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ARTICLES

Develop, Critique, Publish: The Rise of Legal Research in Brazil (1955-2006)

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ABSTRACT This paper discusses how legal research became the main framework for conceptualizing the academic production of legal knowledge in 20th-century Brazil. I consider that structural changes in academic institutions fostered a new regime of knowledge production. The sources I used were the proceedings of CAPES's assessment of graduate programs, reports on the state of legal academia from CNPq, news about research institutions and graduate programs and academic publications discussing legal research. I found that three modes of legal research have existed. First, since the 1950s, documentary research, which considers as the unknown to be discovered through research as the very source of Law. Second, from the 1970s onwards, sociolegal research, which considers the functioning of law in society as the unknown. Third, especially from the 1990s, hermeneutical research, which considers the interpretation and application of Law as unknown, according to a hermeneutical key. These three modes of knowledge production have coexisted. Through regulation and professionalization, legal research became distinct from legal doctrine as a professional discipline, though they frequently intermingle.

KEYWORDS Legal research; legal science; legal scholarship; History of Science; science policy; sociolegal studies.

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Desarrollar, criticar, publicar: el nacimiento de la investigación jurídica en Brasil (1955-2006)

RESUMEN Este trabajo analiza cómo la investigación jurídica se convirtió en el principal modo de conceptualizar la producción académica de conocimiento jurídico en el Brasil del siglo XX. Considero que los cambios estructurales en las instituciones académicas fomentaron un nuevo régimen de producción de conocimiento. Las fuentes que utilicé fueron las actas de evaluación ejercidas por la CAPES, informes sobre el estado de la academia jurídica del CNPq, noticias sobre instituciones de investigación y programas de posgrado y publicaciones académicas que discutían la investigación jurídica. Descubrí que han existido tres modalidades de investigación jurídica. En primer lugar, a partir de la década de 1950, la investigación documental, que considera como fuentes mismas del Derecho las incógnitas a ser descubiertas por la investigación. En segundo lugar, a partir de la década de 1970, la investigación sociojurídica, que considera el funcionamiento del Derecho en la sociedad como lo desconocido. En tercer lugar, sobre todo a partir de los años 90, la investigación hermenéutica, que considera como incógnita la interpretación y aplicación del Derecho según una clave hermenéutica. Estos tres modos de producción de conocimiento han coexistido. A través de la regulación y la profesionalización, la investigación jurídica pasó a distinguirse de la doctrina jurídica como disciplina profesional, aunque con frecuencia se entremezclan.
PALABRAS CLAVE Investigación jurídica; ciencia jurídica; academia jurídica; historia de la ciencia; política científica; estudios sociojurídicos.

Desenvolver, criticar, publicar: o surgimento da pesquisa jurídica no Brasil (1955-2006)

RESUMO Este artigo discute como a pesquisa jurídica se tornou o principal modo de conceituar a produção acadêmica de conhecimento jurídico no Brasil do século XX. Considerei que mudanças estruturais nas instituições acadêmicas promoveram um novo regime de produção de conhecimento. As fontes que utilizei foram as atas de avaliação exercidas pela CAPES, relatórios sobre a situação da academia jurídica do CNPq, notícias sobre instituições de pesquisa e programas de pós-graduação e publicações acadêmicas que discutem a pesquisa jurídica. Constatei a existência de três modalidades de pesquisa jurídica. Primeiro, a partir da década de 1950, a pesquisa documental, que considera o desconhecido a ser descoberto pela pesquisa como as próprias fontes do Direito. Segundo, a partir da década de 1970, a pesquisa sociojurídica, que considera o funcionamento do Direito na sociedade como o desconhecido. Terceiro, especialmente a partir da década de 1990, a pesquisa hermenêutica, que considera desconhecida a interpretação e a aplicação da lei de acordo com uma chave hermenêutica. Esses três modos de produção de conhecimento coexistiram. Por meio da regulamentação e da profissionalização, a pesquisa jurídica tornou-se um campo de atuação distinto da doutrina jurídica, embora elas frequentemente se misturem.
PALAVRAS-CHAVE Pesquisa jurídica; ciência jurídica; acadêmico jurídico; história da ciência; política científica; estudos sociolegais.

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Introduction: Researching Law[1]

What is there to know about Law?

For a good portion of the 19th and 20th centuries, the legal order was conceived as an abstract system, a majestic entanglement of rules able to answer any given question. Research, conversely, means the discovery of something previously unknown. If the whole world is contained in the Law, if every fact can receive a legal qualification, then legal research is impossible: the lawyer's art is simply to flesh out the implications of a pre-existing system. And yet, legal research exists. How did it become possible, historically? This paper will address this question in a specific setting—Brazil—with the aim of developing a model for the development of legal research.

Law never sat well within the modern research university—that is, one geared toward knowledge production. Late 19th- and early 20th-century legal knowledge accordingly had very concrete objectives, relying at least partially on non-academic audiences to justify its existence (Costa, 2023). Extensive research has documented how legal books in Southern Europe (Petit, 2014; Beneduce, 1996) and Latin America (Fonseca, 2006) were frequently modeled after oral expression, such as jury trials and parliamentary debates. The role of an academic lawyer was to distill all the intricacies of the legal order so it could be applied properly by judges and attorneys (Jestaz; Jamin, 2004). In 19th-century Brazil, law schools were not regarded as centers of knowledge production, but were meant to educate the elites that would build the recently created nation-state. Law graduates formed a relatively closed community from which judges, congressmen and bureaucrats were chosen (Carvalho, 1980). Accordingly, libraries were not well-developed (Venâncio Filho, 1982), and most students' energies were devoted to literary and cultural activities that developed their rhetoric, networking and other skills useful for a political career (Adorno, 1988).

Countering this style of legal thought as civic practice, in the early 20th century formalism emerged, gearing legal sciences toward technical legal debates instead of the public arena.[2] Nevertheless, the main audience of legal thought was a larger community of practitioners, rather than legal academics specifically. Fully-fledged universities would not emerge in Brazil until the 1920s, and the assumption that they were meant to perform research would not become a project—let alone a reality—before the 1930s (Schwartzman, 1979).

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2. Though non-formalist reflection was still important (Lopes, 2013).

Nowadays, the picture has changed dramatically. Jurists do engage in research not obviously directed either to the general public or legal professionals. Their debates follow an autonomous logic, their journals are frequently hermetic, and many of their themes bear little resemblance to what takes place inside courtrooms (Edwards, 1992). What happened?

Research happened (Clark, 2006, p. 435-476). In the Cold War era, universities became increasingly bureaucratized (Ziman, 1990); external funding of research projects attracted the attention of lawyers, and university career paths were insulated by the generalization of the doctorate. This begat a system of knowledge production that aims to understand its object in and of itself, in which external communication is a secondary concern—though not an irrelevant one. In this paper, I will show how this system, devised for the research university in general, was gradually extended to Law in Brazil, transforming it into a different, more academic discipline.

But where can I find legal research? This is a historical inquiry; therefore, concepts cannot be too strict; otherwise, they will be anachronistic impositions from the author (Costa, 2010). I will therefore not concentrate on a particular *concept* of research.[3] Frequently, debates on legal research tend to get enmeshed in discussions about overlapping concepts, such as scientificity, and the very concept of research is still undertheorized. Another approach would be to chase the "research ideal", as proposed by Kronman (2007). He lists three elements for this "ideal": originality as a value, specialization as organizational base and progress of knowledge as an objective. Though this definition of research is compelling, it might be inconvenient for generating historical questions. First, this is a normative concept, meaning that using the framework of "research ideal" risks overemphasizing the shortcomings of past actors, the constant "not-yet-being" of practices falling short of the ideal. Second, for being too strict, it risks revealing only what the historian is looking for, silencing the richness of the historical record.

I use an "instrumental concept" of legal research. I consider "legal research" as a practice of knowledge production that is academic and not immediately geared toward practice—excluding legal opinions, case law, handbooks for practitioners and every other type of text meant for direct application of the law. In Brazil, in the second half of the 20th century, there were three institutional settings where academic legal studies were produced. I will study each of those to retrieve data and craft my narrative.

3. There is a lively debate in Brazilian literature about what is and what is not research (Nobre, 2005; Fragale Filho; Veronese, 2004; Veronese; Fragale Filho, 2015). This debate is evaluative: it is willing to classify social practices in order to assess it. This, however, falls outside of my scope. My intention is to understand how the idea and practice of research developed, not to evaluate and criticize certain forms of knowledge productions. Thugh useful, this task will be performed in another context.

First, explicit discussions of research policy in seminars and professional associations. This will show what past actors understood legal research to be. Second, centers of knowledge production that are neither immediately pedagogical nor professional; in late 20th-century Brazil, this means a few research institutes (e.g., *Casa de Rui Barbosa*, *Fundação Joaquim Nabuco*) and graduate programs in universities. These institutions produced legal knowledge, but they were not directly meant to teach (as would be potentially the case in a law school without graduate education), and their stated aims were not (necessarily) to support legal practice. Third, state regulation of research. Regulation defines a benchmark of what is desirable and induce actors to reach those targets. This allows us to deduce the perceived aims of research and the presupposed definition of what good research is.

These three institutional settings will provide data both about the diffusion of the expression "legal research" itself, the adoption of the "research ideal" and what was being understood as research in practice.

Where does the data come from? I started from academic debates on and state regulation of legal research, which are the most explicit way of defining my object. I searched for debates in Law journals[4] and read reports on legal research and on accreditation procedures by CAPES (the Brazilian agency that regulates graduate education). I also searched for terms[5] related to this theme at *Hemeroteca Digital da Biblioteca Nacional*. From the initial dataset, I identified: relevant books and articles that were cited; actors engaging in debates, regulation and the administration of scientific associations; scientific institutions used by the community (CLACSO, ANPOCS, CONPEDI), etc. In short, by starting out from a few institutional settings, I identified a wider epistemic community that became the object of my study.

Three research questions will guide the analysis. First, how is legal research produced, that is, what are its methods? This includes an investigation of epistemic virtues, such as originality, interdisciplinarity, and the emergence of specific approaches. Second, why is legal research produced, that is, what are its purposes? Third, what role does it claim within the "kingdom of knowledge," especially *vis-à-vis* legal practice and other universities or disciplines? Here, I will be relying on Siems and Mac Síthigh' work that identifies three conceptions of legal scholarship: as humanities, as social science and as a practical discipline (Siems; Mac Síthigh, 2017).

Research is currently an intrinsic feature of both university and law. We, legal academics, will be the first to naturalize it. This paper will show, conversely, that the very

4. Found through the *LexML* database.

5. "Pesquisa Jurídica", "Mestrado em Direito", "Doutorado em Direito", "Pós-Graduação em Direito".

existence of legal research is very recent. This raises the fundamental questions of our profession: what do we want to know about the law? Why? How? What makes it "legal"? Keeping these questions in mind can certainly lead us to become better researchers.

1. Battered Beginnings: First Initiatives in the 1950s and 1960s

Brazil was a latecomer to the grand concert of knowledge. Its first law schools were established only in 1827. While Hispano-America was granted universities from the 16th century onwards, they were only founded in Brazil in the 20th century. Up to that point, Brazil mostly adopted the French model of professional schools. This kind of environment was utterly inhospitable to scientific inquiry; Brazilian natural sciences, for instance, were only cultivated in government agencies up until the 1930s, meaning that only applied science flourished (Schwartzman, 1979, p. 215-250).

This started to change only in the 1930s. First, Francisco Campos, the minister of education, promoted a comprehensive education reform that included a place for pure science at the university. Nevertheless, intellectual endeavors were regarded as an ornament, as "culture" untethered from economic or social policy (Schwartzman, 1979, p. 170-176). Nevertheless two new universities set the stage for a new marriage between teaching and research that resembled the Humboldtian aspiration: the University of São Paulo (USP) and the University of the Federal District (Galvão, 2021).

In the 1950s, the scenery was already different: more schools were created and the debates around higher education intensified. The Social Sciences were establishing a foothold in the university (Miceli, 1989), fulfilling a precondition for methodological renewal in legal scholarship. The landscape was ready for a new way of studying Law. One should only wait for the pioneers to seize the initiative.

The first institution to pursue legal research in Brazil separately from teaching was *Fundação Casa de Rui Barbosa* (Foundation House of Rui Barbosa—FCRB).[6] This institution was created in Rio de Janeiro as a museum in 1927 to pay homage to Ruy Barbosa, one of the foremost politicians of the Brazilian First Republic; in 1952, to expand its cultural activities, the government erected a research center, which would have sections to curate the edition of the complete works of Rui Barbosa, research Philology and—since Barbosa was a lawyer—Law. The beginnings were not very

6. This evaluation was also made by Aurélio Wander Bastos in the 1990s (CONPEDI, 1994, p. 129). However, he is no impartial observer; he directed FCRB in the 1970s. Nevertheless, I was unable to find any other institution explicitly promoting legal research under this name and which was so clearly separated from teaching. Therefore, FCRB has a strong case for being the first institution dedicated to legal research in the country, even though others could fairly claim the title.

glamorous: *organization of legal information* summs up the kind of research produced at FCRB. The one or two researchers in the Law section gathered statutes of constitutional law, decisions concerning constitutional law and developed a bibliography of Brazilian public law (Real, 1957). That is, the traditional sources of Law: legislation, case-law, doctrine. This is understandable in the context of legislative and bibliographic inflation in the Third Republic. Legislative production had greatly increased to cope with social change (Pinto Ferreira, 1960); by tackling new issues, especially of economic regulation, it had also changed in nature (Souza, 1951). The sources of Law and how to deal with them had become unknown, in a crisis of codification (Irti, 1979). Therefore, the legal community needed new knowledge about what the applicable law was and how it related to the new social reality. It was this niche that FCRB was filling. Between 1956 and 1959, FCRB published three books in the section of Law (Brasil, 2002, p. 51); after that, activity faded, and no further researchers were assigned thereto. Several investigations were left unfinished until the late 1970s (Silva, 1972, p. 22-25).

Other institutions were founded, but not fully commited to academic research. Roberto Lyra founded an Institute of Criminology at the University of the Federal District (now UERJ) in 1954 (Ensino [...], 1961), but it was apparently more dedicated to providing courses and organizing public debates than to producing knowledge. More consequential was another institution, the Institute of Public Law and Political Science. It was a part of Getulio Vargas Foundation (FGV), a private research institution in Rio de Janeiro that provided the first undergraduate course in management in Brazil. Though its first director, Themistocles Brandão Cavalcanti, was a jurist, the institute's research agenda heavily emphasized political science (Cavalcanti, 1958). The institute's activities on law spanned various spheres, including conferences (Evaristo, 1968), courses (Direito [...], 1969; Untitled, 1967; Fundação [...], 1969), debates, presenting bills to politicians (Juristas [...], 1965), competitions (Fundação [...], 1966), publishing a journal, etc., frequently on legal topics. But the political science side prevailed, and in 1967 its journal dropped the expression "public law" from the title.

Rio de Janeiro, the political and cultural capital of Brazil, clearly dominated the intellectual legal landscape. But it was not alone. In Recife, *Fundação Joaquim Nabuco* was founded in 1949 by historian/general humanist Gilberto Freyre, with a research agenda focused on the socioeconomic challenges and culture of the impoverished Northeast. But it would carve out some space for legal research. In the early 1960s, Freyre himself invited a young Law graduate called Cláudio Souto to perform research on a bill on agrarian law for the state of Pernambuco (Junqueira, 2021, p. 330-332). Souto himself did not linger much: in 1963, he was offered a position at the newly

founded Institute of Behavioral Sciences[7] of the Federal University of Pernambuco, where he established a Division of Legal Sciences. From this position, Souto took the first steps toward the foundation of legal sociology in Brazil: he held the first chair ever on this subject, created in 1962 at the Catholic University of Pernambuco (Souto, 1979; Macdonald, 1964). The Institute of Behavioral Sciences was a research and graduate institute attached to the central university administration and was therefore independent from the Law school. It provided a two-year-long specialization course on sociolegal research methodology and social sciences. It was typical of many universities from the 1950s up until the 1968 reform to restrict research to the central institutes, while the single schools pursued teaching. That was particularly true of Pernambuco (Cunha, 2007, p. 139).

This movement from independent research institutes to universities reflects a wider phenomenon in the early 1960s: the opening of spaces within universities themselves for knowledge production. In 1961, a new basic law of education was promulgated, opening space for the creation of research institutes inside universities. Several law schools erected such institutes under the supervision of chairholders, such as those of Santa Catarina (UFSC), Rio Grande do Sul (UFRGS) (Filosofia [...], 1969; Problema [...], 1966), Pernambuco (UFPE) (Amplas [...], 1961) and the Catholic of Rio (PUC-Rio) (U. Católica, 1963), besides failed attempts (Planos [...], 1967). But they probably existed only on paper, as I could not find much evidence of their activities. An institute with a somewhat livelier existence was the Institute of Public Law of the University of São Paulo, founded in 1961 (Universidade de São Paulo, 1962), which promoted conferences tackling traditional topics (Presidencialismo [...], 1962) and published a public law journal until the 1990s. But its approach, and that of its leadership,[8] was that of traditional doctrine, and its publishing house focused on the professional market (O direito [...], 1968; Silveira, 2013).

A clearer separation between professional work and academia, a hallmark of research, failed to emerge. With one exception.

In 1961, the law school of the Federal University of Minas Gerais (UFMG) created six research institutes. But, differently from the others, they took off. They provided fellowships to between 18 and 25 students—almost 10% of the student body of the law school at the time (Castro; Aleixo, 1961, 1962)—to pursue research themes designated by the chairholders (*catedráticos*). The output appeared in a review called *caderno de pesquisas* (research notebooks). Remarkably, the themes and techniques used in the articles were

7. *Instituto de Ciências do Homem*; he himself gives this curious translation (Souto, 1972, p. 239).

8. On his intelectual environment, see Carlos Ari Sundfeld (2005).

outside of the Brazilian mainstream: surveys (Barreto Filho, 1962), interviews (Arquivo da FDUFMG, 1961), a legal dictionary and a lexicon of legal verbs; analysis of legislative history (Barreto Filho *et al.*, 1961, p. 264-269), etc. This caught some attention from the press (Cinco [...], 1962; Institutos [...], 1962; UMG, 1962). These Research Institutes were preceded by the creation of seminars at the chair of Economic Law, in the Hunboldtian fashion (Souza, 2001). In late 1963, the institutes even planned to host the so-called "socio-legal encounters," which would bring together academics, representatives of industry and labor unions to find solutions to Brazilian problems (Castro; Aleixo, 1963, p. 270-271). They were scheduled for October 1964.

And then, everything came to a halt. The encounter never materialized, and the last *cadernos de pesquisa* were published in 1964. On 31 March, a coup put an end to the latest Brazilian democratic experiment and ushered in a persecution against those engaging with creative research.

Not that intellectual pursuit was impossible. In 1967, UFMG tried to resurrect its research ecosystem, and to do so, it produced a most peculiar document: a central plan for all research to be conducted at the law school (FDUFMG, 1967). The aim was to adapt the administrative structure of research to the 1968 university reform—more on that later. The commission, made up of five professors and a student, chastised the previous research institutes for their instability: students remained there for only a year. The plan, therefore, called for the creation of a new career of "researcher," whose members would both retain accumulated knowledge and advise students under a new structure, called "research sectors" (FDUFMG, 1967, p. 23). Most interestingly, research was not to be free, but preordained. The report prioritized five research areas and established dozens of research themes to be developed by future institutions. If the previous research pursued at the institutes had been abstract, the new intellectual enterprises must be practical, oriented toward the "common good" (FDUFMG, 1967, p. 8). Research at UFMG should focus on social and economic reality, facing the challenges of development. Accordingly, most of the research objectives set by the commission dealt either with Latin-American integration or economic law (FDUFMG, 1967, p. 31-37).

This plan is all the more striking for one of its authors: Washington Peluso Albino de Souza. A professor of economics at UFMG, he held several administrative positions in the state government (Souza, 2013) and is regarded as the founder of Economic Law in Brazil (Clark, 2012). He is also one of the first authors to discuss planning law in Brazil; by taking part in the commission, he was both applying his previous knowledge of planning and calling for research on planning itself. This plan is probably related to the reform process that was taking place at the whole university: the rector's office was building a new, single campus, centralizing the administration and establishing central institutes

responsible for teaching basic disciplines. UFMG was adapting to an existing structure the innovative design of the recently established University of Brasília: the first university to do so (Cunha, 1988, p. 119-134).

The plan was approved in May 1968 (Arquivos da FDUFMG, 1968), but was never implemented. In December of the same year, Institutional Act 5 closed Congress and unleashed in the harshest period of the military dictatorship.

Meanwhile, in Rio de Janeiro, the seeds of a revolution in legal research were being planted by a young lawyer from the American embassy. David Trubek was lobbying Brazilian authorities to enact laws favorable to the interests of American capital, especially on the financial market (Trubek, 2021, p. 793-795). After helping with the coup that unseated the leftist government of João Goulart, the Americans were stimulating reforms in the Brazilian economy, which, up to that point, had been closed and over-reliant on state capital. Trubek, however, realized that the mere transplant of legal rules was not enough: Brazilian lawyers lacked the attitudes necessary to use them. If American lawyers were geared to problem-solving, seeing themselves as facilitators of business opportunities, Brazilian lawyers reasoned based on rules and were more worried with finding the "true meaning" of norms than with crafting legal solutions. The answer? To provide a course imparting South American legal personnel with the skills needed to facilitate the operation of multinationals in Brazil.

This was the birth of CEPED: the Center of Study and Research on Legal Education. It was formally founded at the University of the State of Guanabara (Rio de Janeiro), but operated at *Fundação Getulio Vargas*, funded by grants from both USAID and the Ford Foundation (Lacerda; Falcão, Rangel, 2012, p. 10-32). It offered a one-year specialization on company law. CEPED mostly innovated in method: classes were conducted as debates based on pre-assigned readings; discussions concentrated on real cases, students were stimulated to devise legal solutions for foreign entrepreneurs or government companies. This was a world away from the lecture-conference that dominated Brazilian universities. The center existed for five years, but the grant was not renewed. The Ford Foundation wanted the promoters of the course to devise ways to reform Brazilian education from within, and not by setting up a parallel system.[9] Brazilians, conversely, had little interest in an educational revolution, anticipating the enormous resistance from the professoriate. The experience ended in 1971, but, as we will soon see, it bore fruits.

CEPED was not born in a void. In the 1950s and 1960s, there had been intellectual currents proposing new ways of perceiving the law, but they had failed to spark a

9. On the shortcomings of the project and its underlying policy and political objectives, see James Gardner (1980).

research agenda because Brazil lacked research infrastructure. Chief among these was Santiago Dantas's talk of a "Crisis of Law." Dantas (1955) remarked that the industrialization and urbanization initiated in the 1930s, had upended values and social hierarchies, but the law had been slow to adapt. Many started to perceive this incongruity as a "crisis of law": traditional legal concepts failed to solve social conflicts, and the slow-moving lawmaking procedure lagged behind an ever-changing economic and social reality. This crisis of law had as a corollary a crisis of legal education: the simple repetition of codes, traditional classes based on lectures by professionals, the lack of active participation of students; all this prepared future lawyers to simply understand and apply rules.[10] Yet, those rules were meant for a society that no longer existed (Direito, 1977). The new market economy, on the contrary, demanded lawyers able to innovate.

Santiago Dantas' diagnosis was explicitly studied and translated by Trubeck and his group (Lacerda; Falcão; Rangel, 2012, p. 28, 75). But he was not the only one to describe the "Crisis of Law." Orlando Gomes (1955), from Bahia, used the same expression to describe the mismatch between a static law and a dynamic society. This small group of jurists was definitely an exception to the dominance of formalism (Faria, 2016). Nevertheless, when they called attention to the distance between law and society, they were implying that, to know the law, one needs to study society. And this study cannot be speculation. It is research. The intellectual preconditions for legal research were finally encountering an institutional ground where to flourish.

By the late 1960s, Brazilian legal research consisted of a myriad of exciting, though unfinished projects. With a strengthening university environment, nascent social sciences, and growing funding from both public and private actors, the notion that law schools should aim to produce knowledge institutionally was no longer strange. Themes were also diverse. Traditional dogmatic investigation still dominated, of course. But not alone. FCRC conducted research in a sense quite similar to the original understanding of the expression in the USA (Gerken, 2016): that is, information retrieval. New methods were being tried in Minas Gerais and Pernambuco. The main challenge was to understand the new nature of law in a mass democracy and urban society, and identify what the law was in a context of legislative inflation. But under the hostile environment of the dictatorship, the tentative endeavors of the 1950s and 1960s failed to fulfill their potential.

That is, until economic and political upheaval changed government priorities. The 1970s, the years of lead, were arriving.

10. On contemporary Brazilian legal education, cf: Keith Rosenn (1969).

2. Desire for Development: The Economical 1970s

After the dispersive initiatives of the 1960s, research—and not only legal—was in a state of paucity. Brazil, however, had entered a period of accelerated economic development: between 1968 and 1973, during the so-called "economic miracle," the economy grew more than 10% yearly, urban centers swelled, and society became increasingly complex. Inequality also grew. But as the dictatorship attempted to tighten its grip on Brazilian society, the emerging social challenges called for a new approach. The generals chose top-down.

In tune with contemporary economic theories, the government's main legal instrument for promoting change was the economic plan. Between 1972 and 1980, the presidents enacted three National Plans of Development, each running through ca. 200 pages. They established priorities, targets and allocated resources in every area of the economy. Attached to those plans, the Ministry also wrote science plans, called Basic Plan for Scientific and Technological Development (*Plano Básico de Desenvolvimento Científico e Tecnológico*—PBDCT) (Tarapanoff, 1984). They stimulated the use of science to promote technological development, especially in the priority areas of the military: infrastructure, energy, and regional development (Brazil, 1973). This emphasis on national industry became ever more important during the II Plan, born after the global oil crisis of 1973 (Spengler, 2015; Fonseca; Monteiro, 2007).

The plans, however, paid lip service to basic research (Brazil, 1976, p. V), and the second one, enacted in 1974, began to include sections that evaluated the state of each scientific field and established targets for the scientific community. Law was present too. Its role, however, was not to help usher in a new era of development, but, as most basic research, was meant simply to prepare future professors (Brazil, 1976, p. 170). But how?

These plans were not outliers. In the 1960s, one of the so-called basic reforms under discussion was that of the university (Cunha, 1988).

Up to that point, Brazilian institutions retained the outdated organizational model inherited from Portugal and inspired by France: the chair system. All power was concentrated in a few professors, the chairholders, who earned much larger salaries, arbitrarily decided whom to hire as assistant professors, defined the programs of disciplines, and monopolized university administration. Instead of this, both the left and right yearned for the more democratic, American system of departments. It was hailed for recruiting future professors through open competitions from a structured path of graduate education, instead of the whims of chairholders.

In 1965, the Federal Council of Education defined a new system of degrees, swaping the previous inefficient system of doctorates for an American-inspired double-tier

system (Almeida Jr, 2015): after finishing their studies, candidates could either go into professional training, in the so-called specializations (*lato sensu*) or follow the academic training (*stricto sensu*) track. Graduate programs also functioned across two levels: first, two- to three-year master's degrees, and then four- to five-year doctorates. Both master's and doctoral programs consisted of several disciplines that provided advanced training and culminated in a final dissertation. After this system was set up in 1968, a new law instituted university reform and abolished chairs.

The dictatorship's plan was to pour money in the form of fellowships into this new graduate system, aiming to prepare personnel both for science and the "productive sector"—that is, the economy. Up until this point, at the top Brazilian universities, only 10% of professors held PhDs (Motta, 2014): the task was gargantuan. To ensure its success, the government established that the progress of each scientific area would be monitored by a committee of notables, coordinated by CNPq (National Council of Scientific and Technological Development). The reports of these evaluations provide invaluable information on the state of Brazilian research at the time, including legal research.

Three reports were written by CNPq commissions during the 1970s; the first, in 1974, prepared data for the II PBDCT, and the next two, published in 1977 and 1978, followed up by describing compliance with the plan. The first one is anonymous, while the second one was written by a young USP professor called Tércio Sampaio Ferraz Jr., and the third was written by a commission led by Aurélio Wander Bastos and including Ferraz Jr. and Argentinian professor Luiz Alberto Warat. We will discuss each of them in the next pages.

The three reports, with varying degrees of sophistication, unanimously chastised the virtual lack of true research in Brazil. In 1974, structural problems were highlighted: out of 3,722 law professors across approximately 110 Law Schools, only 106 dedicated their time to either research or graduate education, only 22 worked full-time, and no more than six held PhDs. Out of 721 students enrolled in graduate programs, only two held scholarships (CNPq, 1974, p. 1). These problems persisted throughout the decade, though they began to improve slightly after 1975, when the first master's degrees were granted (CNPq, 1974, p. 17). Those problems derived from the strong emphasis of government scientific policy on technology and pragmatic research (CNPq, 1974, p. 2).

CNPq's committees, however, went beyond berating faulty infrastructure: they proposed a comprehensive vision of legal research. The CNPq scholars called for more integration with the social sciences, though conceding the need for legal dogmatics (CNPq, 1977, p. 7). Legal scholarship must avoid the risks of getting detached from reality or isolated from other disciplines; dogmatics facilitated both separations with its abstract, formalist and introspective nature (CNPq, 1978, p. 73). In Brazilian law schools so far, there

had been room for only two kinds of intellectual products: textbooks and technical works meant to help professionals. Neither of those could live up to the standards expected from the Brazilian university after reform (CNPq, 1977, p. 5). Scholarship produced so far resulted from the individual initiative of isolated scholars; this should be substituted by a modern system, that valued training in scientific methodology, collective research and institutionalized projects financed by law schools (CNPq, 1974, p. 4-5). But why was this entire infrastructure needed?

For the team of scholars hired by CNPq, Brazilian legal research must fulfill a mission: to help adapt the law to the social changes prompted by technological development (CNPq, 1978, p. 74). This became ever more important as state law increasingly emphasized economic planning: those willing to change social reality must know it first (CNPQ, 1977, p. 6). Law would only fulfill the promise of solving social conflicts if it was perfectly in tune with social needs. But to achieve such aims, law should be understood with reference to the social reality. Dogmatic discourse, meanwhile, by dealing only with rules and abstract concepts, was ill-equipped to follow change and move beyond texts to their concrete functioning. To shift from dogmatics to a sociolegal approach was to swap metaphysics for science (CNPq, 1978, p. 75).

This sort of reasoning was not born in the heads of young academics-turned-bureaucrats. Its origins harken back to the previous initiatives gravitating around David Trubek: the law and development movement. In the heyday of decolonization, the American bloc was eager to promote development across the Global South to counter communism; the 1960s were declared the "first development decade" by the United Nations.[11] For this intellectual movement, legal institutions can foster development by either removing traditional institutional barriers or providing a better framework for decision-making; since the most developed country in the world at the time was the United States, promoting legal development frequently meant transplanting American institutions to third-world countries (Cao, 2016). CEPED was a case in point. Dogmatics was deemed utterly unable to cope with social change (Saldanha, 1976; Faria, 1978). Development, then, was a *leitmotif* of both Brazilian and American legal thought, requiring intellectual tools that traditional legal thought could not provide. Hence the highly iconoclastic view of CNPq's committee reports.

Opposition to dogmatics and formalism, along with attention to social reality, provided the basis for a unifying view of what would otherwise be a diverse group of intellectuals on CNPq's committee. Warat went on to develop a critique of legal education and legal discourse as an exercise in power, one that had more to do with

11. This Project was presented at USP Law School by UN secretary-general himself (Thant, 1962).

the indeterminacy thesis of Critical Legal Studies than with the fundamental legal optimism of Law and Development.[12] Tércio Sampaio Ferraz Jr. was more interested in Theodor Viehweg's theory of argumentation than in legal change. Only Wander Bastos, who later concentrated on the sociology of legal professions, remained connected with a certain interest in the driving factors of social change, as was the case of classical Law and Development. The three academic-bureaucrats were drawn together mostly by a common belief that legal research should be pursued more akin to the social sciences—and by two generic theoretical assumptions: that there was a disjoint between law and society, and that this mismatch warranted some sort of critique. These theoretical assumptions were shared with the classical form of Law and Development, but after the disappointments of the early 1970s, there was little left connecting all these intellectual trends. Yet the fundamental critical outlook provided the basis for a political alliance that steered the CNPq and CAPES's committees on law at least until the 1990s.

CNPq's assessment of research, however, was not enough to ensure quality. Many universities saw the influx of funding under the National Development Plan as an opportunity to expand their graduate programs without the expertise or infrastructure to ensure quality. The solution was to create an evaluation exercise of graduate education. The agency responsible for that would be CAPES (Coordination of Perfectioning of High-Level Personnel), which is dependant from the Ministry of Education, instead of CNPq, which is subordinated to the Ministry of Science. This choice ushered in a Brazilian specificity: most funding and evaluation focus on graduate programs rather than scientific output per se (Balbachevsky; Schwartzman, 2010). Conversely, scientific funding across most of the world targets universities at large or individual departments. Brazilian programs are the hub of scientific research, to the point that professors who do not supervise PhD or master students have difficulty developing research. These evaluations, beginning in 1976 (Motta, 2014, p. 175) and continuing to this day, provide a wealth of sources on the history of research in Brazil. From 1976 onwards, studying Brazilian science is, to a great extent, studying the history of its graduate programs. And to follow the history of legal research, we have to leave the new capital of Brasília for the older city of Rio de Janeiro.

Exiles from CEPED established the first modern Brazilian graduate program in law. After USAID and the Ford Foundation grants expired, a small group of professors and alumni sought a new home. The Pontifical Catholic University of Rio de Janeiro (PUC-Rio) was a good fit, for it was rapidly implementing university reforms and adapting to the research paradigm. After receiving a grant from the Inter-American Foundation (an independent agency of the American government) (United States, 1974, p. 94), a

12. Trubek put distance between himself and the movement after his Brazilian experience.

group of professors led by Joaquim Falcão, an alumnus of CEPED, established the first master's in law program on Brazilian soil in 1972. The program's area of concentration was unsurprising: Law and Development. Accordingly, students had to take mandatory courses on "relations between law and economics," "legal sociology," and "political aspects of development," among others (CAPES, 1998a, p. 11). The program was explicitly marketed as emphasizing reasoning rather than information. Its objective was to prepare both professionals in company law—following CEPED's mission—and professors who would help bring legal education back in tune with reality (Ensino [...], 1973). If lessons focused on reality, research would soon follow, bringing a more empirical outlook to research agendas (Steiner, 1974, p. 79-80).

This was an exception. PUC was a private, innovative institution; on most *campi*, however, the early 1970s were marked by government repression, which led to a "desert of ideas" (Lopes, 2021). By the end of the 1970s, only 12 (less than 10%) of Brazilian law schools offered master's degrees (UEL, PUC/RJ, UFBA, UFC, UFMG, UFPE, UFSC, UGF, UnB), and only 3 offered PhDs (USP, UFRJ, PUC-SP) (CAPES, 1993a, p. 8). Most of these graduate programs offered disciplines that simply followed up from the bachelor level rather than training students for research (Coutinho, 2021). At both universities in São Paulo—USP and PUC-SP—professors were seen as competent, but the courses were more akin to specializations than to true research degrees (CAPES, 1993a, p. 17).

On top of the institutional fragilities of Brazilian graduate education, there was also fierce intellectual resistance from some quarters. From 1971 onwards, to tackle the perceived crisis in Brazilian legal education, Brazilian law schools began holding an annual meeting called *Encontro Brasileiro de Faculdades de Direito* (Meeting of Brazilian Law Schools). In the 1970s, more than half of directors of Brazilian law schools took part in those meetings (Segundo Encontro Brasileiro de Faculdades de Direito, 1972). The first meetings concentrated on the traditional themes of legal education (Arquivo Central da UFSC, 1971), but by the mid-1970s, many professors resisted the reforms being brought forward by the central government. The demand that every new law professor should hold at least a master's degree was deemed by some to be especially stringent for professionals who had been teaching for decades (Colégio Brasileiro de Faculdades de Direito, 1976, p. 144-163)—some even said that it was "unthinkable" to demand that judges and prosecutors go back to classrooms to study (Rosas, 1979, p. 108). The role of research within law schools was not addressed at all.[13] This backlash during the primary assembly of Brazilian law professors served as an ominous indicator for the future of legal research.

13. Except to state that legal research in Brazil was "non-existant" (Vasconcelos, 1979, p. 386).

The experience of Brazilian legal research during the 1970s was hardly inspiring. The new system of research governance, introduced by the dictatorship, favored a top-down approach and economic motivations. The remnants of CEPED at PUC-Rio provided some steam, along with encouraging initiatives at other universities, such as UFMG, UFC and UFSC, but were not enough to power a whole country. There were, however, clear answers to *why* research was to be pursued. At the bureaucratic/critical levels, research was intended to contextualize law within society so that it could function better; it was also intended to train professors for the many new Brazilian law schools. That is, there was a shift in what was to be investigated by legal research: from what the sources of law are to how law can induce social change. Yet, most law professors concentrated on simply clarifying legal norms; not only this could hardly be characterized as modern research, but few professors had a consistent publication record or worked at the graduate level. Methods were still traditional: ethnography and statistical explorations were mostly aspirational.

This situation would soon change.

3. Concoctions of Critique: The Sociological 1980s

Booms and busts are a constant of commodity-based economies, and the 1980s broke the wrong way for Brazil: economic upheaval and social conflict brought the military dictatorship to an end but also wreaked havoc on the public purse. The end of the decade, however, was bright: a new constitution was adopted in 1988. The roller-coaster of economic crash and political hope was ushered by a turbulent flux of conflict in legal research.

The fundamental orientation of legal research shifted. Law and Development weakened as American funding dried up. For instance, by 1983, PUC-Rio abandoned its concentration area in law and development at the explicit suggestion of CAPES, as the field was now outdated (CAPES, 1998a, p. 38). What came in its place? The answer can be inferred from CNPq reports from 1982 and 1986 assessing compliance with the PBDCT. They remained in the same hands: Joaquim Falcão authored the former report and Aurélio Wander Bastos the latter. They carried forward the same view of legal research, but with a consequential twist: the focus would no longer be on economic development but on sociological structure.

In Falcão's view, the role of legal research was to provide a scientific basis for the social aspirations of Brazilian society, which were largely tied to the challenges of urbanization: violence, redistribution of wealth, political representation, unions, and technological independence (CNPq, 1982, p. 135). It was only natural: after the

gargantuan development projects of the 1970s had swelled urban centers with former country-dwellers chasing economic opportunities, new challenges arose from the explosive combination of social uprootedness and economic bust. The law inherited from the authoritarian period was not up to the task; legal researchers needed to help consolidate democracy (Bastos, 1991, p. 15). Faced with new social facts in an increasingly complex society, legal scholarship should assume its task by recognizing those facts and proposing new legal solutions to tackle them (Bastos, 1991, p. 22).

This theoretical turn was closely aligned with political and social changes. In the early 1980s, the military regime was crumbling because of social mobilization and infighting. The aspirations of a rising people could only find rightful fulfillment in a new Constitutional Assembly. Jurists participated heavily in this dream of national renewal (Faoro, 1985). This is no coincidence. The military had relied heavily on the law: it used "institutional acts," ranking higher than the constitution, to legally structure the regime; pursued administrative, financial, tax, university and other reforms (Abrucio; Pedroti; Pó, 2010); and deployed courts to institutionalize repression (Pereira, 2005). Executive power hypertrophied, and along with it, state law, which had become an instrument of authoritarianism and repression.

In the political imagination of the 1980s, the Executive branch, discretionary power and authoritarianism became associated (Martins; Cunha Jr., 2010), and state law was conceived as an authoritarian tool to be kept at bay. Whenever one pointed out shortcomings of the law, one automatically called out the state that produced and used that law. And to demonstrate the distance between law and society, one needed to use social science methods. Framing legal research as a quest for the distance between law and reality led to the convenient conclusion that the social pact upon which the military dictatorship rested—economic development, fostered by a strong state through the use of law as a technical instrument of controlled social change—had failed.[14] One needed a new pact, one that would rest upon the constitution and individual rights.

This new way of conceptualizing legal research could not be fleshed out by armchair sociologists. Therefore, the epistemic community of jurists designing the new intellectual program of legal research fought to create the scientific infrastructure that could allow sociolegal research to rise and flourish. CAPES's regulation of research favored the collective mode of knowledge production from the social sciences. Scientific associations and research institutes were born. All of that to produce data supporting one central conclusion: law had been used to sustain power, and in doing so, it had

14. This mismatch between law and society could be seen as a problem to be tackled or, in the Marxist tradition, could be seen as an essential feature of the bourgeoise society. That was the view taken, among others, by Boaventura de Souza Santos (2021) and Roberto Lyra Filho (1980, 1984).

left the people behind, particularly minorities. It was time for a new law to reinvent Brazilian society.

Such a project, however, presupposed a clear mode of knowledge production: Falcão and Wander Bastos' remarks were not merely descriptive, but also normative. This outlook was frequently advanced by CNPq's sister agency, CAPES, through the recently created evaluation. In six different assessment cycles throughout the 1980s, CAPES collected data on the number of professors, the number of defenses, and the quality of scientific output to grade each graduate program into one of five categories: A, B, C, D, and non-evaluated. Grades helped to subsidize the accreditation process of graduate programs, which was conducted by the Federal Council of Education. But an efficient instrument of pressure was the visits:[15] frequently, at the end of an evaluation cycle, CAPES sent one or two professors from its special committee for law to tour a graduate program. They would interview coordinators, students, and professors; verify the quality of the facilities; read theses; and, in the end, write an overall report. This direct encounter provided the occasion for dialogue between the ministry—ultimately represented by a scholar—and each graduate program, in a collaborative environment that frequently devolved into soft steering.

Both CAPES and CNPq explicitly divided Brazilian graduate programs into three informal categories (CAPES, 1998b, p. 14; CNPq, 1982, p. 139). The first were the "critical" or "innovative" ones: those that fully embraced interdisciplinarity, modeled themselves after the social sciences and tried to disrupt the Brazilian intellectual landscape. Those included mostly the Federal University of Santa Catarina (UFSC), the Pontifical Catholic University of Rio de Janeiro (PUC-Rio), the University of Brasília (UnB), and the Federal University of Ceará (UFC). A second category consisted of "dogmatic" or "classical" programs: PhDs and masters concentrating on the conceptualization of legal institutions, the systematization of traditional legal sources, and, sometimes, exchanges with legal philosophy. Those were the likes of UFMG, USP, the Federal University of Rio Grande do Sul (UFRGS), etc. Finally, exegetical programs concentrated on black-letter law; examples included the Federal University of Paraná (UFPR), the State University of Londrina (UEL), and Gama Filho University (UGF). This scheme, though oversimplified, can indeed be useful as a first approach to research agendas in Brazilian legal scholarship.

Critical programs tended to study law as part of society. They inherited the "law and development" tradition, like UFC, whose graduate program bore that name until the 1990s (CAPES, 1996, p. 50) and incorporated "Law and Society" trends. But the center of innovation was undoubtedly the Federal University of Santa Catarina (UFSC)

15. For the script of visits, cf. CAPES (1998b, p. 34).

(CAPES, 2000, p. 39, 49, 54, 76-92). Formed by a group of young professors led by Luiz Alberto Warat, the graduate program in Florianópolis positioned itself as an iconoclastic force on the Brazilian legal landscape. With an emphasis on issues such as law and language, psychoanalysis, and even Marxism, this group sought to show how legal discourse was shaped by power. From their point of view, dogmatics was little more than a mystification of jurists' ideology: fiction, not science. And not only theoretical presuppositions set UFSC apart; most of its professors and students studied fulltime, allowing an emphasis on knowledge production so far unheard of in Brazilian legal scholarship. Consequently, UFSC was the only graduate program to receive CAPES' maximum grade ("A") until the early 1990s.

Dogmatic courses, conversely, took a much more traditional approach. They emphasized the study of law as a fusion between source analysis and philosophical speculation, somewhat intermediary between the humanities and legal practice (CAPES, 2000, p. 59). Consequently, these programs tended to attract a more traditional public, populated by legal professionals with little time to spare for study. Those programs lacked research infrastructure, such as offices for professors and funding lines; as such, research became a personal initiative for professors (CAPES, 2000a, p. 59). Consequently, students often cared little for the actual work of research, to the point that CAPES questioned whether some of those courses were true graduate degrees or mere specializations in disguise. That was the case, for instance, at the University of São Paulo: because students interested in a specialization could obtain one by taking master's program courses without presenting a dissertation, enrollment swelled with professionals uninterested in research (CAPES, 1998c, p. 9, 16, 110). The only exception in this category was UFMG, where some professors managed to secure external funding lines and a consistent, though traditional, stream of research (CAPES, 1998b, p. 98-101).

Exegetical programs tended to cater to legal professionals (CAPES, 1997, p. 20, 34) in search of further education, or merely titles. They concentrated therefore on very practical issues, with dissertations frequently limited to mere exegesis of statutes. Those programs frequently exerted an important regional impact in geographic areas where the presence of universities was still underdeveloped, as in the cases of Londrina (CAPES, 1998d, p. 67) and Curitiba (CAPES, 1998e, p. 81).

The law committee of CAPES made extensive efforts to show that such a scenario was not hierarchical. They asserted that dogmatics was "much needed" (CAPES, 1998b, p. 67) and contended that a well-developed dogmatic course was preferable to an underdeveloped innovative one (CAPES, 1995, p. 85). Nevertheless, hierarchical implications are recognizable, such as remarks that UFMG was excellent "regardless" of its dogmatic focus (CAPES, 1998b, p. 65), and recommendations suggesting that certain programs should

emphasize non-dogmatic areas more heavily (CAPES, 1998f, p. 85). It is also common for courses to be regarded as suitable "for the dogmatic type," as if, to be genuinely effective, a researcher should eschew dogmatics (CAPES, 1998f, p. 84).

This is understandable, as dogmatic approaches dominated in Brazil, and such suggestions could be read as a cry for diversification (CAPES, 1995, p. 58). But they were often treated as value judgments, to the point that universities felt they should adapt to CAPES' whims to get good grades. University Gama Filho, for instance, renamed its concentration areas to suggest a "Law and Society" approach that simply did not exist (CAPES, 1997, p. 5). UFRGS went so far as to present a "Law and Society" project even though its faculty largely adhered to the dogmatic approach. CAPES felt compelled to clarify that the law school should own its character and stay within its limits, as its professors were unable to provide the interdisciplinary and critical teaching needed for such a project (CAPES, 2000b, p. 12-14). A CAPES consultant explicitly stated in 1986 that the agency had "bias toward a 'sociological' view of law, which it attempted to impose on everyone" (CAPES, 1996, p. 100); he was not alone (CAPES, 1995, p. 85). During its 1985 meeting, CAPES' committee of law went so far as to admit that labeling a course "classic" carried a derogatory connotation (CAPES, 1995, p. 14).

Were CAPES's invectives against classical legal knowledge a matter of mere prejudice? I believe not. Many of those working with CAPES were either legal sociologists, such as Falcão and Wander Bastos, or individuals aligned with UFSC who were advancing a project not only about research topics but also research methods. They were contesting the prevailing approach to knowledge production: lawyers working individualy to write books advancing their personal viewpoints, instead of engaging in scientific pursuits characterized by a well-defined methodology. They proposed a different arrangement, and this appears in the issues they discussed the most throughout the 1980s.

An apparently inconsequential administrative technicality encapsulates the clash between the different paradigms of knowledge production: should programs be structured around concentration areas or around research lines?

Concentration areas correspond to groups of disciplines that a student must pursue during their graduate studies and, in the end, determine the title they will receive (e.g., Public Law, Commercial Law, etc.). Research lines, conversely, are general themes to be developed over time through collective projects. In the seventies, most graduate programs offered several concentration areas, which frequently would carry the names of traditional disciplines (public law, administrative law, civil law, etc.) (CAPES, 1993b, p. 17-18; CAPES, 1998f, p. 14), providing a marker useful for legal professionals eager to enhance their qualifications (CAPES, 2000b, p. 19). Conversely, many programs offered no research lines (CAPES, 1997, p. 20; CAPES, 1995, p. 10), or, if research was

developed, it was done so in an individualistic and non-systematic manner (CAPES, 2000c, p. 110, 159).

From the 1980s, CAPES' evaluations frequently recommended that graduate programs reduce the number of concentration areas and create research lines. Obviously, this left room for formal compliance: for instance, some research lines were established without any associated projects; others merely replicated the names of traditional disciplines. But the recommendations signaled an increasing valorization of research over teaching in graduate programs. More than that: they emphasized "institutional research," that is, collective projects developed by several professors and students within research groups. And the projects that suited such an organization best were large-scale initiatives, using empirical methods, with field expeditions or other forms of data collection. In short: the social sciences, not dogmatics.

This debate, however, did not cover all the needed reforms. Even in the best dogmatic programs, such as UFMG, less than 20% of professors worked full-time (Gazolla; Aranciba, 1989); in many programs, both students and professors visited the university just a few hours a week. The hidden benefit of UFSC was exactly the composition of its faculty and student body, almost exclusively full-time (CAPES, 2000a, p. 39). CAPES also frequently expressed concerns about the considerable duration required for students to complete their courses: by the mid-1980s, it was common for students to take four, five, or six years to complete a master's degree (CAPES 2001, p. 40; 1996, p. 112; 1998e, p. 124); at USP, where most students worked part-time, average time to graduation approached eight years for master's and nine years for PhD degrees throughout the 1980s (CAPES, 1998c, p. 132).

The emphasis on collective projects, full-time professors, short graduation periods, focus on scientific output rather than teaching: at play here was the professionalization of research. Some of those demands seem to be the bare minimum; and in fact, they are. But they also betray a single model for legal research: the social sciences. Not even the approach of the humanities gets much room in such an arrangement: history, philosophy, literary criticism can be done collaboratively, but by the end of the day, the concrete work must be executed mostly by individuals, across solitary projects. Contrary to rhetorical appeasements toward dogmatics, and even explicit claims of pluralism (Falcão, 1982, p. 15), CAPES was advancing a narrow view of the legal sciences.

This new system of knowledge production required funding. And there was little of that. The 1980s are known in Brazil as the "lost decade," due to high inflation and low growth. Research felt their effect (CAPES, 1995, p. 16). Many graduate programs suffered from a series of crises: PUC-Rio's almost collapsed after the Inter-American Foundation pulled funding (CAPES, 1998a, p. 15); USP was aimless and ill-administrated by mid-decade (CAPES, 1998c, p. 94); UFRJ was in a full-fledged crisis by the late 1980s and its PhD

program closed by the early 1990s (CAPES, 1994a, p. 98; CAPES, 1990, p. 30). This situation was particularly dire in northeastern Brazil, where UFC complained of a lack of funding as a chronic Northeastern problem (CAPES, 1996, p. 96) and UFBA's physical installations were described as "in ruins" (CAPES, 2001, p. 8). Yet nowhere was the situation so desperate as in Pernambuco. UFPE's building went into renovation, blocking access to all library materials for months, while its other buildings did not offer sufficient rooms for the master's program classes. Furthermore, within a few months, the course coordinator retired and his successor passed away, leaving the program without leadership for nearly a year (CAPES, 1998f, p. 13-19). By the mid-1980s, UFSC and UFMG were the only institutions still regarded as being in good condition, according to the Ministry of Education (Bastos, 1991, p. 11-12). The high dreams of CAPES crushed at the rocky soil of moneyless reality. Yet, there was light.

Despite the sense of doom, the 1980s were among the richest periods in the history of Brazilian legal research. Old institutions returned, and new ones emerged at the new dawn of democracy. In 1977, *Casa de Rui Barbosa* restarted its research activities under the guidance of Aurélio Wander Bastos, publishing books that, for the most part, organized case law (Brasil, 2002; p. 51-53). *Fundação Joaquim Nabuco* reinforced initiatives in legal sociology. New institutions were born; particularly consequential was the Research Division of the Rio de Janeiro Bar (OAB/RJ). Founded in 1981, this institution aimed to promote a "critical knowledge of law" through research (OAB, 1984). Under the guidance of lawyer Nilo Batista, it concentrated on two research lines—access to justice and criminal law—financed research projects, including ethnography, and awarded research prizes (OAB [...], 1983). But it also ventured further, promoting political debates with candidates (Cinco [...], 1982), while providing a space for publication of legal research via *Revista da OAB*. Its activities remained relevant until the late 1980s.

A curious new institution was *Fundação Petrônio Portella*, subordinated to the Ministry of Justice. This foundation was originally meant to publish legal works, including instrumental ones for practitioners, historical books, and translations (FPP [...], 1982). The 1980 law that created this foundation, however, established several other functions, including promoting research in the legal sciences and consolidating legislation. In the following years, *Petrônio Portela* published around 20 books and several compilations of legislation, promoted seminars (Nilo [...], 1981), and gave introductory courses on legislation and politics (Fundação, 1981). The foundation was intended to not only to reprint previous statutes, but also to propose new ones, consolidating existing legislation. The institution, however, failed (A íntegra [...], 1987). It employed only a president and a few secretaries (Fundação, 1982), and there were no positions for researchers, implying that the *Petrônio Portela Foundation* could only publish works written by external contributors. In the

late 1980s, the president and managers were uninterested in running the foundation (Fundação, 1982), and little was done to help the constituent assembly installed in 1986. By 1989, the foundation was extinguished.

In general, the most important institutions promoting innovative legal research in Brazil were centered around legal sociology. In the 1970s, pioneer research by Boaventura de Sousa Santos, then a PhD candidate at Yale University, applied ethnographic methods to understand how dwellers of a Brazilian slum solved their conflicts outside the formal justice system (Santos, 2021); Santos held a visiting professorship at PUC-Rio and forged an enduring relationship with Brazilian researchers. In the 1980s, after the 1979 amnesty law and the gradual political opening (*abertura*) of the military regime, there was much more room for critical outlooks on social practices. Opportunities for critique were not lacking. Most of the law that still applied came from the authoritarian regime, completely out of step with human rights aspirations and frequently inefficient, so citizens had to find alternative modes of conflict resolution, which were still inadequate for economic needs. The distance between the justice system and the dispossessed strata of the population got several individuals interested in legal pluralism as a critique of the sclerotic legal system of the state, including Sousa Santos (Junqueira, 1993, p. 141-153). However, it also revitalized the older intuition that it is impossible to study law without analyzing societal dynamics, particularly in a society undergoing change (Faria; Campilongo, 1991a, p. 110). Law and Society research therefore increased greatly throughout the 80s (Souto, 1979).

But where were legal sociologists to be found?

ANPOCS: the National Association of Research in Social Sciences provided a venue for innovative researchers to meet and discuss the future of legal sociology in Brazil. In 1979, Joaquim Falcão—the same professor from PUC-Rio and evaluator for CNPq and CAPES in the 1970s—managed to carve out a working group on "Law and Society" to be organized during the annual meetings of ANPOCS (Junqueira, 1993, p. 12-14). From five to fifteen papers were presented each year between 1979 and 1989, with themes ranging from philosophy to ethnography of crime, Marxism, psychoanalysis and beyond, coming from across Brazil. Many of those presenting at the group came from the most active research institutions at the time, such as *Casa de Rui Barbosa*, *Fundação Joaquim Nabuco*, PUC-Rio, USP, and UFSC, among others, though those from Rio de Janeiro were preponderant. Most importantly, many professionals working with CAPES presented at least once: Aurélio Wander Bastos, Joaquim Falcão, Eros Roberto Grau, Roberto Lyra Filho, Luis Alberto Warat, José Eduardo Faria, José Ribas Vieira, Washington Peluso and others. This provided an environment where new conceptions of law could meet, clash and eventually evolve. After 1989, however, the working group was not renewed by

ANPOC's leadership. Ironically, one year after the new Brazilian constitution was approved and as the discourse of human rights began to gain currency among social scientists, this meeting point was shut down.

A similar group of scholars also took part in a parallel initiative: the *Derecho y Sociedad* working group at CLACSO—the Latin American Council of Social Sciences. This parallel group gathered scholars from at least seven Latin American countries (CLACSO, 1984) under the presidency of Carlos Plastino, from PUC-Rio, to work on law from the perspective of the social sciences (CLACSO, 1981). Among its members, one could find Tércio Sampaio Ferraz Júnior (Groisman, 1982). Its meetings took place between 1979 (CLACSO, 1979) and 1985 (CLACSO, 1985). Though the organization did not flourish, its mere existence was a further sign of the strength sociolegal studies had gathered by the 1980s.

Across these groups, jurists attempted to craft a vision of what legal science should be. Warat, Ferraz Jr., Lyra Filho, and Cláudio Souto were the primary authors discussing the new role of knowledge production in law. Apart from Souto, the others all took part in CAPES' commissions and concentrated on legal theory; Lyra Filho was friends with Wander Bastos. Despite their differences, all criticized the traditional outlook of legal sciences as a description of the legal order,[16] rather aiming to explain the law (Plastino, 1984). However, most of them were more effective at deconstructing common assumptions than at building new intellectual tools. Warat[17] aimed to show that legal discourse, and especially dogmatics, are actually fictions that hide the political nature of law and empower jurists (Warat; Rocha; Cittadino, 1980; Warat, 1995). Lyra Filho aimed to criticize dogmatism in law that protected the interests of the bourgeoisie (Costa; Coelho, 2017; Lyra Filho, 1980, 1984; Sousa Jr., 2019). Tércio Sampaio Ferraz Jr. aimed to reconstruct legal dogmatics from the perspective of Viehweg's theory of argumentation, seeking to describe the decidability of legal problems.[18] Cláudio Souto (1971; 1978) aimed to create a science of law using methods of social and behavioral sciences. None of these thinkers, however, managed to create a new theory on how legal sciences as a whole should operate and how their parts must relate to each other.

Joaquim Falcão (1984), discussing legal sociology in Brazil, rightfully affirmed that in the early 1980s, this discipline in Brazil was less about applying social research methods to legal topics and more a congregation of individuals dissatisfied with the formalistic outlook of Brazilian legal intellectuals. The theories of legal sciences that flourished in 1980s Brazil were more than that, but they all moved in the shadow of formalism: either as an attempt to understand this legal theory or as an invective aimed at its destruction.

16. For a wider survey of these thinkers and their context, cf: Luciana Reis (2018).
17. On Warat's life, cf. Disa Mondardo (1992).
18. On his thought, cf: Ferraz Jr. (1977; 2015).

The 1980s ended with mixed results. Brazilian legal research fostered a rich intellectual life: graduate programs were developing, debate groups were thriving, and new methods such as ethnography were being tested. But the ghost of financial hardship loomed constantly, and scientific output was still insufficient. With the contestation of dictatorship, the fundamental reason for conducting legal research also changed: instead of *development*, *critique* came to the forefront of legal debates. Approaches had also changed: from an economic emphasis, legal sciences had moved toward sociological outlooks.

This attention to social reality stemmed from two complementary impulses: first, the need to criticize the law of the dictatorship as a sclerotic imposition unable to tackle the challenges of urbanization; second, to provide inspiration for a new social order, embodied in the constitution. This new approach was made possible by the development of an academic field not only in law, but also in the social sciences. In parallel to the development of graduate programs, new institutional settings were provided by the social scientific community: ANPOCS, CLACSO, *Fundação Joaquim Nabuco* and others allowed a (circumscribed) group of legal scholars to meet with each other and refine, if not necessarily social scientific methods, at least social language and theory. This was made possible by parallel state stimulus and regulation of graduate education in the field of social sciences, and by investment from American foundations (Chaves, 2019). This cross-fertilization between Law and Social Sciences, and especially its institutional pre-conditions, warrants more research.

In 1988, a new constitution was enacted. What was up to that point a mere aspiration became a reality, and legal research had to respond.

4. Meanders of Method: The Hermeneutical 1990s

At the turn of the 1990s, Brazilian law and state changed. Two things interest us the most: first, a new constitution, stemming from a democratic constitutional assembly, induced new research agendas; second, the continuing development of both ministry initiatives and the universities led to the consolidation of graduate programs. Throughout the 1990s, these first signs of maturity would clash with the structural insufficiencies of the yet-underdeveloped educational system and economy.

The 1988 constitution established a new legal order emphasizing social rights and democracy. Joaquim Falcão, one of the main names of legal research policy, was also part of the commission that wrote the first draft of the future constitution. The focus of research shifted from critiquing the authoritarian order—and its putative legal expression, formalism—to rendering the new fundamental rights effective. The most urgent task was

no longer the charge against an authoritarian state, but the fulfillment of the project of inclusion enshrined in the constitution.

One can easily notice the spread of more sociological and economic-oriented research in public law and the spread of institutional activism (Wolkmer, 2002, p. 125-130; 137-145), showing that the main challenge now was not to expose the shortcomings of the law, but to use the recently opened institutional venues as a tool to transform reality. Accordingly, the entire legal order began to be reconceptualized through the lens of constitutionalism and fundamental rights (Silva, 2005). In parallel, the use of judicial review increased, leading to judicial activism; the judiciary opened up as a possible pathway for social change (Engelmann, 2004, p. 70-79). This new avenue had to be known—and explored.

This renewed intellectual and political environment called for a new institutional setup in academia. Accordingly, some graduate programs placed Constitutional Law at the center of their curricula. For instance, the graduate program at the University of Brasília—the national capital—made the study of the constitution its central topic (CAPES, 1995, p. 177), and UFC changed its area of concentration to constitutional law (CAPES, 1996, p. 137). Betting on the quest for rights, the State University of Rio de Janeiro (UERJ) opened a course entirely dedicated to urban law, which strongly emphasized discussions about inequality and crime (CAPES, 1998g, p. 69-92). Similar topics began to garner attention, especially that of MERCOSUL (CAPES, 1998d, p. 108; CAPES, 1998e, p. 179; CAPES, 1997, p. 161)—implicitly dubbed the South American version of the European Union—, Environmental Law and, to a certain extent, Consumer Law. These new themes are indebted with rights discourse. They frequently build on the 1980s attention to social methods.

Not by chance, the *loci* of sociolegal research, such as the ANPOCS group, were disbanded, and the scientific community considered sociolegal research to be experiencing a hiatus (Faria; Campilongo, 1991b, p. 57; Oliveira; Adeodato, 1996, p. 18). Legal research began moving away from its state-centered outlook, either in its form as a *longa manus* of state intervention, as in the 1970s, or as critique of state procedures, as in the 1980s. Now, it was all about rights.

Those winds of change also reached CAPES. In the early 1990s, new actors emerged. Gama Filho, a private university targeting legal professionals, gained prestige, as did UFC. USP remodeled its structure and gained ground (Faria, 2021, p. 54-57). However, the most significant change was the repositioning of UFSC's dominant position (CAPES, 1994b, p. 139).

In the 1991 evaluation, for the first time, the Florianópolis program was not graded "A," and other programs were ranked higher. Perhaps this was a sign that critique was

no longer so *chic* as fundamental rights? The reason for this decision served to assert the mechanism of CAPES's evaluation itself: rankings were not about absolute quality, but about comparison and trend. Programs that improved would receive better scores; and programs were not merely to be good, but ought to outperform others. CAPES promoted what it called a "spirit of competition." And, in this marathon toward the top, UFSC fell behind new competitors (CAPES, 2000a, p. 182-185), such as PUC-SP, PUC-Rio, USP and UFMG. Moreover, an extreme version of interdisciplinarity was taking place at Florianópolis, risking pushing law off to the side and (CAPES, 2000a, p. 184), as a former student puts it, turning the law graduate program into a general liberal arts PhD (Engelmann, 2004, p. 158). CAPES, under the guidance of economic law professor and future Supreme Court justice Eros Grau, stated that graduate programs from then on would only retain their scores if they met targets previously set by the ministry's committee of law. UFSC was encouraged to uphold its leadership position and help other programs improve, but this was not happening. The university argued that during times of authoritarianism and dogmatism, Florianópolis was a safe space for debate (CAPES, 2000a, p. 138), but under the new CAPES regime, appeals to tradition—or even a "critical tradition"—would be ineffective.

There were other signs of change. The only program to receive an "A" for its PhD was that of UFMG; comparing it with USP, Eros Grau declared that "the course in Minas Gerais is in better condition, avoiding a specialized curriculum and massification," as was the case in São Paulo (CAPES, 1998c, p. 163). That a dogmatic law course could become the leading Brazilian graduate program was unheard of.

The very procedures of CAPES were put into question. In 1993, the coordinator of UFBA's graduate program resigned after the program was downgraded. In his resignation letter (CAPES, 2001, p. 76-78), he pointed out that, in the 1980s, UFSC was Brazil's highest-rated program, and at that time, a UFSC professor served as the coordinator of CAPES' law committee. In the 1991 evaluation cycle, USP, PUC-SP and PUC-Rio were all upgraded, with each represented by a member on the 4-person-strong evaluation panel. All this while enforcing a vicious cycle: CAPES demanded that left-behind programs implement changes, but did not give them grants because their ratings were too low. Even though those complaints bore no results, they stand out as an early critique of evaluation procedures and performance-based funding.

Yet, everything must change for things to stay the same.

Eros Grau had advised UFSC to assert its leadership position: so it did in 1993. To celebrate the 20th anniversary of the master's degree, Leonel Severo Rocha, then its coordinator, called a meeting of coordinators of all Brazilian graduate programs in law; 13 of the 15 coordinators attended. Gathered in Florianópolis, they discussed the nature

and aims of legal scholarship, research evaluation and other topics (CAPES, 1993a). Most importantly, they resurrected an association of graduate programs in law that had been discreetly founded in 1989 by Clóvis do Couto e Silva but went dormant after Silva's death (CAPES, 2000b, p. 104). The CONPEDI association (*Conselho Nacional de Pesquisa e Pós-Graduação em Direito*) would gather at least once a year from then on and continues to be active today. Its seat remains at UFSC.

CONPEDI in the 1990s mostly served to gather representatives from graduate programs to discuss research methods and research policy. Several prominent names attended, such as Wander Bastos, Falcão, Warat, etc. One of the association's main tasks was to politically articulate graduate programs, so they could discuss CAPES's evaluations, propose new criteria, react to changes, etc. But its activities went beyond that. The association also lobbied CAPES to obtain positions on one of its councils—a feat engineered by Luiz Edson Fachin, a professor at UFPR and future Supreme Court justice (CONPEDI, 1999, p. 26). CONPEDI also provided a forum for debating the nature of legal research, its methods and purposes in a specially designated working group (CONPEDI, 1994, p. 4). It continued to foster the view that social sciences should be the model for legal research. Finally, CONPEDI also provided space to discuss pressing issues in Brazilian law, most frequently human rights but also neoliberal administrative reform.

The rise of this new institution bespeaks a new interest in research methodology. As a matter of fact, CAPES continually stimulated graduate programs to institutionalize research efforts, especially in the form of special administrative units or positions such as research or "methodology directorate." The best example of this can be found at the Federal University of Bahia. This institution designated a specific professor to hold weekly meetings with students and their supervisors to discuss dissertation projects from a methodological perspective (CAPES, 2001, p. 61). Though not in a particularly structured fashion, other graduate programs either institutionalized positions to foster debate on methodology or created mandatory courses on research methodology (CAPES, 1997, p. 128). PUC-Rio established a course on research methodology and legal method for recently hired professors (CONPEDI, 2000, p. 120-123). A booming literature on methodology for legal research emerged. Though both "dogmatic" (Leite, 1985; Warat, 1974) and "critical" (Pasold, 1984) universities had organized handbooks of legal research by the late 1980s, it was in the 1990s that commercial books began to emerge and brief articles appeared frequently in law journals.

The rise of CONPEDI and the shift away from the sociolegal model of Legal Research were answers from the community of legal scholars to the increasingly overbearing regulatory presence of CAPES. This came about through a reformulation of the agency.

CAPES became a foundation with more autonomy; in 1994, after the Federal Council of Education was extinguished, CAPES assumed the responsibility for validating graduate

diplomas (Ferreira; Moreira, 2002, p. 187). This reorganization brought about a swift change to CAPES's evaluation in 1998. The assessment would now take place once every three years; programs would not be graded from letters A to E, but from numbers 7 to 1; and programs graded below 3 were to be disbanded (CAPES, 1999). Requisites also became more structured and quantitative. According to the then president of CAPES, the changes were introduced because many graduate programs had reached a good level and were already graded A (Ferreira; Moreira, 2002, p. 193). So, new targets had to be developed, and former requisites that had been reached by almost everyone (e.g., informatization, all professors holding PhDs) would be dropped. The most debated change was a stronger emphasis on internationalization. To reach levels 6 and 7, programs needed to be comparable to international benchmarks, and the commissions trusted with granting these higher grades frequently included foreign members.

The technical and scientific council (CTC), a central organ made up of representatives from each major area (humanities, biological sciences, exact sciences), became responsible not only for certifying the assessment of each individual area but also for reversing its evaluation. The stated objective was to ensure that programs in different areas with the same grade—say, in sociology and physics (Ferreira; Moreira, 2002, p. 194)—would receive the same grade but this reasoning fostered a hegemony of natural sciences over the humanities: the revision was used by representatives from the natural sciences to demote some humanities programs from a score of 7 or 6 to a ranking of 5 or lower—meaning fewer resources for the humanities as a result (Horta; Moraes, 2005).

Finally, a new set of criteria was developed to be employed across all areas, with minimal adaptation to each discipline (Scaff, 2001). It was composed of 40 items, each with a predetermined weight. These criteria, with some minor tweaks and a few major changes, are the precursors of those currently in use. It is difficult to prove how they might have impacted knowledge production (Gläser, 2024), but it is productive at this point to raise a hypothesis. The first group of six criteria, named "proposal" (*proposta do programa*), and the third, "research activity" (*atividade de pesquisa*), emphasized the program's stated objectives, how research lines were structured, interdisciplinarity, the relationship between research lines and research projects, etc. This approach has likely stimulated more awareness of the purposes and strengths of each graduate program and sparked a quest for coherence. At the same time, it has certainly given rise to performative compliance, with many academic administrators deeply engaged in redescribing the reality of their programs in a way that satisfies CAPES' expectations rather than reflecting on their actual circumstances; some have developed great expertise in word games and buzzword development over the years. The second group of criteria, "professors" (*corpo docente*), and the fourth, "teaching" (*atividade de formação*), have certainly induced greater

professionalization and differentiation of legal academia, due to the criteria emphasizing that professors teach full-time in only one graduate program and that they also teach at the undergraduate level. The fifth and sixth groups of criteria, "students" (*corpo discente*) and "dissertations" (*teses e dissertações*), retained the emphasis of the previous evaluations on quantitative criteria. Coupled with the new emphasis of post-1998 CAPES on comparative evaluation—that is, competition between programs—these criteria have set the stage for the race over scores that is so frequently criticized nowadays in professors' lounges all over Brazil.

The new evaluation, however, was not the only major shift at the turn of the 2000s.

First, the number of graduate programs in law increased greatly: if in 1994 there were 15 graduate law programs in Brazil, by 2003, this number had increased to 48 (CAPES, 2004, p. 48). In the future, this will put more pressure on the system and render evaluation more difficult and impersonal.

Second, CONPEDI changed. Until 2000, the association was more of a meeting place for graduate programs, with participation by invitation only and discussions more focused on research policy; in 2001, it became a traditional conference to which everyone could submit a paper. This led to a significant increase in participation—nowadays, more than 1,200 researchers take part in its main events—but at the cost of diluting its initial characteristics.

The initial years of the third millennium saw debates that simultaneously revealed the shortcomings of Brazilian legal research, while highlighting its achievements and unveiling some impasses. In 2002, the Getulio Vargas Foundation (FGV) created two law schools—one in São Paulo and one in Rio de Janeiro—aiming to revolutionize legal education. They were to employ active methodologies and place greater emphasis on research. CEPED was an explicit inspiration, so much so that Joaquim Falcão was named FGV Direito Rio's first director (Rodriguez; Falcão, 2005), and the manifesto of the new law schools incorporated Santiago Dantas's foundational text about legal education.

In 2002, the new law school hosted a debate on the nature of legal research and its contemporary challenges, elaborating on old tropes (Nobre, 2005). The diagnosis of the main contributor, Marcos Nobre, was that legal sciences were out of step with social sciences because of the isolated way law schools operated. This led law professors to operate as if laws and lawbooks ordered reality, instead of adopting a more scientific approach—that is, that social reality explains law, and not the other way around. Therefore, research was more or less undifferentiated from legal practice. He argued that the model text of legal researchers is the opinion—that is, a text that lists arguments in favor of a position that was previously taken. True research, instead, must use the scientific method—that is, generate hypotheses, test them and produce theories. Similarly, Luciano

Oliveira (2004) argues that legal research remains dominated by professional practices like reliance on authority arguments and methodological eclecticism, which means it cannot be considered proper scholarship.

There were some reactions against this normative notion of research, and CAPES's regulatory thrall.

At the 2000 CONPEDI meeting, some speakers expressed discomfort with the quantitative turn in CAPES's assessment. Cláudia de Lima Marques, for instance, stated that legal scholarship should not be obsessed with gaining acceptance at the university, emulating methodological standards from other disciplines. Instead, it should help to tackle the challenges of contemporary society (CONPEDI, 2000, p. 70-84). Read against the background of the *leitmotif* that Law is always behind the social sciences, this was no small assertion. José Luís Quadros de Magalhães went further, accusing CAPES of bowing down to the neoliberal logic of never-ending competition. According to Magalhães, Brazilian universities were emerging from years of attacks, and the competitive evaluation was a strategy to chain them into self-destructing conflict rather than solidarity. The rankings were debasing intellectual labor because professors were "measuring up points to see which universities were in 1st or 2nd place [...], as if in a children's game" (CONPEDI, 2000, p. 30).[19] This was absurd, because most of what was trying to be measured—intellectual rigor, quality, a thorough grasp of reality—cannot be measured. Magalhães was also very critical of attempts to create a single administrative format for graduate education, such as favoring research lines over concentration areas, because doing so was artificial and ignored the diversity of research programs (CONPEDI, 2000, p. 31).

Criticism of the social scientific model was not restricted to CONPEDI. In 2004, Roberto Fragale Filho and Alexandre Veronese argued that law is not deficient in comparison with the social sciences, but that it has its own path of development (Fragale Filho; Veronese, 2004). In 2006, during a follow-up discussion at FGV on legal research and dogmatics, a significant question was raised (Rodriguez, 2008, p. 51): the shift from dogmatics to philosophy or sociology—areas often disconnected from traditional legal debates—actually limited the impact that legal scholarship might have on law as it is practiced in real life? This goes to the throat of the limits of many 1990's debates: by rejecting formalism, they frequently overlooked legal practice. Nevertheless, a return to "law office research" is no alternative. A third approach, a model of science that is at the same time *legal* and *research*, is in order. But has not yet been attained.

19. "Hoje, nós ficamos medindo pontinhos para ver qual que é a universidade que está em 1º lugar, em 2º lugar [...] ou seja, virou brincadeira de criança".

5. Achievements and Blind Spots of Legal Research: Conclusions

Research is not a mere synonym of scholarship, study, or science: it is a specific way of producing knowledge, founded on originality and collective knowing. It is fostered and controlled by strict state regulation and funding regimes. We have discussed how this new way of learning fundamentally transformed Brazilian law as an academic discipline. What were the main features of the particular path of this South American country, and what can it say about legal research in general?

As mentioned in the introduction, research is about piecemeal advancement of knowledge through the collaboration of multiple actors; it therefore presupposes that there is something unknown that must be discovered. Strictly speaking, research is incompatible with legal formalism because formalism believes that law is simply made of norms, and the business of lawyers is to apply those norms in relation to each other to achieve solutions. This is more similar to a puzzle or to a game than to research, for in a normativist account of law, all pieces are known beforehand: any innovation can come only from rearrangement, not discovery. Research eschews formalism. But there is more than one way to do it.

Three models of research can be identified, each corresponding to a different layer of historical practice. Each is defined by aiming to overcome a distinct kind of unknown.

First, "documentary legal research." In this form of inquiry, the objective of investigators is to collect and organize the sources of law—statutes, judicial decisions, etc.—in an intelligible order. The norms and their sources are unknown. This method has been put into practice at FCRC and *Fundação Petrônio Portella*: their published works were lists of other works, consolidations of statutes, collections of legal decisions, etc. This approach was developed due to the increasing proliferation of legislation and bibliography, which has challenged the very definition of what constitutes legal sources.

Second, sociolegal research. As a specific reaction to formalism, this mode of research postulates that scholars must understand how norms function in society. It was most intensely supported by CAPES in the 1980s. This approach can take on a more collectivist tone, as in studies about how communities solve their own problems, or, in the case of Cláudio Souto, it can become more individualistic, treating law as regulated behavior. This mode emerged because social change in the 1960s distanced law from social context; researchers were supposed to understand society to reimagine a new kind of law that would function well again.

Third, hermeneutical research. With constitutionalism, jurists posit that the aim of the legal order is to effectuate fundamental rights. From this claim, it follows that researchers

must reflect on how individual norms can prompt society to bring common practices in line with the constitutional project. This line of research was less prevalent during the 1990s, but would develop further in the first decades of the 21st century.

These modes of research are not clearly distinguished on the historical record; they intermingle across concrete research projects. They are distinct from the three-way model of legal research (Siems; Mac Síthigh, 2017). Legal documentation can support "legal scholarship as practical discipline" and traditional legal reasoning, but also support "law as humanities" initiatives. Sociolegal research is akin to "legal scholarship as social sciences," though it can frequently also incorporate elements of "law as humanities" as social theory and political philosophy. Finally, hermeneutics is one mode of "law as humanities," even though it can employ social scientific methods.

The three models of legal research all arise when one pairs the apparently immutable legal order with social complexity. Traditional legal scholarship presupposes that the world is known, and the scholar is challenged to investigate norms. Legal research postulates that the world is unknown, and that knowledge of norms depends on and enhances knowledge of society. The unknowns that legal research is supposed to address are: the legal sources in documentary research; the functioning of norms in society in sociolegal research; and the realization of human rights in hermeneutical research. From the grinding between known methods and unknown realities, research is born.

Legal research is born out of a sense of malaise that arises when law and society are incongruent; branches of law where this gap is clearer might more easily spawn research. In Brazil, this was true for economic law: as urbanization proceeded and the military dictatorship stimulated social change through economic development, economic law turned into the harbinger of legal research. The economic outlook for Brazilian legal research was further reinforced by the administrative law of science during the 1970s, which placed all research within the realm of national development plans. This might have led to a fusion between economics, dogmatics and social sciences, one that could have characterized Brazilian legal research, but it was not the case.

In the 1980s, legal sociology became the main vehicle for critiquing authoritarianism by pinpointing the inefficiency, elitism, and downright injustice of the legal order. By showing that state law did not work, legal sociologists helped demystify the state. Many individuals sympathetic to this view became evaluators of CAPES and CNPq, and founded CONPEDI. Between the 1970s and 1990s, these individuals advocated for reforming legal research. However, a careful examination of their proposals indicates that their ideas could transform all legal scholarship into legal sociology. Collective projects, statistical methods and outside funding, all hallmarks of traditional social sciences, have been elevated to a normative ideal for legal scholarship.

These efforts have clearly failed: even now, discussions about legal scholarship frequently lament the low quality of most research. Why is that?

Two factors are at play. First, law is a hybrid discipline, one that must do justice both to the profession and to universities. Some Brazilian scholars have stressed that there must be a specific model of legal sciences that does not reproduce either the social sciences or legal practices. But such a model was never developed. The result of the experimentation of the 1980s was to create new disciplines—legal sociology and legal anthropology—not to transform legal research as a whole. Second, most of the innovative experiments in Brazil have happened at the peripheries. In the center—Rio de Janeiro, Brasília and São Paulo—, wages of legal practitioners have been so elevated that both students and professors have hardly worked full time; they did not have time to experiment. Therefore, innovation mostly took place where it was less visible. Sociolegal research was furthered first at UFSC, but also at UFPE, UFC and PUC-Rio, not at UFRJ. Dogmatic innovation found a warmer environment at UFMG compared to USP, at least until the 1990s. But this meant that experiments were less influential. The only attempt to reconstruct legal sciences from a dogmatic standpoint using interdisciplinarity and the structure of modern research financing—that of Washington Peluso—had little impact outside of economic law.

Pulling in different directions, universities, associations, ministries and researchers created a conversation that revolutionized how law is discussed. In the meantime, Brazilian research policy increased the number of master's graduates in law from 0 in 1972 to 1,508 in 2002. This is an astounding feat. But no one has yet managed to organize the many strands of legal scholarship into a coherent model of legal science, one that harbors at once a plurality of approaches and harmony of purposes.

This challenge remains open well beyond Brazil.

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DECLARAÇÃO DE DISPONIBILIDADE DE DADOS

Não há dados vinculados a este artigo.

DECLARAÇÃO DE CONFLITO DE INTERESSES

O autor declara não haver conflito de interesses.