

Law and the Social World

an Ethnographic and Historical Approach¹

Lygia Sigaud

The aim of my paper will be to explore the analytical advantages of combining an ethnographic viewpoint with historical and sociological ones, through a study of the way in which legal innovations produce effects in the social world – or, to put it into other words, how law “enters” social life.

The legal innovations that I will focus on here are those contained in the Rural Workers Statute (henceforth RWS). The RWS, a law passed by the Brazilian Congress in 1963, extended labour legislation to those who worked in agriculture and gave the courts the power to settle all conflicts relating to the new rights. The social world in which these effects will be analyzed is the world of the large sugarcane plantations of Pernambuco, in Brazil’s north-east. The key characters of this world are the bosses (large landowners, tenants and sugar industrialists); the employees (members of the administrative hierarchy); the workers, who make up the labour force used in the sugarcane cultivation; and the leaders of the workers’ unions, which were created during the same time in which the law was passed.

Anthropologists and sociologists have not focused much on the way in which law “enters” into social life. My hypothesis is that this is not so much the result of a negligent viewpoint, but rather of the lack of pertinent signs in the universes being researched. The problems that are available for analysis are not only the product of theoretical concerns. They are also a corollary of the specificities of empirical universes at the moment in which they are made the object of analyses. Some lend themselves more readily to the

¹ Editor’s note: This paper was originally presented at an international colloquium entitled “INTERSECCIONES Y FRONTERAS EM LA INVESTIGACIÓN SOCIAL ANTROPOLOGÍA, SOCIOLOGÍA, HISTORIA” at the School of Human Sciences at the University of Rosario. Lygia sent it to *Vibrant* in November, 2008. Shortly afterwards she wrote to say that she was ill and would work on her text and put in footnotes and bibliographic references when she felt better. Sadly that was not to be. Her children with Moacir Palmeira, Maria Rita, Miguel and Tereza, have authorised publication of the text as sent by Lygia.

exploration of certain themes. The Trobriand Islands, with its sophisticated system of ceremonial exchanges known as Kula, provide an eloquent example. Bronislaw Malinowski, the founder of modern social anthropology, realised the centrality of the Kula institution and analysed it in his first ethnography on the Trobrianders, which has since become an essential reference for all studies of exchange.

The world of the large sugarcane plantations of Pernambuco is one of these cases that lend themselves to a focus on the theme of the “entrance” of law into social life. In this world, which gradually constituted itself from the 16th century onwards, social relationships were personalized and regulated by traditional norms. The Brazilian State did not intervene in the functioning of the large plantations, limiting itself to guaranteeing the right to property of its owners. The most recent regulation had occurred in 1942, with the Statute of Sugarcane Cultivation, which established rights for the workers but which had never taken effect. The law of 1963, however, took events further. While in the remainder of the country the law had no repercussions, in Pernambuco it had immediate effects. In the days after it was passed, the observation of its regulations became the object of a struggle. Through strikes, manifestations, confrontations in the interior of plantations and lawsuits, workers demanded that the statute be respected. Relationships in the interior of the large plantations gradually adjusted themselves to the law. Legal norms and institutions became a reference-point for representations and behaviour, which, if we follow the lead of Max Weber in his studies on law, is evidence that they became effective.

Historians, too, have not contemplated the entrance of law into the social world. Although there are studies that show how legal innovations were appropriated – particularly those of Jane Burbank on the use of law among Russian peasants in the late nineteenth and early twentieth centuries, and that of Elisabeth Claverie and Pierre Lamaison on French peasants and the civil code in the nineteenth century – historians have not been able to show how individuals started to think and to conduct themselves with law as their reference-point. It seems to me that the obstacle they face is not the absence of pertinent signs, as in the case of social anthropological studies, but rather the absence of empirical data that allows them to describe the entrance of law into the social world. Here, too, the world of the plantations is a propitious case. Unlike historians, who must limit themselves to what has been stored

in legal archives, the recent character of legal changes allows the anthropologist access to individuals who lived through them, and enables a focus on that which is not stored in archives, such as representations concerning legal norms, the behaviour associated with them among those who may or may not have had recourse to the courts, and on the ethnographic contexts in which the uses of law are produced.

My paper is divided into four parts: in the first I present the ethnographic data that show how only a few years after the law was passed it had become an omnipresent reference, and lawsuits a generalized practice; in the second, I will go back in time and focus on the moment in which the law was passed, seeking to establish, from historical records, the conditions that favoured the struggle around the norms of the RWS; in the third I will rely on statistical and ethnographical data to qualify the act of having recourse to the courts; in the fourth part, I will shift the scale of my analysis and examine the complexity of the uses of law in the management of relationships with bosses, basing myself on ethnographic research in a small municipality.

1.

In the early 1970's, in my first incursions into the world of the large plantations, my attention was drawn to the pre-eminence of the *direitos*, a native category that designates some of the patronal obligations instituted by the RWS, such as the payment of a minimum wage, of a Christmas bonus, of a weekly rest, of holiday leaves and bank holidays. Seven years after the law was passed, the *direitos* were a constant theme in conversations, even when no question directly concerning them was asked. Bosses complained of the damages that labour obligations brought to pay sheets, and claimed that they were incapable of obeying the law; workers made use of the *direitos* as a marker of periodicity and as a tool for interpreting their recent history (a time "before" and "after" the *direitos*), and to evaluate the behaviour of the bosses; unionists conferred upon themselves the mission of diffusing the *direitos*, and of acting as their guardians. In the early days of the 1970's, thousands of workers had left the *engenhos*, as the large plantations of the Brazilian north-east are called, and installed themselves in the small towns of the region. The labour force was segmented into those who had a formal work contract and still resided in the plantations, and those without one who lived in the towns

and were recruited through intermediaries. The *direitos* were conceived by the various characters of the world of the *engenhos* as being at the origin of this change: according to workers and unionists, bosses were expelling everyone from the plantations in order to avoid paying the *direitos*; bosses, in turn, argued that because of the *direitos* they could no longer maintain the same number of workers in their lands. It was also in relation to the *direitos* that the two segments of the labour force were identified and identified themselves: there were the *fichados*, who had a contract, and the *clandestinos*, who lacked both contracts and *direitos*.

Among workers, the *direitos* were strictly linked to the union and the courts. The union was seen as an institution whose purpose was to uphold the observation of the *direitos*, and who defended the workers in what concerned them. The courts were then perceived as an institution that forced bosses to pay the *direitos* whenever they refused to do so: “when they [the bosses] don’t pay, the worker runs to the courts”; “when they [the bosses] put us out, they have to pay the *direitos*”. These assertions were heard both from those who had already sued their bosses, and from those who had never done so.

On the other hand, bosses, workers and unionists took the law into account in their conduct. Thus, bosses refused to hire new workers in fear of contracting the obligations of the RWS in relation to them; workers wanted the *direitos* to be upheld in the day-to-day of their relationships with the bosses and their employees, and they frequently went to court to complain of their bosses; union leaders, who were themselves ex-workers, encouraged workers to claim their *direitos*, both in the daily affairs of the plantation and through lawsuits, and they frequently acted as intermediaries in negotiations with the bosses.

What I was able to observe ethnographically contrasted greatly with the recent past of the plantations. Within a relatively short interval of time, there had been a significant change in social relations. Among these, I will here highlight the existence of a fixed wage where previously bosses had paid whatever they felt like; payment for periods of no work, such as holidays, where this type of remuneration had previously been unthinkable; recourse to the courts where the regulation of relationships had previously been an internal affair, free from external intervention; and the existence of union organization in a place where workers had been isolated in the interior of plantations. These changes were recognized by the characters of the world of the *engenhos* and could be verified through the literature on its past, produced

both by historians and bosses.

The pre-eminence of law in Pernambuco also contrasted greatly with what could be observed in other parts of the country, where one could find neither the language of the *direitos*, nor the conduct related to them. How, then, are we to explain that in Pernambuco the RWS resulted in such a distinct situation? The answer to this question could not be uncovered through ethnographic research alone. The recollections of those who lived through the advent of the law offered clues, but these were not enough. It was necessary to take into account the recent history of the world of the large plantations, through the documentary sources and contemporary writings.

2.

Ever since the early 1960's, Catholic militants and communists were investing in the organization of the workers into trade unions. By 1963 there were already 36 unions in the Coastal Zone of Pernambuco and one federation, established the previous year, that agglomerated some of these. With the RWS, unionists made efforts to diffuse the *direitos* among the workers, organizing them and encouraging them to fight. In 1963, Miguel Arraes became the governor of Pernambuco, with the support of left-wing organizations. Unlike his predecessors, he did not use the military police to suppress workers. He ensured the rights to freedom of assembly and expression, thus favouring the organizing work of the militants. He also took on the role of mediator in disputes that opposed workers and bosses.

The early sixties were a favourable time for the sugarcane industry, which saw the rise of sugar prices in the international market. Many bosses began to re-occupy land that had been used for subsistence agriculture in order to intensify the cultivation of sugarcane, and to change the ways in which the worker's wages were paid in the hope of increasing productivity. For the workers, these acts violated traditional norms and contributed to the delegitimization of the dominant position of bosses who proceeded in this manner. It may thus be understood why workers were disposed to believe in the good news of legislation announced by union leaders and why they felt themselves to be free from the duties of loyalty – free, therefore, to demand that the new legal obligations be respected during that favourable moment.

The advent of workers' rights, and the wage increases (in the order of one

to five) that followed, marked a time of social effervescence in the coast of Pernambuco. As if by magic, workers were overnight able to buy consumer goods that they could never have afforded before, such as mattresses, furniture, battery-operated radios, bicycles and fresh meat. The emotional tone of their narratives is evidence of their enormous joy, and they allow us to see how extraordinary that time of their lives was.

In March of 1964, the military took power in Brazil. In the region of the plantations, many unions were closed down and various leaders were arrested, tortured and killed. Some months after the coup, the unions were re-opened, thanks to the intervention of Catholic priests. The manifestations and strikes of the preceding period became unthinkable. The labour rights continued to apply and courts functioned normally. Unionists concentrated their activities in continuing to disseminate knowledge of the *direitos*, in acting as intermediaries in complaints with the bosses and, above all, in the filing of complaints to the courts, with the advice of lawyers. Since the military did not have a policy for implementing the new legislation in the rural world, it was through the efforts of the unionists that law progressively entered into the world of the *engenhos*.

3.

In the early 1980's, lawsuits were a general practice. In 1963, there was only a single court for the whole of the plantation region. By 1980 there were already thirteen. Ethnographic research had allowed me to witness the generalization of recourse to courts, but it did not supply me with the necessary data for quantifying and qualifying it. I therefore made use of a procedure which is uncommon in anthropological research, but which is widespread in sociological studies. I carried out a census of lawsuits in twenty-three of the forty-four municipalities of the region in a period of four years. The statistical approach to the census allowed me, firstly, to obtain a dimension of the suits. Between 1978 and 1983, the period under study, some thirty thousand workers, from a total of two hundred thousand, had sued their bosses. Secondly, the census revealed that demands were unequally distributed in the region, with some municipalities showing a greater concentration. Thirdly, it allowed me to develop a profile of the suits. They were mainly carried forth by males, but they did not depend on factors such as age, length of work

contract nor on its termination. Nothing in the census indicated to which variable lawsuits could be correlated. Fourthly, the census indicated that the workers tolerated a disregard for legal norms, and the latter could take years before they decided to go to courts. The results of the census were suggestive, but the regularities that could be observed and their absence only became meaningful in light of the ethnographic data, and through a perspective that went beyond statistics.

During my time in the world of the *engenhos*, I had observed that there was an important difference between union leaders. There were thus those who invested in the mobilization of workers in defence of their rights, through either open conflict with the bosses or through lawsuits. These unionists were considered to be more immersed in the cause of the workers than those who did not proceed in this manner, and they enjoyed greater prestige in the sphere of Pernambuco's unions. After union struggles were resumed in the period following the coup, the struggle for the *direitos* had become an index of excellence in the unions and it was perceived as establishing continuity with the great struggles of the past. The municipalities that showed a greater concentration of lawsuits in the census were those whose unions were led by diligent unionists. I will not have time to analyze the factors that contributed towards making diligence an index of prestige, and I only want to indicate that the involvement of the union leaders was a decisive factor in the complaints of the workers and in their recourse to the courts.

The absence of a statistical regularity in respect to the social properties of workers who went to court intrigued me. The census itself offered me the first clues. These were not in the statistics themselves, but rather in the raw material that did not lend itself to a statistical treatment. From a random sample of the lawsuits, I noticed that many of them contained a short history of the events that led to the suit. An analysis of some of these histories showed me that some traditional norms still held sway within the plantations. They thus had frequent references to the fact that the boss had stopped observing them. Among these, we may highlight the refusal to help a worker in the burial of a family member or to come to the aid of someone who was ill. These references were intermingled with those that referred to the boss's disregard of legal norms, whose reparation was asked of the courts. The inclusion of these short histories served to embellish lawsuits, and they did not have legal effects, since judges were only interested in what concerned the

legal norms. From an analytical standpoint, however, the short histories were precious. They allowed me to infer that social relations within the plantations were orchestrated by a type of implicit understanding, that was constituted by a combination of traditional norms with legal ones. The rupture of these understandings is at the origin of a decision to go to court. Contrary to what might be supposed, recourse to the courts did not only depend on the failure to fulfil legal obligations.

When reinterpreted in light of the ethnographical data, the results of the census offered a more precise picture of the demands brought to court, but they did not allow me to perceive the dynamics of these demands. In order to understand these, it was necessary to turn to ethnographic fieldwork once again, and to change the scale of analysis. In the census, the empirical data had concerned a sample of the whole of the sugarcane-growing region. It was now necessary to focus on a smaller site, where ethnographic observation could be carried out and where I could interact with the characters of the world of the *engenhos*. It is to this that I will now turn.

4.

Rio Formoso, a municipality that, in the early 1990's, had thirty-two thousand inhabitants, came third in the ranking of lawsuits. Its union leaders enjoyed great prestige in Pernambuco, and were renowned not only for the number of lawsuits, but also for the successful strikes that they had carried out. A part of the workers lived in the town, but most resided in the fifty-five plantations of the municipality, which also had two sugar mills.

In most of the *engenhos*, the workers had already sued their bosses, as can be gleaned from the union registries. Yet the same registries also show that there were *engenhos* in which there had been no lawsuits. I therefore carried out a comparative study of the *engenhos* with a high incidence of lawsuits, *engenhos* with no lawsuits, and *engenhos* in which workers were going to court for the first time. My hypothesis was that the absence of suits could supply me with the key for understanding the logic in which demands were inscribed. Ethnographic research and the shift in scale confirmed that lawsuits originated in the rupture of the implicit agreement, but they also revealed a more complex picture.

Firstly, it was possible to perceive that going to the courts was also a moral

question. Unionists and workers who sued their bosses attributed lawsuits to the courage of the workers and accused those who did not go to court of being afraid of the bosses. Those who did not sue their boss, for their part, were not concerned with justifying their actions. The matter was not even an issue. It was only when they decided to do so that they claimed that they had been ashamed of going to court because, up until that time, the boss had been a “good” man.

Secondly, I understood that lawsuits were inscribed in a web of interdependence and reciprocal obligations that tied workers, bosses and unionists. The *engenhos* with a high rate of lawsuits were also those whose workers had closer ties to the unionists, on whom they relied on to settle issues with the bosses. Unionists, in turn, depended on those workers when they organized strikes and large confrontations with the bosses. *Engenhos* with no lawsuits were those whose workers were more linked to the bosses, through personal bonds. Bosses made efforts to do favours for the workers and these felt themselves to be indebted. The moral debt with the boss cancelled the legal debts. When the implicit agreements were broken and the worker went to the union, the union first sought an agreement with the boss. If this were impossible, they would advise the worker to sue his boss. If the worker refused to follow the advice, the union would no longer support him. In what concerns relations with the bosses, unionists would concentrate on lawsuits against bosses with whom they had a history of conflict, in particular the owners of sugar mills. In relation to other bosses, with whom they were on good terms, they were condescending and would not insist that workers sue them.

The possibility of being taken to the courts contributed towards making the bosses of Rio Formoso adjust themselves to the legal norms. They never followed the letter of the law and compensated for the occasional disregard of legal norms by respecting the norms of tradition. There was thus a sort of equilibrium between law and tradition in the interior of each *engenho*. The management of this equilibrium was up to the bosses and their employees. When it shifted, the possibility of a lawsuit was high. If a worker went to the union and decided to sue his boss, a lawyer was called into action. The complaint of the worker, which may have had no relationship to legal matters, was transformed into a legal issue and submitted to the courts. Judges tended to side with the workers and condemned the bosses to pay what they owed. Workers considered victory in the courts to be a victory of the union, and they were grateful and indebted to the unionists.

Conclusion

The ethnographic look at Rio Formoso during the 1990's, associated with the ethnographic look at other moments and the historical and sociological looks, combined with the constant coming and going of looks, allowed me to understand the way in which the behaviour of the characters of the world of the *engenhos* in relation to law contributed, through time, towards its continuing effectiveness and the respect of its norms. This behaviour included the initiative of workers in their daily struggles for the observation of patronal obligations in the *engenhos*, the threat of workers and unionists going to court in their confrontations with the bosses, and the negotiations of workers and/or unionists to reach an out of court settlement. They also included the initiative of the bosses to conform to the rules, even when they were not pressured to do so. The real possibility of being sued, with the corresponding risk of having to pay a hefty amount due to the metamorphoses conjured by the lawyers, the feeling of dishonour that stems from this confrontation, and the well-founded fear of being convicted by the judges – since statistics from the judiciary show that workers regularly get favourable sentences – disposed the bosses to adjust to the law. This adjustment does not conform to the letter of the law. Rather, it is an adaptation. Everything is wrapped in an atmosphere that mingles law with “tradition”, and with the treats, the gifts, the attention and the debts that they create – all of which are characteristic of the functioning of the social world.

The “entrance” of law into the world of the *engenhos* was not the effect of the existence of legal institutions and norms. These are the conditions that make such an outcome possible, and nothing more. The “entrance” was the result of a constellation of favourable conditions and, above all, of the conduct of the characters of the world of the *engenhos* and of the world of law. From the point of view of individuals, their actions do not necessarily seek to conform to law, nor was this the meaning that they attributed to them. It was in the framework of the relationships that inter-connected them that they produced this effect.

Received: 25/01/2009

Approved: 20/02/2009