LAW AND DEVELOPMENT IN THE LIGHT OF DEPENDENCY THEORY

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Post-World War II theories of modernization, including theories of law and development, have proved inadequate either to explain development and underdevelopment or to make a substantial contribution to our understanding of the role of law in underdeveloped countries. To what extent do contemporary ideas of underdevelopment and dependency in the social sciences provide the foundation for a theoretical renewal in the comparative sociology of law? To answer this question, the paper first examines the origins of these ideas and discusses the methods, presuppositions, and concepts of the principal theoretical writings on underdevelopment and dependency. It then considers two important issues raised by these writings and addressed by a number of recent studies: the relation between the state and classes, and the relationship of peasants to capitalism. This review concludes that theories of underdevelopment and dependency contribute to the reorientation of social research on law by forcing a reappraisal of previous ideologies and proposing new frameworks of analysis. But it also argues that such a reorientation must ultimately transcend those concepts by participating in the elaboration of Marxist theories of law.

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I. LAW IN UNDERDEVELOPED COUNTRIES: THE NEED FOR REAPPRAISAL

The theories of modernization—including theories of law and development—elaborated after World War II appear, in retrospect, to reflect the ideological hegemony of Western capitalism and the dominant economic forces of contemporary imperialism. It is therefore not surprising that these theories have proven inadequate to explain development or underdevelopment or to make a substantial contribution to our understanding of the role of law in these processes. They need to be rejected and replaced by a different foundation capable of supporting "a theory of underdevelopment and its liquidation" (Leys, 1975: 21) and of stimulating creative theoretical and empirical research in the comparative sociology of law.[1]

Among the potential sources of such a renewal are the ideas concerning underdevelopment and dependency that are now common currency in the social sciences. Although frequently viewed as recent alternatives to modernization theory, these ideas were not "a sort of mental thunderclap that occurred at a given time and place" (Cardoso, 1977: 8). Many conceptions of underdevelopment and dependency draw substantially on previous work, although this varies with the theorist and the specific historical circumstances in which the ideas were produced. Nor do these ideas, taken together, constitute a unified body of theory that is entirely coherent, internally consistent, and relatively unchanging. Their authors differ greatly in their emphases, conceptual frameworks, and political conclusions. Despite their diversity, however, these theorists, both Marxist and non-Marxist, share certain general approaches to method and explanation. But the very presuppositions that fueled the attempt to transcend modernization theory have recently stimulated criticism, and in

[1] Expressions such as "the comparative sociology of law" and "social research on law" are used in this paper to refer to research, by whatever discipline, that is intended to contribute to social theories of law. For a similar distinction, see Abel (1973b; see also 1978a). Given the low level of theoretical development in much research on law and the belated concern for legal phenomena in Marxist theory, this paper argues that orthodox disciplinary boundaries need to be disregarded or transcended if legal forms and ideas are to be placed within such theories. Since this paper is intended primarily as an introduction to and a survey of the ideas of others, it uses numerous quotations so that, to the extent possible in a brief survey, proponents of the ideas of underdevelopment and dependency may speak for themselves.

some cases rejection, of the central ideas of underdevelopment and dependency themselves.

These themes—the ideological role of law and development theory, the necessity for an alternative conception of underdevelopment and development, and the contribution of different formulations of dependency theory—recur throughout this paper, but a full discussion of each lies beyond its scope. By surveying the major writings on underdevelopment and dependency theory, this paper tries to show that social research on law in underdeveloped countries requires a radical reappraisal and reorientation. Somewhat more tentatively, it also suggests that such a reorientation, though drawing on those writings, necessarily must go beyond them and form part of the elaboration of Marxist theories of law. A major writer on African underdevelopment cautioned recently that

> academic studies can contribute little to the effort to achieve new strategies of development grounded in the interests of the mass of those who are currently the victims of underdevelopment. Perhaps the most such studies can do is to try not to obscure the structures of exploitation and oppression which underdevelopment produces, and which in turn sustain it. [Leys, 1975: 275]

From this modest but realistic perspective, a simple justification may be offered for reviewing the literature on underdevelopment and dependency theory and suggesting that social research on law needs to be reevaluated in its light, though not necessarily remolded in its image. During the past decade or so, significant conceptual advances have occurred in several fields of social research relevant to law, especially in development studies. But, with scattered exceptions, contemporary work in the comparative sociology of law remains relatively isolated from these newer perspectives. Each of these points deserves brief discussion.

A. Changing Perspectives in Development Studies

Although the roots of contemporary Western theories of development may be traced at least as far as the Enlightenment (Nisbet, 1969, 1970; Bottomore, 1971: 283-91; Rhodes, 1968: 383-85), development "as aspiration, ideology, and field of study" (Bernstein, 1971: 142) is largely a product of economic and political events following the Second World War (Myrdal, 1968: 8; Bernstein, 1971: 142; Packenham, 1973; Sunkel, 1977: 6; Foster-Carter, 1974: 72-78; Cleaver, 1976: A.2).[2] Changes in the structure of capitalism, modifications of the colonial system, the establishment of the United Nations, demands of

[2] See Clarkson's (1979) useful survey of Soviet theories of development.

particular groups and classes in underdeveloped countries, the recovery of the Soviet Union, and postwar international tensions (Myrdal, 1968: 8; Dos Santos, 1976: 93-94; Baran, 1957: 1-18; Robin Murray, 1972) contributed to its birth. Together with these historical circumstances, the inability of positive economic theory to explain differences among national economies led to a concern for the "noneconomic factors" in development. Western social scientists drew on the concepts of classical sociology concerning social change, evolution, and progress to elaborate the amalgam of ideas that became known as modernization theory (Bernstein, 1971: 143; 1972; 1979: 80-81, 97 n.4; Dore, 1977: 4-5; Valenzuela and Valenzuela, 1979: 32).

Although it eventually came to encompass a variety of emphases and viewpoints,[3] modernization theory may be characterized briefly by referring to three of its attributes. First, it adopted a notion of social change that emphasized differentiation and integration. Second, it postulated a conception of modernity that was formal and ahistorical but teleological. Finally, it envisaged development as an evolutionary movement from an original state of underdevelopment to an idealized version of the United States or Western Europe (Bernstein, 1971: 143-46; Valenzuela and Valenzuela, 1979: 33-42). Theotonio Dos Santos, a leading dependency theorist, summarized its major principles:

> 1. Development means advancement towards certain well-defined general objectives which correspond to the specific condition of man and society to be found in the most advanced societies of the modern world. . . .
> 2. Underdeveloped countries will progress towards this model as soon as they have eliminated certain social, political, cultural and institutional obstacles. . . .
> 3. Certain economic, political and psychological processes can be singled out as allowing the most rational mobilization of national resources and these can be categorized for the use of economic planners.
> 4. To all this is added the need to co-ordinate certain social and political forces in support of a development policy and to devise an ideological basis which organizes the will of various nations in the 'tasks' of development. [1973b: 58-59]

Underlying the presuppositions and substantive theories of this "ideology of developmentalism" were a notion of knowledge as cumulative, the belief that the proper aims of social science were prediction and the search for universal laws, a sharp distinction between ideology and "objective" social research,

[3] Hilal (1970) "distinguishes five main types of conventional analyses: a) index-typological approach, b) evolutionary and neo-evolutionary approach, c) impact-differential approach, d) psychological and behav[i]orist approach, and e) international status system approach" (cited in Cheng, 1976: 1). For other critical surveys of explanations that this paper subsumes under a single rubric for convenience of exposition, see Szentes (1976: 23-127); Frank (1969: 21-94).

and the translation to underdeveloped countries of conceptual frameworks derived from the experiences and myths of limited groups in developed countries, particularly the United States (Bodenheimer, 1970: 95-121).

Even by the middle of the 1960s, however, the basic assumptions and tenets of modernization theory were being questioned. This was especially true in Latin America, which combined a long history of formal independence with a subordinate relationship to the United States.[4] More generally, international political and economic events and increasing domestic conflict in many countries, including the United States, gradually were reflected in new scholarly concerns. The growth of transnational corporations in symbiosis with the state; the end of the Stalinist period and the growing power of the People's Republic of China; the emergence of national liberation movements in Algeria, Cuba, and Vietnam; the patent failure of the first Development Decade and the widening gap between rich and poor countries; the beginning of new crises in the world economy—all of these contributed to the emergence or renewal of currents of thought that have virtually transformed the field of development studies.[5] The late 1960s and early 1970s saw powerful criticism of the concepts and explanations that dominated research in almost every branch of the social sciences concerned with development.[6] In a paper published in 1969, Dos Santos identified a "crisis in the development model" and concluded that "the very notion of development and underdevelopment [as understood by mainstream scholarship] and the explanatory power of these concepts have lost credibility" (Dos Santos, 1973b: 67-71; see also Smith, 1973: 238-39; International Legal Center, 1974: 23; but see Lehmann, 1979: 6).[7] In addition

[4] Nun (1967) and Corradi (1975) are especially useful discussions of early criticisms; see also Kahl (1976).

[5] See Wallerstein (1979: 154-55); Sunkel (1977: 9-10); Dos Santos (1973b: 67-71); Seers (1979a); Foster-Carter (1974: 79-81); Bernstein (1979: 82); Fagen (1977: 6-7); Kaldor (1978).

[6] See Kesselman (1973); Seers (1963, 1979a, 1979b); Rudebeck (1970); Pratt (1973); Dennon (1969); Dowd (1967); Petras (1965, 1968); Rhodes (1968); D. Cruise O'Brien (1972); Sandbrook (1976); Bodenheimer (1970, 1971); Bernstein (1971, 1972); Nun (1967); Ehrensaft (1971); Legassick (1977); Ocampo and Johnson (1972); Frank (1969: 21-94); Szentes (1976: 13-127); Amin (1974b); Bettelheim (1964: 27-42); Blackburn (1972); Institute for Development Research (1973); Judt (1979); Corradi (1975); International Legal Center (1974: 85); Nafziger (1979); Rimmer (1972); Lummis (1976-77).

[7] Presaging a similar "crisis" in the law and development movement, Sandbrook succinctly summarized the "crisis" in political development theory as follows:

> Crisis, defined as "challenge to the authority of the constituted decision makers expressed through extralegal means of protest," is

to its ideological content, the theory of modernization was "condemned to the closed circle of an ideological discourse from which it [could not] break out"; its very mode of conceptualizing change definitively prohibited any theoretical advance (see Bernstein, 1979: 82-83, 93).

Analyzing the reaction of students of development to social and economic changes in Latin America since 1960, the Chilean economist Osvaldo Sunkel observed that

> development thinking took two different directions. One argued that this was the inevitable consequence of the transition to capitalist development. . . . The other elaborated a radical critique, suggesting that capitalist development in the periphery would not reproduce the historical capitalist development path. . . . The first approach is still followed by the majority of development practitioners. But . . . development thinking among social scientists involved in development planning in the developing countries began to change radically in the mid-1960s. . . . [1977: 10]

This "radical critique" has now spread beyond Latin America to permeate most social sciences (if only as something to be opposed). It has been elaborated in distinct schools and has generated substantial criticism. But whether these schools emphasize processes of underdevelopment or relations of dependence, together they represent "an attempt to establish a new paradigm" (O'Brien, 1975: 12; but see Cardoso, 1977: 8-11).

B. The Rise and Fall of "Law and Development"

Students of legal institutions and processes have continually drawn upon the social sciences, broadly understood, as a source of implicit and explicit theoretical frameworks, insights, hypotheses, and suggestions for research. Those interested in the relation of law and development were no exception, even though traditions of legal research, particularly in the United States, differed significantly from those in social sciences (Merryman, 1977: 473-79).[8] For despite

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perhaps too strong a term to apply to the current *malaise* in development studies. But there definitely is a problem. Conceptual models like the ones examined here have been formulated and reformulated over a period of about fifteen years, yet they remain seriously deficient in terms of their creators' own criteria. They possess . . . little actual or even potential explanatory power. . . . Moreover, given the limitations of the notion of science upon which political development models are constructed, one cannot realistically expect any dramatic breakthroughs in explanatory power in the future. In the meantime, we can expect these less than successful models to shift from the explanation to the prescription of political action. While this is not an undesirable tendency (since it sharpens the political issues), some social scientists will want to reject the conservative implications of the programmes. [1976: 181-82].

See Gouldner (1971) and the essays in Blackburn (1972) for further discussion.

[8] Merryman (1977: 484-91) provides a preliminary list of publications and activities in law and development. See Paul (1978: 500 n.1, 501 n.2) for criticisms of this list.

the depth of its intellectual roots and the existence of earlier analogues (Merryman, 1977: 461-72), the law and development movement was a product of the 1960s (Trubek and Galanter, 1974: 1065-68, 1085-88; Burg, 1977: 495-98; Merryman, 1977: 457-59, 461-73; Gardner, 1978). Linked since its inception to American aid programs and foundations (Trubek and Galanter, 1974: 1063, 1065-66, 1086-88; Merryman, 1977: 457-60; Burg, 1977: 496-98; Gardner, 1978: passim),[9] it remained largely, though not entirely, an American phenomenon.[10] Lawyers, moreover, "were latecomers to the development research game" (Trubek and Galanter, 1974: 1065). Consequently, law and development scholars relied heavily, if not exclusively, upon modernization theory for their presuppositions and theoretical frameworks. Three different aspects of this relationship may be emphasized here.

The law and development movement was characterized by a lack of specificity in and consensus concerning basic concepts, hypotheses, and explanations (Burg, 1977: 500-05, 528). But if one seeks to situate the movement in relation to modernization theories, it is clear that its lack of "closure" had two important, interrelated consequences. It encouraged contributions by scholars (and aid officials and foundation staff) with diverse backgrounds, interests, and theoretical persuasions (see Trubek and Galanter, 1974: 1063, 1067-68; International Legal Center, 1974: 50-56). For about a decade it accommodated a loose alliance of scholars whose notions of "law" and of "development" were ultimately contradictory. If these concepts had been defined more sharply from the outset, they might have prevented the movement's emergence or hastened its demise. But this relative lack of theoretical closure meant also that the law and development movement was highly permeable to the modernization theories then dominating social science. In the absence of an explicit theory, some early law and development scholar-reformers "began to articulate the [implicit] assumptions and theories that

[9] On the history of the law and development movement, see Gardner (1978, n.d.) (cited in Merryman, 1977: 459 n. 5).

[10] The ideology of law as an instrument of development was not limited to the United States. Examples of similar research in other countries include the Restatement of African Law Project at the School of Oriental and African Studies of the University of London and much of the research by Dutch scholars on Indonesia and Belgian scholars on the Congo, Rwanda, and Burundi; see also various articles published in *Verfassung und Recht in Übersee* (Hamburg). LeRoy (1971) criticizes some research related to French-speaking Africa. A thorough review of this literature would place the American law and development movement in better perspective but is beyond the scope of this paper.

underlay their assistance efforts" (Trubek and Galanter, 1974: 1066). Frequently lacking the training or the inclination to elaborate a theory of law (Merryman, 1977: 473-79), legal scholars often relied heavily if not explicitly on the dominant sociological, political scientific, and economic theories of modernization. The attraction of a wider group of scholars to studies of law and development incorporated modernization theorists directly into the movement (see Trubek and Galanter, 1974: 1067-68).

The intellectual and political origins of the law and development movement form a second aspect of its relation to modernization theory. The idea of progress that originated in the sixteenth and seventeenth centuries, notions of instrumental law reform long established in the West, the growth of relatively systematic studies of law and society, the concept of social engineering through law as elaborated by American sociological jurisprudence, and increased U.S. intervention in Europe and the underdeveloped world after World War II all were significant factors (Merryman, 1977: 461-67). As we have already seen, some of these factors underlay modernization theory as well. A critical question, however, is how to explain "the peculiar nature and importance of international concerns following World War II that fused these strands of intellectual history into something that came to be called the law and development movement" (Merryman, 1977: 467).[11] An adequate answer, which lies far beyond the scope of this paper, surely would have to take account of the

> new stage of capitalism, begun after the Second World War, and characterized by the high degree of integration of the world capitalist system . . . [and] by the intensification of the links between the state and the monopolies . . . [which at] the international level . . . culminate[d] in the imposition of U.S. hegemony. [Dos Santos, 1976: 84]

In this new international setting both transnational corporations and states sought the benefits of planning, stability, and containment (Fitzpatrick, 1979a: 6-7; see also Robin Murray, 1972). An answer would also need to consider the causes and consequences of the erosion of liberal values in the United States between 1960 and 1970 and the emergence among politicians and scholars of an increasingly authoritarian emphasis on institutional order (see D. Cruise O'Brien, 1972). Both factors influenced the premises of modernization theory

[11] Merryman (1977: 467) notes that "[o]f the five [factors he identifies], only foreign assistance is a genuinely recent development," but he fails to place aid programs in the context of American imperialism and so cannot offer any explanation of its causes or consequences.

and were woven into the assumptions of development studies that accorded particular importance to law.

The strongest links between law and development research and modernization theory were the basic assumptions of the former, which "function[ed] as the tacit theory in most untheoretical legal research" (Trubek and Galanter, 1974: 1069 n.21). Despite the lack of definitional consensus (Burg, 1977: 505, 528) and the persistent criticisms of instrumentalist conceptions of law (Burg, 1977: 516-25), most law and development scholars shared certain presuppositions that suggested research questions, delimited the range of potential answers, and embodied social and legal values (see Trubek, n.d., 1972b). Trubek and Galanter term these presuppositions "liberal legalism," "the original paradigm of law and development studies in the United States" (1974: 1070, passim). No point would be served here by debating whether these presuppositions, taken separately, are "liberal" or, considered together, constitute a "paradigm."[12] As the legal counterpart of modernization theory, this body of assumptions was "a clear reflection of the basic ideas about the relationship between law and society and between the United States and the Third World that prevailed in United States universities in the late 1950's and 1960's" (Ibid.: 1088). It is useful to summarize these assumptions briefly since, as will be seen later, they are entirely rejected by most underdevelopment and dependency theorists.

As expounded by Trubek and Galanter (1974: 1070-79), the "liberal legalist" paradigm contained a number of assumptions about the relationship between law and society[13] together with

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[12] See Packenham (1973) for a discussion of liberalism and foreign policy. Writing of American political science (and politics) in the late 1960s, Donal Cruise O'Brien notes:

> The political tone of these New Mandarins is not, as Chomsky would suggest, liberal. It is frankly and explicitly authoritarian. The label 'liberal' might appropriately be applied to most of the influential scholars of the early 1960s (Almond, Deutsch, Apter), but not to those who dominate the latter half of the decade (Pye, Huntingdon). It is a dangerous and widely current mistake on the Left to use the epithet 'liberal' indiscriminately, as a political custard pie. [1972: 369]

Although Trubek and Galanter use the term "paradigm" loosely (see Trubek and Galanter, 1974: 1069-70), their usage is consistent with that of certain underdevelopment and dependency theorists (see II. B. infra) and is therefore followed here.

[13] Nader (1969: 8-9) suggests that the formulation "law and society" is a misleading way of posing certain questions for research, for it tends to imply that "law is conceived of as in reality being a system independent of society and culture" (Ibid.: 8). Her statement also applies to the law and development movement (which she does not discuss). The frequent tendency of law and development scholars to conceptualize research questions in this way partly accounts for their failure to consider the possibility that law is ultimately derivative and to provide an adequate social theory of legal forms and ideas.

general notions linking law to development. The first group may be summarized in propositional form as follows: (1) "[S]ociety is made up of individuals, intermediate groups in which individuals voluntarily organize themselves, and the state. The state is the primary locus of supra-individual control in society. . . ." (2) "[T]he state exercises its control over the individual through law—bodies of rules that are addressed universally to all individuals similarly situated [and] . . . by which the state itself is constrained." (3) "[R]ules are consciously designed to achieve social purposes or effectuate basic social principles. These purposes are those of the society as a whole, not of limited groups within it. Rules are made through a pluralist process . . . [in which no] single group . . . dominates the process of formulation of legal rules, and no special characteristic of individuals or groups . . . gives them systematic advantages or disadvantages in rule making." (4) These rules "are enforced equally for all citizens, and in a fashion that achieves the purposes for which they are consciously designed." (5) "[T]he courts have the principal responsibility for defining the effect of legal rules and concepts . . . and thus normally have the final say in defining the social meaning of the laws." (6) The outcome of adjudication is determined by "an autonomous body of learning," not by policies relevant to legal rules or by other considerations. (7) "[T]he behavior of social actors tends to conform to the rules" (Ibid.: 1071-72).

In contrast to these relatively specific propositions, liberal legalist assumptions about the relationship between law and development were extremely vague. The meaning of development was specified only in general terms, devoid of any reference to social and economic forces. Law and development scholars, like modernization theorists, assumed that underdeveloped countries would follow a path roughly similar to that of developed capitalist countries. They "took for granted the existence of some natural tendency for legal systems in the Third World to evolve in the direction of the ideal model of liberal legalism" (Ibid.: 1079). The notion of the state as a neutral political arbiter and the pluralist conception of politics were generally accompanied by an instrumentalist view of law (Ibid.: 1073-74; Burg, 1977: 505-11).

Like modernization theory, the liberal legalist paradigm proved incapable of identifying the critical issues of theory and research in relation to underdevelopment and development, as

even its foremost early proponents have recognized (Trubek and Galanter, 1974; International Center for Law in Development [formerly International Legal Center], 1978: 134-39). By 1974 a "crisis" in law and development studies was identified (Trubek and Galanter, 1974: 1063-64, 1068, 1069, 1080-93; Merryman, 1977: 472-73, 481, 483). It was subsequently pronounced, with the benefit of hindsight, that "the mainstream law and development movement, dominated by the American legal style, was bound to fail and has failed" (Merryman, 1977: 481). The values and assumptions that supported the paradigm, the body of explicit theory upon which it drew, and the empirical research it stimulated have been criticized extensively (Trubek and Galanter, 1974: 1074 n.39, 1076, 1078, 1080-85, 1089-93; Burg, 1977: 529; Merryman, 1977: 481, 483; Gardner, 1978: 36-60; Fitzpatrick, 1979a; Seidman, 1978a, 1978b; Trubek and Galanter, 1978). They clearly were unable to supply a conceptual basis for the achievement of the goals of "freedom, equality, participation, and shared [capitalist] rationality" (Trubek and Galanter, 1974: 1063-64) valued by law and development scholars. Indeed, they were entirely consistent with the destruction of the political and economic bases of such values and even (as a political ideology) contributed indirectly to that result, thereby increasing the exploitation and poverty of the mass of people in underdeveloped countries.

Some scholars assert that several new approaches to the study of law in underdeveloped countries have emerged from this debacle (Trubek and Galanter, 1974: 1084-85, 1095-1100), although others insist that diversity always existed but was previously obscured by the dominant liberal legalist paradigm (see Burg, 1977; Merryman, 1977; Seidman, 1978a, 1978c: 15-16). Regardless of their novelty, there have been several recent proposals for a reorientation of research (Merryman, 1977: 481-83; Burg, 1977: 529-30). But all these proposals, if in different degrees, fail to escape the biases or transcend the limitations inherent in the paradigm that underlay most law and development research.[14] They do not confront directly the

[14] Burg submits that "there is no evidence in the literature that theoretical models in fact afford useful starting points for analysis, or that law and development writers in practice have used such models to further their contribution to the development effort" (1977: 529). Without entering the debate concerning the type of development to which law and modernization theory was appropriate, and to which law and development research made a (perhaps ephemeral) contribution, I want to point out that Burg's criticism confuses the evaluation of particular theories with the necessary role of theory (whether explicit or implicit) in all research. See Myrdal's discussion of the unavoidable *a priori* (1968: 23-24). Moreover, Burg's suggestion that "a greater

deficiencies of a functionalist social science. Nor do they consider the changes in the concept of "development" during the past fifteen years (see Paul, 1978: 501 n.2). Unlike much other work in development studies (Sunkel, 1977: 10-11), they ignore the history and contemporary dynamics of capitalism, which are central issues in the study of underdeveloped countries.

The major critics of law and development from within the movement opt for an "eclectic critique" of the liberal legalist paradigm (Trubek and Galanter, 1974: 1099-1100). They write:

> The critical perspective is largely negative. It rejects liberal legalism, but does not provide any systematic map of legal and social relations that will permit scholars to relate empirical studies of and proposed changes in socio-legal arrangements to the moral values which they espouse. [Ibid.: 1085].

Although they mention the "dependency" literature as the "most virulent form" (Ibid.: 1095) of the political critique of liberal legalism, their article, like other recent studies, makes no attempt to examine that critique or even to take it seriously. This is unfortunate for several reasons. First, much of the disparate literature encompassed by "dependency" and "underdevelopment" theory derives from scholars in underdeveloped countries and thus reflects historical circumstances and experience quite distinct from that of most North American or European scholars. Second, dependency and underdevelopment theories derive much of their inspiration, if not their content, from Marxist thought, a major counterweight to the Weberian scholarship (see Trubek, 1972a) that dominates much Western social science. Finally, theories of underdevelopment and dependency have proven their analytic power; even their most persuasive critics (Leys, 1977; Phillips, 1977; Bernstein, 1979; Kay, 1975) admit that they are superior to modernization theory. They constitute a fertile source of presuppositions, hypotheses, and explanations that pose new questions for sociology of law.

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emphasis on law as a culturally specific phenomena [*sic*] in the context of tangible development problems might just be a worthwhile approach" (1977: 530) does not confront overtly the choice of values inherent in scholarship. Merryman (1977: 481-83) argues the necessity of theory but proposes merely to strengthen and rename one strand of the law and development movement without questioning its basic assumptions. His definition of "development" as "progressive social change" (1977: 463 n. 16, 481) begs the central questions of values and politics that are emphasized by underdevelopment and dependency theorists and to which this paper also draws attention.

C. Purpose and Scope of the Paper

Taking this rejection of modernization theory as a necessary point of departure for research on law in underdeveloped countries, the remainder of this paper has two specific purposes. The first is to examine the principal theoretical writings on underdevelopment and dependency in order to reveal their common presuppositions and to elucidate significant differences among the major writers. The second is to indicate how theories of underdevelopment and dependency may contribute to the comparative sociology of law. The shared presuppositions of dependency theorists clearly distinguish them from the adherents of modernization theory, of which most law and development research may be seen as an "uncritical offshoot" (Fitzpatrick, 1979a: 2). The major proponents of underdevelopment and dependency theories exhibit diverse explanatory schemes and heterogeneous intellectual origins. I then examine two sets of issues addressed by these theories in order to provide a framework for the reorientation of studies of law. In doing so, I briefly recount some recent examples of research that attempt to break out of the sterile mold of earlier law and development studies. On a very modest scale, the paper thus attempts to transcend the traditional ways in which questions have been posed and problems defined by law and development scholars. It suggests that formulating the field in terms of "law and development" not only raised the wrong questions but also predetermined answers and prohibited theoretical advance, thereby repeating some of the worst flaws of modernization theory.

No brief paper can purport to survey comprehensively all of the theoretical currents or, *a fortiori*, the wide variety of important themes or empirical studies relevant to law. This paper emphasizes the literature on Latin America and Africa because that is where dependency and underdevelopment theories originated. Given its primary audience, I have focussed upon writings in English, though some account has been taken of work available only in French, Spanish, or Portuguese. The paper takes a broad view of underdevelopment and dependency theory, including both Marxist and non-Marxist writers. It does not discuss (though it cites) the major writings on imperialism and on North American theories of dependence (see Caporaso, 1978a, 1978b), which lie somewhat outside the mainstream of

underdevelopment and dependency theories.[15] Finally, it concentrates on the major theorists to the relative exclusion of those whose work, though important, merely elaborates the basic themes.

II. AN OUTLINE OF UNDERDEVELOPMENT AND DEPENDENCY THEORIES

This section of the paper attempts to sketch the principal features of underdevelopment and dependency theories.[16] Any

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[15] Discussing the use by underdevelopment and dependency theorists of the concept of imperialism, Leys notes:

> On the whole this concept appears in [underdevelopment theory] only as an 'extra', often with a qualifier (such as 'economic imperialism', 'cultural imperialism', etc.) and often meaning no more than the mechanisms and institutions of penetration and control employed by international capital in the third world. There is a certain ambivalence, to say the least, towards the Leninist conception of imperialism as a historical stage of capitalism, an ambivalence which is I think primarily political and only secondarily theoretical; i.e., in the third world context the adoption of such a concept implies a break with the perspective of reform which much [underdevelopment theory] has not really made. But avoiding the concept means[,] frequently, avoiding realities which are central to the situations with which [underdevelopment theory] is meant to deal. [1977: 96]

Among the many studies of imperialism see Owen and Sutcliffe (1972); Magdoff (1969); Arrighi (1978); Jalée (1965, 1968, 1970); Nabudere (1978a, 1978b); Kemp (1967); Fann and Hodges (1971); Fernandez and Ocampo (1974); Ocampo (1975); Galtung (1971, 1976); Hodgkin (1972); Alavi (1964); B. Cohen (1973); Quijano Obregón (1974); Barratt Brown (1963, 1972, 1974); Maurini (1972); Abdel Malek (1971); see also Cox (1979). Owen and Sutcliffe (1972: 331-76) provide a very useful annotated bibliography including classic Marxist sources and recent studies. A closely related subject, considered only indirectly in this paper, is the role of multinational firms in the world economy in general and in underdeveloped countries in particular. See Mattelart (1979), the readings and bibliography in Radice (1975), and the papers in Faundez and Picciotto (1979). The last is the best recent work on law in relation to multinational firms in underdeveloped countries. Issues of the *Review of African Political Economy* and *Latin American Perspectives* frequently contain articles on imperialism and multinational firms. Time and space prohibit a discussion in this paper of the main North American students of Latin America (e.g., Petras, Johnson, Zeitlin), but a useful preliminary bibliography may be found in Bath and James (1976). See Petras (1977) for a study of crime in Chile.

[16] Among the collections of readings available in English on underdevelopment and dependency theory are Bernstein (1973b); Gutkind and Waterman (1977); Gutkind and Wallerstein (1976); Chilcote and Edelstein (1974b); Rhodes (1970); Oxaal et al. (1975); Wilbur (1973); Cockcroft et al. (1972); Bonilla and Girling (1973); Villamil (1979b). De Kadt and Williams (1974), R. Cruise O'Brien (1979b), and Clammer (1978) are also useful. Smith (1973), though somewhat dated, provides additional references. See also Allen (1976, 1977) and the bibliography of "Current Africana" compiled by Allen in each issue of the *Review of African Political Economy*. Reviews or partial syntheses of the literature include Allen (1976, 1977); Girvan (1973); P. O'Brien (1975); Chilcote (1974); Chilcote and Edelstein (1974a); Shaw and Grieve (1977); Foster-Carter (1974; 1978); Cheng (1976); Valenzuela and Valenzuela (1979); Harding (1976); Bacha (1971) (summarized in Chilcote, 1974: 7-9); Cardoso (1973c) (summarized in Chilcote, 1974: 7); Bath and James (1976), Roxborough (1979). Most articles published in the *Review of African Political Economy* or in *Latin American Perspectives* concern similar themes.

such review is necessarily selective.[17] In outlining theories of underdevelopment and dependency according to their history, shared methods, and common themes, the following synthesis inevitably oversimplifies, and thus to some extent distorts, the work of individual authors. It also tends to exaggerate the degree of unity or the "paradigmatic" quality of underdevelopment and dependency theories. In addition, except for a brief discussion, this section for the most part conflates underdevelopment and dependency theories. Their elaboration during the past decade, changes in the work of individual theorists, the gradual emergence of a consensus on some issues, and the redefinition of others have tended to modify or blur any real distinctions formerly attached to these labels. For the sake of convenience and brevity these terms will generally be used interchangeably throughout the paper. I begin with the origins of these theories, turn to an examination of their methods, and subsequently outline their main presuppositions, definitions, and concepts.

A. Antecedents and Origins

Despite substantial differences among dependency theorists, most have their roots in the intellectual and political tradition of Marxism (compare Cardoso, 1977: 10 with P. O'Brien, 1975: 11; see also Leys, 1977: 98; Palma, 1978: 882-98). Although not all varieties of dependency theory can be considered Marxist,

> underdevelopment theory is . . . partly a correction and partly an expansion of Marx's interpretation of history, an expansion of his method and central ideas to a problem which, in a world scale, was still in embryo at his death: the failure of the countries of Asia, Africa, and Latin America to follow a path of autonomous, capitalist development, leading to their 'regeneration' after they had been brought within the world capitalist economy. [Leys, 1975: 7; see also Barratt Brown, 1974: 69]

Many strands in the literature elaborate aspects of Marx's analysis of the dynamic and characteristics of capitalism and the critique of imperialism developed by his followers, especially Lenin.[18] Marx, however, concentrated mainly on

[17] A comprehensive review of the many themes touched on in this paper could easily occupy a book. The bibliography of works consulted during the preparation of the paper includes slightly more than half of the references collected in a search of the literature.

[18] Although Marx did not develop a distinct theory of imperialism, the theories of imperialism elaborated by his followers are built on his discussion in *Capital*, vol. 3, chapter 14 (Marx, 1974: 232-40) of the forces counteracting the tendency of the rate of profit to fall (see Barratt Brown, 1974: 60; Kemp, 1972: 18). Sutcliffe (1972a: 320) remarks that "strictly speaking it is not possible to have a Marxist theory of imperialism but only to look at imperialism as an

Europe,[19] and his interest in underdeveloped countries reflected this: he saw them as sites of primitive accumulation in the transition from feudalism to capitalism (Marx, 1967: 713-16, 750-64) and also expected European penetration to destroy stagnant social formations and lead eventually to capitalism (Avineri, 1969a: 132-39). He failed to consider the consequences for underdeveloped countries of the removal of a major portion of their economic surplus to Europe, a point that Baran (1957) later insisted was decisive. Moreover, except for brief statements (Marx and Engels, 1968: 319; 1953: 285-86), Marx did not envisage an analysis of colonial capitalism sui generis. Nor did he elaborate his insights concerning the emerging international division of labor (Marx, 1967: 451)[20] into a conception of a world economic system composed of unequal elements, some developing at the expense of others (Foster-Carter, 1974: 70; but see Melotti, 1977: 125). In the subsequent formulation of Marxist theories of imperialism (Hilferding, 1968; Luxemburg, 1951, 1972; Bukharin, 1972; Lenin, 1939; see also Palma, 1978: 882-85), underdeveloped countries were generally treated as adjuncts to the history of European capitalism.[21] Nonetheless, Marx's method, his emphasis on capitalism, and the writings of his followers on theories of

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aspect of the theory of capitalism." He suggests that Marxist writing on imperialism has tended to shift among three concerns:

> (a) the development and the economic and class structure of advanced capitalist societies (especially the factors that drive them towards geographical expansion of their economies) and the relations between them;
> (b) the economic and political relations between advanced nations and backward or colonial nations within the world capitalist system; [and]
> (c) the development of economic and class structure in the more backward nations of the capitalist system, especially the roots of their domination and their failure to industrialise. [Ibid.]

[19] The several sentences following draw particularly on Leys (1975: 1-8), Avineri (1969a: 1-31), and Foster-Carter (1974: 71-76). Avineri (1969a) is a useful collection of Marx's scattered writings on underdeveloped countries; see also Avineri (1969b). Mandel (1962) provides a summary of Marxist economic theory; see also Howard and King (1976).

[20] Describing the relation of Great Britain to India and Australia, Marx wrote: "A new and international division of labour, a division suited to the requirements of the chief centres of modern industry springs up, and converts one part of the globe into a chiefly agricultural field of production, for supplying the other part which remains a chiefly industrial field" (1967: 451). Barratt Brown (1974: 56-57) describes this statement as Marx's "clearest enunciation of the reciprocal process of development and underdevelopment."

[21] Sutcliffe (1972a: 321) suggests, however, that Lenin and Trotsky "developed what amounts to an implicit theory of imperialism from the standpoint of the backward countries," and he notes that Luxemburg explicitly linked underdeveloped countries to the development of capitalism. In a "Foreword" to Evans (1979: ix), Fernandes writes that Bukharin's (1971) "*Economic Theory of the Transition Period* seems to me to be the most important sourcebook for scholars of dependency."

imperialism laid the basis for underdevelopment and dependency theories.[22]

Complementing and extending this legacy, more recent history also decisively influenced the formulation and contributed to the prominence of dependency theories. Political events challenged conservative and ethnocentric ideas about modernization. Responding to changes in the world balance of power, in relations between Africa and Europe, and within the United States, revisionist historical scholarship and the rediscovery of African history (see Foster-Carter, 1974: 80) clarified the characteristics of and the relations between developed and underdeveloped countries. The writings of Paul Baran (1957, 1963; Baran and Sweezy, 1966) were another significant influence in the elaboration of dependency theories (Ehrensaft, 1976: 60-61; Chilcote and Edelstein, 1974a: 42; Leys, 1975: 4; 1977: 98; Palma, 1978: 899; Foster-Carter, 1974: 80; Cardoso, 1977: 8-9; Booth, 1975: 52, 66-68; see also Nabudere, 1978b: 90, 164-67, 173, 224). Baran's analysis of the extraction of surplus from underdeveloped countries, his condemnation of their reactionary bourgeoisies (who were allied to foreign capital), and his demonstration that "economic development in underdeveloped countries is profoundly inimical to the dominant interests in the advanced capitalist countries" (1957: 12) have been absorbed as first principles by many dependency theorists.[23] Two other combinations of elements also stood out

[22] Foster-Carter (1974: 71-76) provides a useful discussion of the classic Marxist position on such issues as the political role of the peasantry and the question of nationalism and summarizes the major differences of "neo-Marxist" underdevelopment theory (Ibid.: 84-94).

[23] Baran's (1957: 12) view of industrialization is belied by recent events, which have provoked new analyses (see Sutcliffe, 1972b; Warren, 1973). Baran has been described as having "good claims to be regarded as the most influential founder of contemporary 'underdevelopment' theory" (Leys, 1975: 4) and as the "founding father" of neo-Marxist approaches to the study of underdevelopment (Foster-Carter, 1974: 80). Foster-Carter writes elsewhere (1976: 175 n.37): "If Frank is the Copernicus of the new paradigm, then Baran . . . is surely its Aristarchus." According to Chilcote and Edelstein (1974a: 42), Baran and Sweezy were widely read in Latin America in the 1960s. The economics of the *Monthly Review* school and of Baran in particular were a major influence on André Gunder Frank (see Frank's work generally, but especially 1967: Dedication, xi, xvii, 6, 8, 202; 1975: 11, 20). Seven of the articles collected in Frank (1969) were first published in the *Monthly Review*. Booth (1975) argues that Frank's account of underdevelopment is best viewed "as a synthesis of the ideas of the ECLA/structuralist current and those of Marxism, or, to be more precise, those of a Marxism rooted on the one hand in the Cuban Revolution and on the other in the economics of the *Monthly Review*" (Booth, 1975: 52, original emphasis omitted). The work of Baran (both alone and in collaboration with Sweezy) was influential beyond Latin America. In his major synthesis Samir Amin (1974b) acknowledges the work of Baran and Sweezy (1966) as being "of crucial importance" (Amin, 1974b: 2; see also Bettelheim, 1964: 97, 99-100). Amin (1977b: 258 n. 13) writes that "it was Baran who established positively the relation between imperialism and underdevelopment, which is only implied by Lenin." As Bernstein (1979: 99

(see also Palma, 1978).

The first was the conjunction of the post-Stalinist revival of Marxist thought with dramatic examples of revolutionary practice, especially in China and Cuba. The former led to a "return to Marx": the rereading of Marx, Engels, and Lenin; the redefinition of fundamental concepts in the light of these texts; and the formulation of questions in terms of these concepts (Godelier, 1970: 15; see also Chesneaux, 1969: 13-15; Cleaver, 1976: A.4; Copans and Seddon, 1978: 31-34; Poster, 1975; Lichtheim, 1966; Hughes, 1968). The Chinese Revolution posited an alternative model of development; it offered a criticism of Soviet state capitalist notions of growth not only from the left (Amin, 1977b: 1-6) but also from outside Europe. The Cuban experience, in the shadow of the United States, revived debates concerning Trotsky's theory of permanent revolution (1969), which emphasized the incapacity of a national bourgeoisie to carry out a program of radical change (Booth, 1975: 64-66). These various strands converged to raise basic questions about the role of underdeveloped countries in the world, to demonstrate the applicability of Marxist methods and concepts in analyzing that role and its transformation,[24] and to assert the possible existence of paths of development unlike those of Western capitalism and the Soviet Union.

A second crucial combination of elements was the elaboration by the UN Economic Commission for Latin America (ECLA) of a model of development based on "import substitution industrialization" and the subsequent reformulation or rejection of this model, in whole or in part, by many Latin American scholars in the 1950s and especially in the 1960s. ECLA was founded as a UN regional commission in Santiago, Chile, in 1948. Under the aegis of Dr. Raúl Prebisch, its Executive Secretary from 1950, it elaborated a coherent theory of development that made it "the recognized spokesman for Latin America's economic development" (Hirschman, 1961: 13) for almost two decades. Beginning with the effects of the Depression, which revealed the consequences of dependence on exports, and recognizing the appreciable level of

n.12) points out, some of Amin's basic concepts draw on the notion of economic surplus presented in Baran (1957) and Baran and Sweezy (1966), and they share an underconsumptionist theory of capitalist crises. The influence of Baran and Sweezy on underdevelopment theory is well illustrated by Nabudere's attacks on underconsumptionist theories (1978: 90, 164-67, 173, 227-28). For general discussions of this question, see Sweezy (1968: 190-236) and Mandel (1962: 361-71).

[24] For discussions of Marxism in African studies and anthropology, see Waterman (1977), Copans (1977), and Copans and Seddon (1978).

industrialization in Latin America by 1945 (Booth, 1975: 53), ECLA formulated a powerful nationalist critique of the assumptions underlying neoclassical theories of international trade and of the outward-directed model of development deriving from them.[25] Prebisch and ECLA distinguished two parts of the world economy, an industrialized center and a periphery that specialized mainly, though not exclusively, in primary products. They argued, contrary to orthodox theory, that the benefits of technical progress, hence of trade, tended to accrue mainly to industrialized countries rather than being distributed equitably between center and periphery. In their view, this was a consequence of the long-term deterioration in the commodity terms of trade and of the fact that the demand for imports from peripheral countries (as compared to those from central countries) was relatively inelastic in relation to income. It therefore followed that "an increase in the traditional exports of a typical Latin American country might well produce *no* increase in national income" (Booth, 1975: 55, emphasis in original). Consequently, policies were urged that might promote and protect domestic industries in peripheral countries in order to produce previously imported goods at home.

In actuality, these policies merely led to greater dependence upon foreign capital and transnational corporations (Dos Santos, 1973: 67-71; Booth, 1975: 56-57; Bernstein, 1979: 90). Even in the early 1950s some Latin American scholars criticized ECLA's position (Cardoso, 1977: 9-11). But beginning in 1954, ECLA's encouragement of foreign investment as a solution to pressures on foreign exchange led to an increased defection of scholars (Booth, 1975: 57-60). In the face of the political and doctrinal sterility of Latin American communist parties, many scholars, especially those gathered in Santiago in the 1960s, began to elaborate concepts of dependence to explain the failure of national bourgeoisies to carry out an autonomous capitalist development. They drew on previous work in Latin American economic history (Cardoso, 1977: 9-14; Valenzuela and Valenzuela, 1979: 43; Smith, 1973: 235-

[25] The basic document is United Nations (1950); see also United Nations (1951). Other relevant UN publications are cited in Booth (1975: 80 n. 9, 81 nn. 22, 25, 32). ECLA official publications from 1949 to 1963 are collected in ECLA (1969). See also Prebisch (1959, 1969). Discussions of the role and ideas of ECLA include Hirschman (1961); Baer (1969); Frankenhoff (1962); Flanders (1973); Salera (1971); Hodgson (1966 [cited in Bath and James, 1976: 3]); Pollock (1973). On the relation of ECLA to Latin American dependency theory, see especially P. O'Brien (1975: 7-11); Booth (1975: 50-64); Cardoso (1977: 8-11); Cheng (1976: 10-16); Girvan (1973: 1-10); Chilcote (1974: 10; 1978: 57-58).

238) and on Marxist theories of imperialism to analyze the relationships between foreign domination and domestic ruling groups and classes (Harding, 1976: 4; Cardoso, 1971; Bernstein, 1979: 90, 93; P. O'Brien, 1973: 35-36; Palma, 1978: 907-09; see also Corradi, 1975). ECLA's criticisms of theories of trade, its model of center-periphery relations, and its structuralist conception of underdevelopment provided the bases for many dependency theories, especially (but not exclusively) those within the "anti-imperialist, anti-Marxist" tradition that inspired ECLA itself (Booth, 1975: 9). The influence of ECLA was thus decisive in the formulation of a "radical structuralist" view of underdevelopment as dependency theory (see Leys, 1977: 97-98).

B. Methods and Purposes

Given their diverse historical antecedents, theorists of underdevelopment and dependency not surprisingly employ a variety of analytical methods. Nevertheless, certain common features can be identified. Generally speaking, underdevelopment and dependency theorists reject the methods of positivist and empiricist social science (Dos Santos, 1973b: 62; Cardoso, 1971: 74-75, 78-79; 275-85; Mamdani, 1976: 5; Duvall, 1978: 55-56; Cardoso and Faletto, 1979: xi-xiv). Most would subscribe to the method of political economy[26] outlined by Marx:

> It seems correct to begin with the real and the concrete. . . . However, on closer examination this proves false. . . . The concrete is concrete because it is the concentration of many determinations, hence the unity of the diverse. It appears in the process of thinking, therefore, . . . as a result, not as a point of departure, even though it is the point

[26] Allen (1976: 291) offers the following broad definition of political economy: "a concern with the temporal dimension, with how change may occur and be induced; a concern with the ways in which systems and phenomena are reproduced, or reproduce themselves, rather than an assumption that this does not require explanation; a concern with the economic bases of ostensibly noneconomic phenomena; a concern with holistic theories as much as, or more than, with middle range analysis; and a sensitivity to disciplines other than one's own." This broad definition encompasses underdevelopment and dependency theorists but also indicates the limited number and general character of the methodological features they share. Allen has listed some common interests, not defined a method. Among the many sources on Marx's method, see Marx (1968a, 1973); Mandel (1962: 690-730); Kolakowski (1978: 312-25); Sweezy (1968: 11-22); Barratt Brown (1972b); Carver (1975); Sayer (1975); see also Barratt Brown (1974: 19-22) and the papers collected in Blackburn (1972). Marx's notion of political economy differs fundamentally from the neoclassical definition given by Packenham: "Political economy may be defined as the analysis of the costs and benefits of alternative uses of scarce resources by political leaders, where resources, costs, and benefits are all conceived in both economic and political terms" (1973: 231). Chattopadhyay (1974) discusses different notions of political economy as a method. Benton (1977) and Keat and Urry (1975) compare Marx's method to other social science methods.

> of departure in reality and hence also the point of departure for observation and conception. [1973: 101]

This method entails the use of "successive approximations," "which consists in moving from the more abstract to the more concrete in a step-by-step fashion, removing simplifying assumptions at successive stages of the investigation so that they may take account of and explain an ever wider range of phenomena" (Sweezy, 1968: 11).

Dependency theorists share an emphasis on history or, more precisely, on the historical nature of social reality. This feature distinguishes dependency theory from idiographic historiography and from the search for universal, extrahistorical formal laws (Bernstein, 1973a: 20-24; but see Leys, 1977: 99). Most theorists postulate that different interpretations of reality are rooted firmly in their specific historical circumstances (see, e.g., Thomas, 1974: 303). Such an emphasis on the historical nature of social phenomena, including ideas, has led some theorists to stress the extent to which Marx's own work may be of limited applicability today (see Ibid.: 25-40, passim). Such theorists frequently view Marx's method, and not his particular analyses or predictions, as his most important contribution to underdevelopment theory (Frank, 1975: 99).

The method of dependency theorists tends to be holistic, rejecting or seeking to transcend the artificial distinctions between politics and economics (Leys, 1975: ix; Brett, 1973) and hence between disciplines. It argues that the unity of social forms must be grasped if their separate elements are to be understood adequately (Frank, 1969: 95-107; 1975: 98-99). Both the insistence on historical specificity and holism are integral to the method of political economy (Baran, 1963; Gutkind and Wallerstein, 1976a: 7-8; Chattopadhyay, 1974). In accordance with those dictates, dependency theorists have redefined the unit of analysis (see Cheng, 1976: 35-41, 141-42, passim), and several have offered interpretations of the history of the world system as a whole (Amin, 1974b; Wallerstein, 1974, 1979; Frank, 1978a, 1978b; Szentes, 1976).

Another methodological characteristic of many dependency and underdevelopment theorists is an explicit recognition of the political conclusions that follow from theory (Cheng, 1976: 9, 21, 144; Quijano, 1971: 11-12; Harding, 1976; Bernstein, 1979; Nabudere, 1978b: 268-79; Frank, 1969, 1972, 1975; Leys, 1977). This recognition, though deriving mainly from Marxism, was also shaped by the political conflicts in Latin America that

directly influenced the elaboration of dependency theory (see Harding, 1976).

A final, related feature of dependency theories is their emphasis on "the fundamental question: development for whom?" (Amin, 1974a: 16). One early study of the role of law in underdevelopment consequently proposed to formulate

> a methodology meant . . . to permit an inquiry into what fundamental social interest has profited from the passage of each of the [Peruvian] regime's concrete measures, as well as the role compromises and alliances between groups with special interests have played in the attempt to secure such benefits. [Quijano, 1971: 1-2]

Dependency theorists thus recognize explicitly, as modernization theorists often did not, that definitions of development and underdevelopment are essentially normative and necessarily imply the exercise of moral and political choice.

These shared methodological features[27] and the mode of conceptualization implicit in them are related directly to the purposes of dependency theory, which, like those of all social science theories, are twofold at least. Dependency theories articulate the interests of particular groups or classes[28] and simultaneously embody preconceptions, raise questions, and propose explanations. It is the latter set of purposes that primarily concerns us here. What is the analytic purpose of dependency and underdevelopment theory?[29] In order to indicate their distinctive theoretical characteristics and clarify their potential contribution to research on law, it is useful to start with a brief examination of the claims of dependency theorists; the later discussion of their presuppositions and of some important issues will provide additional elements for an answer.

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[27] Underdevelopment and dependency theorists differ in the political implications of their theories, the extent to which they employ a dialectical method or a structuralist analysis, and their use of class analysis and of Marxist concepts such as mode of production. That these methodological features are so limited in number and general in character suggests the eclecticism and theoretical incoherence of underdevelopment and dependency theories considered as a whole. This point is developed later in the paper.

[28] Writing from within the mainstream of American political science, Fagen addresses the question: "Where do we go from here if we take seriously that body of thought loosely and somewhat misleadingly known as dependency theory?" (1977: 3; see also 1978). He points out that "the 'we' in the 'where do we go from here' basically refers to U.S. scholars, living and working in the center rather than the periphery . . . embedded in a certain intellectual tradition, and facing different intellectual and political challenges than their Latin American colleagues" (1977: 3). His discussion and shift in emphasis are therefore especially pertinent to many readers of this paper (compare 1977 with 1978).

[29] A draft of this paper was virtually completed before it was possible to consult Duvall (1978), who provides a clear and concise discussion of the theoretical purposes of dependency theory.

The theoretical claims advanced by dependency theorists (and their critics) fall into roughly four groups.[30] The first holds that despite the common terminology often used by theorists "there is no such thing as a single unified body of thought called dependency theory" (Harding, 1976: 3). Emphasizing the Latin American political origins of dependency theory, Harding summarizes this viewpoint:

> [t]hese theories should be seen . . . as an intensive dialogue in which the Marxists, freed of the pressures of orthodoxy, had a chance at winning over the more radical bourgeois reformists in the face of experiences which consistently dashed the hopes for national capitalist reform in country after country . . . . [1976: 4]

Other Marxist authors similarly ascribe the theoretical incoherence and political inefficacy of dependency theory to its origins as an ideology of bourgeois nationalism (see Dos Santos, 1976; Leys, 1977; Bernstein, 1979).

A second point of view sometimes admits that "no unified theory of dependency yet exists" (Chilcote, 1978: 55) and that profound political differences separate theorists grouped under a common rubric (Fagen, 1977: 7). But it maintains that dependency theories nevertheless contain a "common core" (Fagen, 1977: 7) or "tend[ency] to cluster" (Chilcote, 1978: 55) such that, despite their diversity, they provide a coherent "approach" (Cardoso, 1977: 16), an "organizing perspective" (Fagen, 1977: 10; see also Valenzuela and Valenzuela, 1979), a "framework of reference" (P. O'Brien, 1973: 35; 1975: 12), or a heuristic model (Chilcote, 1974, 1978; Chilcote and Edelstein, 1974a) distinct from conventional development or modernization theories. According to some writers, the purposes of ideas of dependency are to identify significant relationships for investigation and suggest new ways of interpreting or explaining specific situations—not to propose a formal theory (see Palma, 1978: 888-89, 905, 910-12).[31]

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[30] This formulation stems from an argument developed in the conclusion to this paper concerning the theoretical contribution of underdevelopment and dependency ideas to the study of law. I do not group underdevelopment and dependency theorists into schools of thought. For attempts to do so, see Chilcote (1974: 9-20; 1978: 55-62); P. O'Brien (1975: 11); Bath and James (1976: 5-10); Harding (1976: 6-7; Palma (1978: 898-911); Hellwege (1978: 60-62). Foster-Carter (1978) identifies some different currents of thought in the related debate concerning modes of production.

[31] Cardoso (1977; see also Cardoso and Faletto, 1979) expounds this position and criticizes the formalization of dependency ideas. He provides a clear, concise statement of this position, although not all writers in this second group would agree with the precise mode of expression: "What is intended is an approach that accepts and starts from the idea that history is movement and that structures are the result of impositions; even though these impositions may become crystallized, they contain tensions among classes and groups which always make them, at least potentially, dynamic" (1977: 16). By its terminology, concepts, and notion of dependency theory, this statement

A third position is held by scholars who have begun with this frame of reference but have attempted to elaborate more formal theories of dependency, albeit from different political perspectives and within different intellectual traditions. Marxists have sought to establish the laws of motion of dependent capitalism (Bambirra, 1974; Marini, 1972; see also Szentes, 1976). Working in the empiricist, positivist tradition, several North Americans have tried to deduce hypotheses from the general notion or "theory" of dependency in order to test them empirically.[32]

Finally, a fourth group of writers argues that dependency theory "is an attempt to establish a new paradigm" (P. O'Brien, 1973: 35; 1975: 12; see also Foster-Carter, 1976; Bodenheimer, 1970: 123-28; Cheng, 1976: 4-9; Chilcote, 1978: 56-57). This viewpoint recognizes certain distinctions between natural science and social science (Foster-Carter, 1976: 70-71; Cheng, 1976: 8-9) but still maintains that the characterization of dependency theory as a paradigm "adheres relatively strictly to" (Foster-Carter, 1976: 173) or at least "somewhat parallels" (Chilcote, 1976: 56) the conception of a scientific paradigm put forward by Thomas Kuhn (1962).

As Cardoso remarked in a similar context, this disagreement concerning the purposes of dependency theory "is not merely methodological-formal. It is . . . at the very heart of studies of dependency" (1977: 16). Yet it is clear that not all the viewpoints set forth above are necessarily mutually exclusive.[33] In part, their diversity simply indicates the

exemplifies more clearly than do most other formulations the combination of Marxism and structuralism in Latin American dependency theory.

[32] See McHenry (1976); Chase-Dunn (1975); Vengroff (1975; 1977); McGowan (1976); McGowan and Smith (1978); Kaufman et al. (1975); Tyler and Wogart (1973); Stevenson (1972); Syzmanski (1976); Rubinson (1976); Schmitter (1971); see also Caporaso (1974); Duvall and Russett (1976); Duvall et al. (1977 [cited and discussed in Duvall, 1978: 69-78]); Waleri (1975; 1976 [discussed in McGowan and Smith, 1978: 198]).

[33] A statement that cuts across the classification proposed in the text is Philip O'Brien's assertion that

> the theory of dependence . . . is a higher level hypothesis the objective of which is to define the problem or area of interest and to try and show how lower level, more specific *ad hoc* hypotheses fit within this framework. The purpose of a higher level interpretation is to guide and make more coherent at an abstract level, lower level explanations. . . . If a sufficient number of *ad hoc* explanations cannot be accommodated within the higher level hypothesis, then the plausibility and usefulness of the framework must be rejected. The theory of dependency . . . represents a framework of reference within which various heterogeneous phenomena are analysed to see how they link and interact with each other to form a total system. The theory must therefore be judged with reference to its adequacy or inadequacy as a framework for the articulation of the dynamics of certain relationships. In brief, it is an attempt to establish a new paradigm. [1975: 11-12]

diffusion, partial absorption, and reinterpretation of ideas about dependency since their initial formulation (see Cardoso, 1977; Hellwege, 1978). However, it also reflects quite different conceptions of social science in general, frequently derived from radically different "domain assumptions" (cf. Gouldner 1971: 29-60) and political positions. But if diversity thus suggests theoretical weakness, it also reveals the normative, ultimately political character of social science theories, and particularly of the theories of law and development with which this paper is concerned. Counterposed to modernization theory and liberal legalism, some (but not all) strands of dependency theory form part of divergent ideologies and correspond to the interests of competing classes or fragments. Accepting the paradigmatic status of underdevelopment and dependency theory, one writer noted: "the battle of competing paradigms is not confined to the analytical level but also involves political struggles" (Cheng, 1976: 9; see also Dos Santos, 1973b: 62). The recent history of theories of underdevelopment and dependency demonstrates that these conflicts were inevitable given the diverse political origins, intellectual antecedents, and theoretical ambiguities of early dependency theory. Despite their significant advance over ideas of modernization, theories of underdevelopment and dependency offer an ambiguous, fragmentary foundation for the student of law.

C. Presuppositions, Concepts, and Propositions

This sketch of their methods and objectives indicates that theories of underdevelopment and dependency, considered as a whole, are eclectic in nature. Perhaps nowhere is this manifested more clearly than in the presuppositions, concepts, and propositions of those theories. The coexistence of profoundly different currents of thought further suggests that ideas of underdevelopment and dependency are described more accurately as an approach or a framework than as a theory (see also Duvall, 1978: 56-57, 68). Recognizing this diversity, the following paragraphs outline the main presuppositions and concepts, accepted by most theorists, that distinguish underdevelopment and dependency theory from modernization theory.

The principal assumptions and propositions of these theories have been summarized by many writers.[34] "The

[34] See Chilcote (1974); Chilcote and Edelstein (1974a: 27-39); Roxborough (1976, 1979); Cockcroft et al. (1972: xi-xiii); Fagen (1977: 7-9); Valenzuela and Valenzuela (1979: 42-51); Bodenheimer (1971); Lall (1975); Duvall (1978);

distinctive feature of this project has been a radical revision of the content of the term 'underdevelopment' " (Bernstein, 1979: 83). These theorists reject the "original state" view of underdevelopment, which presupposes that "if there are 'developed' and 'advanced' countries in the present they must have at some time been 'underdeveloped' " (Hoselitz, 1952: v). They maintain, on the contrary, that contemporary developed countries may have been undeveloped but were never underdeveloped (see, e.g., Frank 1969: 4). Underdevelopment denotes the consequences, both past and present, in certain countries of the world of a particular historical process:

> the emergence and consolidation of capitalism as a world system. The original centres of capitalism established their wealth and their power through incorporating and exploiting other parts of the world. The primary accumulation of capital in the metropoles or centre was fed through a drain of wealth from the satellite or peripheral countries, typically involving their colonization, a 'surplus drain' which continues to the present day even if its forms may have changed, and direct colonial rule is no longer a necessary condition of this process. [Bernstein, 1979: 83]

Underdevelopment and development, accordingly, are "simply the two faces of one single universal process . . . [and] have been, historically, simultaneous processes . . . which have interacted and conditioned themselves mutually" (Sunkel, 1973: 135-36). As a result, underdeveloped countries differ fundamentally from the developed countries in their internal characteristics and position in the world system. Consequently the history of developed countries cannot possibly provide a model of development for contemporary underdeveloped countries (see, e.g., Cardoso, 1971: 95).

If underdevelopment is defined as a series of "self-reproducing structures" (Leys, 1977: 93) that must be understood historically, analysis must start from "the period in which any given region of today's 'third world' began to be progressively incorporated into a permanent relationship with the expanding, capitalist economy" (Leys, 1975: 8). At least three corollaries have generally been derived from this proposition. First, any study of underdevelopment must give a central place to the historical development and contemporary characteristics of capitalism as an economic and social form. This emphasis upon capitalism (see Sunkel, 1977), and the consequent reliance on Marx's work as a major source, parallels recent trends in other social sciences, including

Caporaso (1978a); Villamil (1979a); Leys (1975: 1-27; 1977); Bernstein (1979: 83-85); Palma (1978); McDaniel (1976-77).

(belatedly) law.[35] Second, underdevelopment cannot be understood by analyzing underdeveloped countries solely at a national or subnational level. Underdevelopment is a consequence and a manifestation of the roles of countries (and classes) in the world capitalist economy. The analysis of underdevelopment, including its legal aspects, must therefore take account of the ways in which a country has been and is presently integrated into the world economy. The existence of two terms, "underdevelopment" and "dependency," thus reflects more than the different historical origins of formulations that have fused into a single concept. The choice of terms often indicates differing emphases on external and internal factors, as well as the difficulty of analyzing their interconnections or even distinguishing precisely between them.[36] A third corollary is an essentialist view of the identity of the underdevelopment phenomenon throughout the world. Frank's thesis of "continuity in change"—"the continuity and ubiquity of the structural essentials of economic development and underdevelopment throughout the expansion and development of the capitalist system at all times and places" (1967: 12)—is merely the best known (and crudest) expression of a widely shared viewpoint. Theorists recognize the diversity of contemporary conditions and the changing forms of dependence and underdevelopment at different historical

[35] Examples and surveys of Marxist work on law include Tushnet (1978); Balbus (1977a [reviewed by Trubek, 1977], 1977b); Pashukanis (1978); Edelman (1979); Renner (1949); Cain and Hunt (1979); Tigar and Levy (1977); Hirst (1979); Kinsey (1978); Foster (1979); Thompson (1975); Hay et al. (1975); Taylor et al. (1973, 1975); Sumner (1979); Fine et al. (1979). See also the papers in Faundez and Picciotto (1979), especially those by Faundez (1979), Picciotto (1979), and Fortín (1979). Other relevant studies, especially of state and classes, are cited later in the text.

[36] The ambiguity of this formulation suggests some of the problems involved in synthesizing the strands of different theories into a uniform framework. See the discussion of units of analysis, production and exchange, and internal and external aspects of dependency, infra pp. 755-56. Girvan (1973: 1) implicitly raises this issue by referring to "the concept of external dependence and the institutionalization of underdevelopment." A more recent and more complete formulation is Leys's (1977: 93) distinction:

> The term 'underdevelopment' refers to these self-perpetuating processes, these self-reproducing structures, *and* to their results. The term 'dependency' is sometimes used to refer to exactly the same things, and sometimes more specifically to refer to the non-autonomous nature of the laws or tendencies governing change in the social formations of the periphery.

Leys concludes, as does this paper, that "[i]n spite of disagreements between the users of the two terms their differences seem less important than their extensive points of general agreement" (Ibid.). The distinctions among the various theorists do not coincide systematically with the use of the terms "underdevelopment" or "dependency" and cannot be adequately understood in that way.

periods,[37] but most insist, nevertheless, that analytic priority be given to the fact that underdeveloped countries share a common peripheral role in the world economy (see Cheng, 1976: 101-02; Evans, 1979: 27; Johnson, 1972: 108; Frank, 1975: 20-21; Leaver, 1977: 113; Ray, 1973: 13-14).[38]

The analysis of underdevelopment therefore begins with the world capitalist system: "it is the internal dynamics of this system which determine the structural characteristics of the formations of both the centre and the periphery" (Cheng, 1976: 39). Several writers have offered a model of this system and analyzed its main feature and processes. It is impossible here to do more than briefly mention their work.[39]

Though differing on many points, Szentes (1976) and Barratt Brown (1963, 1972a, 1974) concur in proposing a dualist model of the world system. In Szentes's view European colonialism, expressing the needs of capitalism for raw materials, markets, and investment outlets, was the decisive factor in establishing an international division of labor between manufacturing countries and those producing primary commodities (1976: 136-39, passim). The internationalization of production, the concentration and centralization of capital, and the rise of transnational corporations since the Second World War have led recently to the emergence of a new international division of labor, manifested most clearly in the control of technology (Ibid.: 331-37).

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[37] See Amin (1974b: 17-20); Bodenheimer (1970: 125-26); Thomas (1974: 62-69); Johnson (1972); Cardoso (1971: 77-117; 1972: 88-93; 1977: 18); Quijano (1971: 17, 25-26, 43-49, 67); Frank (1967, 1972, 1978a, 1978b); Magdoff (1972); Dos Santos (1970c: 231-34).

[38] Employing an illuminating analogy, Evans summarizes this point:

> Contemporary dependency theorists see the international division of labor as shifting substantially on the surface while continuing to have the same fundamental effect. Curiously, the most carefully elaborated theoretical underpinning for this view comes not from within the dependency tradition but rather from the latest version of the theory of comparative advantage, known as the "product life cycle model" (Vernon, 1966; Johnson, 1968; Wells, 1972). According to the product life cycle model, new products are likely to be first produced and sold in the center, later produced in the center and exported to the periphery, and finally produced in the periphery. Over time, more and more products will be manufactured in the periphery, but these products will continue to share certain characteristics. [1979: 27-28]

A more thorough sociological study of dependency than is possible in this paper might consider the implications of this observation.

[39] Additional studies include Hymer (1972); Palloix (1972a, 1973, 1974); Senghaas-Knobloch (1975); Michalet (1976); Radice (1975). Brenner (1977) criticizes some of the writers considered in the text, especially Wallerstein and Frank. Cox (1979) provides a useful summary. Barraclough (1962; see especially 1966: 10, 16, 20) and Braudel (see text infra) are among the non-Marxist writers who consider similar themes. For recent studies, see Kaplan (1978); Goldfrank (1979).

André Gunder Frank, although recognizing this division of labor, rejects the dualist characterization of the world system (1967: 211; 1978a: 132-33, 138-39). Defining capitalism primarily in terms of the production and circulation of commodities (see 1967: 19-20, 24; 1978a: 249-50), he considers that since the sixteenth century it has "effectively and entirely penetrated even the apparently most isolated sectors of the underdeveloped world" (1969: 5; see also 1967: 3). He initially proposed a model of the world system as a series of metropoles and satellites (1967: 7-8, 16-17, 19-20, 146-50; 1975: 78-79)

> which in chain-like fashion [extend] the capitalist link between the capitalist world and national metropolises to the regional centers (part of whose surplus they appropriate), and from these to local centers, and so on to large landowners or merchants who expropriate surplus from small peasants or tenants, and sometimes even from these latter to landless laborers exploited by them in turn. [1967: 7]

The "development of underdevelopment" resulted from this drain of surplus and, more importantly, from "the impregnation of the satellite's domestic economy with the same capitalist structure and its fundamental contradictions" (1967: 10; see also 1969: 3-16). Recently Frank has moved away from this schematic "dependency" perspective[40] and tried to sketch the relationships among different parts of the world and the transformation of precapitalist modes of production throughout successive historical phases of a single worldwide but uneven and unequal process of capital accumulation (1978a, 1978b).

A third writer, Samir Amin, has analyzed the world capitalist system and particularly the role of African countries within it.[41] A convenient and fair summary of his analysis is provided by Cheng:

> —The world capitalist system, consisting of social formations at the centre and in the periphery, is integrated into a single world system primarily through relations of exchange and international specialisation of production.
> —There exists in this global system a hierarchical structure of modes of production/sectors with uneven productivity and heterogeneous relations of production.
> —The modes of production/sectors of the periphery are articulated with the capitalist formations at the centre but are disarticulated with respect to the formations at the periphery.
> —The structure of articulation/disarticulation is the result of centuries-old evolution of forms of international specialisation dictated by the

[40] See the introductions or prefaces to all of Frank's work, especially Frank (1978a: xi-xvi, 1-12; 1978b: 11-23). Among the many criticisms of his earlier work are Weaver (1971); Petras (1967); Arrighi (1971 [summarized in Frank, 1978a: 6-7]); Genovese (1970); Nove (1974). Booth (1975) provides the best general discussion; see also Frank (1974).

[41] See Amin (1965, 1966, 1967, 1969, 1970, 1971a, 1971b, 1971c, 1971d, 1972, 1973a, 1973b, 1973c, 1973d, 1974a, 1974b, 1974c, 1974d, 1975a, 1975b, 1976a, 1976b, 1976c, 1977a, 1977b); Amin and Vergopoulos (1974); see also *Revue Tiers-Monde* (1972). For criticisms of Amin's work, see Bernstein (1979) and Cheng (1976: 44-45, 57-96, 137).

> internal dynamics of the capitalist formations and imposed on the periphery by the centre initially through political domination and subsequently through the mechanism of unequal exchange.
>
> —Transfer of value/economic surplus takes place from the precapitalist to the capitalist formations as a result of primitive accumulation. This process of primitive accumulation survives the prehistory of capitalism and its persistence to the present constitutes the essence of the problem of accumulation on a world scale. [1976: 59-60]

This summary, however accurate, cannot do justice to the analytic framework used by Amin and the wealth of insights in his extensive publications. As Bernstein (1979: 85-86) points out, Amin stands virtually alone among underdevelopment and dependency theorists in having provided a model of central capitalist economies and also an extremely detailed analysis of peripheral social formations.

If Szentes, Frank (but see Leaver, 1977) and Amin elaborate different Marxist interpretations of the world system, Immanuel Wallerstein's project derives its main inspiration from the French *Annales* school of historiography, and particularly from Fernand Braudel.[42] Retaining the terminology of Marxism but modifying its concepts,[43] Wallerstein (1974, 1979) argues that the modern world-system, a capitalist world-economy, originated in the "long" sixteenth century from 1450 to 1640. This world-system was (and remains) a unit with an extensive internal division of labor (see, e.g., 1974: 347-49) or grid of interdependent exchange relationships (1979: 14, 121). The feature that defines the system as capitalist is "production for sale in a market in which the object is to realize the maximum profit" (Ibid.: 15; see also Ibid.: 16, 66, 120, 147-49, 159, 272-73, 285). The modern world-system also differs from earlier world-systems (or world-empires) in that the boundaries of its political and economic structures do not coincide (Ibid.: 196, 222-23, 272-73). It comprises core states and semiperipheral and peripheral areas, each of which fulfills a different role in the system (1974: 102-03, 349-50; 1979: 18-25, 37-48, 68-73). Unequal exchange, in the sense formulated by Emmanuel (1972),[44] operates continuously to

[42] See Burke (1972) for an overview of the *Annales* school. A general discussion of Braudel's method may be found in Braudel (1972). The main writings by Braudel are listed in the bibliography of Wallerstein (1974).

[43] See the discussion of the concepts of mode of production (Wallerstein, 1979: 4, 52, 74, 136, 146-47, 155, 159, 220, 272-73, 285) and social formation (Ibid.: 4-5). Wallerstein's discussion of the Frank/Laclau debate on feudalism, capitalism, and units of analysis is also instructive (see Ibid.: 4-10, 138-51). See also Cheng (1976: 44-57, 84-89); Laclau (1977: 43-50); Brenner (1977); Aya (1975). See Bernstein (1979: 85) and Brenner (1977: 29), among others, on the relation of Wallerstein to André Gunder Frank.

[44] See the debate between Bettelheim and Emmanuel (Emmanuel, 1972: 300-07, 352-55, 380-83). In addition to the books by Amin and Barratt Brown, the

appropriate the surplus of the world-economy to the core (Wallerstein, 1979: 71-72, 273-74, 292-93). Particular regions may change their positions within the system to some extent. But "all states cannot 'develop' simultaneously *by definition*, since the system functions by virtue of having unequal core and peripheral regions" (Ibid.: 61, emphasis in original; see also Ibid.: 73, 106).

Although most theorists deploy the idea of a world system as a general, often implicit notion rather than an explicitly formulated concept, it provides the context within which they have sought to locate the causes, characteristics, and consequences of underdevelopment. Partly because of this lack of theoretical precision (see Leys, 1977: 101-06), the causes of underdevelopment have been the subject of much debate (see Fagen, 1977: 24 n.9) or, more frequently, have been indicated only vaguely (see O'Brien, 1973: 39-40; Leys, 1977: 96, 105-06). In order to clarify the various positions, which often remain implicit, it is necessary to agree with many theorists that "there is no determinant connection between raw materials export and underdevelopment" (Frank, 1978b: 103; see also Amin, 1974b: 65-79) and that imports of the means of production, including technology, are specific forms rather than causes of dependence (see Szentes, 1976: 186-88; Cardoso, 1972: 90-91; 1972-73: 88-90; Sutcliffe, 1972b: 190; see also Girling, 1973). It is then possible to identify several strands of the argument.

One position, put most forcefully by Kay, is that "capital created underdevelopment not because it exploited the underdeveloped world, but because it did not exploit it enough" (1975: x). Rigorously applying Marx's law of value and his distinction between merchant and industrial capital, Kay maintains that the penetration of merchant capital, first independently and then as an agent of industrial capital, both stimulated and blocked the development of productive forces in precapitalist modes of production and prevented the full development of capitalism (Ibid.: 93-153; see also the criticism in Bernstein, 1976).

A second position is that "aggression by the capitalist mode of production, from the outside, against these

following works, which could not be consulted in the preparation of this paper because of time constraints, discuss the theory of unequal exchange: Florian (1971); Chatelain (1971); Pilling (1973); Bettelheim (1970); Van de Klundert (1970); Palloix (1972); Emmanuel (1974, 1975); Bradby (1975b). See also the sources cited in Sutcliffe (1972a: 325 n.19). Evans (1979: 28 n.1) notes "the absence of concrete work on Latin America which links the theory of unequal exchange to the dependency theory tradition." But see Frank (1978a) and, on Africa, the work of Samir Amin and the criticisms by Nabudere (1978b).

[precapitalist] social formations, constitutes the essence of the problem of their transition to formations of periphery capitalism" (Amin, 1974b: 142). Capitalism penetrated and dominated other modes of production, often without fully destroying them. Peripheral formations were integrated into a framework of unequal international specialization that distorted their economic and social structures in specific ways (Amin, 1976c: 200-03, 333, passim).

A third view is that

> the situation of underdevelopment came about when commercial capitalism and then industrial capitalism expanded and linked to the world market nonindustrial economies that went on to occupy different positions in the overall structure of the capitalist system. [Cardoso and Faletto, 1979: 17]

This process resulted in the creation of two different "situations of dependency" that prevailed before the current phase of capitalism dominated by multinational corporations (Ibid.: xviii, 66-73, 173, passim). One, in which raw materials linked peripheral and central countries, was characterized by national control of the export system. Central investments in the periphery went to sectors that local economies "were not competent to develop." The center controlled the marketing of production in the periphery but "did not replace the local economic class that inherited its production base from the colony" (Ibid.: 66). The other situation was marked by the formation of enclaves in which local groups lost control of production. Such enclaves were formed either by the gradual displacement of local producers who were unable to compete in the production of particular commodities or by the expansion of the central economies into countries where local groups have previously been incorporated only marginally into the world market (Ibid.: 70).

These (and other) writers raise several issues whose resolution directly impinges upon, and sometimes determines, whether they explicitly identify the causes of underdevelopment and how they distinguish causes from consequences. The first concerns the periodization of history. The establishment of periods is essential to any attempt to analyze underdevelopment in terms of historical process(es) and to demonstrate relationships among different parts of a single world sytem (see O'Brien, 1973: 38; 1975: 13; Booth, 1975: 73). Despite general agreement on the broad outlines, however, theorists' presuppositions and purposes led them to delimit

somewhat different specific periods.[45] A second, related issue concerns the unit of analysis. Simply by emphasizing the world system, theorists of underdevelopment and dependency generally have posed this question in a way radically different from the formulation of modernization theorists. But not all theorists have stated their unit of analysis clearly or borne in mind that the choice of the unit of analysis depends partly on the study's purpose (see, e.g., Frank, 1978b: 2-7; Laclau, 1977: 34-50; Wallerstein, 1979: 6-36; Cheng, 1976: 17-41, 142). A third issue, not always distinguished sufficiently from the second, is the relative importance of production and exchange. Although Marx accorded priority to the former (see Nicolaus, 1972: 312), underdevelopment and dependency theorists, even within the Marxist tradition, have differed fundamentally about the roles of production and exchange in underdevelopment (see, e.g., Frank, 1978a: 248-59; 1978b: 10-12, 40-43: Laclau, 1977: 15-41; Leaver, 1977; Banaji, 1977: 30).[46] A final, related issue, again not always grasped very clearly, concerns the distinction and relationship between "external" and "internal" causes and characteristics of underdevelopment and dependency.[47] The

[45] See Kay (1975: 125-26); Frank (1967; 1978a: 20-21, 259-67; 1978b: xi, 7-10, 13, 76-78, passim); Nabudere (1978b: vi, passim); Wallerstein (1974: 10-11; 1979: 3-5, 25-27, 30, 33-34); Sunkel (1973: 154-63); Cardoso and Faletto (1979); Amin (1972, 1973a, 1974b); Coquery-Vidrovitch (1976a).

[46] Hilton (1976) is indispensable for an understanding of this issue. As Wallerstein's (1979: 6-10) comments indicate, the debate concerning the relative importance of production and exchange is closely linked to (and often confused with) the definition of the unit of analysis and of other theoretical concepts, such as mode of production and social formation. This debate is central to a theoretical explanation of the causes and consequences of underdevelopment, whether or not the latter is viewed as a unitary phenomenon. It continues to be important in economic and legal anthropology (see pp. 774-76 infra).

[47] In distinguishing causes, characteristics, and consequences, it is useful to bear in mind that, for many theorists, they pose different levels of analysis and are dialectically related: characteristics and consequences, once produced, tend to reproduce themselves and to produce additional causes. Frank (1978a: 3), like some other theorists, resorts to Mao Tse-tung's (1971: 87-89) discussion of contradictions:

> As opposed to the metaphysical world outlook, the world outlook of materialist dialectics holds that in order to understand the development of a thing we should study it internally and in its relations with other things. . . . The fundamental cause of the development of a thing is not external but internal; it lies in the contradictoriness within the thing. . . . its interrelations with other things are secondary causes. Thus materialist dialectics effectively combats the theory of external causes, or of an external motive force, advanced by metaphysical mechanical materialism and vulgar evolutionism. . . . Does materialist dialection exclude external causes? Not at all. It holds that external causes are the condition of change and internal causes are the basis of change, and that external causes become operative through internal causes. In a suitable temperature an egg changes into a chicken, but no temperature can change a stone into a chicken, because each has a different basis.

These issues recur in the literature on the articulation of modes of production, especially the theories of Meillassoux and Rey (see pp. 774, 776-78 infra).

characterization of factors as "external" or "internal" obviously depends partly on the unit of analysis. But it is also related to the identification of the origins of underdevelopment or dependency and the explanation of how they are reproduced. Despite their dialectical method,[48] early Latin American dependency theories as reinterpreted in the United States often "end by reestablishing the priority of the external over the internal . . . [and eliminating] the dynamic proper to dependent societies as a relevant explanatory framework" (Cardoso, 1977: 14, original emphasis omitted; social formation or national society assumed as unit of analysis).[49]

In identifying the principal characteristics of underdevelopment and dependency, theorists have been influenced by the tendency to view underdevelopment as a unitary phenomenon (see Bernstein, 1979), a reflection of their desire to formulate a theory that parallels but opposes orthodox development or modernization theories. The consequences have been twofold. First, there is broad

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[48] The best summary of this early approach is given by Cardoso:

> The 'movement' that had to be understood . . . was that deriving from the contradictions between the external and the internal, viewed in the complex fashion and summed up in the expression 'structural dependency.' If imperialism was embodied in foreign capital . . . it also implied a structural pattern of relations that 'internalized' the external and created a state which was formally sovereign and ready to be an answer to the interests of the 'nation,' but which was simultaneously and contradictorily the instrument of international economic domination. Certainly, the phases of capitalist expansion . . . are constituent parts of dependency situations, but the latter are explicable only when those forms cease to be taken as an entelechy or as an abstract and general conditioning factor, and reappear concretely in the analysis of their articulation in each local economy at different moments of time. This process was to be explained not as the 'abstract' unreeling of forms of accumulation, but as an historicosocial process through which certain classes impose their domination over others, certain factions of classes ally [with] or oppose themselves to others in political struggle. In this struggle, what appears at first as inevitable because of the 'logic of capitalism' is revealed without disguise: one side wins or loses, one form or another of dependency is maintained or makes way for another, the general conditions for capitalist development are sustained or reach their limits, and other forms of social organization are foreseen as a historical possibility.
>
> Thus, right from the initial propositions, dialectical analysis was the point of departure.[1977: 13-14]

Among the many discussions of the "external/internal" issue, see Cardoso and Faletto (1979: xvi, 15, 20-22, 26-27, 177-78); Cardoso (1971: 70-72, 90-92, 238-39, 273-74; 1972: 90); Dos Santos (1973b: 72-79); Kay (1975: 176-77); Laclau (1977: 42-50); Frank (1978b: 2-7, 116); Bodenheimer (1970: 125-26); Johnson (1972: 102-11); Ziemann and Lanzendörfer (1977: 157); Rodney (1973: 37); Palma, 1978).

[49] Consequently many writers, abandoning dialectics, distinguished simplistically between "the structures of internal dependence and the subjugation of these internal structures to outside influence" (Bath and James, 1976: 13). Others, ignoring classes, interpreted dependency theory as "revolv[ing] around the relationships of nations, one to the other, in terms of dominance versus dependence" (Chilcote, 1974: 4). Each of these trends obscured the analysis of the causes of underdevelopment.

agreement on the nature of underdevelopment as "insufficient or distorted capitalist development" (Cheng, 1976: 141; see also Bernstein, 1979; Phillips, 1977; Leys, 1977: 94). Second, the characteristics of underdevelopment have been reduced to a list of factors that are frequently little more than empirical generalizations at a relatively low level of abstraction (see Bernstein, 1979: 89). In order to avoid merely listing these factors (see, e.g., D. Johnson, 1972: 71-73, 108; Dos Santos, 1976: 94), the following discussion places them within the more general conceptual frameworks employed by several theorists.

Dos Santos gives the most frequently cited definition of dependence:[50]

> [D]ependence is a *conditioning situation* in which the economies of one group of countries are conditioned by the development and expansion of others. A relationship of interdependence between two or more economies or between such economies and the world trading system becomes a dependent relationship when some countries can expand through self-impulsion while others, being in a dependent position, can only expand as a reflection of the expansion of the dominant countries, which may have positive or negative effects on their immediate development. In either case, the basic situation of dependence causes these countries to be both backward and exploited. [1973b: 76, emphasis in original; see also 1970d: 231]

Although based upon a division of labor within the world system (Dos Santos, 1973b: 76-77), dependence as understood in this (static) structural sense necessarily implies relationships among entities that may be located within different societies or social formations. Consequently,

> the concept of dependence itself cannot be understood without reference to the articulation of dominant interests in the hegemonic centres and in the dependent societies. . . . Domination is practicable only when it finds support among those local groups which profit by it. . . .
>
> . . . The concept of compromise or collusion of the various interests involved is an essential element in the elaboration of a theory of dependence. [Dos Santos, 1973b: 78-79].

Such an analysis explicitly rejects the notion of the unified state as a political actor and the conception of the world system as simply a collection of nation-states (see Caporaso, 1978a: 2). Beginning with these (or similar) presuppositions, theorists identify the characteristics of underdevelopment rather differently. These features will emerge through a brief discussion of the work of Amin, Sunkel, and Cardoso and Faletto.

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[50] Other, less static definitions of dependence are given in Senghaas (1975: 249-50); Brewster (1973: 91); Ziemann and Lanzendörfer (1977: 156-58); see also Cardoso and Faletto (1979: xiv-xxv). O'Connor (1970) proposes the expression "economic imperialism." These definitions refer to "dependency" rather than to "dependence," as Caporaso (1978a, 1978b) makes the distinction. For other studies, see Dos Santos (1966, 1968a, 1968b, 1970a, 1970b, 1972, 1973a, 1973b, 1974, 1976).

Starting from an explicit model of the world system and the theory of unequal exchange, Samir Amin discerns three characteristics of underdevelopment:

> (1) the extreme unevenness that is typical of the distribution of productivities in the periphery, and in the system of prices transmitted to it from the center, which . . . largely dictates the structure of the distribution of income . . . (2) the disarticulation due to the adjustment of the orientation of production in the periphery to the needs of the center, which prevents the transmission of the benefits of economic progress from the poles of development to the economy as a whole; and (3) economic domination by the center, which is expressed in the forms of international specialization . . . and in the dependence of the structures whereby growth in the periphery is financed. . . . [1976c: 201-02]

Unequal international specialization distorts the economies of peripheral formations towards export activities and towards light industry using modern production techniques, and it leads to the hypertrophy of the tertiary sector (Ibid: 200-01). As a result, all peripheral social formations have in common "the predominance of agrarian capitalism in the national sector," "the creation of a local, mainly merchant bourgeoisie in the wake of dominant foreign capital," "a tendency toward a peculiar bureaucratic development," and "the incomplete, specific character of the phenomena of proletarianization" (Ibid.: 333). Capital accumulation in the periphery is characterized by the close link between the export sector and the consumption of luxury goods; in contrast, the link between mass consumption and the production of capital goods that is determinant in central capitalism is absent in peripheral formations (Amin, 1974a: 9-15).[51] Numerous mechanisms, including laws, tend to impoverish the mass of the people, whose "marginalization . . . is the very condition underlying the integration of the minority within the world system" (Ibid.: 15).

Some of these characteristics are also emphasized by Sunkel, whose analytic framework is a reformulation of Prebisch's distinction between center and periphery (see Sunkel, 1973: 137; 1974b: 28). In Sunkel's view, the world economy is a transnational capitalist system composed of

> an international or transnational heart or nucleus, consisting of 1) a matrix of national integrated sectors, 2) segregated individual national segments formed by the segregated or marginal sectors of each country, and 3) the relationship between (2) above and the integrated segments. [1973: 147]

[51] This point is discussed also by Frank (1978b: 117-18); Cardoso (1972-73: 90); Oxaal (1975: 37-38); and Thomas (1974: 50-55, 59, 61, 302), among others. The best discussions of its theoretical implications are Alavi (1975) and Ziemann and Lanzendörfer (1977). See also the literature on multinational firms and the internationalization of capital.

The core matrix, overlapping with national economies, comprises a small number of large transnational corporations (see Sunkel, 1972a; 1973: 163-68; 1974b: 29-30). "The specialization of production within the transnational core is the basis . . . of the dependency relationship between developed and underdeveloped countries" (Sunkel, 1974b: 30). Bilateral and multilateral relations among governments and international institutions reinforce dependency by "set[ting] up the rules of the transnational behavior, watch[ing] over their implementation, and promot[ing] the ideologies of transnationalism" (Ibid.: 31; see also 1973: 160-68; Sunkel and Fuenzalida, 1979). Their critical role derives particularly from the need of underdeveloped countries for foreign capital (see Sunkel, 1969a: 31). Consequently, "a fundamental characteristic of underdeveloped countries is the coexistence and interrelationship of a segment of the transnational core and the national peripheries . . . which runs through each branch of economic activity" (Sunkel, 1974b: 32; see also 1973: 146-50).

Transnational integration and national disintegration are simultaneous global processes (Ibid.: 163). Both are fostered by the state, which serves as a financial intermediary and a mechanism for income redistribution and public investment (Sunkel, 1969a: 30). The state tends to promote the expansion of the transnational core because of the political power of the social and economic groups associated with it (Sunkel, 1974b: 38). By influencing the structure of production and the transfer of income, the state contributes to increasing income inequality within the country (see Sunkel, 1974b: 150-53). Perhaps the most important feature of national disintegration is the increasing marginality of the mass of the population, which "is mainly conditioned by the lack [of] or difficulty of access to a reasonable and stable income" (Sunkel, 1973: 142). Another crucial trait is the disintegration of social classes. The formation of "national classes" (Ibid.: 169-70) is prevented or limited by the fact that each class includes individuals who are integrated into the transnational core and others who are segregated from it (Sunkel, 1972a: 527-29; 1973: 169-71; see also 1965, 1969b, 1972b, 1974a; Sunkel and Paz, 1970).

Cardoso and Faletto consider it "senseless to search for 'laws of movement' specific to situations that are dependent, i.e., that have their main features determined by the phases and trend of expansion of capitalism on a world scale" (1979: xxiii, original emphasis omitted). Consequently, they use the

idea of dependency as a method of analyzing concrete situations (Ibid.: xvi-xxv, passim; see also Palma, 1978). Maintaining that "from the economic point of view a system is dependent when the accumulation and expansion of capital cannot find its essential dynamic component inside the system" (1979: xx), they analyze the "new dependency" in Latin America. This is a form of peripheral industrialization or dependent capitalist development characterized by an alliance among the state, multinational corporations, and segments of the local bourgeoisie. The basic economic conditions of dependent development are

> an open market, the exclusion of the dependent countries from the markets of the most developed countries, and the continuous transfer of new units of external capital in the form of advanced technology. . . .The combination of these conditions with the ideologies and legal relations among social groups makes possible "industrial economies in dependent societies." [Ibid.: 175]

In this form of dependent development the role of the state is fundamental, and the pattern of class relations is necessarily complex. "Some local classes or groups sustain dependency ties. . .[while] others are opposed to the maintenance of a given pattern of dependency" (Ibid.: 22; see also Cardoso, 1972-73, 1973a). Dependent development accentuates the exclusion of the masses and of social groups that were once economically dominant. Certain structural limitations on nationally controlled industrial development arise from: the necessity for foreign investment, pressure by various sectors for participation in the benefits of production, a downward trend in the terms of trade, and the role of the developmentalist state (Ibid.: 154-55). National underdevelopment is therefore "a situation of objective economic subordination to outside nations and enterprises and, at the same time, of partial political attempts to cope with 'national interests' through the state and social movements that try to preserve political autonomy" (Ibid.: 21; see also Cardoso, 1965a, 1965b, 1966, 1967a, 1967b, 1969, 1971, 1972, 1973b, 1974).

These and other theorists recognize the diversity of types and the changing historical forms of dependency. They argue, however, that the essential relationship of dependency and the processes of underdevelopment tend to be reproduced in Marx's sense that "when viewed as a connected whole, and as flowing on with incessant renewal, every social process of production is, at the same time, a process of reproduction" (1967: 566; see also Althusser and Balibar, 1970: 269). The structure of production within the world system influences and combines with the political and social structures of

underdeveloped countries to reproduce dependency (see Magdoff, 1972: 164-69; Dos Santos, 1970c: 235-36; O'Connor, 1970). The role of the state and its relation to classes and the relationship of capitalism to peasants are therefore among the factors that both characterize underdevelopment and serve to reproduce it.[52] Both, therefore, raise important questions for the study of law.

III. SOME IMPORTANT ISSUES AND RECENT STUDIES

This section of the paper identifies two sets of issues that are of critical importance to studies of law in underdeveloped countries and mentions some recent work that addresses these questions. In doing so, it draws upon the writings of underdevelopment and dependency theorists but necessarily widens the scope of the discussion. Many of the theorists already mentioned have paid little attention to law, although their work suggests pertinent questions and proposes frameworks for analysis. Conversely, recent studies of law in relation to underdevelopment and dependency are often unconcerned with general theory even when they can be placed within a theoretical framework. Some are part of the contemporary efforts to develop a Marxist analysis of law. Thus far these efforts have concentrated upon central capitalist countries, but some provide a useful context and theoretical impetus, though they cannot be discussed fully here. Finally, recent research concerned with neither law nor dependency theory is mentioned in this section because it could contribute significantly to the comparative sociology of law. This part of the paper is inevitably somewhat broader in scope, eclectic, and more selective than the previous section.

A. State and Classes

Necessarily crucial to any discussion of law, the nature of the state and its relation to society have been central issues in both modernization and dependency theories. The erosion of the assumptions concerning the autonomy of the state, and therefore of law, in relation to society signalled the demise of modernization theory and the liberal legalist paradigm (see Trubek and Galanter, 1974: 1070-72, 1079, 1083-85; D. Cruise O'Brien, 1972). Theories of underdevelopment and dependency so far have taken only limited account of the extensive debate

[52] Allen (1976, 1977), Chilcote and Edelstein (1974a: 47), and Fagen (1977, 1978), among others, also identify these issues as being of central importance.

among Marxists over the nature and role of the state (Miliband, 1972, 1973; Poulantzas, 1972, 1973, 1975, 1976a, 1976b, 1978; Laclau, 1977: 51-79; Offe and Ronge, 1975; Offe, 1974, 1975; Gold et al., 1975a, 1975b; Therborn, 1976, 1978; Esping-Anderson et al., 1976; Wright, 1978; Block, 1977; Trimberger, 1977, 1978; de Brunhoff, 1978; Holloway and Picciotto, 1978). But partly because of its origins in the failure of bourgeois nationalist development in Latin America, dependency theory has helped to reformulate the question of the nature of the state and its relation to society (see Cardoso, 1977: 19). It has engendered and contributed to debates concerning the relative autonomy of the state, its material basis, and the class nature of its policies and staff, all of which are directly relevant to the sociology of law.

Despite changes in the views of individual theorists and the tendency of complex arguments to overlap on some points, several distinct views concerning the role of the state may be discerned. In analyzing them, it is useful to bear in mind Skocpol's injunction "to take the state seriously as a macro-structure" (1979: 29). Skocpol has argued that

> the state properly conceived is no mere arena in which socioeconomic struggles are fought out. It is, rather, a set of administrative, policing, and military organizations headed, and more or less well coordinated by, an executive authority. Any state first and fundamentally extracts resources from society and deploys these to create and support coercive and administrative organizations. . . . [T]he administrative and coercive organizations are the basis of state power as such. [Ibid.]

In contrast to most Marxist theorists, she holds that these state organizations are at least potentially independent of the (direct) control of a dominant class; "the extent to which they *actually* are autonomous, and to what effect, varies from case to case" (Ibid.: 29-30, emphasis in original). In her view, the state necessarily competes with the dominant class (or classes) in the appropriation of resources. Moreover, it may use these resources in ways that threaten the interests of that class (Ibid.: 30). Unlike Skocpol, whose important study concentrates on Russia, China, and France, theorists of underdevelopment and dependency have focussed on precisely those countries where social revolutions have failed to occur. For this reason, and also because they frequently start from different theoretical presuppositions, they often take a somewhat different view of the role of the state. If Skocpol's work is used as a point of departure (see also Saul, 1974; Leys, 1976), the views of underdevelopment and dependency theorists may be categorized roughly according to whether they conceive of the state as (potentially) autonomous, relatively autonomous, or not autonomous—i.e., subordinate to the

dominant classes (or, for some theorists, other groups).[53]

The first position is perhaps most frequently associated with the work of Sunkel and Furtado.[54] This view tends to consider class differences as less important than other distinctions, such as that between "transnationalized" and "segregated" sectors. It argues the possibility of national capitalist development, often based on military government acting in the interests of a national bourgeoisie. Sometimes characterized as "the new nationalism" (P. O'Brien, 1973), this view "looks to the state or grouping of states as the instrument of struggle against dependency" (Harding, 1976: 8). Consequently, it envisages legal measures as potentially effective in minimizing or controlling the effects of relations of dependence and in enhancing the economic independence of the national bourgeoisie.

Maintaining that this view gives insufficient weight to the influence of foreign capital upon the state, critics argue that "the state is . . . transformed from a defensive mechanism against foreign capital into a disguised instrument of foreign control" (Harding, 1976: 9; see also Frank, 1967, 1969; Wallerstein, 1979: 228-29). This point is recognized and elaborated by two writers (Langdon, 1977, 1979; Godfrey and Langdon, 1979; see also Godfrey, 1979; Lamb, 1975) who, accepting the notion of underdevelopment, apply to Kenya Sunkel's thesis of transnational integration and national disintegration. They argue that Kenya is characterized by a relatively stable symbiosis between the state and multinational corporations (MNC) by which the domestic bourgeoisie is integrated into the transnational sector and is thus highly privileged in relation to the segregated sector (Langdon, 1977: 97). This symbiosis is distinguished by

> (i) considerable MNC ability to bargain out regulatory advantages for its subsidiaries . . . (ii) close informal channels which MNC executives can use to approach state officials . . . (iii) considerable state ability to bargain out accelerated managerial Africanization, African participation in product distribution, and increased local African shareholding in MNC enterprises; (iv) heavy tax revenues for the state from particular MNC subsidiaries . . . a degree of informal, illicit flow of financial favours to state personnel; and (vi) increasingly

[53] Leys (1976: 43) argues that "in order to understand the significance of any state for the class struggle we must start out from the class struggle, not the state." Although I accept this point, this survey is directed toward a different audience and is intended to serve a purpose different from that of Leys. The survey, in any event, treats the issues of state and class together in order to show the differences among theorists and thereby emphasize the need for students of law to take Ley's point seriously.

[54] Among the latter's writings are Furtado (1963a, 1963b, 1964, 1965a, 1965b, 1969, 1970a, 1970b, 1972, 1973a, 1973b, 1974a, 1974b, 1976).

> widespread state shareholding in MNC subsidiaries . . . . [Langdon, 1979: 229-30]

"These close MNC-state links have established a certain independence for the state structure, permitting it to manage and avoid potential conflicts between local and foreign capital" (Ibid.: 236; see also 230, 233-34; 1977: 96; Godfrey and Langdon, 1979: 282-83). State mediation submerges potential class antagonisms, at least temporarily, and ensures that no challenges to the symbiosis will arise from contradictions between local and foreign capital (see Langdon, 1977: 97; 1979: 237).

Proponents of a second position, following Fanon (1967: 119-65), argue that the state bureaucracy, in whole or in part, itself constitutes the dominant class. They reject the economic assumptions underlying the first nationalist view (see Cardoso, 1973a: 162). They also challenge the notion that "the State in dependent, capitalist societies is incapable of instituting a stable and durable system of domination" (Pompermayer and Smith, 1973: 122). Some adherents of this position (e.g., Pompermayer and Smith, 1973) draw on recent Marxist theory, especially the work of Poulantzas, concerning the relative autonomy of the state. Others (e.g., Cardoso, 1973a; Evans, 1979: 43) tend to follow an "organizational, realist" view (Skocpol, 1979: 31), but they emphasize the ways in which dependent state capitalism, especially through public corporations cooperating with multinational firms, stimulates class formation within the state.

Thus Cardoso argued that in the "associated-dependent development" of Brazil, an alliance among the military (state), the international bourgeoisie, and the Brazilian bourgeoisie resulted in "the consolidation of a *relatively stable* model of bureaucratic domination" (1973a: 171, emphasis in original). In this "agreement" between the local bourgeoisie and the state,

> the former has momentarily relinquished its political-control instruments (political party system, elections, and so on) as well as the instruments of symbolic-ideological definition and diffusion (freedom of the press, habeas corpus, doctrinaire pluralism, liberal education), all of which have become rather closely responsive to state pressures and military control. In the trade-off, civil society has contracted and the state has mushroomed, particularly with respect to the regulation of economic life. But in the process, the military implicitly assumed an identity between the economic interests of the entrepreneurs and the general interests of the nation. They defined some areas in which private business would be preferentially encouraged to act. [Ibid.: 159]

This alliance required "that the instruments of pressure and defense available to the popular classes be dismantled" (Ibid.: 147). More recently, in a *post scriptum* written for the English translation of their major work, Cardoso and Faletto define

somewhat more precisely the class relations inherent in "the contradiction of a state that constitutes a nation without being sovereign" (1979: 200). They argue that the state in industrialized Latin American countries such as Brazil, by engaging in production with multinational corporations (Ibid.: 202), acquires an entrepreneurial, dynamic character and

> embodies an alliance between the interests of the internationalized sector of the bourgeoisie and those of public and entrepreneurial bureaucracies. The local bourgeoisie links itself to these sectors. In part, the state in dependent capitalism generates its own social base, since its productive function is to assure capital accumulation, and since in performing this function, it creates a sector of public entrepreneurs. At times this stratum is called the "state bourgeoisie," to emphasize that these social agents are not simple bureaucrats nor do they simply implement the "public good." They function, sociologically, as the "officeholders of capital." [Ibid.: 210]

Among the legal consequences of "associated-dependent capitalism" are a proliferation of public corporations and the adoption by "officials of the state (notably in the judicial sector) . . . [of] both an ideology of equality and generality . . . and a practice in which dominant interests impose themselves" (Ibid.: 209).

Elaborating a similar but more detailed conception of the state in Brazil, Evans (1979) considers dependent development to be a process specific to certain semiperipheral countries (in Wallerstein's terms). Its characteristic feature is an alliance of multinationals, local capital, and the state (Ibid.: 11, 32, 52). As "the dominant class in the semi-periphery" according to Evans, the members of these three groups "have a common interest in capital accumulation and in the subordination of the mass of the population, but [their] . . . interests are also contradictory" (Ibid.: 52). Evans views the state bourgeoisie as "a sort of class 'fraction' which participates in a common project with both the multinationals and local private capital" (Ibid.: 47). Such common projects increasingly take the legal form of *tri-pé* or "tripod" ventures that blur the boundaries between different types of capital while simultaneously fostering their integration (Ibid.: 227; see also 213-73). Evans argues that "the extremely exclusionary nature of dependent capitalist development accentuates the coercive aspects of the state just as the necessity of coping with the multinationals accentuates the entrepreneurial side" (Ibid.: 47). These processes deny the mass of the population any benefits of production and preclude any serious attention by the state to welfare measures (Ibid.: 288; see also Fagen, 1978: 295). Since local capital is not homogeneous (Ibid.: 282), they tend also to accentuate contradictions between the local bourgeoisie and the state,

between managers of state enterprises, and within the state bureaucracy (see Evans, 1979: 265-73, 279, 288-90). Laws may include "protestations of support for local capital" (Ibid.: 259), leave a margin of ambiguity to give the state greater leverage in dealing with multinationals (Ibid.: 229), be used to negotiate the terms of dependence (see Quijano, 1971: 47-50, 69, 85-86, 115), or simply be manipulated to integrate state enterprises with and subordinate them to foreign and domestic capital (see Evans, 1979: 230). But the role of law is limited and political contradictions are inevitable since dependent development in its state capitalist form depends fundamentally on imperialism (Ibid.: 290).

A similar view has been offered of the relation between state and class in African countries after independence. In the absence of a strong local bourgeoisie, segments of the petty bourgeoisie tended to assume control of the state and, by manipulating its legal forms, took on the functions of (Meillassoux, 1970), or became, a "bureaucratic petty bourgeoisie" (Mamdani, 1975: 51; 1976: 272) or "bureaucratic bourgeoisie" (Shivji, 1976: 22, 60, 63-99; Mamdani, 1976: 315; Martin, 1974: 18; Seidman, 1978c: 271-73, 278, 354, 402-03; see also von Freyhold, 1977). Thus Shivji argues that in Tanzania the Arusha Declaration, extending the state's economic role, consolidated the base of a bureaucratic bourgeoisie (1976: 64, 79-80, 85). Seidman, although starting from very different questions (1978c: 18, 349, 469), explanatory frameworks (1978c: 69-78, 462-68), and conceptions of society and the state (1978c: 345, 462-64), suggests that "the legal order developed a bureaucratic bourgeoisie" (1978c: 402). Emphasizing the manipulability of law (1977: 86; 1978c) within an economic order dominated by foreign firms, he considers the transformation of the political elite into a bureaucratic bourgeoisie as primarily the result of institutional factors that first organized bureaucratic roles and then specified the range of choices within them (1978c: 408, 464-68). In his view, the most important of these institutional factors (all of which operated through legal forms) were "the growth of the parastatal sector and excess discretionary authority in the civil service and corruption," together with opportunities for private-sector investment and control over development programs (1978c: 409). Summarizing his institutionalist thesis, Seidman proposes that "the state by the legal order created a new class with the potential to destroy the very order that created it" (1978c: 413; see also International Center for Law in

Development, 1978: 139, 141). Turner (1976) inverts this argument in analyzing the collapse of political compromise and legal regulation in the face of relations among transnational corporations, local business, and state compradors in Nigeria. She describes the inability of state technocrats to control triangular relations similar to those that prevailed in Brazil (see also Evans, 1979: 308-14). Turner argues that partly as a consequence of the weakness of a national capitalist class, "there is no social demand for state regulation, and there are no means of enforcing rules to govern profit-making. . . . [therefore] the state remains an arena for unruly capital accumulation" (1976: 78; see also Y.P. Ghai, 1976a: 184-85).[55]

In contrast to this view, and to that of the state as autonomous, a third group of scholars has argued that the state in underdeveloped countries, though subordinate to a neocolonial international bourgeoisie, is relatively autonomous in relation to domestic classes.[56] This position, and the consequent theoretical interest in petty bourgeois politics (see Leys, 1975, 1976; Mamdani, 1975; Saul, 1976; Williams, 1976b), are found most commonly among writers who concentrate on African countries. Like Robin Cohen (1972), they tend to emphasize the formation of classes and class action and the relation of these processes to the state. These writers are also influenced by the work of Miliband and Poulantzas and, in at least one instance (Ziemann and Lanzendörfer, 1977), by the recent "state derivation" debate among West German Marxists (see Holloway and Picciotto, 1978b). Within this group three subcategories emerge: the thesis of the overdeveloped postcolonial state, bonapartist interpretations of the relation between state and classes, and materialist conceptions of the state.

The thesis of the overdeveloped postcolonial state was originally put forward by Alavi (1972) and subsequently elaborated by Saul (1974; see also Wood, 1977; Schaffer, 1978). Insisting on "the historical specificity of post-colonial societies" (Alavi, 1972: 59), Alavi argued that the "mutually competing but reconcilable" interests of the three propertied classes (the

[55] The studies by Mamdani (1976), Brett (1973), Leys (1975), and Shivji (1976) are especially useful on law in East Africa. See Saul (1974, 1976) for comments on the work of Mamdani and Shivji.

[56] That Bryde (1973: 22-25, 30, 33-34, 40, 53-54) and Szentes (1976: 273-76, 317-18) agree on this point, despite their fundamentally different theoretical frameworks, suggests that the view is widely held, even though its implications and its relation to a more general theory of the state and society often remain implicit. Leys (1978) came to my attention too late to be taken into account in this paper.

indigenous bourgeoisie, the neocolonial metropolitan bourgeoisie, and the landowning classes) guarantee that no single class has exclusive control of the state (Ibid.: 71, 72). Consequently, the state is able to play a mediating role among them and also preserve private property and the capitalist mode of production in which their interests are embedded (Ibid.: 62). The relative autonomy of the state rests on two factors. The first is the pre-eminent role played by the state during the colonial period:

> The bourgeois revolution in the colony insofar as that consists of the establishment of a bourgeois state and the attendant legal and institutional framework, is an event which takes place with the imposition of colonial rule by the metropolitan bourgeoisie. In carrying out the tasks of the bourgeois revolution in the colony, however, the metropolitan bourgeoisie has to accomplish an additional task which was specific to the colonial situation. Its task in the colony is not merely to replicate the superstructure of the state which it had established in the metropolitan country itself. Additionally, it has to create [a] state apparatus through which it can exercise domination over *all* the indigenous social classes in the colony. It might be said that the 'superstructure' in the colony is therefore 'overdeveloped' in relation to the 'structure' in the colony, for its basis lies in the metropolitan structure itself, from which it is later separated at the time of independence. The colonial state is therefore equipped with a powerful bureaucratic-military apparatus and mechanisms of government which enable it through its routine operations to subordinate the native social classes. The post-colonial society inherits that overdeveloped apparatus of state and its institutionalized practices through which the operations of the indigenous social classes are regulated and controlled. [Ibid.: 61, emphasis in original]

The state apparatus also plays an unusually important economic role, partly through its network of bureaucratic controls and partly by appropriating a large share of the surplus and using it in the name of economic development (Ibid.: 62, 72).

Saul elaborates Roger Murray's emphasis on the role of ideology in understanding "the contradictions inherent in the accession to state power of unformed classes" (1967: 31, original emphasis omitted; see also 34-35) to add a third factor: the postcolonial state must create the conditions of its own ideological hegemony, including territorial unity and legitimacy (Saul, 1974: 351). The instrumental reflection of state ideology in the legal system (Y.P. Ghai, 1976; see also R.W. Johnson, 1977, 1978), attempts to develop a legal literature (see Martin, 1978), and the ideology of law and modernization itself (compare Saul, 1974: 351) all exemplify this process. Saul suggests that East Africa, unlike the Pakistan and Bangladesh analyzed by Alavi (1972), experienced overdevelopment of the postcolonial state resulting "not so much in response to a need to 'subordinate the native social classes' as a need to

subordinate pre-capitalist . . . social formations to the imperatives of colonial capitalism" (1974: 353). In this latter process, which presupposes a class structure different from that discerned by Alavi (see Saul, 1974: 153), the establishment through law of colonial monopolies in the interest of expatriate capital was crucial (see Brett, 1973; Mamdani, 1976).

A second subcategory rejects the thesis of the overdeveloped postcolonial state and its corollary insistence on the class character of the bureaucracy (Leys, 1975: 193; 1976: 41-45; see also Barker, 1977; Szentes, 1976: 273-76, 317-18; Y.P. Ghai, 1976a). That the bureaucrats (or some of them) are bourgeois is tangential to the specific functions the bureaucracy performs for the ruling alliance (see Leys, 1975: 193; see also Robin Cohen, 1972: 248-50) and the dominant class, which "is still the foreign bourgeoisie" (Leys, 1976: 44). Leys is not "entirely convinced that the 'state bureaucracy' does now constitute a class" (1976: 48), arguing that most of sub-Saharan Africa resembles the France of the 1850s analyzed by Marx (1968a) in its "complex and fluid class structure corresponding to the still incompletely evolved interrelationship of the capitalist and non-capitalist modes of production" (Leys, 1975: 209). In this situation, "the leader is not the agent of any one class, but enjoys a measure of independence" (Ibid.: 211). Such a bonapartist regime is not necessarily short-lived and should be treated as a generic form in some circumstances (Ibid.; but see J. O'Brien, 1976).

Neocolonial, bonapartist politics is likely to have several legal consequences. First, in view of the relative inefficacy of attempts to establish ideological hegemony, the state relies on a mixture of legal ideology (including constitutionalism) and repression (see Leys, 1975: 238-43, 246-48). Second, despite the "liberal-democratic" appearance of legal institutions,

> the neo-colonial state does not represent the interests of a dominant national bourgeoisie, and consequently these institutions, which were developed for that purpose, function badly, if at all. Their utility is largely ideological; in reality they tend to atrophy. [Ibid.: 244]

Third, increasing pressure by the groups constituting the regime's domestic political base compels the state to adapt the monopoly structure of the colonial economy by establishing (through legislation) niches for small local capitalists. This creates an African petty bourgeoisie that serves and complements foreign capital without replacing it (Ibid.: 148-69). Fourth (as Leys wrote of Tanzania), legal measures prove entirely incapable of preventing

> the dominance of a local bourgeois class, and of foreign bourgeoisies. . . . [To argue otherwise] ignore[s] both the . . .

> adaptation [of the existing state] to the task of defending bourgeois interests . . . and the fact that the penetration of Tanzanian society in all its dimensions by capitalism was far too advanced to be checked, let alone prevented, by juridical measures. Rosa Luxemburg's words apply as much to periphery capitalism as to capitalism in the metropoles: '. . . the fundamental relations of the domination of the capitalist class cannot be transformed by means of legislative reforms, on the basis of capitalist *society*, because these relations have not been introduced by bourgeois *laws*.' [1976: 47, Leys's emphasis]

Fifth, legal measures that threaten the position of ruling groups are likely to be only symbolic (Bryde, 1976: 22-25, 30, 33-34, 40, 53-54, 192; see also 1977). Students of law therefore need to recognize the relatively minor importance of legal rules compared with social, political, or administrative factors: "if African lawmakers were ready to change the *status quo* . . . the specifically 'legal' aspects of 'development through law', namely the translation of development policies into legal norms, would be the least of their problems" (Bryde, 1976: 192).

The thesis of the overdeveloped postcolonial state is rejected not only by proponents of the bonapartist view but also by a third group, who attempt to formulate a materialist conception of the state. These writers accept the idea of the relative autonomy of the state (see Ziemann and Lanzendörfer, 1977: 148-49, 151-52, 162) but try "systematically to 'derive' the state as a political form from the nature of capitalist relations of production" (Holloway and Picciotto, 1978a: 3). Partly on the basis of theories of underdevelopment and dependency, they argue that "the distinctive feature of the peripheral production process is the unity of reproduction dependent on the world market and structural heterogeneity" (Ziemann and Lanzendörfer, 1977: 159). These characteristics, together with the fact that "national" political and economic spheres in the periphery do not coincide,[57] determine the specific functions of the peripheral state. Considered as an institution for economic production, the state aims at

> (a) linking the world market context with the national economy by breaking down—as far as is possible while maintaining the total inner reproduction—the political frontiers between the world market and the national economy. . .
>
> (b) securing the existence and expansion of the world market in the national economic area. . .
>
> (c) securing internal economic reproduction which is not guaranteed through the economic process
>
> (d) securing the structural heterogeneity, as a specific condition both for world-market and national reproduction, against the process of disintegration in the non-capitalist area . . . and in the backward capitalist areas of the national economy

[57] Robin Murray (1971) and Therborn (1979) offer similar reformulations of the units of analysis question.

and following a "policy of neglect" in relation to the consequently marginalized mass of the population (Ibid.: 161). Peripheral societies are characterized by weak classes and a fragmented, unstable class structure so that the state, as mediator, "becomes the actual forum of class struggle and class relations" (Ibid.: 162). Considered as an institution for political reproduction, the state therefore

> [acts] as intermediary in political differences between the synthesised national interests (or the interests of sections of the national bourgeoisie) with the interests of the external bourgeoisie and their states. . .
>
> [guarantees] the cohesion of the social structure, which is continually threatened by its own dynamic;
>
> [and acts] as intermediary in political differences between the growing state bureaucracy and the other classes and fractions of classes. [Ibid.]

Each function entails the use of law as well as other forms of state power.[58] But these writers hold that "conditions which are not already present in the society cannot be created by the state" (Ibid.: 167). Like others who view the state as relatively autonomous, those who advance the materialist conception decisively reject as naive obfuscation the instrumentalist notion of law inherent in law and modernization theory.

Regardless of their differences, each of these authors seeks to reformulate the relation between state and society in a way that differs radically from that which was implicit in the early law and development literature. These theorists reject the notion that individual and state are the sole actors in history, the pluralist presupposition that a general consensus of values and interests prevails among all members of society, the idea that courts are primary in defining the social meaning of law, and the belief that the state, itself bound by law, acts evenhandedly in the interests of all. This reformulation is of critical importance for studies of law in underdeveloped countries if the

> key question becomes, to what extent is it possible for the non-revolutionary, equity oriented state to take [a] leading role, to achieve the degree of autonomy from class forces at home and abroad necessary to implement and sustain public policies which attack the root causes of mass misery? [Fagen, 1978: 293]

Recent theoretical writing on the relation between state and class suggests that this possibility is extremely limited (see also Paliwala et al., 1978). Legal measures may be employed to foster alliances among transnational corporations, domestic

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[58] Ziemann and Lanzendörfer (1977) make numerous references to law in relation to these functions of the state; see also von Freyhold (1977); Picciotto (1979). For the debate concerning the state in South Africa, see *Review of African Political Economy* (1976), particularly Davis and Lewis (1976); see also *Review of African Political Economy* (1978); Legassick (1974).

capital, and the state; to consolidate partnerships between foreign capital and segments of the local bourgeoisie; or to carve out niches for the growth of local capital, if within narrow limits. In some countries this may enhance the capacity of the state to negotiate the terms of dependent capitalist growth, including industrialization (see Sutcliffe, 1972b; Warren, 1973). But this strategy depends fundamentally on a highly unequal distribution of the benefits of production. It reproduces existing classes within the society and presumes the continuing exploitation and marginalization of the masses (see Quijano, 1974b).

Many scholars have shown that these systematic inequalities are inherent in the legal order. This point has been made in studies of: colonial labor law (see Arrighi, 1973; van Zwanenberg, 1975; Fitzpatrick, 1976; Shivji, 1979), the transfer of Western legal categories and institutions (Lenoble and Ost, 1977, 1978; LeRoy, 1978a, 1978b, 1979);[59] patterns of court use (Abel, 1979b); the organization of the legal profession (Luckham, 1976a, 1976b, 1976c, 1978, 1979; see also Abel, 1979b); the role of public enterprise in mediating the domination of foreign capital (Ghai, 1976a: 169-72); the legal regulation of migration and welfare (see Snyder and Savané, 1977); and the creation of forms of popular justice as survival strategies by dominated classes (Santos, 1977; Snyder, 1978b). States that are unstable, repressive, and authoritarian, or merely weak and ineffective within the world system, rely on ideologies of "development" and "modernization" to legitimate the position of the classes that sustain them and to contain the organization of the dispossessed.[60] Such containment tends systematically to "check the creation of any basis in reality to sustain liberal legalism" (Fitzpatrick, 1979a: 8). Comparative sociology of law must reject such ideologies as the framework of discourse. The recent work on the relation between state and society examined here provides the basis for more adequate theoretical conceptions.[61]

[59] These studies form part of the Subproject on the Transfer of Legal Knowledge in the UNESCO program of research on the conditions governing the transfer of knowledge, established after the nineteenth General Meeting of UNESCO in Nairobi. The Subproject is coordinated by the International Association of Democratic Lawyers based in Brussels. For discussion of an analogous project on mass communications, see R. Cruise O'Brien (1979a). These projects reflect recent UN interest in the transfer and development of technology (compare Ewing, 1966; Ewing and Koch, 1977).

[60] The current research by J.P.W.B. McAuslan on the ideology of planning should contribute significantly to our understanding of the relation between ideology, state, and class.

[61] See Luckham (n.d.) for a discussion of the methodological questions

B. Capitalism and Peasants

Underdevelopment and dependency theorists have emphasized the relation of the state not only to the bourgeoisie but also to workers[62] and peasants. Whether one agrees that "most of the crucial innovations of neo-Marxism [in analyzing underdevelopment] concern the peasantry" (Foster-Carter, 1974: 89), it is undeniable that writers on underdevelopment and dependency have contributed significantly to the renewal of theoretical and practical interest in the relation between agricultural producers and the state in underdeveloped countries, and the role of peasants within the world system.[63] The relation of peasants to state and capital has been a central issue in a number of fundamental debates concerning the mechanisms of dependency, the role of capitalism in the process of underdevelopment, the formation of classes, and strategies of transformation. A brief sketch of this extensive, complex discussion (see Foster-Carter, 1978; Wolpe, 1980) may reveal some of its implications for research on law.

One issue arose in a debate over whether the rural areas of Latin America were characterized most appropriately as capitalist, as Frank maintained (1967, 1969), or as feudal, following Laclau (1977: 15-41). Because both rejected the conventional dualist conception of underdeveloped countries, their disagreement raised more basic issues concerning the definition of capitalism, the specification of units of analysis, the definition of a mode of production, and the political implications of theoretical concepts.[64] This exchange provided the point of departure for an extensive debate on whether the Green Revolution had established a capitalist mode of production in Indian agriculture, including such issues as the relative importance of generalized commodity production, free wage labor, the role of capital in circulation and production,

involved in some of these studies. Many of these issues are also discussed in the readings collected in Ghai et al. (n.d.).

[62] Allen gives an introductory bibliography on workers in Africa and the debate concerning the "informal sector" (1976, 1977); see also the *Review of African Political Economy*. Quijano (1974) discusses marginalization.

[63] This interest reflects a new willingness to take seriously the lessons of peasant revolutions; see Wolfe (1969); Paige (1975).

[64] See Booth (1975: 72-74); Alavi (1975: 160, 171-76, 180-81, 182); Harding (1976: 5-6); Cleaver (1976: A.4-A.8); Cheng (1976: 17-41); Foster-Carter (1978: 75-77, passim); Cardoso (1977: 11-12); Leaver (1977); Wallerstein (1979: 6-10, 138-51); Brenner (1977); see also Mandel (1970); Romagnolo (1975); Lowy (1975); Novack (1976).

and tenancy relations.[65] It stimulated a more comprehensive discussion of the place of modes of production in a materialist conception of history (Banaji, 1977). It also provoked Alavi to elaborate the concept of a colonial mode of production distinguished by "deformed generalised commodity production" and "deformed extended reproduction" (1975: 192), thus placing this debate squarely within underdevelopment theory.

A second element consists of recent efforts, beginning in France, to apply the concepts of (Althusserian) Marxism in economic anthropology.[66] This tradition of analysis

> presumes that in the context of a disruptively expansive capitalist system, the dynamics of capitalist development cannot be understood without reference to the dynamics of non-capitalist modes of production and to their systemic relations with capitalism. [O'Laughlin, 1977: 3]

It has concentrated mainly on reconstructing precolonial (especially African) economic organization, analyzing the characteristic structures and relations of "noncapitalist" modes of production, and studying the effects of colonialism and capitalism (see Copans and Seddon, 1978: 35-36), especially through the articulation of different modes of production (see Foster-Carter, 1978; Bradby, 1975; Clammer, 1975).[67]

A third element was produced by the conjunction of recent British Marxist theory and precapitalist modes of production (Hindess and Hirst, 1975, 1977a, 1977b; Taylor, 1975, 1976; Asad and Wolpe, 1976; Wolpe, 1972, 1975; Cook, 1977; Banaji, 1977; see also Anderson, 1974a, 1974b) and the elaboration of "peasant studies" as an academic subfield. Scholars have attempted to analyze peasants using the theoretical concepts developed by Marx, who was concerned mainly with Europe (see Avineri, 1969: 1-44) and whose assessment of the peasants' political role was ambivalent at best (see Duggett, 1974). These efforts culminated in a recent survey of the literature on peasants that argued convincingly that " 'peasantry' as a theoretical economic category does not exist in Marxism and the non-Marxist substitutes for it in economic anthropology do not represent a rigorous alternative" (Ennew et al., 1977: 296). Consequently,

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[65] See Rudra et al. (1969); Rudra (1969, 1970, 1971); Rao (1970); U. Patnaik (1971a, 1971b, 1972); Chattopadhyay (1972a, 1972b); Saith and Tankha (1972); Banaji (1972, 1973); Frank (1973); Sau (1973a, 1973b, 1975); Alavi (1975); Cleaver (1976); see also Wood (1978). This debate is summarized in McEachern (1976); Alavi (1975: 172); Foster-Carter (1978: 71).

[66] See, e.g., Meillassoux (1960, 1964, 1971, 1972, 1973, 1975, 1977); Rey (1971, 1973, 1975a, 1975b, 1976); Dupré and Rey (1969); Amselle (1976); Terray (1972); Godelier (1973); see also Clammer (1975; 1978); Seddon (1978); Bloch (1975).

[67] See O'Laughlin's (1975) survey of Marxist approaches in anthropology.

some scholars (Ibid.; Bernstein, 1976, 1977; Palma, 1978: 890-93; see also Banaji, 1977; Tribe, 1979; de Crisenoy, 1979) have urged that the classic studies by Lenin (1967) and Kautsky (1899)[68] of the penetration of capitalism into noncapitalist agriculture provide the most useful foundation for an analysis of the relations among peasant, capital, and state.

For the present purposes, the importance of these debates lies in proposing different frameworks of analysis for several related questions: What role did (state) law play in the process of rural underdevelopment or in the (complete or partial) transition to capitalism in agriculture? What were the consequences of this transition for legal ideas and institutions and for groups or classes in precapitalist formations?[69] How does law influence contemporary relations among peasants, capital, and the state in underdeveloped countries within the world economy? These questions should stimulate future research, but they have also been addressed to some extent by recent studies that draw on the "modes of production" debate.

These studies attempt to recast in a generally materialist framework a tradition of anthropological research on law in which the settlement of disputes has been a major theme (see Abel, 1973a; Roberts, 1979). By and large, anthropological research on law has been characterized by the use of the case method, a tendency to emphasize either the cognitive or the institutional aspects of law (see Moore, 1970: 276), and the epistemological presuppositions of methodological individualism. Such research has concentrated on "defining the range of options open to litigants and . . . analyzing the constraints and incentives that channel the choices they make" (Collier, 1973: 244). In contrast, recent studies place more emphasis on the effects of economic factors on the outcome of disputes (see Starr and Yngvesson, 1975). Increasing attention has been devoted to legal pluralism since Hooker (1975: 53; see also Y.P. Ghai, 1972: 1-4) reaffirmed Bohannan's characterization of colonial law as "a systematic misunderstanding between two [legal] cultures within a single power system, with constant revolutionary proclivities resulting from what is, at best, a 'working misunderstanding' " (1965: 39). Several scholars have also considered the relation of peasants to state legal institutions and processes. Some have

[68] See the bibliography in Ennew et al. (1977) for other relevant works by Lenin; Kautsky is summarized in Banaji (1976).

[69] The reverse relationship, although equally important, has not been discussed to any extent in the literature.

elaborated the concept of semiautonomous social fields as a framework of analysis (Moore, 1973; see also 1977, 1978). Others employ the notion of internal colonialism to show how the hierarchy of courts maintains ethnic stratification and boundaries (Hunt and Hunt, 1969). A third group (Perry, 1977; Collier, 1975), whose interests converge with those of theorists interested in dependency or modes of production (see Long, 1975, 1977), has used the idea of brokerage to investigate legal pluralism and the relation of peasants to the state. Collier (1975) shows that in Mexico, Zinacanteco political leaders channel the effects of state development policies on rural communities. She argues that the reactions of individual brokers to national and local pressures account for the persistence of rural conciliatory procedures and also for the fact that the "substance of Zinacanteco [dispute] settlements has begun to change toward conformity with codified law in cases where law and traditional custom are in conflict" (1975: 61). Such scholars use a cultural definition of peasants, a dualist notion of the economy, and a pluralist conception of society, and they often employ the notion of legal levels formulated most clearly by Pospisil (1971: 97-126). This model of society, as we have already seen, differs fundamentally from that used by underdevelopment and dependency theorists. Moreover, most anthropological studies of law give relatively little attention to the relation of law to class formation, the role of agricultural producers in the world capitalist economy, and the economic bases of political and legal institutions.

These are precisely the factors emphasized in recent studies that draw on underdevelopment theory to elaborate a new framework for the study of law. French anthropologists and others (e.g., Wolpe, 1972, 1975) stress the articulation of different modes of production as a consequence of colonialism. They argue that capitalism tends simultaneously to dissolve and to conserve "noncapitalist" modes, enabling capitalists to benefit from markets (see Luxemburg, 1951), ensuring a supply of cheap labor, and dividing the working class (Meillassoux, 1975: 145-46).[70] Although differing in purpose and theoretical rigor, several recent studies of law build directly or indirectly on aspects of this work. Research on colonial Senegal suggests that migration under the influence of capitalism articulated, at least temporarily, distinct modes of production (Snyder, 1979).

[70] O'Laughlin (1977) offers a rigorous criticism of this view.

Several papers advance the view that in underdeveloped countries,

> law's . . . functions become the conservation of the traditional mode in the face of economic forces that make for its dissolution and the containment of indigenous class organisation that could challenge metropolitan dominance. [Fitzpatrick, 1979a: 9][71]

Analyzing Tanganyikan labor laws from 1920 to 1938, Shivji (1979) argues that the dominance of finance capital led to the simultaneous conservation and dissolution of precapitalist modes of production; these processes were reflected in the semiproletarian character of labor, mirrored by colonial use of penal sanctions for absence and desertion. Two studies analyze the establishment and operation of the village courts introduced in Papua New Guinea after 1973 (Paliwala, 1979; Fitzpatrick, 1979b; see also Y.P. Ghai, 1978: 120-22). Fitzpatrick argues that

> this type of dispute settlement closely reflects the wider political economy from which it emerges. It reflects the maintenance of traditional society and has a basis in "custom" and "customary obligations". Yet historically it comes also to fill a gap that appears in the preceding colonial hierarchy of power. In this it draws on the new authority of dominant class elements that are beginning to emerge. These class elements have some release from the controls of traditional society. They are authoritarian and adjudicative in the settlement of disputes in contrast to the participative and consensual nature of the traditional mode. [1979b: 14]

Obscured by official ideology, "the key decisions on village courts were taken by the colonial power before self government" (Paliwala, 1979: 5). The main consequence of the 1973 Village Courts Act was to extend into rural villages the state apparatus of social control and to enhance the formation of class alliances (see Paliwala, 1979; see also Abel, 1979c; Hofrichter, 1979).

Some of these studies rely on assumptions concerning precapitalist or "noncapitalist" modes of production and social formations that are questionable or not always made explicit. Thus far, research on law has not drawn on the diverse literature on "colonial modes of production" (see Rey, 1971: 294-463; Banaji, 1972; Alavi, 1975). But at least two different studies, only parts of which have been published, examine the transformation of law in Africa since the beginning of the colonial period (see also Ghai and McAuslan, 1970). Chanock, in a paper that forms part of a larger study of the origins of "customary law" in Central Africa, argues that

> the African law of modern Africa was born in and shaped by the colonial period. . . . [I]n accordance with the policy of indirect rule [under British colonialism], a large portion of the administration of

[71] Fitzpatrick elaborates this position in essays that were not available during the preparation of this paper (1978, n.d.).

> justice was turned over to precisely those people who had reason to define and, more importantly, to administer the law in a restrictive and authoritarian way. [1978: 80; see also 1977]

This work demonstrates the recent emergence of the "customary law" recorded by colonial anthropologists and illuminates the social forces that selected and shaped it. Chanock challenges the concept of "customary law" as simply "folk law in the process of reception" or "a kind of legal situation . . . in which dominant legal systems recognize and support the local law of politically subordinate communities" (Fallers, 1969: 3). Drawing on the reinterpretation by French Marxist anthropologists of theories of exchange (see Meillassoux, 1960, 1964; Rey, 1971; Dupré and Rey, 1968), another study analyzes the changes in precapitalist legal ideas and forms that accompanied the subsumption of an African social formation into the world economy and that are associated with the transition to capitalism (Snyder, n.d. a, n.d. b; see also 1977, 1978a, 1978b). Both Chanock and Snyder reject the dichotomous distinction between "traditional" and "modern" law frequently associated with the notion of a dual economy. Their analysis suggests the need for a substantial qualification of arguments that urge reliance on "customary law" in development planning (see Narakobi, 1978; see also Y.P. Ghai, 1978: 117-19).

Studies of precapitalist legal ideas and the specific circumstances of their transformation give an essential historical content[72] to the abstract category of "natural economy" (see Luxemburg, 1951: 402; Bradby, 1975: 127-28; Bernstein, 1977: 61). This notion is the starting point of a recent article (Bernstein, 1977) drawing on the writings of Lenin (1967) and Kautsky (1899) on peasants in order to resolve some of the problems posed by the terms of underdevelopment theory (see Frank, 1978b: 248-50). It overcomes some of the difficulties in theories of the articulation of modes of production and of the simultaneous dissolution and conservation of precapitalist (or noncapitalist) modes of production under the impact of capitalism (see Bernstein, 1977: 60-61, 68-69; Foster-Carter, 1978; O'Laughlin, 1977; Cheng, 1976: 143-44). Bernstein argues that

> peasants have to be located in their relations with capital and the state, in other words, within *capitalist relations of production* mediated through forms of household production which are the site of a struggle

[72] Sayer (1975: 790-91) sees "relational [or structural] analysis and historical analysis" as complementary. Banaji (1977) is among the best discussions of this question.

> for effective possession and control between the producers and capital/state. [1977: 73, emphasis in original]

Such an analysis "investigates the ways in which capital attempts to regulate the conditions of peasant *production* (as well as exchange) without undertaking its direct organization" (Ibid.: 64, emphasis in original). It raises two sets of issues: "how the conditions of production are determined by the circuit of capital, and the question of effective possession of the means of production and effective control of the production process" (Ibid.: 69) and "the mechanisms and forms of the appropriation of surplus-labour" (Ibid.: 72). In his theoretical note Bernstein refers to the use of law by the colonial state to organize the exploitation of land and labor: legal measures regulating cultivation and improvement schemes, both of which encourage the development of commodity relations that determine the conditions of peasant production; and rural development schemes through which the state promotes the extension and intensification of commodity relations. His formulation of the relations among peasants, capital, and the state suggests new directions both for historical research and for studies of contemporary law (see also Feder, 1970; Roseberry, 1976, 1978; Kitching, 1977; de Latour Dejean, 1975; Cliffe, 1976; Williams, 1976a; R. Cohen, 1972, 1976; Coquery-Vidrovitch, 1976b; Post, 1976). Together with recent work on the circumstances governing the emergence of a "local law" in some African countries (LeRoy, 1977, 1978a, 1978b), it contributes to a reformulation of the theoretical framework for understanding the economic and political bases of legal pluralism today.

These studies also raise the central issue of "development for whom?" International organizations have recently sought to elaborate strategies for satisfying "basic needs" or promoting "Another Development" (see Dag Hammarskjold Foundation, 1975; Tripartite World Conference, 1976; D.P. Ghai et al., 1977; Nerfin, 1977; IDS Bulletin, 1978). Self-reliance and the organization of the rural poor are major themes in discussions of the legal aspects of these strategies (see International Center for Law in Development, 1978: 139-40; Y.P. Ghai, 1978; Institute of Philippine Culture, 1979; de Silva et al., 1979). The weakness of such strategies does not lie merely in "a failure to integrate systematically analysis and prescription with the underlying political, economic and social forces, both at the national and international levels" (D.P. Ghai, 1977: 17), for these strategies *are* premised on an analysis of such forces (see Cox, 1979: 282-83; Feder, 1977; see also de Kadt, 1974: 3, 14).

Rather, the failure is political, not scholarly. Moreover, to the extent that such development strategies are a "conservative reabsorption" (Kay, 1975: 8; see also Leys, 1977: 99; Bernstein, 1979: 97) of the ideas of underdevelopment and dependency, they indicate the ideological character of the latter (see Leys, 1977; Bernstein, 1979) and suggest that, like modernization theory, they are an insufficient basis for the analysis of law in underdeveloped countries and, consequently, for the renewal of social research on law. Finally, the discussion of these strategies offers another warning against attributing too much importance to law. Like theories of state and class, recent studies of peasants and capitalism confirm the suggestion that "the strategy of achieving Another Development through law is seriously flawed" (Y.P. Ghai, 1978: 124). They indicate that for the mass of the people "development" pursued by such means is likely to be wholly illusory.

IV. CONCLUSION

What are the implications of studies of underdevelopment and dependency for social research on law? Two points that may be elementary but are still essential have been implicit in this survey. The first is the necessity of rejecting decisively the conceptual framework of "law and development" and its principal assumptions concerning the state, law, and society. The second is that for the study of law in underdeveloped countries to be theoretically adequate and (perhaps) practically useful, it must transcend orthodox disciplinary boundaries and reformulate questions within the framework of Marxist political economy (see Leys, 1975: 275). Scholars must recognize that legal forms and ideas are secondary and ultimately derivative.

Theories of underdevelopment and dependency call for a fundamental revision of the units of analysis that have been used, implicitly or explicitly, in most studies of law. Even the critics of dependency theory recognize that it has made

> virtually impossible the isolated mode of observation which regarded problems of the developing countries as 'domestic' problems that could be solved without taking account of their involvement in the world econom[y]. . . . [Hellwege, 1978: 49-50]

In addition, these theories indicate the necessity of historical understanding of the organization, concepts, and processes of contemporary legal systems. In particular, studies of legal pluralism and of the state require an historical analysis of the social and economic forces that shape legal forms. Moreover, theories of underdevelopment and dependency compel

scholars to confront the processes of exploitation and the issue of equity. They also demonstrate the importance of analyzing the role of the state (and law) in relation to classes and of identifying the distinctive characteristics of capitalism as an economic and social form. In doing so, they resuscitate as a central analytic category the concept of class. Furthermore, these theories require that social research on law address strategies of socialist development and also analyze the limits of social and legal transformation within the contemporary world economy. Finally, theories of underdevelopment and dependency demand exposure of the moral and political values that inhere in the concepts of law and development. Scholarship necessarily embodies these values, but even in research on the nature of the state and the meaning of development they frequently remain implicit (see Abel, 1973c, 1978c).

This survey of the literature indicates the extent to which ideas of underdevelopment and dependency supply a new framework for social research on law. Partly because the level of theoretical debate in such research has been so abysmally low, I have examined in some detail the ways in which underdevelopment and dependency theorists have contributed to theories of the state and of the relation of peasants to capital. Confronted with the many books and articles on underdevelopment and dependency, the student of law is well advised to take to heart Cardoso's modest claim:

> Have dependency studies been able to whet the imagination so that discussion is opened on themes and forms of comprehending reality which are compatible with the contemporary historical process?
>
> . . . Does the theoretical representation of . . . this process proposed by dependency studies permit us to comprehend the forms of capitalist expansion on the periphery and realistically to make out alternatives to it?
>
> . . . Do the studies enable us to define the classes and groups that give life to . . . structures through their political struggles . . . [and] to clarify relations between ideologies and social and political movements in specific political conjunctures, so as to . . . transform reality? [1977: 18]

The task of using these studies as a basis for more specific explanations of legal forms must be left to the reader, partly because of the length of this review, but more importantly because of the eclecticism and theoretical incompleteness of the ideas I have tried to survey.

Social research on law presupposes the elaboration of theoretical concepts that identify questions for research and suggest means of explanation. It requires a theory encompassing law, society, and the state. But, as many writers

indicate,[73] the ideas of underdevelopment and dependency do not provide such a theory. Their failure to do so stems from their mode of conceptualization as well as their eclecticism and terms of argument. By forcing a reappraisal of previous ideologies and proposing new frameworks, the ideas of underdevelopment and dependency have contributed significantly to the reorientation of research on legal institutions and processes in underdeveloped countries. But many may agree with this review that a more appropriate point of departure for studies of law lies in the theoretical concepts and explanations developed by Marx.

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[73] See Bodenheimer (1971: 344-51); Frank (1972: 8-9; 1974; 1978a: xiii, 2); Kay (1975: 8-10, 12, 54-55, 103-05, 153); Harding (1976: 5); Cueva (1976: 15-16); Phillips (1977); Leaver (1977); Duvall (1978); Bernstein (1979); Lall (1975); Therborn (1979: 98-101); Leys (1977).

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