicos
Joaquim Arruda Falcão	University of Brasília (UnB)	O Ensino Jurídico e a Ordem dos Advogados do Brasil
Álvaro Villaça Azevedo	University of São Paulo (USP)	Formação do Advogado – O que Fazer
Fábio Konder Comparato	University of São Paulo (USP)	Proposta de Reformulação Curricular do Curso de Graduação em Direito
José Eduardo Faria	University of São Paulo (USP)	O Ensino Jurídico
Ada Pellegrini Grinover	University of São Paulo (USP)	Crise e Reforma do Ensino Jurídico

Source: OAB Ensino Jurídico, 1993 and *Iattes* platform ([www.cnpq.br](http://www.cnpq.br))

Along the same lines, the success in the production of such repertoires corresponds to the market for a redefinition of legal doctrine opened up by the mobilisation of those practical jurists who move towards the critique and the politicisation, as well as towards the various forms of militant-lawyering that expand in the 1990s.

### **The Definition of the Careers of State and the “Politicisation” of the Law in the 1990s**

At the level of the careers of State, the mobilisation of certain definitions of the Law and of the Judiciary appears as a process of politicisation of this institution in the 1980s and 1990s. According to Vianna (1999) and Arantes (2002), there is a “judicialisation” of politics, represented by the use of *ações diretas de inconstitucionalidade* (direct unconstitutionality suits) at the superior courts level, where the dispute over the meaning of constitutional rules is expressly on the agenda. The use of this type of appeal brings regional disputes between representatives of the Executive and the Legislative to the field of the Law and to the superior courts, hence transferring what might be characterised as a traditional problem of the political arena to the sphere of legal interpretation.

This transfer implies a greater intertwining between the political and legal spheres in the sense of the transit of personnel and of relationships established between jurists who move between spheres of power. The very internal organisation of the Judiciary puts in opposition the public selection processes for the first tier of justice, on the one hand, and the appointments for the composition of the superior courts, on the other. This structure tends to create cleavages between the judicial instances that judge interpersonal conflicts, such as the first tier of the justice system, and the more political superior courts.

On the other hand — and also related to the opening up of the legal arena to new uses of the Law —, from the 1990s, there also occurs a greater “judicialisation” of social life. This process comprises the entry into the legal setting of a range of problems identified with collective causes (consumer rights, human rights, environmental rights, social rights and others). In general terms, this “judicialisation” of politics and social life may be characterised as a phenomenon that increases the Judiciary’s potential of conflict mediation<sup>5</sup>.

The greater legitimisation of the Judiciary and of the institutions connected to the legal milieu may also be attributed to a disbelief in the traditional channels of political mediation. This legitimisation is related at the same time to a social diversification in recruitment, to the new institutional definitions of the careers of State and to conditions that make possible the mobilisation of new repertoires of doctrine and conceptions of the Law.

The institutional definitions of these careers on the basis of the 1988 Constitution involve legal guarantees, like the fact that the job is for life, that judges cannot be moved from one municipality to another as punishment for a decision and that their salaries cannot be reduced, which ensure relative autonomy in relation to the world of politics. In other words, these guarantees represent conditions that offer possibilities of action for



newly recruited agents, who redefine the social uses of these careers, projecting them beyond a restricted space and often confronting other powers of the State.

Specifically, within Brazilian public space, segments such as those of state and federal prosecutors, which act in the name of “legitimate public morality”, grow in importance. In the case of the public prosecution service, the monopoly of action “in the name of society” legitimised through institutional guarantees brings with it an underlying perception of Brazilian society as “incapable of defending its rights autonomously”. It equally brings with it a critique of the traditional channels of political mediation, such as the political parties and other institutions of the representative system, associated with the “morally reprehensible “practices of corruption and cronyism (Arantes 2002)<sup>6</sup>.

In this sense, the struggles of state and federal prosecutors to affirm their “independence”, their socially instituted space in relation to the groups linked to the political and bureaucratic worlds, and to the Judiciary, are also representative. One of the resources utilised is the press, which allows instant repercussion in the world of politics. The use of this resource to speak “in the name of society” to a public that transcends the interpreters of the Law contributes to the enlargement of prosecutors’ space and to their social legitimisation as guardians of public morality.

In the case of judges, the space for broadening the mediation with the social movements takes shape in the professional associations and in the training centres administered by them. Their strengthening occurred over the course of the process of formulation of the new Constitution that began in 1986. In this sense, they emerge as mediators of judges’ interests and as focal points of the disputes over the definitions of their “political role”, as well as being a space for judges’ legitimate politicking.

The political science-based studies produced in Brazil, France and Italy<sup>7</sup> that analyse this range of phenomena that may be generically termed “politicisation” of the Law focus on the intertwining between politics and the Law as a new institutional role played by the Judiciary or the public prosecution service. Such analyses<sup>8</sup> reinforce the profile of lawsuits and of the new rights that may be claimed as determining factors in this new setting, following the re-democratisation of the country with the advent of the 1988 Constitution (Arantes 2002; Vianna et al. 1999; Silva 2001). To a large extent, the “politicisation” would be absorbed in the “constitutionalisation” of the Law, seen as a natural phenomenon in a process of political opening and institutionalisation of a democratic society.

In spite of containing indications of the social diversification in the recruitment for the careers of State, such research does not go deeper into the relationship between the changes in recruitment and the possible tensions and redefinitions in jurists’ hierarchies, and possibilities of legitimate uses of the Law. The growth in the competition for the monopoly of the legitimate application of the law within the legal space seems to coincide with the different political, ideological or “social” uses emerging in the 1990s. Equally, the tensions and realignments between jurists coincide with alterations in the recruitment for careers of State.



For the segment of judges, the changes in social origins are indicated in Vianna et al. (1997)<sup>9</sup>. A sample of Brazilian judges recruited between 1974 and 1985 shows that 54% of judges had parents with up to eight years' schooling, while 34% had parents with "low-ranking occupational profiles". It also shows that 72% of judges' parents were public employees or employees of State companies. The change in judges' social makeup, exemplified here by their family origins, may be ascertained by comparison with population studies on bachelors of Law in the late 19th and early 20th centuries<sup>10</sup>.

The key question in understanding the factors conditioning these processes of political mobilisation of the jurists of State lies in the relationship between the social diversification of their recruitment and these new agents' dispositions activated in several uses of the Law and of the legal professions. The variables to be considered in the relationship between the diversification and the uses of the Law do not involve solely the new recruits' social origins, but also the relationship between their social characteristics and their dispositions to certain uses of the Law. This implies including in the analysis conditioning factors such as their religious and philosophical education, for example, obtained in school or within the family, as well as political militancy and relations with "social movements", in the positions taken up in certain uses of the judicial space.

For the French case, Cam (1978)<sup>11</sup> indicates as conditioning factors of the space for judges to take up positions, the relationship between diversification of schooling, social diversification and the redefinition of the uses of the Law. In analysing the recruitment of judges in France after 1968, he makes clear the arrival of a third age in the profession. In this case, the "feminisation" of the judges' population, their younger age and the change in the social origins of judges recruited from the 1970s, correspond to a growth in judges' numbers and to a redefinition of the technologies of decision, in the sense of a preoccupation with the "social" dimension and with the "critique" of traditional positive Law.

In this process of taking up positions, religious morals, political experiences and, more broadly, the predispositions to certain moral definitions of justice and of the use of the judge's career are concurrently at play in defining the positioning before the Law. In the case analysed by Cam (1978), for the judges who identify with Labour Law, the relationship between their social origins, their forms of adherence to Catholicism and leftwing political positions come into play in defining their positioning in the legal space.

Working more specifically on the effects of the moment on the mobilization of judges in the 1980s and 1990s in Italy, France and Spain, there are several works that bring important references to the analysis of the phenomenon at hand. It is worth mentioning in particular Roussel (2002), Israel (2001) and Garraud (2003) for the French case, Briquet (2001) and Vauchez (2001) for the Italian case and Pujas (2000) for the Spanish case. Their research centres the analysis on the logics of collective action on the part of judges faced with the scenario of the politico-financial scandals in France and of the anti-corruption movements in Italy and Spain. Their main starting point is the "autonomisation" of the legal space in relation to the political and economic world as the chief hypothesis for the emergence of the "politicisation" of judges and public prosecutors. This

“autonomisation”, based at the same time on the recruitment mechanisms for these careers and in their institutional guarantees, made possible the conditions for the mobilization of several resources by the “jurists of State” in their “morality enterprises”, such as the media and even, in some cases, their expertise in accounting and finance.

In the Brazilian case, the effects of the “autonomisation” of the legal space on the economic and political world deserve to be considered in conjunction with the entry of new agents into the careers of State and their respective aspirations and social dispositions, whether inherited or acquired in their previous socialisation. Along these lines, one may combine an analysis of the logics that reveal themselves in the context of collective action with variables referring to these jurists’ trajectories, the types of involvement in the student movement and the predispositions acquired within the family group, as well as the interrelationships of this set of dispositions that engender certain practices and are put in operation according to the practical contexts of action. In this sense, it is permitted, at the level of doctrinal confrontations, to investigate the objective affinities between the social position and the propensity to political involvement and mobilization of certain resources to strengthen vanguard positions in challenging or preserving the legal tradition.

### Lawyers’ Political Involvement and the Production of Collective Causes

Lastly, a third mode of mobilisation of repertoires of “critiques” of the legal tradition and uses of the judicial space is represented by lawyers engaged in collective causes. Initially, this phenomenon is most clearly present in the realm of Labour Law, on the part of lawyers practicing for trade unions, and, during the 1970s, in the defence of political prisoners and in the international lawyers’ networks related to the movement in defence of human rights.

In Brazil during the 1990s, these modes of political involvement on the part of lawyers in collective causes took on other forms. This is chiefly the case with regards to social movements in which groups of lawyers invest in manifesting<sup>12</sup> political causes constituted within the space of these movements. This phenomenon holds a series of specificities that are closely related to the rise of groups of jurists linked to efforts to redefine the Law “socially” and to leftwing political militancy. Equally, this phenomenon is related to the institutional redefinition of the country, from the adoption of the 1988 Constitution, and to the conditions making possible certain uses of the judicial space generated on the basis of its relative “autonomisation”.

A range of works that deal with this phenomenon was developed in the USA over the course of the 1980s and 1990s. It is identified with the notion of the *cause lawyer*, developed by Austin Sarat and Stuart Scheingold<sup>13</sup>. This framework aims to analyse the various modes of involvement of US lawyers with collective causes, particularly with the

support of the American Bar Association in the lawyers' movements in favour of the abolition of the death penalty in the USA<sup>14</sup>.

The work done under this perspective analyses the alterations occurring in the US legal world, both in the space of production of legal decisions and in the space of the legal professions, related to the emergence of this pattern of lawyering engaged in collective causes. According to this literature, the specificity of political involvement via the Law requires an analysis of the strategies of social movements in the use of the judicial space, the role of jurists in manifesting and formalising political causes in the language of the disputes within the Judiciary and how to reconcile professional action with political militancy.

Another factor that deserves consideration is the emergence of an international space for the construction of collective causes by means of the export and import of political and "social" causes, and the formation of international networks of lawyers. This internationalisation is strong in the case of the human rights field, especially through NGOs. As indicated by Dezalay and Garth (2001), the recourse to international legal forums such as the International Court of Justice and the repertoires of legal doctrine produced on the basis of human rights conceptions were utilised mainly to create an alternative to the tightening of the State over the course of the dictatorial periods in Latin America<sup>15</sup>.

In the case of Latin America, and more specifically of Brazil and Argentina, Meili (1998; 2001) makes out two patterns of lawyers' involvement in collective causes, one formal and largely internationalised (formalized-issue networks), the other based on informal networks of cooperation among lawyers (informally organized networks).

In the Brazilian case, Meili (2001) refers to a reduction in the number of formal networks constituted on the basis of the OAB human rights committees during the military regime and linked to international networks, in favour of groups of lawyers that began practicing in defence of social movements of the "landless", "roofless" and others, all related to social rights. In another sense, the more formal and internationalised lawyers' networks engaged in collective causes that remain are connected to movements and issues such as environmental protection, children's and adolescents' rights, women's rights and the fight against violence. They are articulated through specialised NGOs.

Equally, the analysis of lawyers' political involvement needs to consider the series of specificities present in the history of the formation of the legal profession in Brazil and recent processes that allowed the re-conversion of certain groups of lawyers to an involvement in the collective causes of social movements.

## Final Considerations

One may oppose, on the one hand, the legal tradition, characterised by the inheritance of *bacharelismo imperial*<sup>16</sup>, and, on the other, a process of social diversification, that

has affected the world of the legal profession, of the careers of State and of university teaching since the 1970s. As a result of the phenomenon of the diversification of jurists' social, political and geographic origins, a whole set of definitions and uses of the Law emerged, the most favourable moment for this process being the institutional redefinition and the mobilisations around the 1988 Constitution.

The process of diversification affects simultaneously the space of the practical careers and of university teaching. In this sense, it permits the emergence of certain profiles of jurists through a positioning in a relatively autonomous academic space in relation to the world of the legal tradition. In such a context, a set of repertoires of critiques and redefinitions of several concepts and doctrines gets produced and imported. Such repertoires are mobilised by several practical jurists, both in the universe of the careers of State and in the space of the new forms of activist lawyering that proliferated during the 1990s.

The growing predominance of recruitment for the careers of State by an impersonal public selection system, the struggles for the institutionalisation of these careers and their relative "autonomisation" in relation to the space of politics and the economy enhance the conditions for the appropriation of new uses of the Law by several social groups. On the other hand, this contributes to the emergence of new groundings for universal moral ideas of Justice, State, the common good and the general interests of society, these being objects through which jurists express their expertise and their monopoly of applying the Law, the just or the ethical.

Such factors contribute to a new legal repertoire that can be mobilised in the world of the practical careers as much by the alternative judges who unleashed a movement questioning the legal tradition in the 1990s, as by the leaderships of judges' and prosecutors' associations. Along the same lines, they serve to provide the grounding for manifestations of political and "social" causes by the various networks of lawyer-militants linked to collective causes such as human rights, "landless", "roofless", feminists and environmentalists.

This process may be read more broadly as indicating jurists' moves in the restructuring of the space of power. In this dimension, the professionals of the Law are losing positions in the political field and in the management of the State to other segments, in particular to economists. At the same time, this process accompanies the pace of the country's political re-democratisation, which implies the activation of social movements in the 1990s and the use of the Law and the Judiciary by these movements and by activist jurists. By virtue of corporatist defence, jurists re-directed themselves to a defence of the State, of the general interests of society and of the common good, as opposed to a defence of market interests.

The battle of ideas put forward in particular by the "Alternative Law movement" between the conservative and the "critical" conceptions of the legal disciplines, of the teaching models and of the causes and definitions of the careers of State gives ground to a division of labour, with the "critical jurists" accommodating themselves in the space of university teaching. Such division accompanies the rate of absorption of the critique of

the legal tradition by the more traditional centres, notably those that contribute to the strengthening of the various conceptions of State and Justice against the set of definitions and specialities identified with the market and with neoliberalism.

Equally, the activist legal profession involved in collective causes needs to be better analysed, as a form of re-conversion of political militants, as does its linkage to international human rights networks and the space for the import and export of political and “social” causes with the greater internationalisation of the Law. These questions deserve to be looked at in more depth, considering the specificities of the Brazilian case and the configuration of the space for intellectual production at state level as parts of a phenomenon of re-positioning of jurists within the sphere of power and of the uses and definitions of the legal and judicial world that result from it.

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## Notes

- 1 On this, see Wolkmer (2001) and Andrade (1996).
- 2 Regarding the genesis, emergence and legitimisation of the sociology of Law discipline in the French academic space, see the set of interviews by Arnaud and Andrini of Jean Carbonnier (1995).
- 3 On the diagnoses of and proposals for legal teaching in Brazil, see the range of works produced by the expert committee brought together by the Federal Council of the OAB (OAB Ensino Jurídico 1992, 1996, 1997) and the studies by Nalini (1994) and Rodrigues (1995).
- 4 In this case see specifically Arruda Jr. (1988).
- 5 On the new uses of the Law specifically in the realms of political regulation and public policies, see Jobert (2000) and Commaille (2000).
- 6 According to Arantes (2002, 96-97), who conducted interviews with members of the federal and state public prosecution service, the idea of the “opposition between degenerated politico-representative institutions and a weak civil society” is a recurring one. In this sense, prosecutors feel “it is necessary for the public prosecution service to bring the big issues before the Judiciary, and that the latter work as a realm for the substitution of politicians incapable, as they are, of heeding society’s appeals due to omission or even bad faith”.
- 7 For the French and Italian case, see the works by Maillard (2003), Tirbois (2003), Garapon (2003) and Liberatti (2003), who deal with the new “political” roles taken on by judges in the 1990s, on the basis of the notion of “politicisation”.
- 8 Specifically on the Brazilian public prosecution service, see Silva (2001).
- 9 See also the research by Bonelli (1998) and Castilho and Sadek (1998).
- 10 For the 19<sup>th</sup> century, see Venâncio Filho (1982). For the early 20<sup>th</sup> century, see Miceli (1979).
- 11 See also, on the oppositions between the characteristics of the “notable judge” and the “republican judge” and the crises resulting from the recruitment of judges in France, Charle (1993) and Mounier (1990).

- 12 On the use of the Law in the transposition of “political causes” to the judicial space by social movements, see Spanou (1989) on the legitimisation of the “ecological cause” in the universe of European Law.
- 13 On the notion and possibilities for use of the notion of *cause lawyer*, see Sarat and Scheingold (1998; 2001). In this perspective, for the French case, there is the recent work by Gaiti and Israel (2003), as well as Israel (2001) and Spanou (1989).
- 14 Specifically on the American Bar Association’s active involvement in support of death row inmates’ lawyers and in the construction of the “abolition of the death penalty” cause, see Sarat (2001).
- 15 This phenomenon of the construction of a space of jurists identified with the “human rights cause” articulated with the catholic church is particularly clear in the Chilean case, as demonstrated by Dezalay and Garth (2001) and Garland (2003).
- 16 Expression used by Brazilian social scientists to refer to the hegemony of bachelors of Law in Brazilian politics during the imperial period. These bachelors were the sons of the elites who studied in Coimbra (Portugal) and worked in Brazil as importers of European institutions. They occupied the main positions of power and were characterised by the use of liberal rhetoric.

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