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Extralegal Property, Legal Monism, and Pluralism

Daniel Bonilla Maldonado*

I. INTRODUCTION

Legal monism—that is, the idea that there must be one and only one centralized hierarchical legal system in each state—has dominated the political and legal imagination of the West.¹ There must be, argue the monists, one sole legal order at the state level in order to protect the principles of equality, legal security, legality, and political unity, as well as to maintain social and political order. Legal norms must have a general character: citizens must know the legal consequences of their actions and must be certain that the same rules and principles will be applied in similar fashion to all the members of the political community. The monists argue that violence and uncertainty arise when there are parallel legal orders that simultaneously seek to control the conduct of citizens by differing means.

Property in the West has conceptually depended on legal monism.² Our political and legal imagination, influenced by the

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1. This article is product of a research project done during several months by a team consisting of Everaldo Lamprea, Francisco Quiroz, Laura Rico, Nicolás Figueroa and myself. The arguments presented in this text were nourished by the discussions that we had during the months in which the research team met weekly to talk about the project's advancements. The ideas presented were also nourished by the debates that we had in the seminar about legal pluralism that I taught at Universidad de los Andes. All members of the research team participated in this seminar. Similarly, this article is rooted in and overlaps with the various texts that were created as a consequence of the collective work: on the one hand, the undergraduate theses written by Laura Rico and Nicolás Figueroa, that I had the opportunity to supervise; on the other hand, the text, *La Propiedad Extralegal: Un Caso de Pluralismo Jurídico*, written by Everaldo Lamprea (unpublished). A draft of this article was presented at SELA 2008 in Buenos Aires, Argentina. I thank the seminar participants for their critiques and comments.

2. See generally Masaji Chiba, *Legal Pluralism in mind: A Non Western View*, in LEGAL POLYCENTRICITY: CONSEQUENCES OF PLURALISM IN LAW 71 (Hanne Petersen & Henrik Zahle eds., 1989); Peter Fitzpatrick, *Law, Plurality and Underdevelopment*, in LEGALITY, IDEOLOGY AND THE STATE 159 (David Sugarman ed., 1983); Tamar Diana Wilson, *Introduction*, in 25 LATIN AMERICAN PERSPECTIVES 3 (1998); Nicholas Blomley, *The Boundaries of Property: Lessons from Beatrix Potter*, 48 CANADIAN GEOGRAPHER 91 (2004); John Griffiths, *What is Legal Pluralism?*, 24 J. OF LEGAL PLURALISM & UNOFFICIAL L. 1 (1986); Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC'Y REV. 869 (1998); Gunther Teubner, *The Two Faces of Janus: Rethinking Legal*

political and legal philosophies of Locke and Kelsen, is committed to the idea that the absence of a centralized hierarchical legal system at the state level would generate cognitive and security problems of such magnitude that private property would subsequently weaken and disappear. The existence of several legal orders whose objective is the regulation of property within the same State would make the exchange of goods and services very difficult. The citizens and public officials would not know which rules should be applied in cases of conflicts regarding property. Real rights would become subjective inasmuch that they would depend on the different normative references available. The circumstances in which the coercive power of the State should be employed would be unclear.

In this paper, I will argue that legal monism regarding property is a faulty theory from a descriptive perspective and that it is a limited theory from a normative perspective. On the one hand, the way it conceives of property does not permit an accurate description of how property rights are actually imagined and practiced in a good part of the global South. The conceptual axes of legal monism cannot account for the diversity of property regimes that exist in a high number of developing countries. It is estimated that approximately 50% of the population in the global South lives in peripheral districts where property is controlled by norms other than those of the State's legal order.³ Neither does the theory permit the description and comprehension of the process by which unofficial judicial systems are created,⁴ the exposure of the complex relationships that these systems maintain

Pluralism, 13 CARDOZO L. REV. 1443 (1992); Gunther Teubner, *Breaking Frames: The Global Interplay of Legal and Social Systems*, 45 AM. J. COMP. L. 149 (1997). See also the texts that were written as a consequence of the collective research work: Everaldo Lamprea, *La Propiedad Extralegal: Un Caso de Pluralismo Jurídico* (unpublished thesis, Universidad de los Andes) (on file with author); Laura Rico Gutiérrez de Piñeres, *Pluralismo y Propiedad Informal: Un Ejemplo del Caso Bogotano* (unpublished masters thesis, Universidad de los Andes) (on file with author); Laura Rico Gutiérrez de Piñeres, *Jerusalén: La Historia de un Barrio Contada por sus Pobladores* (June 30, 2006) (unpublished undergraduate thesis, Universidad de los Andes) (on file with author); Nicolás Figueroa García-Herreros, *El Concepto de Derecho en el Debate Sobre el Pluralismo Jurídico* (2006) (unpublished undergraduate thesis, Universidad de los Andes) (on file with author).

3. UN HABITAT, *PRO POOR LAND MANAGEMENT: INTEGRATING SLUMS INTO CITY PLANNING APPROACHES 4-5* (2004), available at, www.chs.ubc.ca/archives/files/Pro%20Poor%20Land%20Management.pdf.

4. In this article, I will interchangeably use the words "informal," "unofficial," and "extralegal" to name the non-state legal systems. These terms gather precisely the fact that these "alternative" legal systems have a different origin from that of state law and usually are in tension with it. This does not mean that informal legal

with the State's legal system, or the conception of distinct theoretical frameworks for considering the problem of property in developing countries.

On the other hand, legal monism flatly negates the possibility of legal pluralism having normative value. In contrast with legal monism, I will argue that the diversity of property regimes is, in some cases, plausible from a regulatory point of view. Having a plurality of systems regulating property would be an option that could bear fruit in States consisting of communities that are radically diverse from a cultural point of view. This would be a mechanism that would, among other things, contribute to the peace and cohesion of the political community. In the same manner, the existence of "informal" or "unofficial" regimes that regulate property, insofar as they are created directly by the citizens, would allow for the adjustment of legal norms to the characteristic particularities of each social group and for the quick and easy alteration of them in accordance to changes that the groups experience. Likewise, it would allow for the solution of cognitive problems faced by citizens of low levels of education, economic resources, and social and political connections, who usually have serious difficulties relating to the state legal order.

To justify these arguments, I will divide this article in two parts. In the first part, I will critically analyze the relationship between legal monism and property. The reflection in this first section, therefore, will be purely theoretical. In the second part however, I will make a shift from theory to practice. In this section I will describe and analyze the extralegal property regime that determines the manner in which the inhabitants of the Jerusalén quarter, part of the Ciudad Bolívar district of Bogotá, interpret and transfer property. This case study will allow me to illustrate the descriptive and normative shortcomings of legal monism, as well as the usefulness of certain tools provided by legal pluralism for comprehending the reality of property as it actually exists in the Global South. Although the conclusions reached in this study cannot be generalized, the notable similarities between the situation of the Jerusalén inhabitants and that of the inhabitants in peripheral quarters of the cities in the global South allow for the articulation of some analogies that may help us to better understand the property problem in this part of the world. At the end of the second part, instead of concluding, I will try to bridge the gap

systems are less important than state law, less complex, or that they do not have a clear or solid structure.

between theory and practice. In these final reflections I will make use of some of the theoretical tools studied in the first part of the paper in order to comprehend the way by which the state legal system interacts with the legal micro system, which governs in Jerusalén. Similarly, in these final remarks, I will offer some reflections on the consequences that the coexistence of two property regimes in the city should and do have.

II. LEGAL MONISM AND PROPERTY

Legal monists defend the idea that one and only one centralized hierarchical legal system exists and must exist in each nation-state. Those who hold this theoretical perspective, therefore, are convinced that for each State one sole and indivisible sovereign must (and generally does) exist. The power to make law is concentrated in this sovereign and thus the sovereign is the sole source of political power and guarantees the unity and cohesion of the nation. The monists argue that the law created by the sovereign must consist in an assembly of general and abstract norms, which reflect the dominant values in the community and must form a stratified legal system. Thus, for the monist, the nation's *ethos* is expressed in a legal order that contains as its basic components rules and principles characterized by their universal and eternal vocation and arranged in pyramidal fashion. The best version of legal monism, as can be seen, is conceptually interwoven, albeit not necessarily so, with liberalism.

The fact that liberal legal monism pervades our political and legal imagination is not gratuitous. Its dominance rests on powerful theoretical and practical reasons. To begin with, monism shores up its postulates by calling on principles that are highly valued by the enlightened modern project to which an important number of people today are committed, consciously or not. Liberal legal monism calls on the principles of equality, legal security, legality, and political unity to justify its postulates. For this version of legal monism, the fundamental equality of human beings must translate to the equality of citizenship. The political community must therefore leave to one side the normative diversity characteristic of estamental societies. Legal norms, in principle, must be directed to all citizens and must govern the political community for long periods of time. In this way, citizens will be able to form accurate expectations regarding the legal consequences of their actions and will be well aware of the areas unregulated by law where they can fully and autonomously exert their will. Lastly,

liberal legal monism guarantees the cohesion of the political community and creates the necessary conditions for collective action.

Secondly, legal monism offers practical advantages regarding central themes to the life of any State that contrast with the disadvantages linked to the political organizations of the *ancient* regime. The existence of a sole sovereign reduces the cognitive costs tied to the determination of the norms that control a situation and therefore favors the obedience of law or the application of sanctions in the case of disobedience. Likewise, having a single stable system of norms applicable to all citizens contributes to the creation of a strong and legitimate State. The citizens will identify with a political community that recognizes them as equals. In contrast, the existence of multiple sovereigns, so characteristic of a typical feudal system in the past regime, renders it difficult for the citizen to easily and rapidly determine what norms they must obey. The diversity of legal orders attempting to exert control over actions contributes to the weakening and fragmentation of the political community, and undermines the legitimacy of the State when it extends basic rights differently to different groups of citizens.

Liberal legal monism has been paradigmatically articulated in the context of political philosophy by social contract theories, particularly that of Locke.⁵ For adherents to social contract theory in general, the fundamental reason for the move from the natural state to a civil state is the existence of multiple legislators and enforcers of the law, as well as the absence of an impartial third party capable of resolving conflicts between people. For Locke in particular, freedom in the natural state is perfect, not absolute, inasmuch as the conduct of individuals is guided by natural law. Conflict, however, is still inevitable in the natural state. Self-interest and ignorance lead to violations of natural law, and insofar as all human beings are creations of divinity and, therefore equal, there is no superior person capable of neutralizing the tensions that arise among them.⁶ All members of the species may act as enforcers of natural law and judge the actions of others. The issue is that in one situation, people may act out of egoism, revenge, or confusion.⁷ The creation of a political community then

5. Cf. Lamprea, *supra* note 2.

6. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 262 (Special ed. 1994) (1698) (“*Firft*, There wants an establiſh’d, fettled, known Law, received and allowed by common content to be the Standard of Right and Wrong, and the common meafure to decide all Controversies between them.”).

7. See *id.* at 174 (“Self-love will make Men partial to themselves and their

becomes necessary in order to "authoritatively" eliminate the multiplicity of legal operators and to resolve the problems to which natural law's vagueness gives rise.⁸ The State, a consequence of the consensus attained by people, must concentrate the creative power of law and maintain a monopoly over force. In the same way, the State must use both this power and this monopoly to protect the lives and property of all of its citizens, as well as to resolve the disputes that occur among them.⁹

Within the confines of legal philosophy, it was Kelsen who expressed liberal legal monism in its sharpest form.¹⁰ For Kelsen, there is no difference between State and law: since the State is the group of norms created by the sovereign, then, for this author, both categories are identical. To be more precise, law, according to Kelsen, is a hierarchical system constituted by norms enacted by a set of centralized institutions whose validity is in turn derived from a presupposed fundamental norm.¹¹ According to Kelsen, the law of the state excludes any other system of norms that poses competition. If this were not the case, then the sovereign promoting the law would not be supreme and therefore, would not be

Friends. And on the other fide, Ill Nature, Paffion and Revenge will carry them to far in punifhing others. And hence nothing but Confufion and Diforder will follow, and that therefore God hath certainly appointed Government to refrain the partiality and violence of Men.").

8. See *id.* at 267-68 ("This Legiflative is not only the fupream power of the Common-wealth, but facred and unalterable in the hands where the Community have once placed it; nor can any Edict of any Body elfe, in what Form foever conceived, or by what Power foever backed, have the force and obligation of a Law, which has not its Sanction from the Legisflative which the publick has chofen and appointed: For without this the Law could not not have that which is abfolutely necessary to its being a Law, the confent of the Society, over whom no Body can have a power to make Laws but by their own confent, and by Authority received from them . . .").

9. See *id.* at 238 ("Men being, as has been faid, by Nature, all free, equal and independent, no one can be put out of his Eftate, and fubjected to the Political Power of another, without his own Confent, which is done by agreeing with other Men to joyne and unite into a Community, for their comfortable, fafe, and peaceable living one amonsft another, in a fecure Enjoyment of their Properties, and a greater Security againft any that are not of it.").

10. Cf. Lamprea, *supra* note 2.

11. HANS KELSEN, PURE THEORY OF LAW 221-22 (Max Knight trans., Univ. of Cal. Press 2d ed. 1967) ("The legal order is not a system of coordinated norms of equal level, but a hierarchy of different levels of legal norms. Its unity is brought about by the connection that results from the fact that the validity of a norm, created according to another norm, rests on that other norm, whose creation in turn, is determined by a third one. This is a regression that ultimately ends up in the presupposed basic norm. This basic norm, therefore, is the highest reason for the validity of the norms, one created in conformity with another, thus forming a legal order in its hierarchical structure.").

sovereign.¹²

Traditionally, private property and legal monism, expressed in paradigmatic fashion by Locke and Kelsen, have gone hand in hand. It is commonly held that private property could not exist in the absence of one sole centralized hierarchical legal order at the state level. Property, as the argument goes, would disappear in the absence of a common property regime to furnish the categories for understanding and transferring it and for resolving the conflicts that arise over it. The reasons that explain the close relationship between these two categories are of a practical rather than conceptual order.¹³ Conceptually, it is not necessary to have a property system at the state level for property rights to find existence, justification, and protection. For example, according to Locke, property is a natural right, and its existence does not depend on the existence of a State or on that of a unified normative system with a state-like character.¹⁴

For legal pluralism, private property is also conceptually compatible with the existence of multiple property regimes within the same State. Property rights do not conceptually depend on monism. The coexistence of two or more property regimes in the same State can be justified by reasons which range from a respect for cultural diversity to religious tolerance.¹⁵ In fact, this is precisely the situation encountered in an important number of contemporary States: Colombia, Brazil, Haiti, the Philippines, and Egypt for example. In these countries there are various coexisting property regimes that demand obedience from the citizens, two of

12. HANS KELSEN, *THE LAW AND THE STATE* 189 (Anders Wedberg trans., Russell & Russell 1961) ("It is the juristic concept of the State that sociologists apply when they describe the relations of domination within the State. The properties they ascribe to the State are conceivable only as properties of a normative order or of a community constituted by such an order. Sociologists also consider an essential quality of the State to be an authority superior to the individuals, obligating the individuals. Only as a normative order can the State be an obligating authority, especially if that authority is considered to be sovereign. Sovereignty is—as we shall see later—conceivable only within the realm of the normative.")

13. Cf. Lamprea, *supra* note 2.

14. See LOCKE, *supra* note 6, at 185 ("Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Perfon*. This noBody has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may fay, are properly his. Whatsoever them he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with it, and joynd to it something that is his own, and thereby makes it his *Property*.")

15. See Ruth S. Meinzen-Dick & Rajendra Pradhan, *Legal Pluralism and Dynamic Property Rights* 1-2, 26 (CGIAR Systemwide Program on Collective Action and Property Rights, CAPRI Working Paper No. 22, 2002), available at <http://ideas.repec.org/p/fpr/worpps/22.html>.

which are the property systems of indigenous communities and those that largely govern dealings in the peripheral districts of the major cities.

To be sure, the first argument of a practical order that demonstrates the plausibility of the nexus that has historically existed between legal monism and property holds that the unity, clarity, and simplicity that are guaranteed when there is only one state property regime facilitate the decision-making process of the citizens with respect to their goods and simplify community life.¹⁶ The existence of various property regimes in the same State would then generate the opposite effects: it would make the system unnecessarily complex and would force the citizen to obey a large number of norms that often either contradict themselves or promote differing courses of action with respect to problems related to property.

The second argument points out that legal monism of property is necessary for the consolidation of a modern market economy.¹⁷ There must be a common way of understanding, evaluating, and transferring resources for the free interplay of supply and demand to fluidly unfold. The circulation of property becomes more difficult when there are competing forms of representation, valorization, and exchange of property.

The third argument indicates that monism is necessary for the social legitimacy of property rights.¹⁸ The conflicts that generate the differences about property are tremendously divisive. Consequently, these conflicts must be resolved rapidly, effectively, and legitimately. Such a solution can only be reached if there is no other recourse than to a single assembly of public norms accepted by the majority of the citizens. These norms provide the substantive and procedural tools to legitimately resolve the conflicts over property. A single system of state regulation of property allows citizens to fairly easily determine who owns what good and to trust that their rights will be upheld in situations when they are violated by third parties.

However, despite the strength of the practical arguments

16. See JEREMY WALDRON, *THE RIGHT TO PRIVATE PROPERTY* 43 (1990) ("Justification and legitimation necessarily proceed on a fairly broad; and the organizing idea of a property system (the basis on which its rules are learned and understood for application in everyday life) provides a natural point of contact between legitimizing considerations and the grasp which ordinary citizens have on the rules.").

17. See HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL* 7, 10 (2000).

18. WALDRON, *supra* note 16, at 162.

called on to explain why legal monism of property does and should exist; it is, at least in the global South, merely an aspiration. Legal monism of property is not a fact in this region of the world.¹⁹ At the most, it is an ideal, a hope, an illusion. Legal pluralism is the rule, not the exception. In the global South, it is calculated that by 2015 there will be around fifty cities with more than five million inhabitants and the majority of these citizens will live in informal settlements.²⁰ Likewise, it is calculated that between 50% and 70% of the people in developing countries settle in informal sectors of cities.²¹ In Egypt, extralegal property is currently the rule for 92% of the people in cities and for 83% of those in rural zones.²² In the Philippines, the norm is that 57% of city dwellers and 67% of people in the countryside live in extralegal settlements.

In Latin America, six of every eight buildings are constructed outside the bounds of the official market economy and around 80% of all real estate is beyond the orbit of state law.²³ Other figures indicate that between 40% and 50% of the populations of Latin America and the Caribbean live in sectors that are unrecognized by official law. Extralegal property in Bogotá reaches 59%, 10% in Buenos Aires, 50% in Caracas, 40% in Lima, 40% in Mexico City, 50% in Quito, and 47% in Recife.²⁴ In Peru, only approximately 30 of every 100 houses built have a valid title recognized by the State.²⁵ Approximately 53% of the Peruvians who live in cities and 81% of those who live in rural areas dwell in lodgings which are regulated by extralegal systems.²⁶ In Haiti, the figures reach 68% in the cities and 97% in the countryside.²⁷ Furthermore, studies carried out by CEPAL in Kingston, Lima, Managua, San Pedro Sula, and Sao Paulo indicate that nearly half of the inhabitants in those cities live in more or less precarious extralegal settlements located in high-risk zones where the systems for the transfer of

19. Cf. Lamprea, *supra* note 2.

20. De Soto, *supra* note 17, at 84.

21. *Id.* at 85.

22. *Id.* at 254.

23. *Id.* at 85.

24. Catalina Hinchey Trujillo, *La Puesta en Práctica de la Campaña de Seguridad en la Tenencia de la Vivienda en América Latina y el Caribe*, in *LAS CAMPAÑAS MUNDIALES DE SEGURIDAD EN LA TENENCIA DE LA VIVIENDA Y POR UNA MEJOR GOBERNABILIDAD URBANA EN AMÉRICA LATINA Y EL CARIBE 25* (CEPAL, Seminar and Conference Series, 2000).

25. De Soto, *supra* note 17, at 85.

26. *Id.* at 252.

27. *Id.* at 33.

property and rent do not follow the mandates of the state's legal system.²⁸

The problem is not necessarily that monism has failed to materialize in the global South. Some may argue that the global South has tried (and should always try) to make it a reality. The problem is that legal monism does not admit that a high percentage of the population conceives of, evaluates, and transfers property using norms that are distinct from those of state law. Legal monism is a sort of conceptual lens that does not accurately describe reality. On one hand, at least in Latin America, but perhaps also in the rest of the Global South, it diverts the attention of the authoritative legal operators. Legislators, judges, and administrators generally lose sight of the situation of the majority of citizens with respect to property. Their discourse and actions only address title and deed, the public registry, and the official real estate market. The challenges and tensions over property are resolved by public policy, laws, sentences, and decrees that find their basis in categories and norms that have little to do with the living conditions of a very high number of citizens. Without doubt, public policies and legislative measures have been undertaken to address the challenges of extralegal property in many Latin American countries.²⁹ These, however, are the exception; they are responses caused by the sheer force of the facts on the ground—that is, the immense social, economic, and political problems that extralegal lodging generates.

On the other hand, an important number of Latin American academics, and probably others in the global South, teach their classes and write their books as if legal monism was the rule and not the exception. Certainly, law students and practicing lawyers need to know the official legal norms, but those are not the only things that need to be known. It is more important for law professors to dedicate class time and pages in their books to themes such as the ownership of wild animals, hunting, and fishing as forms of occupation, accretion,³⁰ and avulsion³¹ than to subjects related to

28. See Trujillo, *supra* note 24.

29. Consider for example the legalization programs for marginal quarters and individual titularization programs put forward by the People's Housing Bank in Bogotá.

30. See Código Civil [Cód. Civ.] art. 719 (Colom.) ("Accretion is the augmentation of a riverbank or lake by the slow and unperceivable withdrawal of the waters.")

31. See Código Civil [Cód. Civ.] art. 722 (Colom.) ("An owner conserves ownership over the part of his land that, through movement or other violent natural force, is transported from one location to another, to the effect of taking it back, but if it is not

extralegal property. This theme is not even mentioned in the great majority of course syllabi or books on property rights.³² Title and deed are unavoidable subjects for any lawyer. It would seem, however, that extralegal regulatory systems of property should also be unavoidable subjects for any lawyer.

Likewise, the dynamics that guide the interaction between the official and informal property systems should be given importance. These systems are constantly colliding or complementing each other. If attention were given to the relationship that these assemblies of norms have, we would probably learn valuable lessons regarding, for example, the history of state law, the transformations that state law constantly undergoes due to contact with informality and the relationships between law, politics, and society.

Hence, if we want to understand the way in which property is interpreted and exchanged in a large part of the Global South, we must question the supposed unity, homogeneity, and exclusivity of state property law. From an empirical perspective, state property law coexists in much of the global South with extralegal systems of property. Likewise, contact between these two groups of norms generally results in the transformation of state law or through incorporation of elements of extralegal systems into state law. It would seem that state law and extralegal property systems are, in many States in the global South, structurally paired;³³ that is, each sees the other as an external variable with which it interacts and generates dynamics for the construction or recreation of its internal structures. Both systems have entry and exit ports for information that provide channels for intersystem communication. Both orders, sometimes willingly and sometimes in response to powerful pressure from the other system, exchange information which has internal effects. Neither system is sealed nor pure; in other words, completely untainted by the other assembly of norms.

So, then, if from the descriptive point of view legal monism for property is questionable, what can be said of the model from a normative point of view? Most theories on the informal sector in general and on extralegal property in particular defend the idea

reclaimed within the following year, it becomes the property of the owner of the land to which it was transported.”).

32. See, e.g., JOSÉ J. GÓMEZ, BIENES (1981); IGNACIO ALHIPPIO GÓMEZ, MANUAL DE CIVIL BIENES Y DERECHOS REALES (1994); ARTURO VALENCIA ZEA, DERECHO CIVIL 2 (1990).

33. See Teubner, *The Two Faces of Janus*, *supra* note 2.

that it should not have a place in modern society since it is a consequence of the pre-capitalist remnants still found in the Global South.³⁴ According to both the theoreticians of modernization and dependence and the Marxists and neoliberals, once capitalism is consolidated in this region of the world or once it is subverted by a communist system, extralegal property will vanish—as well it should. The common argument that these theories share, despite the important differences between them, is that this is the only way to incorporate into the official system an assembly of citizens who have historically remained on the margins of the political community.

While for some this objective will only be reached if traditional systems of production that impede the implementation of a modern market economy are displaced, for others it will only be achieved if the gap is closed between the center and the internal periphery, which does nothing other than reproduce the international relationships of production. In the same way, for others still, the disappearance of extralegal property systems will only occur if the means of production are appropriated by the State. These informal systems, it is argued, are one of the consequences of the subordination that the capitalist system (whether it be consolidated or on the path to consolidation) forces upon large masses of the population. Lastly, for certain others these alternative property regimes will only be neutralized if the State takes measures that allow for the absorption of “informal” goods into the formal market economy. Massive programs of legalization of informal settlements and ascription of individual deeds for the buildings, for example, would be necessary to bring to life these resources which remain on the margins of capitalism. All of these theories in the end are ultimately intertwined with legal monism as it applies to property.

Informal property systems are often doubtlessly the product of unequal and unjust power relations, and maintain the people who are subject to them in poverty and political marginalization. Extralegal property rights are not recognized by the State and thus do not enjoy the security of official rights. The coercive apparatus of the State can never move to protect them, while on the

34. See Bob Jessop, *Liberalism, Neoliberalism, and Urban Governance: A State-Theoretical Perspective*, 34 *ANTIPODE* 452 (2002); Alejandro Portes & Richard Schauffler, *Competing Perspectives on the Latin American Informal Sector*, 19 *POPULATION AND DEV. REV.* 33 (1993); Tamar Diana Wilson, *Introduction: Theoretical Approaches to the Informal Sector*, 25 *LATIN AM. PERSP.* 3 n.2 (1998).

other side, it can always move to defend state property rights. Extra-official property is always highly precarious. Similarly, informal goods are outside the official market, and at times are worth less than goods recognized by the State.³⁵ Many of these goods, furthermore, cannot be used as collateral for bank loans that could in turn be used to improve the quality of life of the owners—for example, for improvements to the family's lodging or for the creation or consolidation of small enterprises or businesses. Lastly, since they are not recognized by the State, owners of informal goods often feel excluded from the political community—as if they were second class citizens not worthy enough to participate in the public sphere.

The problem with the dominant positions that look negatively upon extralegal property is that they use these criticisms to disqualify, *a priori*, any form of extralegal property. By definition, all forms of extralegal property are dubious and must be fought. This perspective obscures the fact that sometimes these property regimes can have emancipating effects.³⁶ Whether they are a product of the absence of the State, of its authoritarianism, or are left over from precapitalist times, the fact is that an important number of these systems once formed are not incapable of bringing benefits to their creators and their creators do not always want to be rid of them. Hypothetically, at least some of these regimes, inasmuch as they were created from the bottom up, may adequately reflect and protect the interests of those directly affected by the informal system—a question which cannot always be predicated on the state property regime. Likewise, at least some of these systems are flexible, adaptable, and sensitive to context. Some of these systems can keep pace with the changes that occur in the areas where these systems are the rule.

These systems can also have egalitarian effects inasmuch as they distribute the cognitive burden required by interaction with the law. Identifying the norms that govern a case, interpreting them, and interacting with the institution in charge of their implementation are tasks which require the investment of notable quantities of scarce resources: time, energy, and money among others. These costs are usually very high for the habitants of zones

35. In some cities, the value of informal property is much higher than that of formal property. See DE SOTO, *supra* note 17, at 189.

36. See DERECHO Y SOCIEDAD EN AMÉRICA LATINA: UN DEBATE SOBRE LOS ESTUDIOS JURÍDICOS CRÍTICOS 254-58 (M. G. Villegas & C. Rodríguez eds., 2003); Antonio Carlos Wolkmer, *Pluralismo Jurídico: Nuevo Marco Emancipatorio en América Latina* (on file with the University of Miami Inter-American Law Review).

where informal property systems exist, who are generally people in the lowest socioeconomic categories of the community and have limited education. The cognitive uncertainty with regards to law is thus spread out more equitably: no one has a monopoly on technical legal knowledge and many more people can directly defend their property rights. Lastly, the availability of various normative regimes to regulate property can offer the necessary flexibility to resolve parallel conflicts that arise in scenarios where the actors are very diverse, such as in a complex situation where the State faces a culturally distinct community disputing the use of water for field irrigation and tensions arise between a member of the majority community and a member of a minority group over how much water each can use. The existence of diverse normative orders could allow for a peaceful and legitimate resolution of diverse conflicts for the people subject to their effects.

Similarly, monist visions of property lose sight of the fact that informal regimes are sometimes the product of values and principles we are committed to; for example, the respect for cultural difference that led culturally diverse indigenous and black communities in Colombia, Bolivia, and Mexico to create their own property systems. In these cases it would seem desirable not only to avoid measures whose aim is the destruction of these systems, but also to develop programs that permit their protection and reproduction.

So then the challenge of defining which unofficial property systems should disappear and which should be protected cannot be adequately met without empiric studies. Fieldwork seems unavoidable in these cases. In order to evaluate the feasibility of the system, knowing its history, its content, and the consequences it has for its creators and for third parties, as well as knowing the position that these persons take in regards to the continuation or disappearance of the system, are all necessary.

III. JERUSALÉN, CIUDAD BOLÍVAR, BOGOTÁ: LEGAL PLURALISM AND INFORMAL PROPERTY

The team that worked for six months in the Jerusalén quarter of Ciudad Bolívar consisted of five persons: two law professors, an anthropologist, and two law students.³⁷ This quarter was chosen for the case study for three fundamental reasons: first, because

37. Everaldo Lamprea, Daniel Bonilla, Francisco Quiroz, Laura Rico, and Nicolás Figueroa respectively.

Jerusalén is one of the quarters with the highest number of buildings lacking titles in Ciudad Bolívar; it is also one of the quarters where the People's Housing Bank (*la Caja de Vivienda Popular*), the entity handling housing matters for people of limited economic resources in Bogotá, has put forward massive programs to assign titles for buildings. Secondly, it was chosen because it was a quarter in which it was possible to gain access via researchers from the Universidad de los Andes who had previously worked in the zone. Establishing a fluent relationship with the inhabitants of Ciudad Bolívar, there or in any other neighborhood in the city, is not an easy task if the initial contact is not made through consolidated and reliable channels of communication, especially when the object of study pertains to real estate that has not been officially recognized by the State. Thirdly, it was chosen because it is one of the few quarters of Ciudad Bolívar of which something has been written.³⁸ Although no research with a similar theoretical framework and goal to ours had been done, we would have some basic information about the neighborhood. Thus, we would not have to begin our research completely in the dark.

The case study was guided by three general questions: Does an informal property regime exist in Jerusalén? If so, what are the characteristics of the system? Finally, once the system had been mapped, what could be said of the normative value of this informal property system? To respond to these lines of questioning, the research took an informed qualitative and theoretical focus.³⁹ The objective of the research was to accurately identify the internal point of view of practicing members of the quarter; that is, to describe how the inhabitants of Jerusalén understood questions of property in the quarter. We meant to privilege the notions, intuitions, categories, and representations of the people directly implicated in the property dynamics in the area rather than, as is common in this kind of work, the descriptions that researchers might make from the "outside looking in."

To achieve this objective, a combination of three methodolo-

38. See M. C. Niño & J. Chaparro, *USOS, COSTUMBRES E IMAGINARIOS EN EL ESPACIO PÚBLICO: EL SECTOR JERUSALÉN* (1998); María Mercedes Maldonado, *EL SIGNIFICADO JURÍDICO DEL "DERECHO A LA CIUDAD"* (2002); Report given at Lincoln Institute for Land Policy, *CURSO DE DESARROLLO PROFESIONAL, MERCADOS INFORMALES: REGULARIZACIÓN DE LA TENENCIA DE TIERRA Y PROGRAMAS DE MEJORAMIENTO URBANO EN AMÉRICA LATINA* (Nov. 18-22, 2002).

39. See Paul Willis & Mats Trondman, *Manifesto for Ethnography*, 1 *ETHNOGRAPHY* 5 (2000).

gies were used: observation, life stories,⁴⁰ and semi-structured interviews.⁴¹ All in all, thirty nine interviews were conducted; thirty four of the interviewees were inhabitants of Jerusalén and five were public officials directly involved in the property regularization programs in the quarter. The number of interviews was determined by the saturation of information criterion.⁴² The interviews were discontinued when it was seen that the response patterns of the interviewees were repeating themselves.

The research was theoretically informed inasmuch as a theoretical framework was established, that of legal pluralism, which was used to determine in a precise way the object of study, as well as to define an assembly of problems and questions to guide the fieldwork.⁴³ As is required by this type of perspective however, the relationship between theory and practice was not limited to one direction alone. The fieldwork contributed to question, confirm and develop certain conceptual categories advanced by legal pluralism. It is best to avoid two extremes in theoretically informed research: on the one hand, that the theory becomes an end in and of itself, and on the other, that the fieldwork is initiated without clear and precise conceptual tools.⁴⁴

Legal pluralism, the framework within which the research was carried out, advances two fundamental theses: first, that it is an error to identify rights with state law and that the center of gravity in law is not the State, but the society. For legal pluralism, it is not unusual at all for two or more legal orders to coexist in one State. Yet, for legal pluralism it is fundamental to distinguish two phenomena that can be easily confused: internally diverse legal systems (for example, a federalist system) and a plurality of systems coexisting within a State.⁴⁵ The first phenomenon is a variation of legal monism. In this type of situations there is a sole rule of recognition that is internally diverse. This legal system

40. See Daniel Bonilla, *Pluralismo Jurídico y Propiedad Extralegal: Clase, Cultura y Derecho en Bogotá*, 36 REVISTA DERECHO PRIVADO 207 (Colom. 2006).

41. Francisco Quiroz, *La Propiedad Extralegal en Jerusalén: Estudio de Caso* (unpublished research report, on file with the author).

42. See Daniel Bertaux, *From the Life-History Approach to the Transformation of Sociological Practice*, in BIOGRAPHY AND SOCIETY: THE LIFE HISTORY APPROACH IN THE SOCIAL SCIENCES 29, 37 (Daniel Bertaux ed., 2d prtg. 1983).

43. See generally MARTYN HAMMERSLEY & PAUL ATKINSON, *ETHNOGRAPHY: PRINCIPLES IN PRACTICE* 23-53 (2d ed., Routledge 1995) (1983); ROSANA GUBER, *LA ETNOGRAFÍA, MÉTODO, CAMPO Y REFLEXIVIDAD* (2001).

44. Quiroz, *supra* note 41.

45. See Franz von Benda-Beckmann, *Who's Afraid of Legal Pluralism?*, 47 J. LEGAL PLURALISM & UNOFFICIAL L. 37, 63 (2002).

therefore can be adequately synthesized by the image of the kelsenian pyramid; no doubt a complex pyramid, but only one pyramid. The second phenomenon, plurality of systems, is legal pluralism's true object of study. In this situation, persons face the coexistence of at least two different legal systems within the same political unit. Each of these legal systems has its own rule of recognition, and thus, autonomy.

This is to say that pluralism directly targets legal monism as its adversary. Nevertheless, legal pluralism is not a current of monolithic thought.⁴⁶ The three most important variations within this theoretical perspective are Classical Legal Pluralism ("CLP"),⁴⁷ New Legal Pluralism ("NLP"),⁴⁸ and Conventionalism.⁴⁹

The research in Jerusalén was guided by the postulates of Conventionalism. For a conventionalist, the object of study of CLP, that is, the epistemological space created by colonial and postcolonial relationships, is tremendously limited. It is not clear why the plurality of legal orders is a monopoly of colonial territories, both conceptual and physical. Legal pluralism seems to be part of the reality in most contemporary States and not all legal pluralism in colonies or ex-colonies can be explained starting with the relationship of these places with the metropolis, extralegal property being one example. Likewise, it seems that the conception of imperial law and subordinate law as separate, autonomous, and closed systems turns out to be questionable. It would seem that these, as do many legal systems that coexist in the same State, usually enter into a dialogue that not only transforms each, but also converts them into systems that mutually incorporate parts of the other.

NLP attempted to neutralize several of the weaknesses of CLP. It pointed out that plurality of legal systems is a characteris-

46. Daniel Bonilla Maldonado & Libardo Ariza Higuera, *El Pluralismo Jurídico: Contribuciones, Debilidades y Retos de un Concepto Polémico*, in PLURALISMO (Sally Engle Merry et al. eds., 2007).

47. Leopold Pospisil, *Kapauku Papuans and their Law*, 54 YALE U. PUBLICATIONS IN ANTHROPOLOGY 3 (1958); Leopold Pospisil, *Legally Induced Culture Change in New Guinea*, in THE IMPOSITION OF LAW 127 (Sandra B. Burman & Barbara E. Harrell-Bond eds., 1979).

48. See Blomley, *supra* note 2, at 91 n.2; Merry, *supra* note 2; Boaventure de Sousa Santos, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada*, 12 LAW & SOC'Y REV. 5, 5 (1977); Wilson, *supra* note 2, at 3 n.2. See generally Fitzpatrick, *supra* note 2; Griffiths, *supra* note 2; Teubner, *The Two Faces of Janus*, *supra* note 2; Teubner, *Breaking Frames*, *supra* note 2.

49. See BRIAN Z. TAMANAHA, A GENERAL JURISPRUDENCE OF LAW AND SOCIETY 166-70 (2001); Brian Z. Tamanaha, *The Folly of the 'Social Scientific' Concept of Legal Pluralism*, 20 J. L. & SOC'Y 192, 192 n.2 (1993).

tic in a number of industrialized and postindustrial States. Likewise, it argued that within the colonial context not every pluralism is a result of the relations between a metropolis and its "overseas territories." The new legal pluralists pushed forward with research to locate and describe legal orders that govern, among other things, companies, international organizations, universities, mafias, and marginal communities. Lastly, the NLP stressed the intertwined and overlapping character of many of the legal orders that coexist within the same State. For the conventionalists, however, NLP still has a fundamental flaw: the vague character of its concept of law that does not allow it to distinguish between the realms of the legal and the social. For NLP, every normative order can be qualified as a legal order. The category of "law" thus loses its analytic power, and the connections and differences between legal orders and other normative orders are obscured.

Conventionalism deals with the conceptual ambiguity of the concept of law by concentrating on the discursive practices of people.⁵⁰ For a conventionalist, laws are what people define them to be in their social practices, so research into legal pluralism should concentrate on how people use the term "law" and the courses of action that these uses lead to. Likewise, this argumentative maneuver avoids falling into the essentialism or functionalism of the perspectives that attempt to articulate a sharper concept of law by starting from a characteristic or a group of characteristics that are supposedly ever present in a legal system, or by starting from a function or group of functions that law supposedly always performs. The term "law" for a conventionalist names very diverse realities that do not necessarily have elements in common. For this reason it was fundamental to concentrate the research in Jerusalén on the internal point of view of its inhabitants.

IV. THE SYSTEM FOR REGULATING PROPERTY IN JERUSALÉN, CIUDAD BOLÍVAR, AND ITS INTERACTION WITH OFFICIAL LAW

Ciudad Bolívar is urban district number nineteen in Bogotá and is located in the southwest part of the city.⁵¹ The district counts 658,477 inhabitants, 12,998 hectares (50.2 sq. miles), and

50. See TAMANAHA, *A GENERAL JURISPRUDENCE*, *supra* note 49, at 166, 171-205.

51. See ALCALDÍA MAYOR DE BOGOTÁ ET AL., *RECORRIENDO USME: DIAGNÓSTICO FÍSICO Y SOCIOECONÓMICO DE LAS LOCALIDADES DE BOGOTÁ, D.C.* (2004).

252 quarters. In terms of population it ranks fourth in the city and its inhabitants represent approximately 10% of the population of the Capital District. In surface area, the district is only superseded by two other districts, Sumapaz and Usme, and it is one of the zones of the city with the most marginal neighborhoods, that is, developments without any official planning or recognition or basic public services. By 2002, the Capital District had legalized 146 of these quarters, which represents 1,176 hectares and 63,051 lots; making it the district in Bogotá with the most legalized lots.

Ciudad Bolívar is one of the poorest districts of the city. It has the highest poverty and misery indexes of the twenty districts in the Capital District. 26.3% of the displaced people who migrate to Bogotá come to Ciudad Bolívar. In the area there are 97,477 people whose basic needs are not satisfied. This number represents the highest percentage of people living in these circumstances with respect to the total number of inhabitants per district. While the overall proportion for Bogotá is 7.8%, in Ciudad Bolívar it is 16.2%. According to figures from District Planning Department, 59.7% of this district's inhabitants are in Category 1 and 35.7% are in Category 2 (the lowest categories in the official classification), which means 95% of the population live in poverty conditions.

Jerusalén is one of the 252 quarters of Ciudad Bolívar and one of 146 quarters that have been legalized by the Capital District. Its population is approximately 32,000 inhabitants, and a density of 67.82 people per hectare. The majority of its inhabitants come from zones other than the Capital District and are in the socioeconomic level one, the lowest in the state classification system. Its inhabitants, as is the rule in Ciudad Bolívar, are mostly country dwellers who came to the area after having been displaced by the armed conflict that has lasted for more than forty years or who came to Bogotá in search of economic opportunities for their families. A notable percentage of them come from the departments of Santander, North Santander, Tolima, and Boyacá.⁵² The quarter is divided into approximately 8,597 lots, most of which do not have public deeds. The case study thus focused on one of the poorest, most populated zones with the highest number of problems regarding informality in all of Bogotá.

The interviews and observations carried out by the research team in Jerusalén enabled us to respond affirmatively to the first

52. Niño & Chaparro, *supra* note 38, at 166.

question guiding the study. In effect, the residents of Jerusalén consider that property in their neighborhood is conceived, evaluated, and transferred by means of a legal system distinct from that of the state. State law governs “out there.” In the quarter itself, an assembly of alternative norms reigned. As Carmen Fernández, one of the local leaders, put it: “there is our law, and then there is state law.”⁵³ This system, argued the residents who were interviewed, has its origin in the void left by the State and the urgent need for access to housing “rights,” as well as the subsequent need to price and transfer lots and houses. This system also arises as a consequence of the informal origin of the quarter itself. Jerusalén was built on lands that were part of Hacienda Casa-blanca, which belonged to a prominent family in Bogotá. It was built on lots sold by a group of people—“Los Socios” (the Associates)—who parceled the land unbeknownst to its owners and offered it for sale to people of low economic resources interested in becoming “landowners.” Some of the people who arrived in the quarter in 1981, when it was just beginning, were aware of the fact that they were buying lots that belonged to someone else; others knew they were taking part in transactions that were “illegal” from an official, legal point of view.

The fieldwork also showed us that the informal legal property order in Jerusalén was structured around six rules and one principle, that have governed the lives of the inhabitants of the quarter for close to twenty-five years and that are still perceived by the inhabitants in contrast to the official laws.⁵⁴

The first central rule in the “Jerusalén” legal order establishes the criterion for determining who can be considered an owner in the quarter. This first rule indicates that ownership is conferred to those who build on the land.⁵⁵ This is to say that prop-

53. Interview with Carmen Fernández in Jerusalén Quarter, Ciudad Bolívar, Bogotá, Colombia (Mar. 11, 2008).

54. “Let’s say that I have a lawyer’s instincts. So I see the problems. I told my partner, ‘you gave him ten thousand pesos, so what? I need to see the title.’ If this is so cheap I need a title. At the time I didn’t know anything about what possession was or what a title was or anything. I only knew that there were titles and that the man who sold us the land had obviously not given us a title, he gave us a promise of sale. But I’m not like the old folks, for me a promise of sale isn’t good for anything. We had a lot of altercations, my partner and I, over the famous purchase agreement. I was fully aware that at any time the police could kick us out and we would be right back where we were before, renters in the big city.” *Id.*

55. “For us, as leaders, I don’t speak for anyone, first of all because we weren’t going to give away the ownership rights we earned over 20 years to the Gavirias or to anyone. I recognize the ownership rights of my neighbor, the one over here, the one over there, the President of Bellavista, the President of Potosí, the gentleman with

erty in Jerusalén is acquired through the transformation of the land by work, particularly work that results in the construction of real estate. The Colombian Civil Code and its rules of title and deed are not used as a reference in determining property ownership in Jerusalén. It is interesting to examine the similarities of this practice with the argument advanced by Locke to determine who can be considered the owner of a good—namely, he or she that has transformed the good with work.⁵⁶ For the inhabitants of Jerusalén, this is a rule that commands deep respect and strikes powerful emotions given the difficulties and efforts that were necessary to build and consolidate the quarter. This rule is also used as evidence of ownership within the quarter and as evidence of possession for the official law, for example when people participate in the programs that the municipality of Bogotá has developed to assign titles to informal dwellings.

The second rule refers to the way by which property is transferred in the quarter. Jerusalén's inhabitants resort to an institution called the promise of sale.⁵⁷ This is an informal document which identifies the buyer, seller, price and the lot under negotiation. Consequently, the promise of sale is the principal means of proving ownership within the settlement. In some occasions this document is notarized by a public notary by the buyers and sellers. In the eyes of state law, however, this written agreement has no validity as proof of ownership, nor has it anything to do with the institution recognized by the civil code that carries the same name. An official promise of sale is a document that requires the

the freight, the one with the scrap yard, the one who loads the peddler's cart; these are the owners. . . . Here we say that we don't recognize any other owner of this land than ourselves. We've made it better, we've suffered, we've felt hunger, we've created an entire model or history of an organized community and that is enough." Interview with Rubén Darío Silva in Jerusalén Quarter, Ciudad Bolívar, Bogotá, Colombia (June 2005).

56. See LOCKE, *supra* note 6.

57. "The promise of sale was, and still is today, like an IOU. You know what an IOU is? An IOU says: in the name of so-and-so I owe so much money at so much interest at payments over so much time. A promise of sale is the same: a title in which the person is certifying that the land which at this time I am ceding to the gentleman is really mine and I cede it to the gentleman for a certain price from a certain date on. Then comes the signature with the number of the lot and all. Some of these promises are made out well in receipts, those preprinted receipts where it's explained that the lot is located in whatever block next whosever's lot. Then we took it to the notary and the notary authenticated the signatures. That was when you could say 'this is mine.' Other promises of sale were sloppy, some were even done on notebook paper. But whatever, all this was done, it was all valid, because here we put a lot of faith in a person's word." Interview with Carmen Fernández in Jerusalén Quarter, Ciudad Bolívar, Bogotá, Colombia (Mar. 11, 2008).

different parties to sign a purchase agreement by a specified time in the future. The transfer of property ownership in Jerusalén is by no means carried out in accordance with official procedures.

The third rule, which disappeared once the quarter was consolidated, was the means by which the inhabitants sought to establish a public registry of the lots. The “Jerusalén” order required that every lot in the quarter be registered in the Building Log.⁵⁸ This log was created by the Communal Action Assembly, a type of community organization that is very well-known in Colombia and is also recognized and promoted by state law. This building log serves three very important functions: to resolve conflicts between those who dispute ownership of the same lot (some lots were repeatedly sold by “Los Socios”), to maintain order in the community, and to provide a method for proving ownership within the quarter. The Building Log constituted a public instrument for guaranteeing the legitimacy of property rights in the settlement.

The fourth, fifth, and sixth rules are directly related to the means for proving property rights in the quarter and for protecting the right that state law could grant to the residents of Jerusalén: possession. These rules establish, respectively, that ownership can be proven through extrajudicial testimony,⁵⁹ through the testimony of neighbors,⁶⁰ or through the payment receipts for residential public services or property taxes collected by the city.⁶¹ The rule that refers to extrajudicial testimony gives

58. “And then, with the Pre-Assembly and the Assembly, these issues started being resolved in a different way; they were resolved with the building log that was made. In this log, all the buildings were written down, organized into blocks where every lot had a number. We all went there to register our lot, they marked it with a pen and they kept a little list with the names of all the owners, so it was known that the owner of such and such a lot was so-and-so.” *Id.*

59. “[T]he Assembly had to certify that someone really was the owner and that they weren’t taking over or taking away from some other poor guy. So we validated possession of the properties. The Housing Bank resisted this . . . legal department. They told us we had to have some document. They kept saying: you have to have this document and you have to have that document. Well we told them *no we didn’t*. We said we were making our own document, and that was when we started with extrajudicial testimony. You can’t say you’re not the owner of something because you lost the document! No! No! There has to be a way to solve the problem.” *Id.*

60. “I tell the buyer, ‘I’ll sell you this building but I need a promise of sale,’ and if it’s necessary some witnesses come, even neighbors, to prove that what is being sold belongs to the seller; or it can be checked with the Communal Action Assembly because it is written there in the book where they logged everything [sic].” Interview with Lucy Estela López in Jerusalén Quarter, Ciudad Bolívar, Bogotá, Colombia (May 2008).

61. “What was the most basic documentation requirement? Proving that you had lived in possession of the land for five years. How to prove it? With your purchase agreement, with receipts for public services; then we said: ‘as we’re starting in 2003,

internal value to one of the institutions of state law. It is a declaration made before a judge of state law which affirms that an individual has been in possession of a lot for a determined amount of time. This is also a proof mechanism for property “inside the quarter” and of possession “outside the quarter.” It is a paradigmatic example of what we could call a hinge institution, that is, an institution that connects both systems and which produces effects in both orders—however distinct the consequences it leads to in each are.

The testimony of neighbors and the payment receipts for taxes and public services are also used as proof mechanisms both internally and externally. The first recognizes that those who can testify in good faith on ownership are those who have been a part of the processes of creation and consolidation of the quarter and who have shared the burden of building housing and the common areas of the settlements. The second makes use of an instrument created by the state as a means of proof in its internal system of who holds ownership and as proof in the external system of who has possession. Paradoxically, Jerusalén’s inhabitants, although not recognized as owners by state law, receive a notice each year indicating the amount of property tax they owe to the city. Likewise, they receive invoices on a monthly or bimonthly basis from state companies indicating the amounts that they must pay for the use of water and electric energy.

Lastly, the principle that regulates all real estate transactions in Jerusalén is trust. The contracting parties’ word plays a fundamental role in transactions of this type. On one hand, the community in question is relatively small, so the majority of its members know each other. On the other, there is no institution capable of guaranteeing the fulfillment of the contracted requirements. In the end, it is a community that was and still is (although much less so these days) influenced by the very values of the Colombian countryside where one’s word of honor has great importance for people.⁶²

bring receipts from the past five years, so those starting in 97 and 98,’ ‘but I threw all those out, I don’t have them,’ ‘go to the companies and ask for new ones.’” Interview with Rubén Darío Silva in Jerusalén Quarter, Ciudad Bolívar, Bogotá, Colombia (June 2005).

62. “If one guy was the owner, and we saw someone else making a move on the lot, then we had to find out about the documentation he had and then we notified the first person who claimed it. It was really a matter of trust. If you said, ‘this lot is mine and I have this document,’ then we trusted that it really was his, in good faith we told him, ‘sure, all right, this lot is yours.’” *Id.*

In sum, we can say that the legal system of Jerusalén has the following characteristics: first, it is a system that was built from the bottom up out of the necessity of the residents for lodging and of the complete absence of the State in the area; second, it is a short and simple legal order. It is composed of a low number of rules, principles, and institutions, which are easily understood, interpreted, and applied by everyone involved; third, it is a system that does not presuppose a large investment of economic resources. The system does not require its subjects to invest notable sums of money in order to mobilize it; fourth, it is a flexible system, which has the capacity to adapt to the changing circumstances of the quarter. Once the settlement was consolidated, for example, the Building Log lost its importance as a means of proving ownership, while the payment receipts for taxes became fundamental for this purpose; fifth, the order is not considered by its creators as an end in itself and the end that it serves is no other than the guarantee for the protection and transfer of real estate within the quarter. In other cases the code could be a means to reproduce a valued traditional culture.

Sixth, the "Jerusalén" order is partly a product of the material and symbolic interaction with the state system. The basic concepts used by the legal operators in this quarter of Ciudad Bolívar, such as property, possession, and promise of sale, are taken from state law, although they are obviously reinterpreted and transformed to suit the context in which they are applied. Similarly, the property system of Jerusalén appropriates institutions of state law, such as notaries, judges, and communal action assemblies, for use in the quarter. The notaries are used to "legalize" the documents that transfer property, the judges as a means of proof of ownership in the quarter, and the Communal Action Assemblies as institutions that legitimately solve problems surrounding real estate in the area. This appropriation however, is not one-sided. State law is also experiencing the effects of the informal system of Jerusalén. The legalization of the quarter, the construction of public spaces and of networks for the supply of residential public services, as well as the collection of fees for these services and the property taxes, are a consequence of the interaction of state law with the legal order of Jersalén and the powerful social, economic, and political circumstances that led to its creation.

Once the basic characteristics of the Jerusalén legal order are identified, what can be said of its normative value? Should the permanence and propagation of this system be promoted? The

data collected in the fieldwork pointed to two fundamental factors that enable us to provide a good answer to the question (that is, a response that rests its justification on good reasons). On one hand, the quarter's inhabitants created the legal system because there was no other option for regulating the transmission of property—the “illegality” of the buildings, the absence of the State, and the need to gain access and exercise the “right to the city” did not leave them any other option. From the point of view of the inhabitants and the investigators on the research team, there is no value protected by the “Jerusalén” order that could not be preserved as well or better by state law. On the other hand, the residents of Jerusalén believe that the system should be abandoned. From their perspective, the assimilation of the system by state law has important advantages: higher security for property rights, unquestionable intergenerational transmission, access to the official market economy, and much less psychological stress.⁶³

That the informal laws should be abandoned in this case does not mean that state law should be transformed to effect such a change. State law should reduce the cognitive and economic costs and obstacles to access that the inhabitants of Jerusalén must bear in understanding, interpreting, and applying the official norms. For reasons of principle and for strategic reasons as well, the State should make every effort possible to reach this goal. On one hand, it is the State's duty to assure equal access to rights for

63. “Obviously there are other advantages to following the procedure for ownership [which lead to obtaining a public title]. One is pride, yes, pride. Because one shouldn't have to beg for what is theirs. There are other benefits, clearly: being sure that the land is mine, that one sunny day someone won't show up with a promise of sale saying ‘this isn't mine.’ Because that still happens here. After ten or fifteen years, someone shows up saying, ‘Oh no, what a shame, look at this, I have a promise of sale that predates yours.’ Another reason has to do with family problems. If I live with my partner, or with my spouse, or with my brother or with my uncle or with my grandfather, we all share the same possession. Or is it that the one who came 20 years ago and said to his sister, come and take care of this for me, could he then be the owner? The sister who sacrificed herself for 20 years taking care of the plot or he who came and paid five thousand pesos, or ten thousand, or thirty thousand, or a hundred thousand to buy it and then abandoned it? So it's also about looking for security for the people who lived here 20 years and who can't be sure that the ground they live on is theirs. A title is also useful for the matter of, let's say, those who like to keep their things up to date, isn't it? It's that it's preferable to have things legalized. Like in this one case: someone has a warrant out on them, a criminal record, everything up to date; well the same should be true of housing, shouldn't it? This is the fundamental vision to start the ownership process. Obviously, there are added benefits: if I have a title, it's easier to get credit, it's easier to get a mortgage, it's easier for me to, I don't know, easier for me to get recognized as an owner.” Interview with Carmen Fernández in Jerusalén Quarter, Ciudad Bolívar, Bogotá, Colombia (Mar. 11, 2008).

every citizen, and on the other, if the goal is not reached, the inhabitants of Jerusalén will simply recreate their own system of norms. It is important to emphasize the fact that the need to abandon the informal order of the quarter does not mean that all analogous orders must also be abandoned; there may be good reasons justifying the preservation of these other legal systems. This decision can only be taken after carrying out empirical studies to furnish the necessary information for such a decision.

To conclude, it is fundamental to point out that legal monism is not capable of describing the reality of the property system in Jerusalén, nor does it adequately describe the reality of property rights for a good part of the people living in the global South. For monism, legal pluralism is an exception, which either does not warrant attention or only merits consideration of means to eradicate it. This matters because, if our legal and political imagination continues to be dominated by monism (and if we continue to ignore the strengths of certain categories of legal pluralism), we will not be able to understand our reality well enough to make informed decisions regarding its normative value or be able to recognize and evaluate the efforts of the people who create and recreate it daily.