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The changing face of law after the events of 1968... or when law meets politics: Introduction to the *Mouvement Critique du Droit*¹

MARTINE KALUSZYNSKI*

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Abstract

The aim of this paper is to analyse the origins, the development and the long-term impact of the Critical Legal Movement (*Mouvement Critique du Droit*). Created some thirty years ago, this Movement resulted from the collective mobilisation of legal experts and political scientists across French cities (e.g., Lyon, Montpellier, Saint-Etienne, Toulouse and Paris). Referring mainly to Marxist theories, the Critical Legal Movement argued that law is deeply embedded in its social and its political context, and should thus be analysed through an interdisciplinary approach. Building on this critical perspective, the Movement developed a scientific project and teaching methods, which both differed from and opposed the way in which law was traditionally taught and studied in French Law Faculties. The Movement itself no longer exists, but it nevertheless had far-reaching consequences on the study of law. Indeed, the Critical Legal Movement was an opportunity to successfully explore alternative teaching methods and to create high quality research institutions.

Keywords

Activism; activist lawyers; criticism; law and politics; law reform; law studies; Marxism; 1970s

Resumen

Este artículo pretende analizar los orígenes, el desarrollo y el impacto a largo plazo del Movimiento Crítico del Derecho (*Mouvement Critique du Droit*). Creado hace unos treinta años, este movimiento surgió de la movilización colectiva de juristas y politólogos de diferentes ciudades francesas (como Lyon, Montpellier, Saint-Etienne, Toulouse y París). Haciendo referencia principalmente a teorías marxistas, el Movimiento Crítico del Derecho argumentaba que el derecho está profundamente arraigado en su contexto social y político, y por lo tanto se debe analizar desde un enfoque interdisciplinario. Partiendo de esta perspectiva crítica, el movimiento

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desarrolló un proyecto científico y métodos educativos, que diferían y se oponían al sistema de enseñanza y estudio del derecho en las facultades de derecho francesas. El movimiento en sí mismo ya no existe, pero sin embargo, tuvo consecuencias de gran alcance en el estudio del derecho. En efecto, el Movimiento Crítico del Derecho supuso la oportunidad de explorar con éxito métodos alternativos de enseñanza y favoreció la creación de instituciones de investigación de alta calidad.

Palabras clave

Activismo; abogados activistas; crítica; derecho y política; reforma legislativa; estudios de derecho; marxismo; años 1970

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1. Introduction

The *Mouvement Critique du Droit*, a critical legal studies movement, was created 30 years ago, bringing together French barristers and political scientists (from Lyon, Montpellier, Nice, Saint Etienne, Toulouse, Paris) who, through its references primarily to Marxism, defined a scientific and educational project which distanced itself from the research and teaching prevailing in the law faculties of the day. The movement perfectly reflected its époque, the 1970s, which played a crucial role in its existence. The MCD emphasised the need to rethink law, both in its theoretical dimension and its conditions and practical implications.

"The MCD is a movement of thinking amongst jurists who reject the prevailing positivism and demand a critical dimension to the study of law on the basis of a materialist analysis" (Miaille cited in Arnaud 1993, p. 132). The MCD, of Marxist inspiration, tried to promote its own conception of laws and progressively became organised. Initially, the authors concerned very ambitiously attempted to contribute to the creation of a new vision of law in order to achieve a profound transformation of what existed. Today, the movement has disappeared but remains contemporary both because it gave rise to successful teaching experiences and famous research institutions and because it seems to have a certain echo with young researchers today. It brought the judicial world permeable to the ideas of May 1968 and animated by Marxist debate (Gramsci, Althusser), out of isolation. As *Critique du Droit* took form, law professionals had already become unionised, performing their own critical analyses of legal and administrative institutions. At the same time, *Actes* appeared, a journal presenting a critical point of view of law (Israël 2003).

World news were about decolonisation and the birth of development policies. "*Critique du Droit*" was to open up to these international realities, gaining credentials both at home and abroad.

Any study of the *Critique du Droit* movement raises several important issues: in terms of method, how to re-write history without falling into a generalisation of all the component parts and giving meaning to what has often been diverse and complex? Not simply re-formulating a history of ideas and theories or offering a theoretical history of criticism of law, but attempting to reconnect this collective element to a social and political whole, seeking to understand the social, political and even cultural determinations which have led to the production of such ideas on law. This exercise requires us to ask how this production could have happened, and to come back to the conditions of foundation, context and therefore look at the movement as an attempt to mobilise resources in order to create new operating conditions for law teaching and research. *Critique du Droit* shows the project's actors, forms of engagement and sequences of development from a sociological standpoint, producing something completely different to what a hagiographic account would have revealed. More precisely, we need to come back to the history of *Critique du Droit* in order to understand why these "entrepreneurs" of the project were able to find their place on this competitive "market" of legal production and then in some way disappear – and the renewed interest in the Movement today reflecting a new climate which entails completely different measures and projects.

Reformulating a specific judicial movement is a delicate operation indeed. In particular, it involves a minimum of coherence between the ideas of each of its members, a desire to work in the same direction and according to fairly similar basic postulates yet without reasoning in an exactly identical manner from the point of view of the legal research. Because the movement in question sees itself as a movement of criticism, these conditions must be adhered to very closely. What exactly made MCD a movement?

The group is considered as France's spokesperson in this field, and in everyone's opinion, represents a national orientation in meetings, even though there is always the feeling that we are only seeing one aspect of what that way of thinking offered

at the time. The publication, *Procès*, the association, the bulletins and seminars form a shell and the movement that they bring together are the engine room of a debate on law, and a critique of law and politics. Our authors, through their passionate study and pluralistic observation and their lively and complex analyses, have built and are at the origin of this knowledge of law which is profoundly anchored in Marxism but is even more anchored in a political idea of the world and of law which is not a sacrosanct entity but in reality incorporates a contextualised human, social and political production.

This paper has been built upon the central theses of that publication, the people who promoted it and the authors contributed to it. The very subject of the study, a movement, present the real difficulty - with all the ambition and the distractions involved in getting a group or a "school of thought" to "talk", at the risk of losing its contours; because, by definition, a movement is a sum of several parts, people who are linked by the same aim and the same way of looking at things, but with varying attitudes. It is long-term knowledge of the readers and the authors which leads us to recognise or "adopt" one or the other, and consider his writings and positions as bearing witness to a French tendency. But there is great complexity - even independence - of judgements for each of the themes, and the positions evoked are many and varied, as is the Movement.

Therefore, we will present a way of thinking in a relatively homogenous fashion, but without seeking to artificially reconstruct a connivance of thoughts and attitudes to offer a harmonised picture of this relatively open movement, but with a fairly determined perspective of its thinking on law.

Critique du Droit is undeniably a proper movement, leading to agreements, disagreements, interests, debates and nuance, as any other movement would. The question therefore is to understand what properly characterises the Movement and look at the moment of its emergence. Indeed, a long time before it was founded, several Marxist-inspired authors had sought to table a real debate on law and develop a critical approach to it, but without forming a group, either intentionally, or simply because they were unable to do so. It is therefore particularly interesting to dwell a moment on the instant that the *Critique du Droit* movement came into being and associate that with the social, intellectual and political context of the time. In order to understand the singular issues of today, a socio-genesis of the Movement is important from its creation in the 1970s, and its development through to the 1980s.

Working on the *Movement Critique* has allowed us to explore several avenues or projects which are dear to the actors of social sciences, from the point of view of the creation of a movement, the relationship between the law and politics and between legal science and political science, the question of law training for the elite and the role of teaching and the importance of context in the creation of militant movements. In this respect, context is an extremely important element of the creation of *Critique du Droit*.

The political, intellectual and social context in France in the 1970s: a critical context?

The 1970s were years of "major change" and "construction", where justice and law were mobilised in a particular way as a political and politicization platform (the Bruay-en-Artois affair, "the red judges", birth of the *Syndicat de la Magistrature*). The 1970s are particularly rich and interesting in a study associating the strong ties and ambivalence between law and politics. This period sees politics taking control of law and taking over justice. The judiciary and the legal profession become a breeding ground for political mobilisation and become politicized.

Whilst internationally the geopolitical system is characterised by the peaceful coexistence between the Communist and capitalist blocks, nationally, Marxist ideology is finding an echo both in political life and in the university world. Marxism

in politics produces splits to the left. There is also the whole post-1968 (Hatzfeld 1970, Ory 1983, Winock 1997, 1988, and Hourmant 1997) intellectual context. A new way of addressing teaching in universities was to result directly from that and the events of the period mark the increasing popularity of student unions. It is in this context that the MCD was born.

1.1. External influences

From this desire to propose a new approach to law, several movements or productions critical of law were to be organised in France, such as the Rheims School² and individual paths that converged towards the Mouvement *Critique du Droit* (Journès 1982, pp. 2-8), which shows that this network is not a creation in itself, but that it is applied to an already existing surface or textual material. Thus, the work of Communist jurists such as Monique and Roland Weyl (Journès 1982, pp. 2-8) does not necessarily constitute a major theoretical contribution to the MCD, but nevertheless plays an important role.

After 1968, an independent Marxist university movement emerged in opposition to Marxist-Communism (Demichel 1978, Demichel and Marcel 1975, and Benchikh, Charvin and Demichel 1986, p. 134). This movement did not seek to embark upon political activity, but was more interested in theoretical research, as the works of university Marxists such as Demichel, Francine and André show (Demichel 1978, Demichel and Marcel 1975, and Benchikh, Charvin and Demichel 1986 p. 134).

A third set of work outside the MCD includes the writings of other Marxists who are not necessarily all jurists, but who, from a theoretical standpoint, open the way to the study of law. First of all, it is important to mention the contribution of Nicos Poulantzas and more particularly his studies on the relationship between political power and social classes (1978). Furthermore, reflection on law by the Marxist philosopher Louis Althusser, and in particular in his article "Ideology and State Ideological apparatuses", played a fundamental role (Althusser 1968, 1970).

It is important to point out the significance of the MCD's interpretation of the works of Pashukanis, whose work on the General Theory of Law and Marxism written in 1924 was republished in French translation in 1970 (Stucka 1921, Pashukanis 1978³, Renault 2003, p. 1004). Authors of the MCD also based their thinking on the works of anthropologists such as Maurice Godelier⁴ (1973). Finally, it is important to remember the crucial influence of the theoretical musings of Bernard Edelman (1973) in *Le droit saisi par la photographie*. Finally, the personal works of André Jean Arnaud or Gerard Lyon-Caen⁵ cannot be forgotten.

MDC takes root in the judicial field with many contradictions in the 1970s in France. There were several, and they were all very different. So we can observe a field insensitive to the renewal of thought in general, and not only of Marxism, isolating

² The Rheims school movement was formed in 1973 further to a lecture given by Professor Charles Chaumont in The Hague. Charles Chaumont (1913-2001) was Professor in International Law at Nancy University, at the Institute of Political Studies in Paris (IEP) and at the Free University of Brussels. Very early on, he was to get himself noticed because of his political beliefs and commitment in favour of the oppressed. He was later to be given leadership of the Movement. A dialectic and voluntarism attitude was therefore to become the basis of the work undertaken by the Rheims Group. Very close to Marxist-Leninism, he defended the third world countries and supported the call for a new world order.

³ In his article on "The Doctrines of Marxist Law", Emmanuelle Renault described Pashukanis as "the most significant thinker of the first period of the Soviet theory on law" and shows that "in his major work (...), he attacks both the judicial positivism of Kelsen and the economism of Stucka (one of the first theorists on Soviet law).

The latter (Stucka) is criticised for simply reducing the judicial order to economics without taking its specificity into account.

⁴ Maurice Godelier was to attend the Arbresle seminars, including that of February 27th and 28th 1976, with an address entitled *Economie, religion, pratiques symboliques*, and in May 1976 one entitled *Le sexe comme fondement ultime de l'ordre social et cosmique chez les Baruya de Nouvelle Guinée. Mythe et réalité*.

⁵ Gérard Lyon-Caen (1920-2004) is a famous significant lawyer and expert in labour law, social welfare.

law faculties and ensuring their intellectual paucity both in research and teaching. The very tradition of the process of recruitment appears unsatisfactory. The judicial field is kept totally separate from the changes going on in French society; not only the consequences of May 1968 – which open up possibilities both for thought, practice and patterns – but the progressive popularisation of parties of the Left, gave rise to a major ideological change which made the idea of “a new life” possible (“*changer la vie*”, the socialist party slogan from the end of the 1970s). The birth of movements and unions in the field of law (magistrature, lawyers) also changed the context by impacting sectors which, until then, had been highly “protected” from such developments. Finally, in the context of publishing and circulation of ideas, the model is very rigid by the imposition of “canonical” works and traditional reviews which were a model of intellectual conformity.

2. The advent of the *critique du droit* movement

The formation of the MCD in France in the 1970s was aided by a favourable intellectual environment. Marxist theses enjoyed a certain degree of popularity, in particular amongst economists (Pouch 2001),⁶ and more broadly, amongst all intellectuals who, as part of the 1968 trend, wanted to redefine a fairer way of living together. And this favourable context was not limited to France. On the contrary, to a certain extent the movement was the French version of an American trend called “critical legal studies” (Kennedy 1993, pp. 131-139), which was very influential at the time and very different in its nature and objectives, one of whose important representatives is Duncan Kennedy. Communication between the two movements was, however, very limited.

The *Critique du Droit* movement emerged in opposition to the dominant technical positivist doctrine. This doctrine does not take account of a reality where law and politics are closely interlinked. The *Critique du Droit* movement adopts a Marxist interpretation which prones historical and dialectic materialism. It invites readers to link up phenomena, and see them in an all-encompassing perspective where “the science of law is part of the science of politics”. Before being able to be considered as a group, the MCD is just a set of individuals with their own objective who stand out because of their personal projects and who adopt a specific disciplinary logic. But beyond this diversity, it is possible to demonstrate the coherence of the movement which takes the form of a convergence of projects and is based on a network which is both interpersonal and expressed by a joint desire to combine theory and practice in a scientific approach.

2.1. The founders of the *Critique du Droit* association

The *Critique du Droit* association was brought into being by four clearly identified individuals: Jean-Jacques Gleizal, Philippe Dujardin, Jacques Michel and Claude Journès. All at the time were assistant professors or permanent professors who were attempting, by creating this group, to put forward a veritable intellectual activity to counter university institutions which they felt were too conservative not only in their teachings and curricula, but also in their politics. They sought to catch the universities off balance and adopt an approach much closer to the university and therefore to its students. In this, they took much inspiration from Marxism. At the time, they were all members of the UNEF student union which espoused several leftist tendencies, later to become part of SNESUP, a truly pluralist union.

⁶ See also the works of Francois Perroux (1903-1987), a French economist who developed heterodoxical theses whose prime inspiration was Schumpeter. His originality and the fertility of his analyses were due to the fact that the struggle for power featured centrally, both in terms of market analysis, decisions, firms engendering development clusters or development. He wrote numerous works and articles including *Le Capitalisme* (1948), *L'Europe sans rivages* (1954), *L'économie du XXème siècle* (1961), *L'économie des jeunes nations* (1962a), *Industrialisation et groupement de nations* (1962b) and *Pouvoir et économie* (1973).

See also the works of Henry Denis (1966, 1980) and G.E. Cohen (1978).

Several dates are suggested as the "birth" of the group. Dates vary according to whom we spoke to. For some, it was 1974 (Dujardin 1979), for others 1975 (Antoine Jeammaud 1978) What is interesting from this point of view is to think what, for each one, was the beginning of this intellectual enterprise and what each person believed was the founding moment and what was, for each of them, the original value. For us, the triggering element was the thesis of Jean-François Davignon and the discussions that the work provoked as well as the meetings of Lyon's political studies institute at the "Café on the Corner" and in Arbresle. Meetings began at Arbresle in 1975 and ran until 1979. The seminar of April 26th 1975 was entitled *Une Science du droit est elle possible?* In 1977, the MCD became an association whose director at the time was Jean-Jacques Gleizal, with the constitutive meeting of the Collection *Critique du Droit* taking place on March 19th 1977. The *Critique du Droit* association came into being in 1978 as a "movement of thought exclusively among jurists who refuse the prevailing positivism and demand a critical dimension in the study of law on the basis of a materialist analysis" (Arnaud 1993) with its manifesto, the first issue of the magazine *Procès* and the first work of the collection entitled "*Pour une critique du droit*" in favour of criticism of law (Bourjol *et al.* 1978).

There are several moments that represent the creation of the movement: informal meetings where work in progress is discussed, debates on new teaching practices and therefore on a new vision of law, training of a small group with similar intellectual and trade union affinities, a teaching and scientific project; in short, a moment which marked the Movement's emotional and institutional history. Michel Miaille speaks of « *une aventure messianique, intellectuelle et militante* » (interview 13 July 2004). In this phase, presentation was just as subversive as the content, breaking with university hierarchy, combining statuses and ideas, even if this opening was to have its limits and, for some, continue to be selective. All the founding members that we have mentioned here lived precariously to a certain degree, in their relationship with teachers who were to join them shortly afterwards. A group from Lyon and Grenoble joined teachers from Montpellier, Nice et Saint-Etienne, such as Michel Miaille, Paul Allières, Robert Charvin, Gérard Farjat, Michel Jeantin, Antoine Jeammaud, Evelyne Serverin, Jacques Poumarède, Georges Khenaffou, Jean-François Davignon, Géraud de la Pradelle, etc...

Critique du Droit was a provincial movement (Lyon and the south of France, in particular Montpellier, Toulouse and Nice) which set it in opposition to Paris, traditionally the hotbed of innovation, and where the war of ideas was always stronger. Also, at the end of the 1970s, the defence of Marxism appears as a lost hope and to some extent, out of fashion. This led them onto the avenue of an intellectual territorialisation of law and knowledge with this strong *tradition of law in Lyon* with leading legal figures as Desmichel, Edouard Lambert, Robert Pelloux, Josserand, Emmanuel Levy (Audren 2004, pp. 79-110, Millet 2000) who stamped their mark on the period. "Social science, the common ground of Lyon's legal science"⁷. All were unionised before becoming politicized.

It is also important to note the role of the Algerian experience. Indeed for many, the University of Algiers was to be the "laboratory" of reform of university studies and in particular in law studies. Actually it was a very important experience in terms of training, citizenship, politics and militancy from 1971 to 1975. Michel Miaille and Claude Journès participated in this Algerian experience, the former as a professor and the latter as an assistant (A. Jeammaud and others). An introductory

⁷ Has Lyon succeeded in matching jurists and the social scientists? Lyon, capital of the social sciences, amongst the jurists? The theme of Lyon's alliance bringing legal science and social science together is indeed recurrent in contemporary historiography. It is based in particular on the contributions of a number of professors from the law faculty to projects run by *l'Année Sociologique*, *Archives d'anthropologie du droit* and *Questions pratiques de législation ouvrière*. Indubitably, social science, like comparatism, constitutes an element of the identity of the approach of Lyon jurists.

course in legal science was proposed by Michel Miaille, retracing the major legal concepts including positivist, religious, natural and indeed Marxist concepts.

3. The setting up and development of the MCD

3.1. Knowledge-generating platform: seminars, associations, bulletins, magazines, writings...

The Movement was to be constructed around a collection of writings (Journès 1985, p. 267, Michel 1983, p. 274, Serverin 1985, p. 458),⁸ meeting places (seminars in Arbresle and later in Goutelas in Forez) and a magazine.

When the *Critique du Droit* association came into being in 1978, it published its manifesto, the founding text of the Movement as well as the Movement's vehicle, *Procès*, in the same year. The association and the development of new ideas within universities in Europe were fairly coherent. Thus, in 1978, the manifesto laid the foundations for a movement seeking a theoretical approach with the objective of leading a collective process of reflection on the basis of the following hypothesis: "the state of law is a set of phenomena resulting from class warfare, characterised by social contradictions in such a way that a supposedly neutral analysis of law simply serves to reinforce the domination of the capitalist production pattern through idealism and bourgeois formalism", a hypothesis which is directly taken from Marxist thinking on law and the state and from his theory of historical materialism developed in collaboration with Engels.

As part of an educational and scientific approach, the MCD started publishing its magazine in its very first year, to share its ideas and generate debate around them. The purpose was to engineer a theoretical exercise in a complete and constructed fashion.

3.2. *Procès*, the Movement's vehicle

To emphasize the Movement's approach, the members of the MCD called their magazine "*Procès, cahiers d'analyse politique et juridique*"⁹. It adopted a similar stance to an existing magazine entitled *Dialectiques*¹⁰.

The theme of the magazine was very quickly found, taking its lead both from political and legal science and others subjects associated with it (political philosophy, political sociology, etc...). The main idea was to contribute to the creation of a veritable science of law, hence the more philosophical, sociological and historical studies proposed.

⁸ The launch meeting of the *Collection du Critique du Droit*, March 1977 at the IEP in Lyon. Attendees: François d'Arcy, Paul Bacot, Patrick Comte, Jean-François Davignon, Philippe Dujardin, Jean-Jacques Gleizal, Philippe Hardouin, E. Jaillardon, Antoine Jeammaud, Michel Jeantin, Claude Journès, Michel Miaille, Jacques Michel, Jacques Pagès, J.R. Pendariès, Bernard Pouyet, M. Riottot, Gerard Zalma.

⁹ "I don't remember any discussion about the choice of title...and as far as I can remember there was no difficulty in finding one...I remember the context: readings of Marx and Althusser and the use that we found in those works of the formula "process of work", "process of production" and other syntagms constructed on the basis of the same term. So it had nothing to do with judicial or legal bodies; and everything to do with a processing and anti-essentialist approach to the objects under discussion. As for the subtitle, it met the requirements of the context for a "bachelardian epistemological change" and the desire to link up law and political science". Philip Dujardin, email of July 6th 2005.

¹⁰ "I couldn't say exactly what importance the magazine *Dialectiques* had for me, or should I say for us, in the context of the launch of *Procès*. *Dialectiques* was piloted by young Ecole Normale Superior students who were followers of Althusser and members of the PCF (French Communist Party), and in particular the couple David and Danielle Kaisergruberg. I received various members of the team on a regular basis since the principle distribution of the magazine was "militant" introduction, which meant it had to periodically do the rounds of France. This political experience impressed me and I got a lot from it, both intellectually and politically. David Kaisergruberg came to a sticky end (suicide) and the magazine never got beyond its 30th issue. But there was undoubtedly in there the ambiance of a period and the "principles" that we shared, the conflicts and divergences that our groups and our parties were working on." Philip Dujardin in an email of August 22nd 2005.

In spite of the financial difficulties encountered to secure a regular publication of the review, 19 issues were published in the 12 years of its existence (1978-1990). It seems that the maximum print run for each issue was 250 copies maximum, according to different interviews we had, in spite of problems accessing sources. As a periodical publication, at the outset the magazine was a six-monthly review but from 1984 onwards it had to slow down its frequency of publication: a single issue was to be published each year from then on. This was the case in 1984, 1985 and in 1990. However, only one issue was published for the 2 years 1987 and 1988, and none at all for 1985 and 1989, for financial reasons.

From reading all these issues of the review, it seems that its journalists always sought to cover certain topics, whether to do with teaching or politics or indeed science and theory.

3.3. *A teaching and political tool*

Although some effort went into presentation in each issue, with an obvious educational slant, journalists writing in *Procès* magazine also used this platform to political ends.

As years went by, *Procès* writers opted for a more easy-reading format, the journal becoming better organised and with more content. The very first issues were fairly artisanal and austere: typed on a typewriter, giving a fairly rudimentary product which was quite uncomfortable to read, a detail is not without importance: this formatting obstacle came on top of more fundamental difficulties when reading of articles of sometimes dizzying complexity. From the 5th issue onwards (i.e. the first issue of the 1980s), the texts were typed on a computer, making the content more attractive. Illustrations were also added to improve presentation, along with tables, photocopies of paintings (in issues 11 and 12 in particular), all making it an easier read. It is also important to emphasize that the authors chose to structure the content of the magazine in a very particular way, found right through to the last issue. In the first section they proposed articles, i.e. reflections and personal works submitted by participants. In the second part they added transcriptions of interviews, research notes, readers' notes, reviews of written works, reviews, conferences and symposia. Without any obvious connection with the theme of the issue in which they were placed, these extracts stayed with the general theme of that particular issue. Indeed, overall they echoed the works which directly emerged from the MCD in France such as those published, amongst others, by the *Collection Critique du Droit*, by the publisher Maspero¹¹, given that François Maspero sympathised closely with these ideas. Of course, this meant providing new avenues of investigation and reflection to readers but also adopting positions in relation to the work of their contemporaries. Furthermore, from the 6th edition onwards (i.e. the 2nd issue of the 1980s), the writers decided to include a foreword at the beginning of each issue to explain the theme of that particular issue. This took the form of a "presentation" or an "introduction". Finally, for practical reasons, it was decided fairly rapidly to add a recap of the tables of contents of previous issues at the end of each issue. This gave the reader an overall and complete vision of the work done, allowing the reader to refer directly to the articles that interest him.

The MCD's work in *Procès* magazine is part not only of a teaching approach but also a political approach. One of its objectives was indeed to disseminate a Marxist reflection and if possible, broaden its scope. This was unsettling for members of the university world of law at the time.

¹¹ Having left the Communist Party (PCF) to support the FLN, François Maspero founded Additions Maspero in 1959. In 1961 eight of his books had been banned. Subsequently, he edited all the classics of Trotskyism, of Ché Guevara's disciples and other national revolutionaries. Maspero was fined several times and deprived of his civil rights and spend time in prison. In May 1982, Éditions la Découverte carried on the work of Éditions Maspero (François Maspero left the world of publication for good).

3.4. A political objective

The political nature of the work is emphasised by the writers themselves when, sarcastically, in the foreword to the seventeenth issue of *Procès*, they express surprise at receiving less funding than other reviews. Indeed, because it is published by the Centre of Legal and Political Epistemology of Lyon II University, the journal received local university grants on top of issue sales revenues. The price was initially set at 50 FRF, before increasing to 90 FRF. The other element suggesting the MCD's political involvement is its desire to develop networks. *Procès* appeared then as a good vehicle to achieve this. Thus, the second part of the journal and its advertising space was dedicated to ensuring wider dissemination of critical studies of law throughout France and abroad¹².

Designed as an educational and political instrument, *Procès* was first and foremost a scientific tool. The idea was to develop another, more critical vision of law and the State, and to construct a veritable science of law. This ambition is expressed in the presentation of the 1st issue of *Procès*. The objective of the authors is explained in these terms: "critique to undertake (...) to the necessity to build (...) a science of the State, and better still a science of politics which finally makes a science of law possible (*Procès* 1978 n° 1b)," adding: "this science (...) is present in the works of Marx and Engels and partially formalised in the work of Marx". Indeed, it considers that the historical theory of materialism simply serves to open the way to a science of law and therefore it remains to be constructed in order to be offered to students in particular. And that was clearly their ambition when they launched *Procès* magazine.

For them it was the idea of breaking with the still-dominant positivism of the time in law faculties which could only conceive of the study of law through law itself, which presented all rules as an abstract standard which explained and justified itself within the parameters of an abstract system called "Law" but also with a view to moving to socialism in time. Whilst their initial objective announced a work of theoretical construction, we have to note that the first issues were more to do with theoretical reflection than any authentic theoretical construction. The themes addressed were to bear witness to the multi-disciplinary aspect of the approaches adopted and the diversity and modernity of the themes chosen for the various issues. The magazine's writers would appear to have sought to provide a constructed work: most of the issues were dedicated to the study of a particular theme. Only a few issues failed to offer unity between the various analyses contained within, and there are few of them (issues 9 and 13). With the emphasis on coherence and diversity, *Procès* is perfectly representative of the theoretical construction work carried out by MCD in France.

3.5. A joint desire: a critique of law and a founding work: Miaille's Une Introduction Critique au Droit

To pin down the origins of the Movement, it is important to dwell a little longer on the term "critique" was taken to encourage criticism but in a positive way. Proposing a new way of reading, understanding and analysing law seemed interesting and particularly important for the authors concerned. The very term

¹² The publication of works from the *Collection Critique du Droit* are mentioned in the publication, a collection which was directly under the responsibility of the ACD, in the Maspero collection. Also cited are a large number of university journals such as *Léviathan* (Strasbourg), *Économie et Humanisme* (Lyon), *Actuel Marx* (Paris), *Critique des sciences économiques et sociales*, *Dialectiques* (Paris), *Droit et société* (Paris), *Analyse, Épistémologie, Histoire* (Lyon), *Revue des parlementaires de langue française*, *Revue interdisciplinaire d'études juridiques* (Brussels), the Quebec journal *Anthropologie et Sociétés* (Laval), the Italian *Critica del Diritto* (Rome) and the Spanish *Primera Instancia*. Finally, information was provided on conferences and symposia covering questions which were directly part of a critical reflection on law: also evoked were European study conferences on criticism of law, the meetings at Goutelas in Forez, etc...

"critique" sometimes appears in the very title of works. Amongst these "critique" works, some express the desire to provide an introduction to a type of teaching¹³.

The book by Michel Miaille will be the basis of the reputation of the movement.

In 1976, Michel Miaille wrote one of the most famous texts in critical legal literature of the 1970s. *Une Introduction Critique au Droit*¹⁴, according to the author, is designed for students coming into their first year of law. In fact, the work is intended for a much wider audience since it is understandable to any non-expert. It follows a dual objective: from the teaching side, reflecting on law itself and the legal universe which surrounds it, and a critical objective, addressing the way law is traditionally introduced to students using recommended manuals or a given teaching style, addressing the real question of "What is law?" in only a very simplistic manner. The major interest of this work is to present both a summary of critical theories on law and a guide to reading matter, providing the critique's tool. It is about inviting the student who is beginning his studies in law to think more deeply about the purpose of his studies. In fact this objective is a veritable programme of transformation of teaching and learning practices in law, to the extent that traditionally, introduction to law is more an announcement of the knowledge which will be taught during the law course than an invitation to take a critical look at law. The purpose of Michel Miaille is to introduce a scientific methodology from the very beginning of law teaching to illuminate grey areas to which the students were not habitually exposed. The requirement for epistemological questioning is emphasized in order to found a veritable legal science. Before the prevailing positivist interpretation in introductions to law which stubbornly describe what is visible, Michel Miaille therefore defends critical and dialectic thought whose thesis is that the world is complex and reality relative. Hence, several university assistants were to find common interest in this way of thinking. Constructing a science of law therefore meant going beyond simply the study of legal standards: what we call "technique" and what can be defined as reflecting the legal system as it appears, without explaining its form and content. Legal technique clearly allows us to determine the content of standards and interpret them, compare them and apply them to cases to which they refer, but does not allow what is behind the legal façade to emerge and explain its economic and social functionalities as the MCD sought to show.

3.6. A major project: throwing teaching practices into question

For the founders of the Movement, the objective is to transform teaching practices at law faculties which are judged to be over-conservative.

The interest of this body of work resides primarily in the fact that it takes teaching as the subject of a critical analysis¹⁵. A whole teaching approach promoting in-depth reflection on teaching methods¹⁶ was to be put in place. Indeed, whilst the different authors are researchers, for the most part they are also teachers. Succeeding in their objective of a political transformation of society requires a different sort of training for students, and in particular in law studies. The target is to create a veritable legal science which shows the ideological and conservative nature of

¹³ This is the case for example, with the founding work by Michel Miaille (1976); the author's first objective was educational because he sought to invite the student who is starting off in law to develop a proper critical approach to law so that he can carry out a veritable work of reflection, and not provide him, as is the case of other works that introduce law, with an introduction to law as a foretaste of knowledge transmitted in law faculties. Michel Miaille (1978, p. 266) was also behind a critical introduction to constitutional law through his work.

¹⁴ Jean Carbonnier (1978 p. 126) identified the initial manifesto.

¹⁵ Jean-Jacques Gleizal studies training for jurists as a social phenomenon. The starting point of his reflection involves showing that the training of jurists conditions the production of law to the extent that these jurists are led into the world of law. In this perspective, the author analyses the nature of this training in French capitalist society (Gleizal 1979, p. 50-77, and 1980).

¹⁶ It was in this spirit that Jacqueline Gatti-Montain (1987) wrote through which she analyses the teaching of law from a historical and critical perspective.

received thinking. On the other hand, since it is not established dogma, it must commit to a veritable polemic which keeps its options open.

The Movement then, at the beginning of the 1980s, was to produce numerous texts whose content was educational and scientific and sought to analyse more precisely the tools and practical rules of legal mechanisms. For the Movement, this was about implementing a veritable materialist theoretical line of argument which would not apply the theory already taught in law. The MCD sought to implicate research in teaching and organise its work into workgroups, and emphasised the need to rethink law both in its theoretical dimension and its conditions and practical implications.

It does not seem however that teaching practices within law faculties were radically changed as a result of the MCD. The MCD's influence on teaching practices was undoubtedly greater from a theoretical rather than practical point of view.

3.7. A theoretical and practical approach: a practice of theory and a theory of practice

The coherence of the MCD is marked by a shared commitment and a desire for change. Theoretical and scientific research is a way of looking at practical and political transformation. As part of this perspective, the emphasis is placed on theory as the subject of the transformation of a new theoretical practice: it is about interpreting the legal and political mechanisms of the production of law in a different manner. These two directions are intimately linked, but they are to be presented in a different manner, as two logical moments which constitute the critical study of law.

This synthesis of practice and theory is used by the ACD and explains the birth of *Procès* through the existence of "a political and theoretical imperative" (ACD 1979). This imperative has a specific field of application in the area of teaching. Indeed, the purpose of the Movement is to transform teaching and research practices in law faculties and thus contribute to a different understanding of law within the perspective of a transition towards socialism" (Miaille 1993, p. 132).

Within the MCD, therefore, there is a creative tension between practice and theory whose horizon is a new way of practising theory. The stated desire of the MCD is to develop a new practice of theory necessarily requiring theoretical reflection on the practice itself. This strong link between theory and practice is restated in the presentation of the 6th issue of *Procès*. The MCD authors want to "work on the presuppositions of the politico-legal world, go into greater depth on theoretical research, open up a broader debate on law in social teaching and create concepts without which there can be no proper understanding and transformation of our societies" (*Procès* 1980, n. 6). The theoretical reflection therefore goes hand-in-hand with political practice, but it also concerns legal practice, as we see, for example, in the works of Evelyn Serverin (1979), who a few years later, Evelyn attempted to develop a veritable theory of case law practice in her study (Serverin 1985).

The various actors and authors contributed to the development of knowledge within their disciplines and attempted to transform and work with law as a political science differently, and with adjacent disciplines such as sociology or political philosophy. Those involved in the MCD - characterised as much by its heterogeneous nature as by its coherence - set the objective of promoting a new practice of theory.

3.8. Diversity and coherence of MCD

The scientific production of the MCD authors was characterised by a great variety of personal processes. It is expressed first and foremost through the specificity of each scientific project and subsequently, by methodological choices and specific theoretical presuppositions. MCD is characterised indeed by a broad diversity of

scientific projects which are specific to each of its authors. But for the most part, they are university writings, exercising teaching and research activities at various levels and ranks. But this variety of projects seems to follow a certain disciplinary logic which imposes specific constraints upon the researchers. Thus, the writings of authors from the Movement are part of the disciplinary fields of law and political sciences. But they also entail a multi-disciplinary dimension and refer to adjacent disciplines such as history or political philosophy.

3.9. A multi-disciplinary dimension and a vast range of topics

The diversity of the topics studied by the authors of MCD is particularly well illustrated by the variety of themes addressed in the successive issues of *Procès*. Indeed, general reflection on the theory of law and the State run adjacent to more specific analyses on specific areas of the legal and political system. In this respect, we can identify several representative theme-based complexes in their scientific writing. Whilst the early issues of the magazine are more turned towards theoretical questions, and seek to legitimise the Marxist approach to law (*Procès* 1978, n. 1 and 2), studies are very quickly focused on more precise areas such as case law or teaching (*Procès* 1979, n. 3), police (*Procès* 1980, n. 5 and n. 15/16), economic law (*Procès* 1981, n. 7) or indeed, colonial law (*Procès* 1987/1988, n. 18). The MCD thereby took interest in several branches of the legal field: administrative law, constitutional law (Dujardin 1979), civil law and in particular, employment law (Jeammaud 1978); research in law (Jeammaud 1978, Benchick, Charvin and Demichel 1986, p. 134) and political science (Miaille 1978, p. 266).

This great variety requires specific approaches. As any topic can naturally be situated in several fields, the authors used highly diversified approaches themselves. This multidisciplinary dimension of the MCD resulted in approaches which particularly interested the fields of sociology, philosophy (Michel 1983) and history. From this point of view, we are looking at the first convincing form of "socio-history". In this sense, the use of history is encouraged by Yannick Guin in his *Epistemology of the History of Law of Employment*. According to the author, its historical approach meets the requirement for reciprocal and ongoing questioning between the reality of legal facts and concepts so as to demonstrate the origin, nature and foundation of employment law in capitalist society (Guin 1983).

The diversity of scientific projects and the differing objectives of the actors of MCD are expressed through their theoretical presuppositions and methodological choices.

3.10. Reference to non-Marxist methods: A plurality of interpretations of Marxism

Within the MCD, there is no systematic reference to Marxist principles. This is the case of Jacqueline Gatti-Montain (1987) which was inspired by Nizard (1972, p. 287) or Serverin (1985) who does not explicitly claim Marxist heritage in the development of an analysis method that she implements for her research on case law practice. She refers primarily to comprehensive sociology espoused by Max Weber, but using as reference the approach by Max Weber, Evelyn Serverin distances herself from Marxism. Indeed, she shows that those who produce law are neither theoreticians of law or society; law is produced by its own regulatory mechanisms of which the doctrine is a part. Furthermore, when Marxism is used as a theoretical foundation for scientific analysis, it is not necessarily taken as "the one and only" vision of Marxist ideology. The MCD presents a plurality of Marxist interpretation (Journès 1982) which corresponds to the different sensitivities and objectives of each author. In his article of 1982 on the crisis faced by Marxism, Claude Journès identifies this plurality of interpretations of Marxism and attempts to go beyond it through a constructive perspective.

In the MCD, there were several ways of being Marxist; there is a level of economic Marxism and references to Marx as a philosopher. Some are closer to Trotskyites

such as Jacques Michel, others to Communism such as Claude Journès and some are members of the PSO, as in the case of Antoine Jeammaud. But they find common ground in a universal approach to Marxism. It is fair to say that the MCD had three components: *Procès* magazine, the *Critique du Droit* Collection and the *Critique du Droit* Association. These three entities federate individuals to form an interpersonal network where the writings of some add meat to the contributions of others, and what is more, feed off the works of authors from outside the Movement.

We could carry out an analysis of the Movement in terms of networks, which would require first of all defining the surface upon which the network based itself. New discursive productions, works or articles by authors from the MCD are nodal points or knots which are linked by relationships of interconnection or intertextuality. These intertextual relations are established by different authors who refer explicitly to the works of other authors of the Movement or to Marxist writers on Law from outside the Movement.

Here, we are working with the idea of "politicization of science" and knowledge. Its very foundations and teaching were laid out flat for scrutiny. Judicial knowledge placed in a critical situation in an analysis where the major thesis is to say that law participates in the creation, operation and reproduction of production relationships by representing them in a deformed manner, i.e. through this dimension that we refer to as "ideological". This means sympathising with the idea that capitalist society is essentially law based and law appears as the specific and necessary mediation of the production relationships that characterise it. Legal rules and political forms cannot be self-fulfilling, and take their roots in the conditions of material life.

Thus, the pertinent research topic with the ambition of reporting on the arrival of functions and transformations of law could only be this form of representation, organisation and reproduction of social production relationships of social life which we shall refer to as *Politico-Judiciaire*.

4. Contributions

The Movement did propose a new, or rather renewed, theoretical approach to the intellectual blockade mounted by the law faculties. Their analyses in Marxist terms were unknown or caricatured in Stalinist forms with a prevalence for the economy and mechanical methodology. What *Critique du Droit* was to propose was another interpretation marked by Althusserism and the renewal of Marxist studies linked to Poulantzas. The return to the very texts of Marx and work on these texts is the originality of the Movement which helped us to discover – or rediscover – a fact which is now accepted: there are several possible interpretations of Marx and, more particularly, there are non-dogmatic interpretations which raise questions, instead of constructing a "theory" in the sense of a closed doctrine. What the Movement did on Marx was what had been claimed by the critical movement for a long time: not manufacturing critical weapons (such as new dogma) but proposing a criticism of weapons through an interest in the judicial debate. Hence a series of works which can be referred to as "fundamental research".

Even though the link with movements and syndicates was very weak (SM, SAF, *Boutiques du Droit*) it obviously served to highlight law teaching and practices. This was about "getting away from theoretical law" to come back to it in a more helpful way¹⁷. This resulted in a series of works on teaching theory which functioned as "counter manuals" in the key subjects: civil, constitutional, economic and international law and subsequently administrative and employment law.

¹⁷ Interviews with Régine Dhocquois on February 21st 2004, Daniele Lochak on July 13th 2006.

Finally, this project was built on a strong ambition: that of institutional recomposition, even suggesting the “end” of law faculties and the creation of faculties of social sciences where law would no longer be independent of the other subjects. Without realising it, they were announcing the return to an old multi-disciplinary teaching idea. This idea succeeded in challenging the way in which members of the teaching corps were recruited (with the end of *agrégation* as a form of competitive entry guaranteeing the longevity of orthodoxy) and even the calling into question of the body of professors who were intended to become unique and non-hierarchical. A veritable project for teaching and education, the successful implementation of multi-disciplinarity and the possible socialisation of law.

On top of this intellectual project there was a teaching-related project: teaching law in another way by proposing students and teachers a different relationship with the very activity of jurists. We see right away how this reminder is only to do with ideas, promoting theoretical voluntarism without analysing the conditions and contradictions of the Movement.

The MCD was therefore to enjoy mitigated success. The different groups who proposed a critical approach were to find some sympathy and this was to vary according to country. In spite of the difficulties the MCD encountered in France maintaining coherence in its work, which was finally to result in its disappearance in 1990, this way of thinking did however manage to introduce a different way of looking at law both in France and abroad.

The influence of the MCD was to be seen partly in its institutional extensions and also in the contacts that it was able to establish abroad. Thus, the most personal research at the beginning of the association’s lifetime became institutionalised in official status terms. Thus, Michel Miaille formed CERTE in Montpellier (*Centre d’Etudes et de Recherches sur la théorie de l’Etat*). He took an interest in political practices and representations and in modes of socialisation and representative democracy. Its main research theme focuses on public politics. The Economic Law Research Centre (CREDECO) was set up in Nice. It was launched by Antoine Jeammaud in Saint Etienne from the Saint Etienne group of Critical Research on Law (CERCRID). The CERCRID was created in 1982 in the faculty of Law and Economic Science of John Monnet University in Saint Etienne (UJM), now known as the Law Faculty. It has been associated with the CNRS since January 1st 1985. Jacques Michel in Lyon also founded the GREPH, a political and historical epistemology research group which was a “young team” created in 2003 and attached to the Political Studies Institute (IEP).

Connections with faculties abroad in Italy, Belgium and South America were but brief moments giving the illusion of a global influence of the Movement. But other critical movements were to appear in Europe and particularly in Belgium, Holland and the UK. However, none was to have the impact that the French ACD had. The association was to enjoy a certain international influence because it rapidly developed contacts with countries such as Belgium, Germany and Italy, but also with universities in South America (eg: Mexico and Brazil). By way of example, it was co-founder of the “European Conference of Criticism of Law” (ECCLS) in 1981. Some of the texts were to be translated into Spanish, Italian and Greek for similar journals to *Procès*, such as “Critical” in Mexico and “Contradogmáticas”.

5. Pavane for a dead infant: the end of critical legal studies?

5.1. Obvious divergences on the intellectual and political plane

The MCD which began in 1978 survived for only 12 years due to a lack of internal coherence, in spite of the considerable influence that it was able to exercise in the university. The Movement enjoyed substantial success amongst French and foreign

intellectuals¹⁸, but it allowed intellectual and political divergences to emerge which were to counter the federating objective which was there at the beginning. From 1981 onwards, under the pen of Jean-Jacques Gleizal (1981), we read that "*Critique du Droit*" did not fully succeed his fairly critical review offering some interesting strategic options.

The MCD's theoretical construction approach based on a materialist analysis of law, made it impossible to get beyond differences of opinion amongst its members, both in terms of the intellectual approach to adopt and their own political convictions. The career paths of the different members of the association mean that meetings become difficult to organise. In order to solve the problem of distance between the members, the idea of local groups evolved. The centres created were designed to continue fulfilling the ambitions of the Movement after its demise.

The end of the Movement is particularly marked by the nature of the conflicts opposing the members of the Movement. Differences in statuses¹⁹, some being assistant professors and others already professors – were quickly to mark their conflicts. The careers of the founders of the Movement were those most affected, whilst those who became figure-heads were those who succeeded at their careers institutionally, which slid them progressively into the sort of academia to which the Movement was so averse.

There was a certain disenchantment with the Movement²⁰. There was disenchantment more generally because of the diversity of personalities and temperaments involved and, beyond their professional status, there were the different objectives that they invested in the Movement and/or the journal.

The fragility of the Movement prevented it from really taking on a recognised role in its field. Of course, there were outbursts (such as the production in the middle of the 1980s of a new set of works presented as "critical" and a review called "*Droits*" with an innovatory dimension and style); but the small group was unable to stand up to a highly rigid and somewhat airtight publication system – especially given the investment that would have been required to set up a truly "militant" movement.

The diversity of careers of its members (coming from very different parties or leanings), and the diversity of interests they had, led to a sort of management of the Movement where there was respect for differences within, but a reputation for Marxist dogma on the outside – especially as theory was favoured over news, which was frowned upon as a detour which would have obstructed or prevented the Movement's fundamental *raison d'être*. The openness, seen as necessary and desirable by some, was not to be followed by others, as illustrated by the very loose links that the Movement had with other movements and unions, to the extent of there being none at all (SM, SAF, *Boutiques du Droit*). The pure and beautiful doctrine was to extinguish the desire for openness which finally could not be achieved or was to be achieved elsewhere.

Finally, the election victory of the Left in 1981 and the advancing careers of all the members of the group – in some cases they had actually become figures of the profession – further weakened the possibilities of offering a credible alternative.

¹⁸ At the Arbresle or Goutelas seminars, the following were present. We mention just a few because an exhaustive list would be enormous: Mireille Delmas-Marty, Jacques Chevallier, Danièle Lochak, Régine Dhocquois, Tienot Grumbach, Odile Dhavernas, Gérard Timsit, Raymond Verdier, Klaus Kroissant, André-Jean Arnaud, Michel Troper, François Ost, Michel Van de Kerchove, Christine Lazerges, etc... and by correspondence with *Critique* on a more occasional basis, Olivier Duhamel, Pierre Favre, Bernard Lacroix, Jean-Pierre Cot...

¹⁹ Jacques Michel, interview March 2nd 2004: Antoine Jeammaud is more moderate. For him, the decline of the Movement is clearly linked to the development in the careers of the different protagonists but in particular because of the political split and the end of the socio-economic context of the era. Interview of February 26th 2004.

²⁰ Jacques Michel, interview of March 2nd 2004.

And thus, without drama or fireworks, the Movement ceased to meet and publish and, without there ever being a real decision to end the project, practically disappeared as a significant body within law faculties.

Indeed, the MCD was to enjoy much greater success in Latin America and the US than in Europe. Nevertheless, the contribution of the Movement is universal since it touches the very foundation of the state of law: is it possible to consider law via other models than the dominant paradigm? This theme is all the more contemporary since it places law in its social context as a recipient of questions related to power and interaction between players.

Today, whilst law is changing on account of globalisation, territorialisation and governance, it is easy to imagine that the situation might be ripe for a new critical movement (García-Villegas 2006). In order for such a construction to be solid it is important to take into account elements inspired by the different waves of the MCD: first of all, it is important to consider judicial pluralism as understood by one of the first critical movements, the Movement for Free Law espoused by Ehrlich and Kantorowicz. Subsequently, we need to look at the position of the Movement which had the most influence in the US, Legal Realism, conveying that law is political. It is also important to include the postulate of GAP of the Law and Society Movement (Vauchez 2001) which dissociates law in books and law in action to show that law is too often separate from reality, and seeks to reduce that discrepancy. Law today, indeed, tends to be pragmatic. But finally, it is important to examine law in its domination or emancipation relationship.

The other critical success factor of a new critical movement is to do with the epistemological approach. On the one hand, the national perspective is obviously passé because of globalisation and the strong emergence of local movements. It is also necessary to transcend a number of dichotomies: thus, what was missing 30 years ago, i.e. the creation of a network, not only becomes technically possible but a political necessity.

Those are the possible elements of another project which could come under the heading of "criticism of law" and, without repeating the experiment of the 1970s, could extend it in another way. Perhaps thus, the critical movement could find the influence that it should have, if only to show the importance of a critical approach in a way of thinking about law in a given time and a given context.

It is a fact that the reference to Marxism has today lost pertinence and the members of the Movement have all abandoned research that they did over a period of 20 years. But the critical point of view continues to be relevant in the current legal context. Law has not become weather-beaten as certain Marxist jurists had predicted, and on the contrary plays an increasingly important role in liberal democracies. The creation of a state of law constitutes a major challenge in developing countries, where the "judiciary" must be recreated in its proper social and political context in order to be evaluated objectively. It is to this that the critical point of view leads which, while taking legal technique into account, also defends the case according to which law is also answerable to the social sciences and must be part of an inter-disciplinary approach.

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