



EDICIONES UNIANDES
Facultad de Derecho

SERIE DOCUMENTOS DE INVESTIGACIÓN

Nuevos Estudios Socio Jurídicos

COMPARATIVE SOCIOLOGY OF LAW

MAURICIO GARCÍA VILLEGAS

DOCUMENTO DE INVESTIGACIÓN No 10

Serie Documentos de Investigación. No. 10.

Abril 2004

© Universidad de Los Andes - Facultad de Derecho
Teléfono: 3394949- 3394999. Ext: 3068
<http://derecho.uniandes.edu.co>
E mail: mrengifo@uniandes.edu.co

© Ediciones Uniandes
Cra 1ª. No 19-27. Edificio AU 6
Apartado Aéreo 4976
Bogotá D.C., Colombia
Teléfono: 3394949- 3394999. Ext: - 2181 – 2071 - 2099. Fax: Ext. 2158
<http://ediciones.uniandes.edu.co>
E mail: infeduni@uniandes.edu.co

ISSN: 1692-8423

Coordinación editorial: Mauricio Rengifo Gardeazábal

Comité editorial:
Daniel Bonilla Maldonado
Alfredo Fuentes Hernández
Rodrigo Lozano Vila
Mauricio Rengifo Gardeazábal

Diseño de Cubierta: Jaime Flórez Moreno

Impresión
Econta S.A.
Carrera 1 No. 19ª 23
Bogotá, Colombia
Teléfono: 3 394949. Ext: 2195 - 2196
E mail: econta@uniandes.edu.co

Impreso en Colombia – Printed in Colombia

Todos los derechos reservados. Esta publicación no puede ser reproducida ni en su todo ni en sus partes, ni registrada en o transmitida por, un sistema de recuperación de información, en ninguna forma ni por ningún medio sea mecánico, fotoquímico, electrónico, magnético, electroóptico, por fotocopia o cualquier otro, sin el permiso previo por escrito de la editorial.

COMPARATIVE SOCIOLOGY OF LAW*

(Second draft – please do not cite)

By
Mauricio García Villegas

INTRODUCTION

Interest in the sociology of law has increased in the United States, Europe, Latin America and Asia over the last twenty years. The number of publications, congresses, and programs has grown substantially and bears witness to the existence of a dynamic and healthy academic field of study. However, the field's production is fragmented into national clusters, which makes it difficult to grasp its spirit and evolution in a global perspective. There have been some attempts in the past to illuminate the rather disjointed picture of contemporary sociology of law. Perhaps the most important is the book *Developing Sociology of Law*, edited by Vincenzo Ferrari, which reports on the national evolution of the field in 35 countries (Ferrari 1990). Prior to Ferrari's book, Renato Treves published a similar report in 1968 (Treves 1968). Recently, the collection of articles assembled by Javier Trevino for the *American Sociologist* is a good example of this type of effort (Trevino 2001). Doubtless these collections of articles represent an important contribution to a global comprehension of the sociology of law. Each is rich in useful information on research carried on in institutions and universities that would otherwise be difficult to find in current collections, even in the United States. They also give a sense of the unequal development of the field in each continent and country, which is probably its most striking characteristic in a global perspective.¹

* I am grateful to Howard Erlanger, Jacques Commaille, André-Jean Arnaud, Cesar Rodríguez, Daniel Bonilla, Mauricio Rengifo, Diego López for the valuable comments they provided on a previous version of this paper.

¹ The United States has the largest, most active and consolidated academic sociolegal field. The number of publications and conference papers is a good sign of its vitality but also the eagerness and fertility of the theoretical debates conducted by scholars working in the field. There are some very effective organizations providing resources and opportunities for academic exchanges. The sizeable Law and Society Association, for instance, was created in 1964; the American Bar Foundation is also important. Each of these publishes a specialized journal -- *Law and Society Review* by the former, and *Law and Social Inquiry* by the latter. In Europe, despite the traditional interest of nineteenth-century classical sociologists, and the important current efforts toward the consolidation of the field, sociology of law has not overcome its national barriers and its disciplinary conflicts. In Europe the main gathering place is the Research Committee on Sociology of Law, which belongs to the International Sociological Association. There is also the European Research Association for the Law and Society-Droit et Société. A large spectrum of nationally-based bodies and institutions that eagerly promote sociolegal studies also exists, particularly in Great Britain, Italy, Germany, and the Scandinavian countries. In Latin America, sociology of law has generated a great deal of interest in the study of law and society over the last decade, particularly due to what is today called the new wave of

However, these collections only partially fulfill their purpose, mainly “to give the reader a sense of the field in global perspective” (Trevino 2001). Significant questions remain about articulations and evolutions in the five regions explored in this work. The valuable national information appears too fragmented to lend itself to the construction of a global perspective, and, it is especially difficult to explain how and why theories and ideas have or have not been influential in one place or another (Nelken 2001). This absence of articulation is an inherent risk in this type of work: because authors are asked to report on developments in their own countries, a more diachronic, interpretive and global perspective is often missing. I will name this missing point of view a comparative sociology of law.

In this article I want to present an account that might aid in a better comprehension of the sociolegal field in comparative perspective and I hope to contribute, from a social and critical perspective, to a better communication among academics with an interest in legal phenomena in Europe and in the United States. My underlying purpose is to explain the different developmental paths that sociological and critical legal perspectives have taken in Europe and in the United States over the last century. I will argue that despite increasing numbers of international exchanges and heightened communication, the sociology of law is still linked to national dynamics, even as regards its most theoretical works, and I will call for greater effort in the area of comparative analysis. Since no sociolegal studies have been conducted on this comparative perspective, the ideas I will advance in this paper have a preliminary character and aim only at convincing others to join in an exploration of the topic.²

Before beginning, I intend to develop three points: first, the concept of law in sociological perspective; second, the sense and scope of the expression “sociology of law” in different sociolegal traditions; and third, a methodological clarification on the scope of the expression “comparative sociology of law.”

Following Pierre Bourdieu, I argue that the law is a social field,³ in which participants contest the interpretation of the legal forms and the legitimated vision of law and society.⁴ Those participating in the legal field -- like those in the

law and development, linked to the process of transition to democracy in several countries. However, the sociology of law barely exists as a field of study (García Villegas 2001).

² There have been only a few tentative attempts to articulate a comparative perspective. Perhaps the most thorough is the text of Arnaud and Fariñas Dulce (Arnaud 1998). See also other texts of Arnaud such as (Arnaud 1998; Arnaud 1988). For the Anglo-Saxon context see (Herget 1987); (Nelken 1983); and (Van Caenegem 1987).

³ According to Bourdieu, a field is a set of objective and historical relations between positions of social actors who struggle for power or capital (Bourdieu 1992: 16).

⁴ “The juridical field is the site of a competition for the monopoly of the right to determine the law. Within this field a confrontation occurs among actors possessing a technical competence which is inevitably social

religious field -- struggle over the appropriation of the symbolic power that is implicit in legal texts (Bourdieu 1986:817-818). Thus, the law becomes a form *par excellence* of symbolic power -- and of symbolic violence -- given the possibilities possessed by its practitioners to create institutions and with them historical and political realities through a simple exercise of naming (Bourdieu 1986:839). Since the law is a social field in which a great deal of social and symbolic capital resides, it is not surprising that inside the field there are fierce clashes among its members for the possession of and distribution of this capital. Inside the legal field, actors located in different positions and endowed with different dispositions, fight for the chance to pronounce the final word about the meaning and ultimate scope of the law. Such a struggle is not only intellectual but also political, given the fact that most legal debates have direct implications for the distribution of power and goods that occurs in the political field. Controlling the law is important for the control of society.⁵ This is why the struggle also takes place outside the field.

From this standpoint, the conventional idea that the legal culture of countries, with its debates, its authors, its schools and internal movements, is sufficient to explain the origin, evolution and actual status of the legal traditions and legal practices found therein is seen to be problematic. That explanation ignores the strong connections that exist between the culture and the social and material conditions in which it prospers. The internal struggle among legal actors for the appropriation of symbolic power has not been independent of the political context in which it has taken place. Connections between the political and the legal field are multiple and mutually constitutive.

This does not mean, as some theories of the law have led us to believe, that knowledge of the material conditions in which the legal discussion takes place is sufficient to know the outcome. The legal field in its majesty, its rites, and its shrines is not amenable to being reduced merely to existing economic forces. It is not just a reflection of the material world (Pashukanis 1978). Neither is the law pure erudition that can be detached from the social conditions in which it is found. These extremes ignore the existence of law understood as a social field that is relatively independent of external demands -- the logic of which is determined, according to Bourdieu by two factors:

On the one hand, by the specific power relations which give it its structure and which order the competitive struggle (...) that occurs within it; and on

and which consists essentially in the socially recognized capacity to interpret a corpus of text sanctifying a correct or legitimized vision of the social world" (Bourdieu 1986:817; 1986:6). This makes law a particularly interesting case for the study of power in society.

⁵ So, for example, the legal delimitation of the property right is also a response to poverty and social marginality.

the other hand, by the internal logic of legal functioning which constantly constrains the range of possible action and, thereby, limits the realm of specifically legal solutions" (Bourdieu 1986: 816).

A comparative socio-legal assessment of the authors, the debates, the movements in the field of law, must keep in mind the complex connection between, on one hand, the relative autonomy of the 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 the reasons for which certain ideas, authors, or movements are accepted and others rejected be appreciated. 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 production and reception influence them. Keeping in mind this complex web of connections, I think that we can avoid what Lawrence Friedman has termed the "internalist school"⁶ - that is, the temptation to explain the evolution of a discipline, in this case, the 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.⁷

I will now briefly turn to the second point in the theoretical framework, which is the definition of sociology of law. The expression sociology of law denotes and connotes different things, and this dispersion of meaning both intensifies the fragmentation characterizing the field in a worldwide perspective and to some extent explains the current lack of interest in the comparative approach. From an epistemological point of view there is a tension between the legal and the social elements of the sociology of law, corresponding to the professional division between sociologists and lawyers. Most of the definitions of the field waver between these two disciplinary emphases. With this distinction in mind, Renato Treves, one of the leading figures in the sociology of law in Europe, proposed a useful classification. According to Treves the expression sociology of law conveys three different meanings. First, it could refer to the study of the role of law in society. This conception attaches the sociology of law to a general sociology and, by doing so, proposes a whole explanation of society in very broad terms. Several tendencies can be located here, all of them linked to the main sociological traditions, among which functionalism and Marxism have been the most influential. Second, sociology of law could refer to a specific type of legal study that goes beyond legal doctrines to understand legal phenomenon from a social perspective. Here legal doctrine is perceived to be insufficient and even

⁶ According to Friedman, this perspective looks at law as the lawyer or jurist looks at law" (Friedman 1989:10)

⁷ 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.

misleading for an apprehension of the real meaning of law. This conception is associated with a general theory of law as the discipline in charge of the distinctions between legal norms and other types of norms, such as moral or social norms. Finally, sociology of law might refer to those empirical studies seeking to explain whether or not legal norms and institutions penetrate individual and collective behavior. This perspective is linked to different sociologies, for instance the sociology of organizations when it is concerned itself with research on justice or the sociology of professions, in relation to lawyers or officials. According to Treves, the only point unifying these three conceptions of sociology of law is their external or non-doctrinal point of view vis-à-vis law. In this essay I will not maintain these technical distinctions, at least at the beginning, since they render the comparative analysis that I am proposing practically impossible. Thus I will use the terms “legal sociology,” “sociology of law,” and “sociolegal studies” in a broad and inclusive sense that allows me to compare it with what in US is called *studies of law and society*. However, in the second part of this essay I will focus specifically on sociolegal theory, and set aside the evolution of the sociology of law.

Finally I would like to offer a methodological caveat. Europe is too large and diverse a continent to give rise to a homogenous sociolegal tradition. The differences among the countries are visible and since sociology of law is a field of knowledge that is intimately linked to national cultures, it is therefore to be expected that there is no such thing as a single “European” tradition. I am conscious that the search for an explanation in comparative terms is a risky enterprise and that the ideas and illustrations that I am putting forward in this essay can be countered with other examples. However, although risky, I believe that it is a necessary and useful task. To sharpen the comparative focus, I have decided to concentrate on the relationship between the United States and continental Europe and, with respect to the latter, to emphasize France, Germany and to a lesser extent Italy, given that these are the countries where the sociology of law – in the broad sense – has experienced the most development. Great Britain shares some characteristics of both the United States and continental Europe and is, therefore, a separate case that merits separate study. I will make only a few scattered references to the British case.⁸

I will divide my explanation into four parts. Initially, I will present an overview of the sociology of law in Europe and in the United States, outlining their broad characteristics and distinctive features. Second, I will compare their legal cultures and relate them to their political power; third I will turn to the analysis of anti-formalist movements that arose in the two settings at the beginning of the

⁸ While the language and the legal tradition (*Common Law*) are features that England shares with North America, the lesser relative importance of judicial power and the relevance of rational positivism à la Bentham are elements that are shared with the continent.

twentieth century. In the last section I will discuss the differences that exist today in the organization of legal education in the universities of the two regions.

I. CONTINENTAL EUROPE AND THE UNITED STATES COMPARED

The first impression gleaned from a comparative look at the sociology of law in global perspective is that it is strongly linked to national settings and that its development and importance varies tremendously from one country to another. In the United States these studies have grown and flourished for at least four decades. A sign of the productivity of the American academy is found in the activities of the Law and Society Association.⁹ The scope of its annual meetings and publications has steadily increased, especially over the last twenty years. To foreign observers the vitality of the American movement and the apparent ease with which it attracts researchers from such diverse disciplines as law, political science, sociology and anthropology is quite surprising. In Europe, conversely, despite the existence of a very visible sociolegal tradition,¹⁰ and of important developments during the last two decades,¹¹ the studies of law and society still occupy a relatively marginal position both in legal and sociological domains.¹² In Latin America, on the other hand, with a few isolated exceptions, studies that examine legal subjects from the perspective of other disciplines are not recognized as belonging to a sociolegal discipline.¹³

⁹ The Law and Society Association was founded in 1964. For the history of this project see (Trubek 1990; Friedman 1986; Garth 1998; Hunt 1993).

¹⁰ In addition to the classic works of sociology -- for example (Durkheim 1983; Marx 1978); (Weber 1978) -- some classic texts in the European sociolegal literature would include among others: for Germany, (Rehbinder 1977; Raiser 1986, 1999; Blankenburg 1986); for Italy, (Treves 1978; Ferrari 1976); for France (Carbonnier 1978; Arnaud 1981; Commaille 1985; Commaille 1995); for England, (Cotterrell 1992); (Campbell 1976; Hunt 1978); for Portugal, (Santos 1977, 1995) for Spain, (Díaz 1980); for Belgium, (Van Houtte 1985); for the United States, the literature is too extensive to single out a few titles. For general information see the handbooks (Vago 2000; Treviño 1996) and the readers: (Abel 1995; Macaulay 1995). Among the best known journals of legal sociology are found: *Canadian Journal of Law and Society* (Montreal); *Current Legal Sociology* (Oñati – Spain); *Droit et Société* (France); *European Yearbook in the Sociology of Law* (Milan, Italy); *International Journal of the Sociology of Law* (London); *Journal of Law and Society* (Oxford); *Journal of Legal Pluralism and Unofficial Law* (Uttleton); *Law and Social Inquiry* (Chicago); *Law and Society Review* (USA); *Revista Critica de Ciencias Sociais* (Coimbra); *Social and Legal Studies; an International Journal* (London); *Sociologia del diritto* (Milan); *Zeitschrift für Rechtssoziologie* (Germany)

¹¹ Especially the creation of the journal *Droit et Société [Law and Society]* and the D & S Network in France and the Instituto Internacional de Sociología Jurídica [*International Institute of Legal Sociology*] in Oñati (Spain).

¹² See (Dezalay 1989; Arnaud 1998; Arnaud 1998; Commaille 1989; Travers 2001).

¹³ See (García Villegas 2001; Capeller 1991; Wolkmer 1995; Junqueira 1993; García Villegas and Rodríguez 2003).

The current numerical predominance of American sociolegal studies must be viewed cautiously however when judging the value of different sociolegal traditions. At least two cautionary notes apply here. First, it is important to keep in mind that the term sociology of law is not always used in the same fashion in different countries. In Europe the sociology of law has been frequently understood as a discipline with its own area of study and method. The definition of the scope and methods of the discipline, has been the object of innumerable debates between lawyers and sociologists. So much so that the result has been the establishment of a sort of two-faced “Janus” model¹⁴: one sociology of law as conceived by jurists and another as conceived by sociologists.¹⁵ That is what André-Jean Arnaud and Maria Jose Fariñas Dulce have termed “the separatist solution” (Arnaud 1998). In France, for example, legal sociology of jurists has been developed in great part by Jean Carbonnier, dean of the law school at Poitiers and professor of law at the University of Paris. Carbonnier thought, as did Jeremy Bentham (Bentham 1962) and Hans Kelsen (Kelsen 1981), that legal sociology should be an auxiliary science of law. From that arises the idea of a sociology of legislation. That is the type of legal sociology that is the most compatible with legal positivism, as the references to Bentham and Kelsen demonstrate. Sociologists of legal phenomena, however, criticize the servility of sociology before law that is attached to this conception¹⁶ Pierre Lascoumes has argued that those countries in which legal sociology is developed under the influence of Durkheim – such as France, Belgium and Spain – created a positivist legal sociology that little by little lost its independence from law to the benefit of the “separatist solution.” On the other hand, the countries influenced by Max Weber’s legal sociology -- Anglo-Saxon countries, Germany and Italy -- put more stress on interpretation and were more flexible in epistemological terms, which facilitated its development.¹⁷

The disciplinary debate that opposes lawyers and sociologists has produced more of a reciprocal rejection than a reflexive exchange. The reason for this may lie in the fact that it takes place in a void between the legal and the social field: there is no audience for the debate since neither the meaning of the law nor the social role of the law are clearly at stake (Commaille 1985). Lawyers dismiss the debate, considering that it does not touch the main issues in the legal field, while

¹⁴ According to the expression used by (Commaille 1985).

¹⁵ In sociology of law “one must always ask which discipline is asking the questions” argues Serverin, thus reflecting the intellectual atmosphere for the study of the sociology of law in France (Serverin 2000: 7). See also (Friedman 1986; Van Houtte 1986; Arnaud 1998; Arnaud 1998; Arnaud 1992).

¹⁶ On this perception see (Commaille 1983; Arnaud 1998; Arnaud 1995; Commaille 1985) (Carbonnier 1978). In Germany see (Aubert 1967; Noll 1973; Rehbindner 1977) ; in Italy see (Febbrajo 1984)

¹⁷ See (Lascoumes 1991), also (Serverin 2000:46) (Pollak 1988). In the French context the underestimation of Weber’s sociology of law lies also in the political opposition between two French sociologists: Raymond Aron – defending Weber’s ideas – and Georges Gurvicht drawing upon Durkheim social theory (Pollak 1988), being the later the most important representative of French sociology of law in the middle of XXth century. For the place of Weber in the German sociology of law see (Treiber 1988)

sociologists neglect it because it is not really a sociological matter. This is why some European authors such as André-Jean Arnaud and Maria Jose Fariñas Dulce have advocated the creation of a sociology of law in Europe understood as a "field" and not as a discipline (Arnaud 1998: 161 y ss).

In the United States, the vision, while perhaps less ambitious, has been that of establishing a "field of studies," rather than a discipline.¹⁸ Such a field of study serves as an interdisciplinary meeting place for different disciplines, which do not thereby lose their identity, nor do they claim a privileged position with respect to the subject matter. Therefore rather than talking about sociology of law it makes more sense to talk about "studies of law and society." This does not mean that tensions do not exist, or have not existed among the disciplines just that these tensions among for example lawyers, sociologists, anthropologists, historians, are easier to take and more short-lived.¹⁹ Flexibility prevail in the United States, not only in the subject matter but also in the methods by which it is studied. This flexibility does not always contribute to fostering rigorous and seriousness in the discussion; in the large scholarly production in the United States on law and society, relatively little has met the test of time. These few works, however, weight heavily in comparative terms.

A second cautionary note is that the purpose to transform the teaching of law through the introduction of a sociological perspective -- shared on both sides of the Atlantic at the beginning of the 20th century -- has not been taken up in law schools on either continent. They continue to be equally impervious to the sociological perspective and continue to be concentrated on dogmatic and professional studies.²⁰ Something similar can be said of the sociology departments, which are rather indifferent to the legal phenomenon and not very receptive to looking at what goes on there. If a consolidated sociology of law exists in the United States it is an extracurricular activity. The field is being pushed and developed by professors who only with difficulty include their sociolegal interests

¹⁸ There are exceptions to this general trend; the most celebrated is probably the work of Donald Black who aimed at creating a sociolegal science (Black 1976).

¹⁹ However, the debate between the disciplines is not absent from the North American debate. On this point see (Garth 1998; Trubek 1989) (Friedman 1986) and more recently (Tomlins 2001) . For a more general historical view on the relations of cooperation and confrontation between the disciplines interested in law see (Duxbury 1995). An idea of the importance of the disciplinary debate in Anglo-Saxon law can be found in (Twining 1974). England is, as often occurs in other areas, a special case. In general terms the sociology of English law, for reasons of language and culture, is closely linked to the US legal sociology. However, it has its specificities and the intensity of the disciplinary debate is perhaps one of them. On this see the debate that recently sprang up between Roger Cotterrell and David Nelken (Cotterrell 1983) A view of American legal sociology that is especially centered on the disciplinary question can be found in the French author Antoine Vauchez from the University of Paris (Vauchez 2001).

²⁰ To appreciate the limited influence of legal sociology on studies of law in Europe see the country reports published in "Developing Sociology of Law: A World-wide Documentary Enquiry (Ferrari 1990). See for example, the report on Germany (Rohl 1990).

in regular teaching duties and by private and government foundations and institutions that are interested in the practice of law and in funding research (Duxbury 1995; Sarat and Silbey 1988; Dezalay 1989).²¹

In any case, the impoverished development of sociology of law in Europe remains surprising, specially from the sociological perspective, above all if it is remembered that at the end of the 19th century, the emerging European sociological tradition had a marked interest in the legal phenomenon. If we take into consideration that classical European sociology manifested a deep interest in the question of law, a more promising evolution of the sociology of law in Europe would have been expected. The study of law was an important component in classical theory. This was very clear in both Weber and Durkheim, but even for Marx the law played an important role in the explanation of the State and more generally in the bourgeois system of domination, although he never developed an explicit theory of law and domination. By the second half of the nineteenth century, the future of the sociology of law (as reflected in the work of classical sociologists such as Durkheim) looked bright.²² However this hope was not fulfilled, at least not until the last quarter of the 20th century when new social theorists (among them Niklas Luhmann, Jurgen Habermas, and Pierre Bourdieu) proposed new interpretations of society in which the legal element played an important role, though probably not equal to its centrality in the works of Durkheim and Weber. In short, sociology of law does not run in tandem with the history of sociology. The interest that sociologists have professed for the study of law has changed over time. How can we explain this discontinuity of interest in the law in the discipline of sociology? Talcott Parsons asked himself the reasons for the “mystery” of the “weak interest” sociologist have on legal systems after the classics (Parsons 1977).

Concerning the sociolegal perspective in Europe, it has been marked by a tendency to speculation and grand theory that account for its marginalization from both legal theory and sociological theory. According to Arnaud and Fariñas-Dulce, the fact that European sociology of law originated in the departments of theory and philosophy of law and was expounded by philosophers of law, who were critical of legal formalism, hindered the development of empirical research and favored the debate over methodology and epistemology (Arnaud 1998). A clear

²¹ Lawrence Friedman is particularly pessimistic about the influence of the Law and Society movement on law faculties in the United States, something that does not occur, at least nowadays with the Law and Economic movement (Friedman 1986).

²² Industrialization and increased social complexity were determining factors in the emergence of interest in law as an explanation of social phenomena in Europe. In France, for example, a legal sociology project developed following Emile Durkheim led by jurists such as Léon Duguit (Duguit 1889); Francois GénY (GénY 1899), Eduard Lambert (Lambert 1928). In Germany the debate between the economic approach to law put forward by Marx and Engels and the so-called “legal socialism” of authors such as Ferdinand Lasalle and Antone Menger was important.

example of the ideological character of much of legal sociology is the work of Georges Gurvitch, which, according to Serverin, “offers less a theory of the relationship of law and society than a program of struggle against the state” (Serverin 2000:50). Even in England, despite the influence of the United States, this separation of theory and practice has been visible, not only in the famous text of Campbell and Wiles, *The Study of Law in Society in Britain*, but also in recent views of those such as Max Travers (Travers 2001).²³ One exception to this European trend may be the Centro de Estudos Sociais (CES) at the University of Coimbra (Portugal), under the direction and leadership of Boaventura de Sousa Santos. This center²⁴ not only possesses the merit of combining theory and empirical research, but it also transcends the national legal space in order to explore the local, the national and the global dimensions of the issues.

II. LEGAL CULTURES AND POLITICAL POWER.

I will now explain the differences that exist between the legal field's protagonists - in terms of positions and symbolic capital - in the common law and the continental European legal traditions. I will punt my emphasis in the relation between legal culture and political power in order to clarify the context in which different socio-legal cultures developed.

The contrast between the Common Law and the Civil Law jurisdictions is rooted in the political and social history of England and the continent. Since 1200 England has possessed a unified legal system called, for this reason, common law. This is even more important if we take into consideration the fact that France reached the stage of one code of laws for the whole realm just before the Revolution of 1789 and Germany accomplished the same task in the 19th century (Van Caenegem 1987: 94). Codification on the continent was the response, brought about by the Enlightenment, to a great need for rationalization and organization. English lawyers never felt such a need. Since feudal times the King of England had been able to organize and centralize judicial practice so the local jurisdiction and feudal courts diminished in importance. A well differentiated class

²³ According to Travers, many of those interested in legal sociology end up doing purely theoretical work, while the empirical research does not take theory into account. He says, “Although it is dangerous to employ cultural stereotypes, there are clearly great differences in the relationship between intellectuals and society in Britain and continental Europe. At the time when French Enlightenment philosophers were promoting reason as a means of improving upon our limited sensory knowledge of the world, British thinkers were proclaiming the virtues of empiricism”(Travers 2001:34). A less pessimist view of British legal sociology can be found in Cotterrell (1990).

²⁴ Recently Santos has published the second edition of his main book *Toward a New Legal Common Sense* (Butterworths, 2002). Among a large number of publications and projects, the institute publishes the journal *Revista Crítica de Ciências Sociais* and a collection of studies entitled *Saber Imaginar o Social*. Information about the CES (Centro de Estudos Sociais) may be found at its Internet site: www.ces.fe.uc.pt/index.php.

of lawyers grew up around these central courts;²⁵ they enjoyed great independence to select, train, and admit new members and had immense political influence (Zweigert 1998). English lawyers and judges, who came from the higher bourgeoisie, ranked above barristers and also played a very important political function in conservation.

In contrast to this early centralized legal system, an atomized legal order prevailed on the continent up until the 17th century, when efforts to introduce rationalization and universalization in the legal system were undertaken through the revival of the old Roman law. The reception by the middle of the 15th century of Roman Law in Germany served to overcome the absence of a strong system of imperial justice. Jurists trained in Roman law were first employed in ecclesiastic institutions and then in universities. During the 17th century, these lawyer-professors created the *Usus Modernus Pandectarum* out of the Roman law, which was based on generalized concepts from which individual cases could be decided. Jurists dominated legal life for four centuries -- up to the unification achieved in Bismarck's day. This explains why legal education in Germany has been provided in and controlled from universities. The law produced there had a theoretical and formalistic character which contrasted with the rather forensic and pragmatic law made in England by the guild of lawyers.²⁶ Something similar happened in Italy where professors teaching Roman Law prevailed over legislation and case law. Like judges in England, lawyers and professors in continental Europe have been to some extent instruments of the political powers that be and important tools for the conservation of the status quo (Van Caenegem 1987: 157) .

In France, efforts aiming at the consolidation of a unified legal system came about with the creation of the absolutist state in the 16th century (Anderson 1979). As in England, French jurists played a conspicuous role in the configuration of a common private legal system. They were not professors but practitioners, legal advisers, judges, and royal administrators. In spite of these efforts the French legal system was not really unified until the end of the Revolution, when the Civil Code was put in place. "When you travel in this country you change legal systems as often as you change horses" Voltaire used to say (Voltaire 1838). Since the Revolution, legislation is alleged to be the source of the legal system whereas the role of the judiciary is relegated to the task of mechanical application. Not only did the law acquire a great deal of formality and rationality but also there was a net separation between the political function of creation – corresponding to the

²⁵ According to Van Caenegem, "Round these judges, few but eminent, the Order of Sergeants at Law, a corporation of senior advocates, grew up, grouping the best legal brains, who were trained in the orbit of the central courts and from whose ranks the senior judges were recruited"(Van Caenegem 1987: 95) .

²⁶ Most of the great English lawyers were practitioners. Examples are Glanvil, Bracton, Coke, Mansfield. William Blackstone might be an exception insofar as he became a professor in Oxford after a short career as a barrister.

legislators – and the technical function of adjudication, which was supposed to be driven by free value judgment.²⁷ Codification was also a “weapon against the judiciary, or the caste of the *noblesse de robe* who owned their offices and invoked nebulous general principles that were nowhere written down” (Van Caenegem 1987:152).

A different development took place in America over the course of the 19th century, with the consolidation of the idea that judges make a significant portion of the law. The explanation of this trend had to do with the history of judges in America and their relation to political power. From the standpoint of the egalitarian ideas arising in the independence movement in America, English Common Law was viewed with suspicion.²⁸ Between the Declaration of Independence and the Federal Constitution of 1787 radical ideas against the law flourished in America.²⁹ Legislation was enacted in states with the purpose of purging feudal English features from the common law. The legal profession itself was perceived as an unacceptable privilege. Many states enacted provisions according to which all citizens could practice the law without any further qualification.³⁰ The difference between lawyers and non-lawyers was not that sharp – says Friedman – frequently, “a man came to the bar after the briefest of clerkship and with little more than a smattering of Blackstone.” Up until the end of the 19th century no state made a law degree, or a college degree, compulsory for admission to the bar (Friedman 1985). The idea that judges could be elected democratically, which came from this period, introduced a great deal of informality, common sense and political viewpoints into American legal practice.³¹ The close connection between judicial and political practice helps us to understand why, by the middle of the 19th century, political thought spurned the French idea of division of powers and adhered to the more English one of legislative superiority (Friedman 1985:140).

In the post-Civil War era, in the second half of the 19th century, the United States underwent extraordinary economic expansion, bringing about increased social and legal complexity. The business field demanded a more rational and predictative

²⁷ The best example of this judicial subordination is the court of Casation in France.

²⁸ In his history of the Common Law, Roscoe Pound explains how English law was suspect and French law got a sympathetic reception. “There was a general agitation for an American code to be drawn up either on French lines or without any regard to the law of the past by an exercise of pure reason” (Pound 1939). However, he also points out the fact that French legal literature was not accessible.

²⁹ The anti-law movement had two wings according to Lawrence Friedman: “One current of thought distrusted the common law on the grounds that it was remote from the needs of ordinary people and was biased toward the rich”. Another faction distrusted it because “... it was archaic, inflexible, irrelevant” (Friedman 1985:113).

³⁰ Lay judges were very common from the colonial times onward, and they were usually politicians (Friedman 1985:125).

³¹ After the middle of the century – Friedman says – “the popular election of judges was more and more accepted as normal” (Friedman 1985:371).

legal system. Similar to what was occurring in Germany at the time, legal formalism was welcome in America. The belief that the law was a merely technical body of knowledge, divorced from the political and social world, was in fashion at that moment throughout most of the western world. The study of law in specialized academic centers was then perceived as the adequate way to practice law rather than as a general education. Since that date, law schools have acquired a monopoly over legal education to the detriment of the old practice of learning law in an attorney's office. However, the inverted relation between legal doctrine and legal practice that characterized both European and Anglo-Saxon traditions was not modified by legal formalism and academic legal training. According to Friedman during the 19th century, law professors generally consisted of prominent judges and lawyers (Friedman 1985).

These historical differences between judges and practitioners in England and United States, legislators in France, and professors in Germany have been attenuated over the last century. Legislation and law schools acquired importance in America and England, while judges and practitioners gained prestige and reputation in France and Germany. A different *Lebenswelt*, rooted in history, still prevails in each country, however, and plays an important role in the debate between legal and sociolegal perspectives. Whereas in the United States, sociolegal critique has focused on legal practice and, for the most part, neglects theoretical legal problems, in Europe the target of sociolegal criticism has been the doctrinal legal system, conceived of as the heart of legal domination. I will provide explanations of this point below. Two additional remarks are required at this point. First, theoretically, there is no difference among the three legal actors in terms of political preferences; judges may be conservative or progressive just as legislators or professors may be conservative or progressive. Only the political environment of each country will reveal the connections. Second, it seems that judges and legislators prospered in some contexts in which the State was strong enough to create a degree of authorized political power. Conversely, where the State was weak and the law was atomized, the role of legal experts and professors tended to prevail.

To sum up, not only is the dynamic of the legal field different in the two traditions, it is also the case that politics and power are played out differently in the two traditions. This occurs in at least two ways: first, in Europe the fact that the law was conceived of as a matter of legislation led legal doctrine to be formalistic and "scientific", and, it also stimulated a legal critique that neglected legal autonomy and overestimated the sociological and political dimensions of law. In the Anglo-Saxon tradition, the perspective of the judge introduced an interpretivist and political understanding of law. Second, the outcome of the internal struggle between professors, lawyers and legislators seeking to appropriate the symbolic power of law through legal interpretation and legal theories is different in each

tradition. The privileged position of judges in Common Law is occupied by professors in Germany and by legislators in France (Van Caenegem 1987).

III. SOCIO-LEGAL THEORIES IN EUROPE AND UNITED STATES

Bearing in mind the different relation between legal actors, legal cultures and political power in the both Europe and United States, in this section I will concentrate on the development of socio-legal theories in Europe and United States. My line of argumentation is twofold: first, I will analyze the anti-formalist movements that originated at the beginning of the 20th century in the United States and Europe in order to highlight their similarities and differences, second, I will try to show how different types of critical movements in law have been shaped not only by the position-disposition of the legal protagonists but also by the relationship that these actors have maintained with the political field.

1. Legal Realism compared to the Free Law Movement.

Sociolegal theory was born as a worldwide approach by the turn of the nineteenth-century. In legal academic circles, it emerged mostly in the *Historical School* led by F. K von Savigny. The Historical School opposed the 1814 codification project inspired by the French model and led by Thibaut. The first codification in Germany had been imposed by France with the creation of the kingdom of Westphalia in 1807 (Savigny 1815). Savigny advocated the customary and organic source of law as opposed to the legalist and statist idea of the Enlightenment and of codification (Dufour 1974). According to Savigny all positive law is, in one sense or another, law that arises from the people (*Volksrecht*). He claims that law transforms itself in the same way that language and morals do. Only in a latter stage of the social development of law is it manifested as legislated norms.³² Another representative of the Historical School was Rudolf von Ihering,³³ who influenced scholars such as Eugen Ehrlich,³⁴ Herman Kantorowicz in Romania and

³² This movement, according to Savigny, was necessary because the *Volksrecht* needed to fight its lack of clarity through the formalization of its premises in the form of legislated law. But nonetheless, even positive law is just a stage or a translation of the *Volksrecht*.

³³ Ihering is considered to be the father of the so-called "school of interests," which promoted a method of applying the law judicially based on the interests at stake. It famously defines subjective law as "judicially protected interests." Notable among his works are *Geist des römischen Rechts* (1852), *Der Kampf ums Rechts* (1872), and *Der Zweck in Recht* (1877). See also (Ihering 1901).

³⁴ Eugen Ehrlich is acknowledged to be the most renowned spokesperson of the *Free Law School*. Ehrlich had demonstrated from his first writing, a certain sympathy for the system of *common law*, in which he saw elements that were instruments in the struggle against the formalism represented in codification. His work was introduced to the United States by the German refugee jurist Herman Kantorowicz, another representative of the school and later by Roscoe Pound.

Germany,³⁵ Francois Géný, Leon Duguit, and Maurice Hauriou in France, and Oliver Holmes, Roscoe Pound, and Karl Llewellyn in the United States. All of them defended alternative understandings of law against the formalistic legal thought prevailing in legal education at that time. In the case of Europe, anti-formalism was forged out of three key movements. First was the reaction against codification (1804-1810) and against the identification of law and legislation. Second, a new type of law called *Social Law* sprung up that enshrined social rights and social self-determination. Finally, it was a reaction against the Franco-German political philosophy (Jellinek and Carré de Malberg) according to which only the State can create law, owing to the fact that it is prior to and above all law and therefore can only be limited by its own will (Salas 1991).

The anti-formalist critique of early 20th century European authors aimed at a demystification of the law and its project of codification. Three elements of this critique can be identified: first, opposition to the traditional view according to which the law is reduced to official law produced by or recognized by the State. In contrast to this conception of “legal sources” they claimed that the official law was part of a phenomenon of legal pluralism that called for a sociolegal understanding of law (Gurvitch 1931).³⁶ “Legal Provisions cannot possibly cover the entire law,” said Eugen Ehrlich (Ehrlich 1922:141). The second element is a rejection of the notion of law as a rational, coherent and autonomous system, that is, a system that ignores the existence of gaps and contradictions. Legal doctrine understood as a unified and coherent system of knowledge driven by logic and deduction does not exist. Instead, lacunae and voids are pervasive in the legal system. Finally, the critique recognizes living law or social law as the primary source of official law. Customs and “living law” – in contrast to the official law - are a fundamental source of production of law. “The great mass of law,” explained Eugen Ehrlich, “arises immediately in society itself in the form of a spontaneous ordering of social relations, of marriage, the family associations, possession, contracts, succession, and most of this Social Order has never been embraced in Legal Provisions” (Ehrlich 1922:100). To summarize, legal pluralism, incoherence, and *living law* were three essential features of the European challenge to formalism, all of them in opposition to a legal conception that is based in codification and the enthronement of legislation.

Savigny, Jhering, Geny, Ehrlich, and supporters of the Free Law Movement were at one time an important theoretical source for the American legal anti-formalism

³⁵ Eugen Ehrlich and Hermann Kantorowicz are considered to be the founders of modern sociological jurisprudence in Germany. Ehrlich most important follower in Germany is Thomas Raiser (Raiser 1999) (Rohl 1990).

³⁶ Herbert L. Hart argues, with reference to Holmes, Pound and Jhering, that despite their differences, they all fought against the same errors with respect to the nature of law, which is “.....to believe that legal concepts are closed and precise, in the sense that it is possible to provide a complete and exhaustive definition in terms of a set of necessary and sufficient conditions” (Hart 1970)

which opposed Legal Formalism.³⁷ Legal Realism created the largest and most influential legal perspective ever known in United States countering the use of conceptualism and formalism in law schools.³⁸ Legal Realism, however, was not a unified movement. "It was nothing more than an intellectual mood," commented Neil Duxbury (Duxbury 1995:4). Nevertheless, it was a very influential mood that not only spread the idea that law has a political nature but also that such an idea is not troublesome. Several different trends, most of them linked to strong and brilliant personalities, can be distinguished here.³⁹ Legal Realists, like Oliver W. Holmes, Karl Llewellyn, and Benjamin Cardozo also found inspiration in the Free Law Movement and European anti-formalist scholars, though this paternity is rarely recognized in their works.⁴⁰ They advanced a pragmatic and skeptical jurisprudence.

Embedded in the mood created by the legal realism, Roscoe Pound,⁴¹ inspired in anti-formalist legal thinkers from Europe and particularly by the Free Law Movement,⁴² created what he called *sociological jurisprudence*. Pound was interested in the law in practice rather than in its abstract content (Pound 1927: 326). He called for a type of judicial interpretation in which judges would explicitly and objectively weigh social and economic consequences. His conception – which according to Trevino, "... is the only truly sociological theory ever formulated" – can be summarized in the following points. First, he opposed the prevailing and so-called scientific understanding of law, arguing that it neglects the social ends of law and treats law as an end. He was therefore

³⁷ Roscoe Pound was the major advocate of European anti-formalist ideas during the 1920s and 1930s, especially through his work, *Interpretation of Legal History* (Pound 1967). See also Cohen (Cohen 1937; Cohen 1960: 185-191). Llewellyn knew the work of Ihering and Ehrlich very well; see, for example his text *A Realistic Jurisprudence* (Llewellyn 1930). Also, as Duxbury explains, *The Common Law* of Oliver Holmes is clearly indebted to the nineteenth century historical jurisprudence of Savigny and Maine (Duxbury 1995:34).

³⁸ Legal formalism was developed in reaction to what was called in the first half of the nineteenth-century Grand Style, epitomized by judges like John Marshall, Benjamin Cardozo, and James Kent. Given the youth of the new republic and its legal system, Grand Style in the USA characterized rulings that were based upon context, consequences and experiences derived from legal decisions. With the arrival of liberalism and laissez-faire by the second half of the century a new conception of judicial decisions was imposed, one which was based on logical deduction and syllogism and served the interest of the powerful economic groups that came into existence at that time. That new style was called conceptualism and originated in the Harvard Law School.

³⁹ It is always difficult to define the core of realist thought. According to Twining, if there is any agreement among those who have studied this movement, it would refer to the movement's heterogeneity and its dispersion (Twining 1985). A less critical view can be found in (Summers 1982), (Ackerman 1984), and (Hunt 1978). See also H. L. Hart (Hart 1983).

⁴⁰ According to Herget, anti-German feelings generated by WWI were an important cause. However the main reason was the fact that it was unnecessary to be familiar with them given the much greater authority of Roscoe Pound (Herget 1987:432).

⁴¹ Pound introduced sociological jurisprudence in a speech at the American Bar Foundation in 1906 (Pound 1904); (Hull 1997).

⁴² Roscoe Pound professed great admiration for Eugen Ehrlich. On this see *Ibid.* and (Pound 1904).

interested in *law-in-action*, rather than in *law-in-books* and in the discovery of factual rules that govern the production of legal norms. Law was conceived of as an institution operating within a larger societal context that regulates social processes with the objective of securing and protecting society's interests. Second, in order to uncover the real interests underlying legal norms, Pound called for empirical research that could provide insights into the creation of effective legal policies. Among different types of interest he focused on social interests that were put forth as claims, demands, desires, or expectations that human beings collectively seek to satisfy and that society must recognize and protect through the law. Rights were nothing but protected social interests. According to this, the role of sociology consisted of doing the empirical investigation (of courts decisions, legislative declarations, etc.) necessary to infer those interests.

Even though Legal Realism was not a unified movement, some of its commonalities can be depicted. First, the realists advocated a social devaluation of law and particularly of legal norms. "They are much less important than people think," said Llewellyn (Llewellyn 1930: 6?). Second, and in line with the first, realists did not recognize the supposedly determining character of such laws, which led them to explore judicial decisions as the real law. Thus, the famous statement of Holmes that: "predictions on what the courts will actually do is what I understand by law, and nothing more pretentious" (Holmes 1920).⁴³ Third, they call into question the law's neutrality and, thus, postulate its political nature. Llewellyn insisted that underlying legal forms were "more vital ruling practices" where "official manipulation of the rules" is produced. (Llewellyn 1930) So, marginality, indeterminacy and political bias were the central points in anti-formalist realism. A comparison between these features and those that have been depicted from the Free Law Movement shows a more sociological and confrontational European perspective in contrast to a rather legal and policy-science oriented in the United States.

In contrast to their realist colleagues, European anti-formalists of the era saw in "living law" -- not in state law created by a judge -- the nerve center of legal dynamism and the inescapable element of any transformation of law. Official law was understood as a type of mechanism for the better defense, application and protection of the true law: social law. The fact that they look at the official law from an external point of view led to a type of legal discourse that stood further from legal technique and closer to politics and philosophy. That is the meaning of the critique that Felix Cohen levied against Ehrlich when he argued that the main target of his attack consisted merely of "some definitions" (318) that are not brought face to face with the reality. Generality and abstraction were other long-

⁴³ Karl Llewellyn in his article "The Next Step" (1930) made the distinction between "paper rules" and "real rules." "What officials [of the law] do about disputes is, to my mind, the law itself" (1930: 12).

standing characteristics of the European legal critique. H.L. Hart shows how although there were great similarities and common propositions in the works of Holmes and Ihering at the close of the 19th century, the striking difference between them was that while Holmes' attacks were directed against judges and, in general, practicing jurists, the latter wrote in opposition to academic exponents of the law (Teoretiker). These German theorists, says Hart, discounted practice and thought that it should defer to theoretical concepts (Hart 1983: 112).

The realist conception of law, understood as marginal, indeterminate, and political entails a critique that, despite its sociological perspective, accepts the legal insider's standpoint (Hart 1961) and attempts, beginning from that standpoint, to reform and improve law. Perhaps the realist slogans do not reflect this.⁴⁴ They were frequently pronounced with the intention of provoking debate and not with any destructive or revolutionary aim.⁴⁵ In almost all realist texts a clear reformist tendency can be observed, which is to be undertaken through the use of the social sciences. This is a reflection of a typically modern optimism that believed in science and in the capacity of human knowledge to produce social progress. Llewellyn, like his colleagues, accepted that the law faces multiple problems and obstacles; however, he maintains that such problems must be confronted with the "scientific scrutiny of experience" (Llewellyn 1930: 314).

The conceptual distinction between the idea of "living law" developed by Ehrlich and Pound's idea of "law in action" helps to understand the contrasting purposes of the two sociolegal movements.⁴⁶ According to Ehrlich, the law can only offer an incomplete account of social reality. State law distorts social phenomena, leading to large discrepancies between law and society. As a citizen of a community with strong legal traditions -Bukowina - that remained almost untouched by the influence of a distant official central state in Vienna, he experienced the gap between State Law (staatlichem Recht) and law from the people (*Volksrecht*). Ehrlich's criticism of the dominant positivist jurisprudence of his time arose in this context. What was needed, according to Ehrlich, was a new field of study that could account for not only legislated statutes, but also –and primarily- the living law (*lebenden recht*).⁴⁷

⁴⁴ So for example, the famous sentence of Holmes: the history of law has not been logic but experience; or Llewellyn's idea that what the judges make of disputes is .. the law itself; or Jerome Frank's thought according to which rules, whether stated by judges or others, whether in statutes, opinions or text-books by learned authors, are not the Law, but are only some among many of the sources to which judges go in making the law of the cases tried before them....The law, therefore, consists of decisions, not of rules.

⁴⁵ See for example (Twining 1973) and (Hart 1983).

⁴⁶ Pound (1870-1964) and Ehrlich (1872-1922) were contemporaries. Ehrlich was a law professor in Bukowina, a province of the Austrian Empire. Pound had a long and brilliant career, which culminated in the deanship of the Harvard Law School (Pound 1910; Ehrlich 1936).

⁴⁷ Ehrlich was one of the first jurists to develop an inductive method to investigate the social reality of law, and to use tools such as questionnaires, formulae, and interviews. As a result of his investigations, Ehrlich came to distinguish three types of law: social law (*gesellschaftliche Recht*), lawyers' law (*Juristenrecht*)

Ehrlich's idea of "living law" evoked a type of law that was not the state law, or in Ehrlich's terminology, "norms of decision". The living law was a socially constructed law; it was the "law that dominates life itself, even though it has not been printed in legal propositions" (Ehrlich 1936: 439). Ehrlich thus championed a sort of "sociology of law without law" (Ziegert 1979). In contrast, Pound was more interested in an institutional understanding of law, aiming at solving the "gap problem" i.e. the separation between "law in books" and "law in action."⁴⁸ He defended a monistic concept of law, coupled with a sociological call to reduce the identified gap. "Judge-made and statutory laws fail continually because they have no social and psychological guarantee," said Pound (Pound: xxxiii-xxxiv). So, as David Nelken has shown (Nelken 1984), living law cannot be equated to "law in action" simply because, though the latter is a sociological notion, it still in the realm of official law. For Pound, legal norms are those backed by the state. The law was conceived as a tool of social engineering aimed at preventing social conflict. It is a mechanism of social control clearly differentiated from other mechanisms such as public opinion or the family. This top-down and policy-oriented perspective was in contrast to the bottom-up conception propounded by Ehrlich, where the accent was placed on a social law that emerges from organic social relations. The two authors differ, then, with respect to the role of the judge in law. For Ehrlich the judge intervenes in defense of "living law" which implies tensions with state law. For Pound the judge is in the center of official law. In short, since state law and living law are in different, though connected, realms of social life, the gap between them is not a puzzling question (Serverin 2000: 21).

The two scholars were interested not only in the social life of the law – rather than in the analytical concept of law – but also in its progressive understanding. The difference lies in how they place the emphasis on what a practical and progressive conception looks like: whereas in Pound it is the official law, adapted and improved by social science, in Ehrlich it is the law as it expresses common patterns of behavior, which bolsters community and social identity, and for that reason, must inspire the content of official law. And here we find the second main difference between these two authors. Ehrlich was interested in groups, associations and communities whereas Pound had in mind a conception of society centered in individuals and liberties. A certain anthropological optimism is found in Ehrlich's conception. The source of social change was found in social life. For Pound, conversely, it was liberal institutions that were the engine of social progress.

and state law (*staatliche Recht*). Social law is made, according to Ehrlich, from the inner rules of human communities, associations, and organizations.

⁴⁸ For a deeper explanation of the contrast between Living Law and Law-in-Action see (Nelken 1984).

2. The Impact of Socio-legal Ideas in Europe and the United States

The American sociolegal movement had much more influence in the legal academia and in legal practice than did its European counterpart. The Realist legal critique was “energetically pursued in the torrent of scholarship that poured out in the United States Between 1927 and 1940” (Herget 1987:434). Even today most law teachers regard themselves as legal realists.⁴⁹ European anti-formalist conversely had a more limited influence. The political context in which sociolegal ideas prospered was an important factor. Whereas in the United States sociolegal ideas obtained political support from the New Deal and its reformist and democratic vision, in Germany it was the Nazi regime that viewed them positively, to the extent that they released Nazis judges from the constraints imposed by the Weimar Constitution. This is an important factor in the disrepute of the Free Law Movement in Europe. The Nazis were not the only ones interested in the sociolegal perspective though: authors like Léon Duguit (Duguit 1922, 1889) Francois GénY (GénY 1899) and Eduard Lambert (Lambert 1928) in France and Ferdinand Lasalle (Lasalle 1964) and Antone Menger (Menger 1899) in Germany were strongly influenced by the anti-formalist movement and had a certain impact on legal doctrine. But this influence did not last long; their vindication of judges and their call for a social perspective was mostly received by the mainstream, and particularly by legal positivism, as an intolerable political challenge to the unity of law. This is why authors like Evelyne Serverin maintain that legal positivism in Europe or “the primacy of the written rule over other sources of law” “has never been seriously called into question” (Serverin 2000). Additionally, from a critical point of view, the influence of Marxism was much more important in Europe than it was in United States, and this led to a rather theoretical and speculative type of criticism. Legal doctrine was conceived of as being too close to the seat of political power – linked to the tradition of state sovereignty evoked above -- to be neutral and to have redeemable elements leading to social emancipation.⁵⁰

⁴⁹ According to Gary Minda, this was possible because most legal academia associated legal realism with what he calls the “progressive” – read conservative – trend of legal realism, defended by Holmes, Pound and Cardozo, and against radical realism (Minda 1995:32).

⁵⁰ In one of his books about the leftist lawyers in the Weimar Republic, Carlos Miguel Herrera explains how any attempt of leftists to build a critical legal perspective that could contain a progressive dimension of rights as political tools for social emancipation was dismissed by Marxism (Herrera 2002). Of course, there have been exceptions to this general trend, though they did not transcend a merely local impact: at the beginning of the 20th century a leftist stance was in fashion in continental Europe. Leftist scholars defended the idea of social rights and legal reforms as a necessary step toward socialism. In Germany these lawyers, inspired by Karl Marx, Frederick Engels, and especially by Ferdinand Lassalle, had an impact on the legal reforms instituted during the Weimar Republic. See (Lasalle 1964) (Menger 1899; Ledford 1996). In Francia, leftwing lawyers struggle to build socialism through the law, against not only the economic and anti-intellectual positions being promoted in France by Comte and Saint Louis, but also against the Marxist left and the labor movement. The latter saw the law only as an instrument of class domination. Among these jurists Leon Blum (Blum 1965) Georges Scelle (Scelle 1929; Bouglé 1906; Lévy 1909; Hauriou 1910; Duguit 1922) are particularly noteworthy. For an overview of the movement see (Herrera

In America, the claim that judicial decisions were not neutral but political was taken as a defense of a type of judicial activism that was not seen as an outlandish practice in the common law tradition. "Courts must make law," said Oliver Holmes, and he added, "...courts are major policymakers in our system of government" (Holmes 1917). Conversely, the call to legitimate the law-making power of the judges evoked by the *Free Law Movement* was seen as a radical political claim in a legal tradition, and at a time, in which legislation was never questioned as the unique source of valid law. By contrast the realist interest in persuading judges to assume openly the political character of their decisions and therefore the importance of dealing with policy questions and empirical research was a pragmatic proposal that, though controversial, could be managed internally without questioning the foundation of the legal system.⁵¹ The attack on the binding effect of legislation in Europe remained a more radical and therefore marginal criticism than the American questioning of the use of precedents.

In short, the different conceptions of law and society embedded in these two movements determined the future of sociolegal theories on the two sides of the Atlantic at the beginning of the twentieth century. But this, although interesting and necessary, is an incomplete and intellectualist explanation of the evolution of a comparative sociolegal theory. As Foucault used to say, each historical situation allowed only those discourses that were possible (Foucault 1971). We have to explain why these and no other type of theories were possible in the contexts in which they flourished. The way to do that is throughout an explanation of the relationship between legal conceptions and political contexts in the two sites. Let us continue, then.

European legal critics reacted against legislation and codification because they saw them as an expression of the existing political domination. Law was seen therefore as **political power** that ought to be denounced in the political arena and replaced by another power and another law. This conception is part of a long European tradition rooted in the beginnings of the absolute monarchy in France at the dawn of the 17th century.⁵² According to this, the law is the expression of state sovereignty embodied in the monarch. The French Revolution did not break with this tradition. On the contrary, it accentuated it by proposing the idea, initially brought forward by Sieyes and later by Robespierre and the Montagne party -- of popular sovereignty. The writings of Rousseau, interpreted by Sieyes, did not

2003) (Herrera 2002). They were interested in legal practice and doctrine but their movement was too weak to seriously challenge legal formalism and legal conservatism.

⁵¹ According to Pound, "The sociological movement in jurisprudence is a movement for pragmatism.... For the adjustment of principles and doctrines to the human conditions they are to govern...." (Pound 1908).

⁵² On this point see for instance (Van Houtte 1986).

leave much room for political critique through law.⁵³ A clear expression of this equation of sovereignty- general will - law is found in Article 4 of the *Declaration de Droits de l'Homme* as included in the 1793 Constitution. It reads, "Law is the free and solemn expression of the General Will; it is the same for all, whether it protects or punishes...." 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 sovereignty itself. Whereas, in England and USA the term *law* relates to political power and is not necessarily inclusive of what was a *right*, in Europe terms like *droit*, *recht*, *diritto*, *derecho*, had a larger meaning including what was right. This is why critics in Europe tend to get rid of the *law* in order to highlight rights as social rights not legal rights. It is true that later came a reform founded on the critique of the concept of popular sovereignty. However, that did not eliminate the idea of sovereignty, it only changed its contents -- this time in favor of the state as an outcome of the ideas of Hegelians and Rousseauians embodied in the works of Jellinek and Carré de Malberg.

In England, by contrast, the concept of sovereignty never became deeply rooted. During the 17th century the Stewarts failed in their aim of importing the French model. The Glorious Revolution of 1688 finally put paid to the idea of sovereignty and in its place implanted the idea that rights, not political power, is the origin of power -- a power shared and divided between parliament and the king. This facilitated a critique of law without going outside the boundaries of the law itself. This is clearly shown in the work of John Locke which inspired the American Declaration of Independence. In it the idea that governments are put in place to defend rights and that the people can rebel if their governments do not live up to this obligation is enshrined.

In line with this tradition, the realists articulate their critique against the judge – or at least a type of judge - as the central figure in the legal field. Such a critique denounced the political character of judicial decisions but did that using legal arguments. The law was seen as *political decision*; the fight took place inside of the legal field. Although the political character of law is inescapable, the palliative of the social sciences always exists to make the decisions of judges less arbitrary. Legal Realism succeeded in its critique of Legal Formalism, which dominated by the end of the nineteenth century, and particularly it won out against the idea that the law is independent and autonomous not only from social facts but also from politics. Despite the devastating effect of this criticism in the early twentieth century, the American legal mainstream managed to compensate for it by reworking its content and scope. Although it was recognized that social sciences – not abstract logic - provide important criteria for the definition of law and, particularly, for the process of decision-making, it was also postulated that social

⁵³ That is the reason it has been so difficult to introduce control of the constitutionality of laws in France.

sciences would work as important elements in the search for legal objectivity and stability. The political character of the law was accepted insofar as it was connected with the liberal debate on those fundamental and constitutional values in virtue of which controversial judicial cases were to be decided.

The situation in Europe, by contrast, shows that the mainstream never accepted the limitation on the autonomy of the law vis-à-vis social facts and political powers. The main debate vexing legal scholars pitted scholars supporting legal positivism against those advocating natural law. It was framed to answer the question of whether or not the legal system was autonomous from fundamental values, not from social values or constitutional values. Although the debate on fundamental values took place on both sides of the water, only in America was it related to the judicial process and therefore to legal practice. Even Herbert L. Hart's famous concept of law, a moderate version of legal positivism in opposition to J. Austin and Hans Kelsen, was perceived in America as lacking realism and practicality when applied to the process of judicial decisions.⁵⁴

The realists were able to combine their external sociological conception of law with an interest in legal doctrine or an internal point of view (Hart 1961). Unlike their colleagues in USA, Europeans were both disparate in their agendas, and ideological and political in their criticism.⁵⁵ Free Law thinkers being academics divorced from practice "directed their attention to the substance of justice and to the theoretical and moral aspects of scholarly inquiry" (Herget 1987).⁵⁶ The consequence of this choice was the exclusion of the legal struggle aimed at establishing the meaning of the law and attaining the symbolic power at stake in this struggle. Nevertheless, the relative marginality of the critical stance in Continental Europe does not have to be considered a failure, much as the inclusion of the legal point of view is not necessarily to the benefit of American sociolegal critics. In the European case the marginality of socio-legal theory is rather a consequence of the central role that doctrinal and legal formalism have in the legitimization of the political regime. Under these circumstances an ideological denunciation of the law is imposed. In the American case, the socio-legal critique is probably more visible but it has become rather functional to the political regime and to the role the legal system plays in the political system. Socio-legal studies have either been co-opted by the state - in the case of the studies of the audience

⁵⁴ In his famous debate with H.L.Hart, Lon Fuller develops the notion of purposive interpretation in which *context*, *policy* and *legal ends* taken together bring meaning to legal interpretation. This is a good example of the optimistic and constructive understanding of the relation between law and social science that has given its distinctive character to American legal thought, in clear contrast to the European legal academia.

⁵⁵ Additionally, the rise of totalitarian governments in Europe discredited all axiological relativist and skeptic stances. Such generalized disapproval reached its peak in Germany when Nazi judges used ideas from the Free Law movement as justification for their decisions.

⁵⁶ According to Herget and Wallace, Free Law thinkers wanted justice to be done in individual cases rather than a new legal doctrine.

for policy (Sarat and Silbey 1988)- or have become innocuous in terms of social emancipation - in the case of the Legal Consciousness Studies (García Villegas 2003).

Summing up what have been said in the previous sections, the unequal development of sociolegal theory on the two sides of the Atlantic has been marked by the configuration of the legal fields, and particularly by the accumulation of symbolic capital by different legal protagonists: legislators and doctrinaires on the one side, judges on the other. In Europe sociolegal theorists reacted against legislators as representatives of political domination. Law was seen as **political power** that ought to be denounced in the political field. In United States, by contrast, legal realists opposed judges as the central figures in the legal field. They denounced the political character of judicial decisions using legal arguments and the law was seen as **political decision**. The different position and disposition that the legal actors have played in the history of the common law and continental civil law, on the one hand, and their different relationship to political power, on the other, have determined not only two types of legal doctrines but also two types of political relations inside the legal field, and two types of legal critics. In the countries in which the legislator has had a central position in the legal field, the anti-formalist or sociolegal critic has acquired a rather political and ideological character, whereas in those countries in which the judge has had a central position, the sociolegal critic acquired a more legal and empiricist form.

IV. LEGAL EDUCATION AND UNIVERSITIES

The way that sociolegal teaching and research is conceptualized and organized inside and outside the university also plays a role in explaining the differences in what is understood as sociology of law on the two continents. Tensions and debates inside the sociolegal field are very often the consequence of institutional and disciplinary positions (Commaille 1985). In Bancaud and Dezalay's terms, power rather than knowledge explains division inside the sociolegal field (Bancaud and Dezalay 1984). The first thing to emphasize is that there are profound differences in the relationship of legal instruction and practice on the two continents, as we noted in the second section of this essay. Here it is worthwhile mentioning what Max Weber had to say on this matter, pointing out the contrast between a common law system organized by lawyers and a Civil law organized by professors (Van Caenegem 1987). According to Weber, in England the legal profession, characterized by its practical orientation and instrumentalism, developed a very pragmatic jurisprudence. The judiciary was recruited from lawyers who socialized new recruits to the profession and served the interests of the propertied. In Germany, by contrast, scholars were motivated by an interest in the conceptual articulation and systematic arrangements of legal phenomena, and

for that reason were less interested in legal practice (Weber 1992:588). In England, he explained, lawyers aimed at producing lists of contracts and actions useful in practice because they suited the typical and recurrent particular needs of litigants. No system of rational law emerged from this type of law, and the idea of codification, does not fit in this model.⁵⁷ The law school does not play an important role in this model and English professors are far from having the prestige of their continental colleagues. Van Caenegem gives this example: when Dicey became Vinerian Professor at Oxford in 1882 the title of his inaugural lecture was "Can English Law be Taught at the University?" (Van Caenegem 1987: 62). Even today a university degree is not mandatory for the profession. In 1850 the study of law in the United States lasted only one year. At century's end, it was decided to expand the program to two years, and only in the new century did the current three-year curriculum become the rule.

Here I would like to point out three additional differences that are closely related to the Weberian historical approach. The first is the institutional environment in which sociology of law develops. In the United States the studies of law and society are concentrated in no more than five university settings, among which the University of Wisconsin and the University of California at Berkeley stand out, although the influence of the former has declined in recent years. Another important factor in the consolidation of these studies has been the role of two institutions committed to legal practice: The American Bar Foundation and the Rand Corporation. This environment is known for its broad decentralization, implying a large measure of autonomy in both budgetary and academic terms. The absence of hierarchical structure as well as the dispersion and personal and institutional mobility characterize the environment (Dezalay 1989).

The diametrically opposite pole is represented by the French academic system as conceived by Napoleon Bonaparte at the end of the First Republic. Here, the university is designed and directed by the state as guarantor of the Republican idea of equality and universality in education. According to Bowen and Bentaboulet this notion has given rise in France to a highly centralized system, with a strong separation between teaching and research, a sense of intellectual and financial self-sufficiency in the research centers and a weakly developed international perspective (Bowen 2002).⁵⁸ The university system in Germany is, in principle,

⁵⁷ Despite his influence in 19th century England, Bentham's proposal of codification aroused little interest. According to Zweigert and Kotz, "Given their practical sense and their collective interests, English lawyers could not tolerate the thought of replacing the Common Law with a code worked out at a table on the basis of a particular social philosophy" (Zweigert 1998:198). However, it is important to point out that during the 19th century in England common law lost its preeminent role in the creation of law. Legislation became the base for judicial decision as proposed by Jeremy Bentham at the beginning of the century (Zweigert 1998: 201).

⁵⁸ Nevertheless there is a long-standing debate in France about the university system, a debate in which references to the German and American systems are always present. A clear illustration of this for the end

decentralized, but conditioned by some state requirements: for example, the state organizes competitions to obtain university posts.⁵⁹ In Germany strength in research skills gauged in terms of publications is privileged, while in France rhetoric and pedagogical learning is a preferred background for admittance into higher education (Charle 2003: 9). In short, the development of the sociology of law is linked to very different institutional environments on the two continents. One of them can be characterized as centralized, public, and rigid and the other one as primarily private and flexible.

Second, the design of the continental European university is predicated on classical disciplinary divisions that correspond to faculties and that translate into a strict adjudication of quotas for professors according to the subjects within each of these disciplines. In France, this understanding of academic content originates in the close links between the secondary, or high school, program and the university, which was conceived in the reforms enacted by Napoleon in 1808. Until relatively recently, university professors taught classes in the academic high schools to secondary students. Training in philosophy and the social sciences was understood to be the work of the academic high schools. This is the reason for the extraordinary prestige of the *Ecole Normale Supérieure*. Through its doors passed great French intellectuals such as Durkheim, Sartre, Simone de Beauvoir, and the like. Until the end of the 1950s, topics in sociology and anthropology were the domain of the philosophers. Only in 1958 was a *licence* (first degree) created in sociology (Bowen 2002: 539; Cuin 2002).

In Roman law if a course is not taught – and this is the case for the sociology of law – it is because the material itself of such a course does not exist. This is why there is a deficit in the institutionalization of the sociology of law in Europe (Travers 2001). In countries like Germany, France or Italy, the possibilities of those seeking appointment in the university are substantially reduced when the candidate presents him or herself as a sociologist of law, so professors who direct doctoral theses discourage students from pursuing this interest. In Germany, for example, academic chairs in the sociology of law were mainly founded in the 1970s and nowadays only a few faculties have opened such chairs. In France neither sociology departments nor law schools think it necessary to introduce

of the 19th century can be found in (Brunetière 1897; Marchis 1914). For a more recent illustration of the debate see (Charle 2003).

⁵⁹The contemporary system was largely the design of Wilhelm von Humboldt at the beginnings of the 19th century. He proposed the creation of highly competitive centers that combined research and teaching (Von Humboldt 1979). See also Carl-Heinrich Becker, the principal author of the university reforms enacted during the Weimar Republic; according to Becker, institutional autonomy prevailed in the United States and in England, while in Germany intellectual autonomy was the order of the day, something that did not occur in Anglo-Saxon countries (Becker 1925).

courses in legal sociology.⁶⁰ In Italy the situation is perhaps somewhat better for this type of studies, thanks to the influence of Renato Treves.⁶¹ Quite frequently ordinary and tenured professors who head research institutes in Europe cast the deciding ballot against interdisciplinary research (Charle 2003). This rigidity in the classification of knowledge leaves very little room for maneuver to professors and students in law schools who want to explore areas that are not doctrinal subjects.

However, it cannot be forgotten that the arguments against interdisciplinary knowledge that are aired in the European universities are based on a classical conceptualization of the university, founded on a position of respect for academic rigor and tradition -- something that brings undeniable benefits. That is the reason that many Europeans who dedicate themselves to the sociology of law, in particular the French, think that from the qualitative point of view they do not take a backseat to the Americans, while acknowledging the numerical superiority of the North American Law and Society group. So, for example, in an interview that he gave at the end of his life Jean Carbonnier commented as follows, "I ask myself if the foreigners do more legal sociology than the French. Much more, certainly, in volume, but more in depth, I am not so sure"(Andrini 1995: 43).

In the United States, by contract, a departmental organization offers more flexibility in terms of disciplinary boundaries and more mobility of researchers. It is true that in the United States the law schools are not departments; however their faculty seats as well as their personnel are usually highly mobile. On the one hand, positions and salaries are subjected to labor market forces, with each law school negotiating individually with its academic staff. On the other hand, although law professors enter the faculty associated with a basic, required and strictly legal course, they can teach the seminars they propose, almost without restriction. This is due in great part to the fact that in the United States law is designed as a postgraduate program, which means not only more flexibility in the contents of courses but also more interdisciplinary content, given that the students come to the program from different disciplines.

Third, the lesser importance of the state in the makeup of higher education in the United States is associated with a great dynamism and participation of social organizations. This American phenomenon, known as associationism⁶² - is linked to the participation of foundations in the funding of university research, as an outgrowth of the pragmatic notion that research should be aimed at achieving

⁶⁰The first legal sociology course in France was created in 1957 by Jean Carbonnier in the Law Faculty of the University of Paris.

⁶¹ For the French case see (Andrini 1995). For Italy, see (Bixio 1994).

⁶² Tocqueville's idea that associations operate in the United States as an antidote to state authoritarianism is very well known (Tocqueville 1980). Max Weber also referred to this phenomenon (Weber 1906).

useful results for the social whole.⁶³ In this fashion a competitive and hierarchical university system arose in which they are ranked on the basis of their available resources. The rich institutions possess resources that are unimaginable to practically all European universities. In addition, the fact that the university is well connected to the private sector and to the market stimulates the production of goods aimed at facilitating research, such as databases, for example, the creation of which is only possible in a large economy such as that of the United States.⁶⁴

In Europe, the universities operate as part of the public sphere and they are thus subjected to rigid state norms that apply without distinction. It is possible that the American university is better prepared to form part of an environment of national and international competition such as the one fostered by the recent trends toward globalization. Jean Carbonnier summed it up in a convincing fashion, saying, "The historic relationship between 'the politicians' and the jurists, the academic heavyweights of our sociolegal culture, and the relationship of our universities and foreign universities (above all, those in the Anglo-Saxon world) -- all this converges to produce a disquieting situation for sociolegal studies in France that is not something temporary but structural" (Andrini 1995: 96). Although Carbonnier may well have the correct diagnosis, it is still a shame that the world economic trends have made the old public universities of Europe less visible in the international arena and that its modern and emancipatory spirit is very often threatened by the rush to profitability brought about by the American type of globalization.

It should be added that these differences in the legal culture and in the organization of the university have been decreasing in strength over the past 30 years as a consequence of the process of globalization. Specifically, they have been affected by the commodification of the legal profession, above all in the countries of the center. The large firms of American lawyers have been able to impose their practices, values and victories on Europeans through mechanisms of economic globalization (Garth 2002). This is not a phenomenon exclusive to the field of law, however, its transformation and modifications are perhaps more radical owing to the fact that the law was always a field of knowledge and a

⁶³At the beginning of the 20th century as American sociology originated, the pragmatic notion that knowledge and research should have an ameliorative function with respect to social problems was widely influential. The interest shown in the 1930s by private entities such as the Rockefeller Foundation, the Social Science Research Council (SSRC) and the Institute for Social and Religious Research (ISSR) arises from that point. With respect to sociology of law, a detailed explication of the funding of the most significant research projects in the Law and Society movement is provided in (Garth 1998). This work dedicates special attention to the role of the Sage Foundation.

⁶⁴ Widely used databases are available to professors and students both in sociology and in law. These databases are designed by private firms that sell their products to the universities and can do so thanks to the large market for them. In Europe, national and linguistic divisions have not allowed for a substantial improvement in this resource, see (Tenenbaum 1994:57)

practice limited to the confines of the nation-state. Naturally, this transformation affects the distribution of power inside the legal field. Legal consultants who possess international experience, who know American law, and who speak English, are displacing the lawyers who traditionally held privileged positions.

CONCLUSION

Over the last decade interest in sociology of law seems to have swelled in Europe and in the United States. The growing number of publications and events that have appeared on both sides of the Atlantic since the early 1990s would seem to demonstrate the veracity of the statement. However, from a comparative perspective, it would appear that we are still far from having overcome the national character of sociology of law. Furthermore we have yet to consolidate an academic field that can serve as a homogenous reference from which sociolegal studies can communicate with scholars from different disciplines and from different countries. The precariousness of the comparative sociology of law is even more surprising in view of the great interest that classical sociologists of the second half of the 19th century took in the law and later the importance of the academic exchanges between European and American anti-formalist jurists at the beginnings of the 20th century. Seen from the vantage point of the years prior to 1900, the achievements seem to be widely surpassed by the frustrations, particularly if it is kept in mind that the influence of the legal phenomenon in contemporary societies has grown ever greater in complexity and importance.

In spite of this rather pessimistic account I think there is hope for the sociology of law in the future and for the development of a comparative sociolegal theory. Some contemporary phenomena suggest that, as happened a century ago, the time is now ripe for the sociology of law – or for a new anti-formalist movement - to flourish once again. First, legal theories that attempt to explain and to justify the legal phenomena are experiencing extraordinary difficulties concealing their links to political and economic power. This has caused a profound crisis both in American jurisprudence and in European theory of law -- a crisis that is manifested in its increasingly obvious inability to make the law appear to be a normal and necessary phenomenon that is independent of the dominant large-scale political and economic interests of our day. Second, for at least the past two decades a new legal practice has been gaining ground in Europe and the United States -- one that attenuates the classical differences between the legal families. This practice accents political interpretation and flexibilization of the rules. The weight of legal dogma and formalist theories of law have diminished as a consequence of a boundless social reality that the legal system and legal logic cannot restrain. Third, the international perspective of the universities, both in academic affairs as well as in administrative matters, has strengthened in recent

years and it is to be hoped that this trend will continue. Even law schools, traditionally so insular for professional reasons, being prone to see the law as an internal matter, are today opening their doors to the outside world--a world of such complexity that increasingly international and interdisciplinary dialogue is obligatory. Finally, the strength of the phenomenon of globalization and, in particular, academic globalization has opened legal doctrine to external influences. Communication among professors and researchers located in different parts of the world and endowed with a critical stance with respect to the official law and traditional theory of law has never been as intense as it is today. On this point it is necessary to add that this improved communication is being fostered, in great part, by a new generation of academics who both possess an interdisciplinary and critical perspective and who speak several languages and are well acquainted with several cultures.

References

- Abel, Richard. 1995. *The Law and Society Reader*. New York: New York University Press.
- Ackerman, Bruce A. 1984. *Reconstructing American Law*.
- Anderson, Perry. 1979. *El Estado Absolutista*. Madrid: Siglo Veintiuno Editores.
- Andrini, Simona et André-Jean Arnaud. 1995. *Jean Carbonnier, Renato Treves et la Sociologie du Droit. Archeologie d'une discipline*. Paris: L.G.D.J.
- Arnaud, A-J. 1981. *Critique de la raison Juridique*. Paris: LGDJ.
- . 1992. Droit et société: Du constat à la construction d'un champ commun. *Droit et société* 20-21.
- Arnaud, A-J; et Simona Andrini, ed. 1995. *Jean Carbonnier, Renato Treves et la sociologie du droit. Archéologie d'une discipline. Entretiens et Pièces*. Paris: LGDJ.
- Arnaud, André Jean et. al. 1988. *Dictionnaire Encyclopédique de Théorie et Sociologie du Droit*. Paris-Brussels: LGDJ.
- Arnaud, André-Jean. 1998. *Le droit trahi par la sociologie, Recherche et travaux du R&DS*. Paris: LGDJ.
- Arnaud, Andre-Jean and Farinas Dulce, Maria Jose. 1998. *Introduction à l'analyse sociologique des systèmes juridiques*. Bruxelles: Bruylant.
- Aubert, V. 1967. Einige Soziale Funktionen der Gesetzgebung. *KZFSS* 11:284-309.
- Bancaud, Alain, and Yves Dezalay. 1984. La sociologie juridique comme enjeu social et professionnel. *Revue interdisciplinaire d'etudes juridiques* 12.
- Becker, Carl-Heinrich. 1925. *Vom Wesen der deutschen Universitat*. Leipzig: Verlag Quelle und Meyer.
- Bentham, Jeremy. 1962. Principles of Moral and Legislation. In *The Works of Jeremy Bentham 1838-1843, Vol 11*, edited by J. Bwring. New York: Russel and Russel.
- Bixio, Andre. 1994. *Sociologia del diritto. Guida alla laurea in Scienze Politiche*. Bologna: Il Mulino.
- Black, Donald. 1976. *The Behavior of Law*. New York: Academic Press.
- Blankenburg, E. 1986. La recherche de l'efficacité de la loi. Réflexions sur l'étude de la mise en oeuvre. *Droit et société* 2.
- Blum, Leon. 1965. *L'Oeuvre de Leon Blum*. Paris: Albin Michel.
- Bouglé, C. 1906. L'Esprit nouveau de la science du droit. *Revue Bleue*:589.
- Bourdieu, Pierre. 1986. The Force of Law: Toward a Sociology of the Juridical Field. *Hastings Law Journal* 38 (5):814- 853.
- . 1986. La force du droit; éléments pour une sociologie du champ juridique. *Actes de la recherche en sciences sociales* 64.
- Bourdieu, Pierre, Loic J.D. Wacquant. 1992. *An Invitation to Reflexive Sociology*. Chicago: The University of Chicago Press.
- Bowen, John and Martine Bentaboulet. 2002. On the Institutionalization of the "Human and Social Science" in France. *Anthropological Quarterly* 75 (3):537-555.
- Brunetière, F. 1897. Dans l'Est americain. *Revue des deux mondes*:92-123.
- campbell, C. M. and Paul Wiles. 1976. The Study of the Sociology of Law in Britain. *Law & Soc. Review* 10:547-578.

- Capeller, Wanda De Lemos, ed. 1991. *Entre o ceticismo e a utopia: a sociologia jurídica latino-americana frente ao debate europeu*. Vol. 6. Oñati: IISJ.
- Carbonnier, Jean. 1978. *Sociologie Juridique*. Paris: PUF.
- Charle, Chrisophe. 2003. Les références étrangères des universitaires. Essay de comparaison entre la France et l'Allemagne. 1870-1970. *Actes de la recherche en sciences sociales* 148 (8-19).
- Cohen, Felix. 1960. *The Legal Conscience. Selected Papers of Felix Cohen*. New Haven: Yale University Press.
- Cohen, Felix S. 1937. Book Review (Fundamental Principles of the Sociology of Law" By Ehrlich. *Illinois Law Review* 31:1128-1134.
- Commaille, Jacques. 1983. The Law and Science : Dialectics Between the Prince and the Maidservant. *Law and Policy* 10 (2/3):253-265.
- . 1989. La sociologie du droit en France. Les ambiguïtés d'une spécialisation. *Sociologia del Diritto* 16 (2):19.
- . 1995. *L'Esprit sociologique des lois. Essay de sociologie politique du droit*. Paris: Press Universitaire de France.
- Commaille, Jacques and Jeand Francois Perrin. 1985. Le modèle de Janus de la sociologie du droit. *Droit et société* 1:95 - 113.
- Cotterrell, Roger. 1983. The Sociological Concept of Law. *Journal of Law and Sociology* 10:241.
- . 1992. *The Sociology of Law. An Introduction*. London: Butterworths.
- Cuin, Charles-Henry, Francois Gresle. 2002. *Histoire de la Sociology*. Paris: La Découverte.
- Dezalay, Yves, Austin Sarat and Susan Silbey. 1989. D'une démarche contestataire a un savoir méritocratique. Eléments pour une histoire sociale de la sociologie juridique Américaine. *Actes de la recherche en sciences sociales* 78:79 - 90.
- Díaz, Elias. 1980. *Sociología y filosofía del derecho*. Madrid: Taurus.
- Dufour, A. 1974. Droit et langage dans l'Ecole historique du droit. *Archives de Philosophy du Droit* 19:115-180.
- Duguit, Léon. 1889. Le droit constitutionnel et la sociologie. *Revue Internationale de l'enseignement* 28:484-505.
- . 1922. *Le droit social, le droit individuel et les transformations de l'Etat*. Paris.
- Durkheim, Emile. 1983. *The Division of Labor in Society*. New York: The Free Press.
- Duxbury, Neil. 1995. *Patterns of American Jurisprudence*. Oxford: Clarendon Press.
- Ehrlich, Eugen. 1922. The Sociology of Law. *Harvard Law Review* 36 (2):94-109.
- . 1936. *Principles of Sociology of Law*. Cambridge: Harvard University Press.
- Febbrajo, A. 1984. Per una sociología del diritto "critica". In *Società, norme e valori. Studi in onore de Renato Treves*, edited by U. e. V. F. Scarpelli. Milano: Giuffrè.
- Ferrari, Vincenzo. 1976. *L'insegnamento sociologico del diritto*. Milano: Comunita.
- . 1990. *Developing Sociology of Law. A world-wide Documentary Enquiry*. Milano: Giuffrè.
- Foucault, Michel. 1971. *L'Ordre du discours*. Paris: Gallimard.
- Friedman, Lawrence. 1985. *A History of American Law*. New York: Touchstone Book.
- . 1986. La sociologie du droit est-elle vraiment une science? *Droit et société* 2.
- . 1986. The Law and society movement. *Stanford law Review* 38:763-780.
- . 1989. Sociology of Law and Legal History. *Sociologia del Diritto* 16 (2).

- García Villegas, Mauricio. 2003. Symbolic Power Without Symbolic Violence? *Florida Law Review* 55 (1):157-189.
- García Villegas, Mauricio, and Cesar Rodríguez. 2003. Derecho y sociedad en América Latina; Hacia la consolidación de los estudios jurídicos críticos. In *Derecho y sociedad en América Latina*, edited by M. G. Villegas and C. Rodríguez. Bogotá: ILSA, Universidad Nacional de Colombia.
- García Villegas, Mauricio, Cesar Rodríguez. 2001. Notas para la derecho y sociedad en América Latina: hacia la consolidación de los estudios jurídicos críticos. Oñati (Spain).
- Garth, Bryant y Yves Dezalay. 1998. From Legal Realism to Law and Society. Rechaiping Law for the Last stages of the Social Activist State. *Law and Society Review* 22 (2):409-471.
- Garth, Bryant, Yves Dezalay. 2002. *La internacionalización de la lucha por el poder: Los abogados, los economistas y la competencia por transformación de los estados latinoamericanos*. Bogotá: ILSA.
- Gény, Francois. 1899. *Méthode d'interprétation et sources en droit privé positif*. Paris: A. Chevalier-Marescq.
- Gurvitch, George. 1931. *L'idée du droit social; Notion et système du droit social: Histoire doctrinale depuis le XVIII siècle jusqu'à la fin du XIX siècle*. Paris: Sirey.
- Hart, H.L. A. 1961. *The Concept of Law*. Oxford: Claredon Press.
- . 1970. Jhering's Heaven of Concepts and Modern Analitical Jurisprudence. In *Essays in Jurisprudence and Philosophy*. Oxford: Oxford University Press.
- . 1983. American Jurisprudence Through English Eyes: The Nightmare and the Noble Dream. In *Essays in Jurisprudence and Philosophy*. Oxford: Oxford University Press.
- Hauriou, Maurice. 1910. *Principes du droit publique*. Paris: Larose et Ténin.
- Herget, James and Stephen Wallace. 1987. The German Free Law Movement as the Source of American Legal Relaism. *Virginia Law Review* 73 (2):399-455.
- Herrera, Carlos-Miguel. 2002. *Les juristes de gauche sous la république de Weimar*. Paris: Kimé.
- , ed. 2003. *Les juristes face au politique. Le droit, la gauche, la doctrine sous la III République*. Paris: Editions Kimé.
- Holmes, Oliver W. 1917. Southern Pacific Co V. Jensen. In 244 U.S. 205, 221 (Holmes J. Dissenting).
- . 1920. The Path of the Law. In *Collected Legal Papers*.
- Hull, N. 1997. *Roscoe Pound and Karl Llewellyn. Searching for an American Jurisprudence*. Chicago: University of Chicago Press.
- Hunt, Alan. 1978. The Sociological Movement in Law.
- . 1993. *Explorations in Law and Society: Toward a Constitutive Theory of Law*. New York: Routledge.
- Ihering, Rudolf. 1901. *L'Evolution du droit*. Paris: Chevalier Merescq.
- Junqueira, Eliane. 1993. *A sociologia do Diritto no Brasil, Introducao au Debate Atual*. Rio de Janeiro: Lumen Juris.
- Kelsen, Hans. 1981. *Teoría pura del derecho*. México: Editora Nacional.
- Lambert, Eduard. 1928. *Etudes de droit commun législatif. La fonction du droit civil comparé*. Paris.

- Lasalle, F. 1964. *¿Que es una constitucion?* Buenos Aires: Siglo XXI.
- Lascoumes, Pierre. 1991. Le Droit comme Science Sociale. La place de E. Durkheim dans le debats entre juristes et sociologues a la Charniere des deux dernieres siecles. In *Normes juridiques et regulation sociale*, edited by J. Commaille. Paris: LGDJ.
- Ledford, Kenneth F. 1996. *From general estate to special interest : German lawyers 1878-1933*. Cambridge: Cambridge University Press.
- Lévy, Emanuel. 1909. *Capital et travail*. Paris.
- Llewellyn, Karl. 1930. A Realistic Jurisprudence. The next Step. *Columbia Law Review*:431.
- Macaulay, Stuart, Lawrence Friedman and John Stookey. 1995. *Law and Society. Readings on Social Study of Law*. New York: Norton and Company.
- Marchis, L. 1914. Une visite aux universités du centre des Etats Unies. *Revue Internationale de l'enseignement* 68:7.
- Marx, Karl. 1978. The German Ideology. In *The Marx-Engels Reader*, edited by R. Tucker. New York and London: W.W. Norton and Co.
- Menger, Anton. 1899. *The right to the whole produce of labour; the origin and development of the theory of labour's claim to the whole product of industry*, Publisher: London, Macmillan; New York, Macmillan, 1899. London: Macmillan.
- Minda, Gary. 1995. *Postmodern Legal Movements. Law and Jurisprudence at Century's End*. New York: New York University Press.
- Nelken, David. 1983. Pound and Ehrlich on the Living Law. Helsinki, 22 September 1983.
- . 1984. Law in Action or Living Law? Back to the begining in Sociology of Law. *Legal Studies*:157.
- , ed. 2001. *Adapting Legal Cultures*. Oxford: Hart Publishing.
- Noll, Peter. 1973. *Gezetzgebungslehre*.
- Parsons, Talcot. 1977. Law as an Intellectual Stepchild. *Sociological Inquiry* 47:11-58.
- Pashukanis, Evgeny. 1978. *Law and Marxism: A General Theory*. London: Ink Links.
- Pollak, Michael. 1988. La place de Max Weber dans le champ intellectuel francais. *Droit et société* 9:189-203.
- Pound, Roscoe. "Introduction" to Eugene Ehrlich, *Sociology of Law*.xxxiii-xxxiv.
- . 1904. A New School of Jurist. *U. Neb. Stud.* 4:249.
- . 1908. Mechanical Jurisprudence. *Columbia Law Review* 8:605-623.
- . 1910. Law in Books and Law in Action. *American Law Review* 44.
- . 1927. Sociology and Law. In *The Social Sciences and Their Interrelations*, edited by W. F. O. a. A. Goldenweider. New York: Houghton Mifflin.
- . 1939. *The History and System of the Common Law, The National Law Library*. New York: P.F. Collier Son Corporation.
- . 1967. *Interpretations of Legal History*. Gloucester, Mass.: Peter Smith.
- Raiser, Thomas. 1986. Rechtssoziologie Fur Rechtsdogmatik. In *Erganzbares Lexicon des Rechts*, edited by K. F. Rohl. Neuwied: Luchterhand.
- . 1999. *Das Lebende Recht*. Baden-Baden: Nomos.
- Rehbinder, Manfred. 1977. *Rechtssoziologie*. Berlin: Walter de Gruyter.
- Rohl, Klaus F. 1990. Sociology of Law in West Germany in the Eighties. In *Developing Sociology of Law. A world-wide Documentary Enquiry*. Milano: Giuffre.

- Salas, Denis. 1991. *La force du droit*, edited by P. Bouretz. Paris: Editions Esprit.
- Santos, Boaventura de Sousa. 1977. The Law of the Oppressed; The Construction and Reproduction of Legality in Pasargada Law. *Law & Soc. Review* 12.
- . 1995. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. New York: Routledge.
- Sarat, Austin, and Susan Silbey. 1988. The Pull of the Policy Audience. *Law and Policy* 10 (2-3):97-166.
- Savigny, Frederich Karl Von. 1815. Über den Zweck dieser Zeitschrift. In *Thibaut und Savigny. Ihre programmatischen Schriften*. Munich: Verlag Franz Vahlen.
- Scelle, Georges. 1929. *Droit Ouvrier*. Paris: A. Colin.
- Serverin, Evelyne. 2000. *Sociology du droit*. Paris: La Découverte.
- Summers, Robert. 1982. *Instrumentalism and American Legal Theory*.
- Tenenbaum, Eric. 1994. Integración de la base de datos europea: Servicios de infraestructura y necesidad de integración. *Revista Internacional de Ciencias Sociales* 142.
- Tocqueville, Alexis. 1980. *La revolución en América*. Madrid: Alianza Editorial.
- Tomlins, Christopher. 2001. Framing the Field of Law's Disciplinary Encounters: and Historical Narrative. *Law and Society Review*.
- Travers, Max. 2001. Sociology of law in Britain. *The American Sociologist* Summer:26-40.
- Treiber, Hubert. 1988. La place de Max Weber dans la sociology du droit allemande contemporaine. *Droit et société* 9.
- Treves, Renato. 1978. *Sociologia del Diritto. Origini, ricerche, problemi*. Torino: Einaudi.
- Treves, Renato, J. F. Glastra van Loon, ed. 1968. *Norms and Actions. National Reports on Sociology of Law*. The Hague: Martinus Nijhoff.
- Trevino, A. Javier. 2001. The Sociology of Law in Global Perspective. *American Sociologist*:5-9.
- Treviño, A. Javier. 1996. *The Sociology of Law. Classical and Contemporary Perspective*. New York: Martin's Press.
- Trubek, David. 1990. Back to the Future: The Short, Happy Life of the Law and Society Movement. *Florida State University Law Review* 18:4-68.
- Trubek, David, John Esser. 1989. "Critical Empiricism" in American Legal Studies: Paradox, Program or Pandora's Box? *Law and Social Inquiry* 14 (1):3-52.
- Twining, William. 1973. Karl Llewellyn and the Realist Movement.
- . 1974. Law and Social Science: The Method of Detail. *New Society* June 1974:758.
- . 1985. Talk About Realism. *New York University Law Review* 60:329.
- Vago, Steven. 2000. *Law and Society*. New Jersey: Prentice hall, Upper Saddle River.
- Van Caenegem, R. C. 1987. *Judges, Legislators and Professors : Chapters in European Legal History*. Cambridge: Cambridge University Press.
- Van Houtte, J. 1985. *Sociology of Law and Legal Anthropology in Dutch Speaking Countries*. Dordrecht: Martinus Nijhoff.
- . 1986. La sociologie du droit ou le limites d'une science. *Droit et société* 3.
- Vauchez, Antoine. 2001. Entre droit et sciences sociales. Retour sur l'histoire du mouvement Law and Society. *Genèses* 45.

- Voltaire. 1838. *Oeuvres de Voltaire*.
- Von Humbolt, Wilhelm. 1979. Sur l'organization interne et externe des établissements scientifiques supérieures à Berlin. In *Philosophy de l'Université*, edited by L. e. A. R. Ferry. Paris: Payot.
- Weber, Max. 1906. The relations of the Rural Community to Other Branches of Social Science. In *Congress of Arts and Social Science; Universal Exposition, St. Louis*, edited by H. Rogers. Boston: Houghton, Mifflin.
- . 1978. *Economy and Society*. Berkeley: University of California Press.
- . 1992. *Economía y sociedad*. México: Fondo de Cultura Económica.
- Wolkmer, Carlos Antonio. 1995. *Introducao ao Pensamento Juridico Critico*. Sao Pablo: Academica.
- Ziegert, K. A. 1979. The Sociology Behind Eugen Ehrlich's Sociology of Law. *International Journal of the Sociology of Law* 7:225-273.
- Zweigert, Konrad, Kotz, Hein. 1998. *Introdution to Comparative Law*. Oxford: Clarendon Press - Oxford.