**Boa Santos at Yale: reflections on the making of a radical scholar**

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We were asked to travel through the works of Boa Santos. That is a herculean challenge given the vast output of articles, books, projects, poems and even song lyrics he has produced over the years.

Where to start? I have known Boa for 50 years. We first met in 1969 when he was a student at Yale and kept in touch since then especially in the many years he came to Wisconsin annually as a Distinguished International Legal Studies Scholar.

 I decided to start at the beginning, when he was a student at Yale from 1969-73.This was an important period for Boa and for the legal studies field. In that short period, Boa formulated the intellectual approach and social vision that has animated his work for fifty years. In that period he and others at Yale set off an explosion of radical ideas about law that have influenced the field ever since.

My first encounter with Boa was a legal monograph he submitted as part of his application for the doctorate at Yale. As the only member of the Yale faculty who could read Portuguese, I was assigned to review the application. The study seemed highly competent. But it was the very kind of legal formalism of the continental variety Yale had rejected a long time ago and I wondered how he would fit into the school’s tradition of pragmatic legalism and interdisciplinary studies.

There was no need to worry. Once ensconced at Yale, Boa cast off the formalist disguise and began to read widely in law and social science. He took courses in sociology and Marxism, engaged with radical students and others inside and outside the law school, undertook field work in a Brazilian favela, and made the first steps in the creation of a Marxist sociology of law.

To help us understand that transformation and trajectory, we first must look at Yale in the period he was there. Yale Law School in the late 1960s and early 1970s was in turmoil. Women and minorities were beginning to enter the Law School in significant numbers and students were challenging everything. They opposed US foreign policy, championed civil rights and protested the trial of the Black Panthers, demanded radical reform in the Law School, and mocked the bourgeois culture and pretensions of much of the faculty. There was a lot of humor and acting out: to mock faculty efforts to maintain control of the school, students created a mythical organization call S.H.I.T.F.A.C.E: Students To Help Increase The Faculty’s Authority to Control Everything. At Alumni weekend in 1969, SHITFACE posters adorned the building for the alums to see.

New ideas about law and society were germinating amidst the turmoil. Students like Duncan Kennedy and Mark Tushnet were evolving a critique of law that built on, but transcended the radical strand of Legal Realism and was linked to a left critique of society. Women students like Ann Freedman were developing the beginning of what became feminist legal studies. Rick Abel was charting a critical approach to the sociology/anthropology of law and I was grappling with the critique of the development policies I had implemented for four years working for USAID. Rick, Duncan, Mark and I had a reading group on social theory in which the outlines of what later became CLS were formed.

Boa came to Yale during this period after teaching for several years in Portugal and spending a year in Berlin. Portugal was under the control of a dictatorship and intellectual life was strictly controlled. Berlin was open and exposed him to many ideas and strands of thought including Marxism. But it also showed the rigidities of East Germany and that raised issues about Marxism. He noted:

*Eu estudo o marxismo, mas não me considero marxista. Porquê? Fundamentalmente porque eu tinha de resolver interiormente uma questão que não pude resolver em Berlim, que era que o marxismo não tinha muito a ver com aquela sociedade que eu via do outro lado, no mundo comunista*

When he arrived at Yale in 1969, the tumult on campus was reaching its peak. He realized that amidst the social convulsion, Yale was searching for new ideas and serious attention was being given to social justice. Here is how he described the scene in a later account:

*E tive a sorte de chegar num momento de grande convulsão social e foi aí que eu me abri completamente à questão da justiça social e à luta por uma sociedade mais justa...Era todo um ambiente crítico e muito orientado para as questões da justiça social. E a Faculdade de Direito estava naquela altura na frente de muitas dessas preocupações.... O direito, a sociologia e a política confluíam intensa e vertiginosamente*.

Boa has provided an account of his intellectual trajectory at Yale from a left-leaning legal scholar trained in formal legal doctrines to a Marxist approach to the study of law in society. It started with exposure to anthropology, sociology and the sociology of law, things not available in Portugal at the time, included his experience living in a Brazilian favela during the dictatorship in Brazil, and led to a sustained encounter with social theory and Marxism as he worked on his dissertation.

Boa took several sociology and law and society courses at Yale and decided to do his dissertation on law and the poor in Brazil. Thanks to a grant from the USAID-funded Program in Law and Modernization; he was able to start the dissertation project by doing field research in Brazil. He said he chose Brazil because of family links and it was a place he could develop critical socialist theories. It was:

 *uma sociedade onde pudesse realmente dar mais campo às teorias críticas socialistas que começavam a germinar na minha cabeça*

This was in in 1970 at the highpoint of the US-supported military distatorship. He was shocked by the extreme poverty he saw in Brazil, the impact of the military regime, and the role of the US in supporting it. He came back convinced that the prevalent sociological approaches to law he had just learned were inadequate. They failed to take account of class and race relations and politics: something better was needed.

He found that in Marxism. Not due to any formal course on Marxism and Law offer at Yale, but through informal discussions organized by foreign students associated with the Program in Law and Modernization, a course in Yale College on Marxism, and his efforts to build a Marxist approach into the dissertation. Speaking of the impact of the field work in Brazil and work on the dissertation, he later stated that it led to the formation of his political and social consciousness, shaped by Marxism:

*Ele permitiu -me uma consciência política e social, uma consciência filosófica e epistemológica muito mais profunda e radical.*

The experience of living in a Brazilian favela for several months also created the germ of an idea he later developed and made famous—epistemologies of the south. He noted that his first opportunity to study the “South” came during his months in the favela where he really had his first chance to learn about the South:

*o Sul das favelas, é o Sul da sociedade excluída, discriminada, que eu vi no Brasil e com quem convivi intensamente*

Once back in New Haven, Boa dipped into theory and continued reading Marx and Marxist literature. He and other foreign students in the law school organized what he called a counter-course on Marxist analysis of imperialism. He managed to find a course on Marxism in Yale College—the only such course in the university at the time.

As he dipped more deeply into Marxism, Boa found himself facing a dilemma: if, as theory suggested, capitalism was an all-encompassing straight jacket, how could anti-capitalist research be possible in an elite University in a capitalist society and in a Program funded by the US government? The answer, in Marxist terms, was:

*the ideology of liberalism is internally contradictory, and it is through its contradictions that radical science may establish its practice in class societies. In other words, the residual autonomy granted to the scientist by bourgeois science may be used to build up a radical alternative to bourgeois science itself.*

Boa had left for Brazil with a project framed more or less in the standard legal anthropological and sociological theory of the time, including dispute processing. As he started to write the dissertation, he found himself struggling with the relations between the data he had accumulated and the Marxist approach he was developing. That included worrying over the extent to which Marxism should be directly discussed in the dissertation. He initially planned to include a chapter on Marxism but decided against it when a faculty member suggested he drop it.

While at Yale, he did, however, publish a Yale Working Paper called Law Against Law which laid out some elements of a Marxist theory. And this early work of Marxist analysis was followed up in three later publications developing the Marxist approach to the sociology of law: a much revised version of the dissertation in the Law and Society Review in 1977; an article on law in late capitalism in the International Journal of the Sociology of Law in 1980, and a chapter in a book on informal justice in 1982.

The 1977 publication was based on his dissertation and was entitled THE LAW OF THE OPPRESSED: THE CONSTRUCTION AND REPRODUCTION OF LEGALITY IN PASARGADA[[2]](#footnote-2) . At 121 pages is the longest article ever published—or probably ever will be published --in the Review. Pasargada is the fictitious name he gave the favela and comes from a poem byManuel Bandeira that describes a mythical kingdom where life is an “inconsequential adventure”:

*Vou-me embora pra Pasárgada*

*Lá sou amigo do rei*

*Lá tenho a mulher que eu quero*

*Na cama que escolherei*

The article made its Marxist approach clear from the beginning: it starts with the statement that “This study arose out of my interest in unveiling the function of the legal system in a class society” and goes on to explain that the study explores the relation between the informal legal system in the favela and state law as one between a “dominant legal system (the official legal system controlled by the Brazilian dominant classes) and a dominated system (Pasargada law controlled by the oppressed class.)” He explains the very existence of the informal law in the favela in Marxist terms;

 “Since the ideological cohesion of a class society is superimposed upon irreconcilable class conflicts constantly created by the relations of production, the dominated classes within them, tend to develop legal subcultures”

Pasargada was soon followed by a theoretical essay which offered a systematic Marxist analysis of relations between law and community in “Late Capitalism” published in the International Journal of the Sociology of Law[[3]](#footnote-3) and by a study of the role of law in the Portuguese Revolution of 1974 that was subsequently published in a chapter in Richard Abel’s The Politics of Informal Justice (1982). With these publications he had established himself as one of the leading Marxist sociologists of law.

Boa’s years at Yale were crucial for him and for the field. It was a time of turmoil and creativity that marked the beginning of a new era in legal studies. Out of the caldron emerged several strands of radical thought about law and society including Critical Legal Studies, critical sociology of law, feminism, and the Marxist theories of law Boa began to develop in this period. These movements set the stage for later developments like Critical Race Theory and provided the building blocks for a radical counter culture in legal studies whose impact can be seen all around us today!

1. For this paper I have relied on my memory of the days at Yale, help from Richard Abel who was also there, and several articles by Boa including two in which he discussed his intellectual trajectory and the period at Yale: Santos, My Law and Modernization Journey, 7 Journal of Institutional Studies 2 (2021) p.768, and Bruno Sena Martins e Boaventura de Sousa Santos Socialismo, democracia e epistemologias do Sul. Entrevista com Boaventura de Sousa Santos, Revista Crítica de Ciências Sociais Número especial | 2018 p. 9 [↑](#footnote-ref-1)
2. 12 Law and Society Review p.5 (1977) [↑](#footnote-ref-2)
3. Santos, Law and Community: The Changing Nature of State Power in Late Capitalism, International Journal of the Sociology of Law, 8 International Journal of the Sociology of Law 379 (1980) [↑](#footnote-ref-3)