

THE COUNTER-HEGEMONIC USE OF LAW IN THE STRUGGLE FOR A GLOBALIZATION FROM BELOW

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1. INTRODUCTION

I have been arguing that we live in a period overwhelmed by the question of its own relativity.¹ The pace, the scale, the nature and the reach of social transformation are such that moments of destruction and moments of creation succeed each other in a frantic rhythm without leaving time or space for moments of stabilization and consolidation. This is precisely why I characterize the current period as one of transition.

It is characteristic of transitional periods that the nature of the transition is discerned by the fact that the complex questions it raises fail to find a social or cultural environment conducive to their answer. On one side, those —usually small, dominant social groups— that lead the sequences of social destruction and social creation are so absorbed in the automatism of the sequence that questioning what they are doing is at best irrelevant and at worst threatening and dangerous. On the other side, the overwhelming majority of the population that experiences the consequences of intense social destruction and social creation is too busy or pressed to adapt, resist, or simply survive for them to be able to ask and much less to answer complex questions but what they are doing and why. Contrary to what some authors have claimed² this is not a period conducive to self-reflexivity. Probably the latter is confined to those privileged enough to attribute it to others.

This is a very complex period to analyze. Paradoxically, however, the meaning of such complexity as an orientation for action is not most effectively addressed by complex questions but rather by simple questions. A simple, elementary question is one that reaches, with the technical transparency of a sling, the deepest magma of our individual and collective perplexity —which is nothing else than unexplored complexity. In a period not much unlike ours, Rousseau in his *Discours sur le sciences et les arts* asked and answered a very simple question that in his view captured the complexity of the transition under way. The question was: does the progress of the sciences and the arts contribute to the purity or to the corruption of manners? Or in another even simpler formulation: is there a relationship between science and virtue? After a complex argumentation, Rousseau answers in an equally simple way: a resounding “no”. In this paper I will try to respond to

1. Santos, 1995, 2002a.

2. Beck, Giddens and Lash, 1994.

an equally simple question: can law be emancipatory? Or: is there a relationship between law and the quest for a good society? Unlike Rousseau, however, I don't think I will be able to answer with a simple no or with a simple yes.

In the first section I will provide the historical and political background of the question I am trying to answer. In the second section I will analyze the situation in which we are now. Finally, in the third and fourth sections I will elaborate on the conditions under which a highly qualified yes can be given to the question being asked. I will specify some of the areas in which a relationship between law and social emancipation seem to be most urgently needed and possible.

2. SETTING THE CONTEXT FOR THE QUESTION

Once the liberal state assumed the monopoly of law creation and adjudication—and law was thereby reduced to state law—the tension between social regulation and social emancipation became one more object of legal regulation. In the terms of the distinction between legal and illegal social emancipation—which then became a crucial political and legal category—only those emancipatory practices and objectives sanctioned by the state and therefore consistent with the interests of the social groups behind it were to be allowed. This regulated dialectics turned gradually into non-dialectical regulation whereby social emancipation ceased to be the other of social regulation to become the double of social regulation. In other words, rather than being a radical alternative to social regulation as it exists now, social emancipation became the name of social regulation in the process of revising or transforming itself.

With the triumph of liberalism in 1848 the central concern of the liberal state ceased to be to fight against the *Ancien Régime* but rather to counter the emancipatory claims of the “dangerous classes” which, however defeated in the revolution of 1848, kept pressing the new political regime with growing demands for democracy. From then on the struggles for social emancipation were expressed in the language of the social contract, as struggles against exclusion from the social contract and for inclusion in it. The strategies differed between those that sought to struggle within the legal confines of the liberal state—the demoliberals, and later, the demosocialists—and those for whom such confines were set to frustrate any emancipatory struggle worth the name and had therefore to be overcome: various kinds of radical socialists.

This duality came to characterize left politics in the last one hundred and fifty years: on one side, an emancipatory politics obtained by legal parliamentary means through incremental reformism; on the other side, an emancipatory politics pursued by illegal extra-parliamentary means leading to revolutionary ruptures. The first strategy, which came to dominate in Western Europe and the North Atlantic, assumed the form of the rule of law and translated itself into a vast program of liberal concessions that aimed at expanding both the ambit and the quality of the inclusion in the social contract without threatening the basic

structure of the economic and political system in force —that is, of capitalism and liberal democracy. The expansion of political citizenship —universal suffrage, civil and political rights— and of social citizenship —welfare state, social and economic rights— was the political outcome of this strategy. The second strategy, inspired by the Russian Revolution, which came to dominate in the periphery of the world-system, assumed the form of illegal, violent or non-violent confrontation with the liberal state, the colonial or the post-colonial state and the capitalist economy, leading to the creation of socialist states of different kinds. The Russian Revolution was the first modern revolution that rather than being conducted in the name of law was conducted against law.

These two strategies were internally very diverse. I already mentioned that the revolutionary strategy, however predominantly enclosed in same political theory, Marxism, covered different politics carrying different means and goals and the competition among them was often fierce if not outright violent. Similarly, the reformist camp was split between those that gave priority to liberty over equality and were in favor of the most feasible minimal concessions (demoliberalism) and those that refused to establish a hierarchy between liberty and equality and were in favor of the most feasible maximal concessions (demosocialism). Both strands of legal politics fought against conservatism, adamantly opposed to concessions to the excluded from the social contract. However all of them framed by the liberal state, those different political strategies led to different politics of law which in turn were at the source of transformations of the liberal state in different directions —strong welfare states in Europe, weak welfare states in North America, especially in the U.S., etc.

In the last thirty years this political paradigm entered into a crisis that impacted both the reformist and the revolutionary strategy. In the core countries, the crisis of reformism took the form of the crisis of the welfare state and in the peripheral and semiperipheral countries, the form of the crisis of the developmentalist state, through foreign debt, structural adjustment and drastic cuts in the incipient state social expenses. This crisis meant the reemergence of conservatism and an ideological tide against the agenda of a gradually expanding inclusion in the social contract which, in different forms, was common to demoliberalism and demosocialism. Thus, the legal avenue towards social emancipation seemed (and seems) to be blocked. Such an avenue was structurally limited since it consisted in an emancipatory promise regulated by the capitalist state and therefore consistent with the ceaseless and inherently polarizing accumulation needs of capitalism but it accounted in the core countries for the compatibility between capitalism —always hostile to social redistribution— and democracy. The collapse of this strategy led to the disintegration of the already highly attenuated tension between social regulation and social emancipation. But because this tension inhabited the political model as a whole, the disintegration of social emancipation carried with it the disintegration of social regulation. Hence the double crisis of regulation and of emancipation in which we are now, a crisis in which conservatism thrives under the misleading name of neoliberalism. Neoliberalism is not a new version of

political liberalism but rather a new version of conservatism. What is intriguing, however, is the fact that the collapse of the political strategies that guaranteed in the past the compatibility between capitalism and democracy, far from leading to the incompatibility between the two, has seemingly strengthened such compatibility and, moreover, has extended it beyond the core countries where in the past it was mostly confined.

The revolutionary avenue towards social emancipation entered around the same time an equally serious crisis as the nation-states that had emerged from successful struggles against colonialism and capitalism collapsed. Of course, just as had happened with the reformist strategy, so also the “quality” of social emancipation brought about by the revolutionary strategy had been called into question long before. Notwithstanding the crucial differences between them, both the liberal states and the socialist states had put forward a state-promoted, heavily regulated tension between social emancipation and social regulation through which structural exclusions —be they political, economic, social or cultural— crystallized if not deepened.

The way of thinking about social transformation in terms of a tension between social regulation and social emancipation is a modern one. In a situation, such as ours, in which we experience a crisis of both social regulation and of social emancipation one may wonder whether such formulation should not be simply abandoned as it fails to capture in positive terms any aspects of our life experiences. If not all is wrong with our life experiences, something is wrong with the conception that renders them in unconditionally negative terms. Similarly, if both the overarching strategies to bring about modern social transformation, legal reformism and revolution, are in crisis —law abounds but apparently not for social reform purposes, while revolution is simply not there anymore— it is legitimate to ask whether we should not look for new conceptions to make sense of social transformation.

We are in a transition period which can be best described in the following way: we live in a period in which we face modern problems for which there are no modern solutions. The ideas of a good order and of a good society go on haunting us if for no other reason than the nature of the (dis)order that dominates in our ever more unequal and excluding societies —precisely in a moment of history when technological advances seem to exist for our societies to be otherwise. To abandon the tension between social regulation and social emancipation seems thus a politically risky proposition not only because it coincides with the conservative agenda but also because there are not in the horizon any new conceptions with the potential to capture the political aspirations condensed in the modern concepts. Reinventing the tension between social regulation and social emancipation seems therefore a better or more prudent proposition than throwing it altogether in the dustbin of history.

The same is true of the political strategies that in the past embodied the tension between social regulation and social emancipation: law and revolution. The reinventing in this case is particularly complex since while revolution seems

definitely discarded, law is more pervasive than ever, indeed filling the social and political spaces opened by the collapse of revolution. For conservatives there is nothing to be reinvented here, except ever more subtle (and not so subtle) ways of dismantling the mechanisms through which both liberals and demoesocialists turned law into an instrument of social change. The scientific and political task ahead may be thus formulated: how to reinvent law beyond the liberal and demoesocialist model without falling into the conservative agenda —and indeed, how to do it so as to combat the latter more efficiently.

3. THE DEMISE OF THE SOCIAL CONTRACT AND THE RISE OF SOCIAL FASCISM

3.1. Social exclusion and the crisis of the modern social contract

The social contract has presided over the organization of the economic, political, and cultural life of modern societies. In the last thirty years, this social, political, and cultural paradigm has been undergoing a period of great turbulence that affects not only its operative devices but also its presuppositions.

As I have argued elsewhere³, the social contract is based on three presuppositions: a general regime of values, a general system of measures and a privileged time-space. The crisis of the social contract can be detected in each one of these presuppositions.

The *general régime of values* is based on the idea of the common good and general will. These are principles through which social practices are aggregated: “society” as the universe of autonomous and contractual interactions between free and equal subjects.

Such a regime seems today unable to resist the increasing fragmentation of society, divided into economic, social, political, and cultural apartheid. The struggle for the common good seems to be losing its meaning and consequently the same happens to the struggle for alternative definitions of the common good. The general will seems to have become an absurd proposition. Under these circumstances, some authors even speak of the end of society. Ours is a post-Foucaultian world, and we suddenly realize, in retrospect, how organized Foucault's world was. According to Foucault,⁴ two main modes of social power coexist in modern societies: on one hand, disciplinary power, the dominant one, centered around the sciences, and, on the other, juridical power, centered around the state and the law, a form of power undergoing an historical process of decline. Nowadays, these powers coexist with many others and they themselves are fragmented and disorganized. Disciplinary power is increasingly a non-disciplinary power, to

3. Santos, 1998b.

4. Foucault, 1976, 1977, 1980.

the extent that the sciences lose their epistemological confidence and are forced to share the field of knowledge with rival knowledges, which are in turn capable of generating different kinds of power and resistance. On the other hand, as the state loses its centrality in regulating society its law becomes labyrinthian. State law becomes disorganized as it is forced to coexist with the non-official law of multiple de facto non-state legislators, who, by virtue of the political power they command, transform facticity into norm, vying with the state for the monopoly of violence and law. The seemingly chaotic proliferation of powers renders difficult the identification of the enemies, sometimes even the identification of the victims themselves.

Moreover, the values of modernity —liberty, equality, autonomy, subjectivity, justice, solidarity— as well as the antinomies amongst them remain, but are subjected to an increasing symbolic overload, in that they mean increasingly more disparate things to different people or social groups.

The turbulence of our present time is noticeable particularly in the second presupposition of the social contract, the *common system of measures*. The common system of measures is based on a conception of time and space as homogenous, neutral, linear entities that function as the minor common denominators for the definition of relevant differences. Starting from this conception, it is possible, on the one hand, to separate nature from society and, on the other, to establish a quantitative means of comparison between overall and widely distinct social interactions. Their qualitative differences are either ignored or reduced to the quantitative indicators that can account for them approximately. Money and exchange value are at the core of the modern common system of measures. Through them, labor, wages, risks, and damages are easily measurable and comparable.

But the common system of measures goes way beyond money and exchange value. By virtue of the homogeneities it creates, the common system of measures even allows for the establishment of correspondences amongst antinomic values. For instance, between liberty and equality it is possible to define criteria of social justice, redistribution, and solidarity. The assumption is that the measures be common and function by correspondence and homogeneity. That is why solidarity is only possible among equals, for instance, among workers.

Neutral, linear, homogenous time and space have long disappeared from the sciences but only now has their disappearance begun to make a difference at the level of everyday life and social relations. As globalization intensifies and, with it, social inequality and exclusion, the scales in which we are used to seeing and identifying phenomena, conflicts, and relationships are increasingly shaken. The turbulence of scales produces strangeness, defamiliarization, surprise, perplexity, and invisibility. A clear example of the turbulence of scales is found in the phenomenon of urban violence.⁵ When a street child looks for shelter to spend the night and is, as a consequence, killed by a policeman, or when someone who is

5. Santos, 1998a.

solicited on the streets by a beggar, refuses to give alms and is, as a consequence, killed by the beggar, what happens is an unforeseen explosion of the scale of the conflict: a seemingly trivial phenomenon is suddenly scaled up to another level and turned into a dramatic phenomenon that has fatal consequences. This abrupt and unpredictable change of scale of phenomena occurs nowadays in the most diverse domains of social practice. Following Prigogine and Stengers,⁶ I believe that our societies are undergoing a period of bifurcation, that is to say, a situation of systemic instability in which a minor change can bring about, in an unpredictable and chaotic way, qualitative transformations. The turbulence of scales destroys sequences and means of comparison, thereby unsettling the modern dichotomies regulation/emancipation or experience/expectation upon which modern alternatives have been designed.

The stability of scales seems to be confined to the market and consumption—and even there with radical mutations of rhythm and ambits that impose constant transformations of perspective on the acts of commerce. The hyper-visibility and high speed of heavily advertised commodities turns the intersubjectivity demanded from consumers into the interobjectuality among acts of consumption. In other words consumers become nomadic supports of commodities. The same constant transformation of perspective is also occurring in information and telecommunication technologies, where indeed scale turbulence is the originating act and condition of functionality. Here, the increasing interactivity of technologies dispenses more and more with the inventiveness of the users, the consequence being that interactivity surreptitiously slides into interpassivity. Zapping is probably a telling example of interpassivity under the guise of interactivity.

Finally, the *national state time-space* is losing its primacy because of the increasing importance of the global and local time-spaces that compete with it. This destructuring of the national state time-space also occurs at the level of rhythms, durations, and temporalities. The national state time-space is made up of different but compatible and articulated time frames: the time frame of elections, of collective bargaining, of judicial action, of welfare bureaucracy, of the national historical memory, etc. The coherence amongst these temporalities is what gives the national state time-space its own configuration. Now, this coherence is becoming more and more problematic because the impact produced by the global and local time-space varies from one time frame to another. For instance, the time frame of courts tends to be less affected by the global time-space than the time frame of collective bargaining.

Furthermore, time frames or rhythms that are quite incompatible with the national state temporality as a whole become more important. Two of them are worth specific mention. The *instant time* of cyberspace, on the one hand, and the *glacial time* of ecological degradation, on the other. Either temporality collides head-on with the political and bureaucratic temporality of the state. The instant

6. Prigogine and Stengers, 1979; Prigogine, 1980.

time of the financial markets precludes any deliberation or regulation on the part of the state. The slowing down of this temporality can only be obtained at the level of the scale in which it occurs, the global scale, and hence through international actions.⁷ On the other hand, glacial time is too slow to be compatible with any of the national state time frames —particularly with those of courts and electoral politics.

Since it has been so far the hegemonic time-space, the national state time-space configures not only the action of the state but also social practices in general, upon which the competition between instant time and glacial time rebounds as well. For instance, both the volatility of the financial markets and global warming give rise to crises that impact state politics and state legitimacy precisely because of the inadequacy of the state's responses. As in the case of scale turbulence, both instant time and glacial time converge, in different ways, to obscure alternatives. Instant time collapses the sequences into an infinite present which trivializes the alternatives by their techno-ludic multiplication, fusing them into variations of the same. Glacial time, on the contrary, creates such a wide distance between real alternatives —from alternative models of development to alternatives to development— that they stop being commensurate and susceptible of being counter-weighted, and end up wandering in incommunicable systems of reference.⁸ The same confrontation between glacial time and national state time both creates the urgent need of a global alternative to capitalist development and makes it impossible to envision it, let alone to opt for it.

It is, however, at the level of the operational devices of the social contract that the signs of the crisis of this paradigm are more visible. Nevertheless, at first sight, the present situation, far from prefiguring a crisis of social contractualism, is rather characterized by an unprecedented consolidation of the latter. Never before has there been so much talk about the contractualization of social relations, labor relations, welfare relations and partnerships of the state with social actors. But this new contractualization has little to do with the contractualization founded on the modern idea of the social contract. First, unlike the social contract, the new contractual ties are individual and cannot be aggregated. The “historical bloc” once needed to sustain the conditions and objectives of the social contract is now set aside and replaced by a multitude of contracts whose conditions and objectives remain a private matter. Second, neoliberal contractualization does not recognize conflict and struggle as structural elements of the social pact. On the contrary, it replaces them by passive assent to supposedly universal conditions deemed to be unsurpassable. Take the so-called Washington consensus. If indeed it is a social

7. With the specific purpose of slowing down the instant time of financial markets in order to create time for democratic deliberation, the social movements pursuing counter-hegemonic globalization have been proposing the adoption of the Tobin Tax.

8. On this topic in general and on the possibilities of imagining alternative development and alternatives to development, see Santos and Rodríguez, 2002.

contract, it occurs only amongst the core capitalist countries. For all other national societies, it appears as a set of inexorable conditions for acritical acceptance under pain of implacable exclusion.

For all these reasons, the new contractualization is a false contract, a mere appearance of a compromise constituted by conditions, as costly as they are inescapable, imposed without discussion upon the weaker party. Under the appearance of a contract, the new contractualization prefigures the reemergence of status, that is, of the principles of pre-modern hierarchical order in which the conditions of social relations were directly linked to the position of the parties in social hierarchy. But there is no question of a return to the past. As a matter of fact, status is now merely the consequence of the enormous inequality of economic power amongst the parties —be they states or individuals— in the individual contract, and of the capacity it grants to the stronger party of imposing without discussion the conditions that are most favourable to it. The new contractualism reproduces itself through extremely unfair contract terms.

The crisis of modern contractualization consists in the structural predominance of exclusion over inclusion processes. The latter are still in force and even assume advanced forms that allow for the bare reconciliation of the values of modernity, but they confine themselves to increasingly more restrictive groups which impose abysmal forms of exclusion upon much larger groups. The predominance of exclusion processes takes on two, apparently contradictory, forms: post-contractualism and pre-contractualism. Postcontractualism is the process by means of which groups and social interests up until now included in the social contract are excluded from the latter without any prospect of returning. The rights of citizenship, hitherto considered unalienable, are confiscated and, without them, the excluded turn from citizens into discardable populations. Pre-contractualism consists in blocking access to citizenship to social groups that before considered themselves candidates to citizenship and had the reasonable expectation of acceding to it. This is the case, for instance, of the popular classes in the semiperiphery and the periphery.

The exclusions thus brought about both by post-contractualism and pre-contractualism are radical and insurmountable, to such an extent that those who suffer them, though being formally citizens, are in fact excluded from civil society and thrown into a new state of nature. In postmodern society at the beginning of the century, the state of nature consists in the permanent anxiety vis-à-vis the present and the future, imminent loss of control over expectations, permanent chaos concerning the simplest acts of survival and conviviality.

Whether by way of post-contractualism, or by way of pre-contractualism, the deepening of the logic of exclusion creates new states of nature: the precariousness of life and the servitude generated by the workers' permanent anxiety concerning the amount and continuity of work, by the anxiety of the unemployed in search of jobs or of those who do not even have conditions to search for jobs, by the anxiety of the self-employed regarding the continuity of a market which they themselves have to create every day to assure the continuity of their income, and finally by the anxiety of the undocumented migrant workers, who have no social rights at

all. The stability referred to by the neoliberal consensus is always the stability of market and investment expectations, never of the expectations of working people. Indeed, the stability of markets and investments is only possible at the cost of the instability of the expectations of people.

For all these reasons, work increasingly ceases to sustain citizenship, and vice-versa, increasingly citizenship ceases to sustain work. By losing its political status as both a product and a producer of citizenship, work is reduced to the pain of existence, both when it is available—in the form of stressful work—and when it is not—in the form of stressful unemployment. This is why work, even though it dominates people's lives more and more, is disappearing from the ethical references that sustain the subjects' autonomy and self-esteem.

In social terms, the cumulative effect of pre-contractualism and post-contractualism is the emergence of an underclass of excluded, which is smaller or larger according to the central or peripheral position of a given society in the world system. This underclass is constituted both by social groups trapped in downward social mobility—unqualified workers, unemployed, migrant workers, ethnic minorities—and social groups for which the possibility of work has ceased to be a realistic expectation, if it ever was—e.g., the permanently unemployed, youths unable to enter the labor market, disabled people, large numbers of poor peasants in Latin America, Africa, and Asia.

The structural growth of social exclusion, whether by way of pre-contractualism or post-contractualism, and the resulting expansion of the state of nature, which allows for no individual or collective opting out, signals an epochal, paradigmatic crisis, which some designate as demodernization or counter-modernization. This situation entails, therefore, many risks. This is indeed the phenomenon that Beck has referred to as the rise of “the risk society”⁹ or the “Brazilianization”¹⁰ of the world. The question is whether it contains any opportunities for the replacement of modernity's old social contract by another one, less vulnerable to the proliferation of the logic of exclusion.

3.2. The emergence of social fascism

Let us first take a look at the risks. Actually, I think they can be summarized in one alone: *the emergence of social fascism*. I do not mean a return to the fascism of the 1930s and 1940s. Unlike the earlier one, the present fascism is not a political regime. It is rather a social and civilizational regime. Rather than sacrificing democracy to the demands of capitalism, it trivializes democracy to such a degree that it is no longer necessary, or even convenient, to sacrifice democracy in order to promote capitalism. It is a type of pluralist fascism produced by the

9. Beck, 1999.

10. Beck, 2000.

society rather than by the state. The state is here a complacent bystander if not an active culprit. We are entering a period in which democratic states coexist with fascistic societies. This is therefore a form of fascism that never existed.

I distinguish four main forms of social fascism. The first is the *fascism of social apartheid*. I mean the social segregation of the excluded through the division of cities into savage and civilized zones. The savage zones are the zones of Hobbes' state of nature. The civilized zones are the zones of the social contract, and they are under the constant threat of the savage zones. In order to defend themselves, the civilized zones turn themselves into neo-feudal castles, the fortified enclaves that are characteristic of the new forms of urban segregation —private cities, enclosed condominiums, gated communities. As far as the state is concerned, the division amounts to a double standard of state action in the savage and civilized zones. In the civilized zones, the state acts democratically, as a protective state, even if often inefficient and unreliable. In the savage zones, the state acts in a fascistic manner, as a predatory state, without the slightest regard, not even in appearance, for the rule of law.¹¹

The second form of social fascism is *parastate fascism*. It concerns the usurpation of state prerogatives (such as coercion and social regulation) by very powerful social actors, often with the complicity of the state itself, which now neutralize, now supplement the social control produced by the state. Parastate fascism has two dimensions: contractual fascism and territorial fascism.

Contractual fascism occurs in the situations, already described, in which the power discrepancy between the parties in the civil contract is such that the weaker party, rendered vulnerable by having no alternative, accepts the conditions imposed by the stronger party, however costly and despotic they may be. The neoliberal project of turning the labor contract into a civil law contract like any other foreshadows a situation of contractual fascism. This form of fascism occurs today frequently in policies aimed at “flexibilizing” labor markets or privatizing public services. In such cases, the social contract that presided over the production of public services in the welfare state and the developmentalist state is reduced to the individual contract between consumers and providers of privatized services. This reduction entails the elimination from the contractual ambit of decisive aspects of the protection of consumers, which, for this reason, become extracontractual. These are the situations in which the connivance between the democratic state and parastate fascism is clearest. By claiming extracontractual prerogatives the fascist, parastate agencies take over functions of social regulation earlier carried out by the state. The state, whether implicitly or explicitly, subcontracts parastate agencies to carry out these functions and, by so doing without the participation or control of the citizens, becomes complicit with the production of parastate social fascism.

11. A good illustration of this dynamics is Caldeira's study on the geographic and social cleavages in São Paulo. See Caldeira, 2000.

The second dimension of parastate fascism is *territorial fascism*. It occurs whenever social actors with enormous amounts of capital dispute the control of the state over the territories wherein they act, or neutralize that control by coopting or coercing the state institutions and exerting social regulation upon the inhabitants of the territory, without their participation and against their interests. These are the new colonial territories inside states that are very often postcolonial states. Some of these territories are reinventions of the old phenomena of *coronelismo* and *caciquismo* while others are new territorial enclaves sealed by autonomous state intervention and ruled by pacts among armed social actors.¹²

The third form of social fascism is the *fascism of insecurity*. It consists in the discretionary manipulation of the sense of insecurity of people and social groups rendered vulnerable by the precariousness of work, or by destabilizing accidents or events. This results in chronic anxiety and uncertainty vis-à-vis the present and the future for large numbers of people, who thus reduce radically their expectations and become willing to bear huge burdens to achieve the smallest decrease of risk and insecurity. As far as this form of fascism is concerned, the *Lebensraum* —the “vital space” claimed by Hitler for the German people, which justified annexations— of the new *Führers* is people’s intimacy and their anxiety and uncertainty regarding the present and the future. It operates by putting in action the double play of retrospective and prospective illusions, and is today particularly obvious in the domain of the privatization of social services, such as health, welfare, education, and housing. The retrospective illusions consist in underscoring the memory of insecurity in this regard and the inefficiency of the state bureaucracy in providing social welfare. The prospective illusions, in turn, aim at creating expectations of safety and security produced in the private sector and inflated by the occultation of some of the risks and the conditions for the provision of services. Such prospective illusions proliferate today mainly in the form of health insurance and private pension funds.

The fourth form of social fascism is *financial fascism*. This is perhaps the most vicious form of fascist sociability and requires, therefore, more detailed analysis. It is the type of fascism that controls the financial markets and their casino economy. It is the most pluralist in that the flows of capital are the result of the decisions of individual or institutional investors spread out all over the world and having nothing in common except the desire to maximize their assets. Precisely because it is the most pluralist, it is also the most vicious form of fascism, since its time-space is the most averse to any form of democratic intervention and deliberation. Highly significant in this regard is the reply of that stock market broker when asked what he considered to be the long term: “for me, the long term is the next ten minutes”. This virtually instantaneous and global time-space, combined with the speculative logic of profit that sustains it, confers a huge discretionary

12. This is the case, for instance, of popular militias in Medellín (Colombia), and of the groups of emerald miners in the western part of Boyacá, Colombia. See Gutiérrez and Jaramillo, 2002.

power to financial capital, strong enough to shake, in seconds, the real economy or the political stability of any country. The exercise of financial power is totally discretionary and the consequences for those affected by it —sometimes, entire nations— can be overwhelming.

The viciousness of financial fascism consists in its having become the model and operative criterion of the institutions of global regulation. I mention just one of them: the rating agencies, the agencies that are internationally certified to evaluate the financial situation of the different states and the risks or opportunities they may offer to foreign investors. The grades conferred —which, in the case of Moody's go from Aaa to C, with nineteen grades in between— are decisive for the conditions under which a given country or a firm in such a country may be eligible for international credit. The higher the grade, the better the conditions. These companies have extraordinary power. According to Thomas Friedman, “the post-cold war world has two superpowers, the United States and Moody's”.¹³ Friedman justifies his statement by adding: “if it is true that the United States of America can annihilate an enemy by using its military arsenal, the agency of financial rating Moody's has the power to strangle a country financially by giving it a bad grade”.¹⁴ These agencies' discretionary power is all the greater because they have the prerogative of making evaluations not solicited by the countries or firms in question.

In all its forms, social fascism is a regime characterized by social relations and life experiences under extremely unequal power relations and exchanges which lead to particularly severe and potentially irreversible forms of exclusion. Such forms of social exclusion exist both within national societies (the interior South) and in the relations among countries (the global South). The quality of sociability that societies allow or grant to their members depends on the relative weight of social fascism in the constellation of different social regimes present in them. And the same may be said for the relations among countries.

3.3. Social fascism and the production of a stratified civil society

How to confront social fascism? Which political and legal strategies will be most effective in eliminating it? Before addressing these questions, I will briefly characterize the impact of social fascism on the liberal dichotomy state/civil society —since, as will be apparent below, such dichotomy underlies both the problems of and the potential solutions to social fascisms. I distinguish three types of civil society: the intimate civil society, the strange civil society, and the uncivil civil society. If only for graphic purposes we can locate the state at the center of a

13. Moody's is one of the six rating agencies certified by the *Securities and Exchange Commission*; the others are *Standard and Poor's*, *Fitch Investors Services*, *Duff and Phelps*, *Thomas Bank Watch*, *IBCA*.

14. Warde, 1997: 10-11.

given society, the *intimate society* is the inside circle around the state. It consists of individuals and social groups that enjoy high levels of social inclusion (hyperinclusion). Assuming that the idea of the three generations of human rights—civil and political, socio-economic, and cultural rights—is adequate, those included in the intimate civil society enjoy thus all the gamut of rights. They belong to the dominant community that is tied up very closely with the market and the economic forces that run it. Indeed their intimacy with the state is so great that those included in this tier of civil society have access to state or public resources above and beyond what can be obtained by any politics of rights. The relation of this civil society with the state can be described as the privatization of the state.

The *strange civil society* is the intermediate circle around the state. The social classes or groups included in it have mixed life experiences of social inclusion and of social exclusion. Social inclusion is of a low or moderate quality and correspondingly social exclusion is attenuated by some safety nets and is not viewed as irreversible. In terms of the three generations of human rights, it can be said that those in the strange civil society may exercise more or less freely the civic and political rights but have little access to the social and economic rights, not to speak of the cultural or “post-materialist” rights.

Finally, the *uncivil civil society* is the outer circle inhabited by the utterly excluded. They are mostly socially invisible. This is the circle of social fascism and in the strict sense those who inhabit it do not belong to civil society, since they are thrown into the new state of nature. They have no stabilized expectations because in practice they have no rights.

This multiple stratification of civil society has always characterized modern societies. They have distinguished (and distinguish) themselves by the relative size of the different circles of civil societies. While in the core countries the wider circle has tended to be the intermediate circle (the strange civil society), which in class terms has been occupied by the middle and lower middle classes, in peripheral countries the outer circle (the uncivil civil society) has tended to cover the majority of the population. In the last twenty years the neo-liberal hegemonic globalization has produced a double decisive impact on the dynamics of the multi-layered civil society. On the one hand, the intermediate circle, the strange civil society, has been narrowing down across the world system as a few of those living in it have moved up to the inside circle while the vast majority has moved down or sees itself as being in the process of moving from the intermediate circle to the outer circle, to the uncivil civil society. As a result, both core and peripheral and semiperipheral countries, irrespective of the many differences that separate them, have become more and more polarized, between forms of social hyperinclusion and forms of social hyperexclusion. On the other hand, as the neo-liberal model of development is imposed throughout the world system, the dynamics behind both hyperinclusion and hyperexclusion is more and more a global one. The exclusion of today is probably more directly linked to policies originated in—as well as the policies ruled out by—countries in the Western core countries than was the case with colonialism or imperialism. The intervention on the economies and

politics of both peripheral and semiperipheral countries conducted by neo-liberal globalization is unprecedented in terms of its scale and intensity and also in terms of the vast global hegemonic coalition that controls it. This fact explains why the Western based view of social political reality, exported as a globalized localism across the globe, is an ever more “adequate” view of the dominant power structures in different countries. However, as I claim below, this means also that the subaltern West can more easily ally itself to the subaltern “rest”. Only through such alliances will it be possible to overcome the “west/rest” hierarchy.

The typology of civil societies above allows us to show that, despite ideological rhetoric to the contrary, the political and legal discourses and practices allowed by neo-liberal globalization are incapable of confronting social fascism and therefore of addressing the “social question” of the dramatic growth of the uncivil civil society. Indeed, the aggressive reemergence of conservatism has had a decisive impact on the other two ideologies sanctioned by the liberal state, liberalism and demosocialism, as I showed in the first section. It has led to the merging of the two, under the aegis of liberalism. The doctrine that expresses that political hybridization is what I call demoliberalism. The best expression of such a hybrid is the so-called Third Way, as propounded by the British Labor Party and theorized by Anthony Giddens.¹⁵ In fact, though presented as the renewal of social democracy, the Third Way recuperates most of the liberal agenda and abandons most of the demosocialist agenda.

As I will argue in the next section, to confront successfully social fascism and address the needs of the uncivil civil society another law and another politics are necessary, those of counter-hegemonic globalization and of subaltern cosmopolitanism.

4. ON SUBALTERN COSMOPOLITANISM

Neo-liberal globalization, although being the hegemonic form of globalization, is not the only one. Throughout the world, local, national and transnational social groups, networks, initiatives, organizations and movements have been active in confronting neoliberal globalization and in proposing alternatives to it. Aside from struggles that are originally transnational, I include in this vast set of confrontational politics social struggles that though local or national in scope are networked in different ways with parallel struggles elsewhere. Together they constitute what I call counter-hegemonic globalization whose most eloquent manifestation today is the World Social Forum.

They are counter-hegemonic not just because they fight against the economic, social and political outcomes of hegemonic globalization but because they challenge the conception of general interest underlying the latter and propose an

15. Giddens, 1998.

alternative conception. For hegemonic globalization the unfettered expansion of global capitalism is the general interest and as such legitimized to produce vast, unavoidable and in the end positive (because growth-promoting) forms of social exclusion. On the contrary, counter-hegemonic movements and organizations claim that such massive social exclusion bears witness to the fact that the interests of global capital, far from being the general interest, are indeed inimical to the latter, since social exclusion and particularly its most extreme form, social fascism, deny basic human dignity and respect to large parts of the population across the globe. Treatment with dignity and respect are due to humankind—and for some, to nature as well. As such the idea of general interest calls for social inclusion and cannot be reconciled with processes of social transformation premised upon the inevitability of social exclusion.

Counter-hegemonic globalization is therefore focused on the struggle against social exclusion, a struggle which in its broadest terms encompasses not only excluded populations but also nature. The eradication of social fascism is thus the primary objective and therefore the uncivil civil society is the privileged social base of counter-hegemonic struggles. From there, the latter aim at reaching out to what I have called the strange civil society, where less extreme forms of social exclusion prevail.

Social exclusion is always the product of unequal power relations, that is, of unequal exchanges. And, since several forms of power circulate in society it is as unfeasible to produce a monolithic theory of social exclusion as it is to bring all the struggles against it under a single banner. Counter-hegemonic globalization is therefore a plural project. Here lies both its strength and its weakness. Such plurality and diversity does not preclude the possibility of communication, mutual understanding and cooperation among the different struggles. Indeed, the potential and viability of counter-hegemonic globalization revolves around such a possibility. Nevertheless, whatever is achieved through collaboration among progressive movements and organizations is less the result of a common starting point than of a common point of arrival. I call this rather loose bundle of projects and struggles subaltern cosmopolitanism, or cosmopolitanism of the oppressed.

The current debates on cosmopolitanism do not concern me here. In its long history cosmopolitanism has meant universalism, tolerance, patriotism, world citizenship, worldwide community of human beings, global culture etc., etc. More often than not, when this concept has been used—either as a scientific tool to describe reality or as an instrument in political struggles—the unconditional inclusiveness of its abstract formulation has been used to pursue the exclusionary interests of a particular social group. In a sense cosmopolitanism has been a privilege of those that can afford it.

There are two ways of revisiting this concept, one by asking who can afford it, the other by asking who needs it. The first question is about social practice. It entails the singling out of those social groups who have managed to reproduce their hegemony by using to their benefit concepts like cosmopolitanism that would seem to run against the very idea of group benefits. This question thus has a critical,

deconstructive stance. The second question is about social expectations. It entails the identification of groups whose aspirations are denied or made invisible by the hegemonic use of the concept and may be served by an alternative use of it. This question has a post-critical reconstructive stance. This is the question I ask here.

Paraphrasing Stuart Hall, who raised a similar question in relation to the concept of identity,¹⁶ I ask: who needs cosmopolitanism? The answer is simple: whoever is a victim of intolerance and discrimination needs tolerance; whoever is denied basic human dignity needs a community of human beings; whoever is a non-citizen needs world citizenship in any given community or nation. In sum, those socially excluded, victims of the hegemonic conception of cosmopolitanism, need a different type of cosmopolitanism. Subaltern cosmopolitanism is therefore an oppositional variety. Just as neo-liberal globalization does not recognize any alternative form of globalization, so also cosmopolitanism without adjectives denies its own particularity. Subaltern, oppositional cosmopolitanism is the cultural and political form of counter-hegemonic globalization. It is the name of the emancipatory projects whose claims and criteria of social inclusion reach beyond the horizons of global capitalism.

Since there is no unified theory, and much less unified strategy underlying these projects, subaltern cosmopolitanism is best rendered by reference to those projects that provide specially cogent or exemplary illustrations of the struggle against social exclusion in the name of an alternative globalization. In my view, the Zapatist movement is one of such projects. Thus, I will now move to identify the major political features of subaltern cosmopolitanism through a theoretical reconstruction of the Zapatista movement. This theoretical reconstruction by far transcends the Zapatistas themselves and, I believe, its relevance will survive the future vicissitudes of its protagonists of today.

What is most striking about the Zapatistas is their proposal to ground the struggle against social exclusion in a new civilizing horizon. By focusing on humanity, dignity and respect, they go way beyond the progressive political legacy we have inherited from the nineteenth and twentieth centuries. In my view, the novelty of their contribution to subaltern thought and struggles is four-fold.

The first novelty concerns the conception of power and oppression. Neo-liberalism, more than a specific version of the capitalist mode of production, is a civilizing model based on the dramatic increase of inequality in social relations. Such inequality takes on multiple forms, that are also many faces of oppression. The exploitation of workers is one of them, but there are many other kinds of oppression affecting women, ethnic minorities, indigenous peoples, peasants, unemployed, immigrants, ghetto underclasses, gays and lesbians, the young and children.

16. Hall, 1996.

All these kinds of oppression bring about exclusion, and that is why at the core of the Zapatista struggle there is not the exploited but rather the excluded, there is not class but rather humanity: "Behind our 'pasamontañas'... there are all the simple and common men and women of no account, invisible, nameless, without a future."¹⁷ The emancipatory nature of social struggles resides in all of them as a whole and not in any one of them in particular. The priority to be given to one or the other does not stem from any theory but rather from the concrete conditions of each country or region in a given historical moment. The struggle to which, under these conditions, is given priority, assumes the task of opening up the political space for the remaining struggles. Thus, for example, the concrete conditions of Mexico at this moment give precedence to the indigenous struggle. However, it was not accidental that the Zapatista leader that addressed the Mexican Congress on March 28, 2001 was Comandante Esther. With her impressive speech, the Zapatista movement sealed its alliance with the women's liberation movement.

The second novelty concerns the equivalence between the principles of equality and difference. We live in societies that are obscenely unequal, and yet equality is lacking as an emancipatory ideal. Equality, understood as equivalence among equals, ends up excluding what is different. All that is homogeneous at the beginning tends to turn eventually into exclusionary violence. In as much as they carry alternative visions of social emancipation, differences must, therefore, be respected. It is up to those who claim them to decide to what extent they wish to hybridize or dedifferentiate. This articulation between the principle of equality and the principle of difference requires a new radicalism in the struggles for human rights. Regardless of the concessions made to workers, and later to others excluded from the social contract, political liberalism neutralized the radically democratic potential of human rights by imposing worldwide a very restrictive European historical reality. In legal and political terms this is embodied in the concept of different generations of human rights and the idea that the first generation (civil rights) prevails over the second one (political rights) and both prevail over the third one (social and economic rights). The radical novelty of the Zapatista proposal in this regard lies in formulating their claims, which by and large concern human rights, in such terms as to avoid the trap of generations. Considered separately, the eleven Zapatista claims are far from being path-breaking or revolutionary: work, land, housing, food, health, education, independence, freedom, democracy, justice, peace. Together, they make up a "new world", a civilizing project that offers an alternative vis-à-vis neo-liberalism.

The third novelty concerns democracy and the taking over of power. If the forms of power are many, and if society is not globally changed in the direction of the protection of dignity and respect, it is useless to take over without transforming it: "To seize power? No, simply something far more difficult: a new world".¹⁸ The

17. Ana María, 1996, pp. 102-103.

18. Subcomandante Insurgente Marcos, cited by Ceceña, 1999, p. 103.

stress is not on the destruction of what exists, rather on the creation of alternatives. As the faces of oppression are multiple, so are the struggles and proposals for resistance varied. So varied are they that no vanguard will unify them: “We do not wish, nor can we, to occupy the place that many expect us to occupy, the place whence emanate all opinions, all answers, all truths. We won’t do it.”¹⁹ Rebellion must find itself from below, from the participation of all. Violence is no alternative —indeed organized violence is a “prerogative” of the dominant classes or social groups— and representative democracy only fails because it is corrupt and because it does not accept the challenges of participatory democracy.

What is at stake is the constitution of a counter-hegemonic globalization encompassing several worlds, several kinds of social organizations and movements, and several conceptions of social emancipation. The political obligation that unites such diversity is a horizontal political obligation that feeds on the substitution of relations of shared authority for relations of power. But such an obligation is as fundamental in relations among organizations or movements as inside each of them. Internal democracy is the golden rule, not to be confused with democratic centralism, of a Leninist bent, which was only justified, if ever, in the context of clandestine struggles against dictatorships —amongst recent examples, the case of ANC against apartheid in South Africa must be highlighted.

The low-intensity democracies in which we live are trapped by the spaces of political action they open and are unable to fill up. Filling them up is a task for the counter-hegemonic forces. These can show that democracy, when taken seriously, has little to do with the caricature into which liberalism, not to mention neo-liberalism, has turned it. What is essential is to understand that, contrary to what the modernist vanguards wanted, “one must walk along with those that walk more slowly”.²⁰ Since there is no goal but rather a horizon, what matters is that we walk together. The strategic role of communication and information consists in showing that you are not alone in the struggle.

The fourth novelty of the contribution of the Zapatistas to subaltern cosmopolitanism is that rebellion and not revolution is the key issue. Since taking over state power is not an immediate objective, rebellious actions have a vast social field of operation —the vast set of social interactions structured by power inequalities. Different movements or struggles may be interested in confronting different social interactions and the struggle has to be conducted in light of the specific conditions at hand in that particular social field at that precise historical conjuncture. This means that an old canonical sequence of revolutionary Marxism in the twentieth century, which was put forward most eloquently by Althusser —“Marxists know that no tactic is possible which does not rest on some strategy and no strategy which does not rest on some theory”²¹— is thereby abandoned or completely subverted. Under Zapatism what is tactics for one movement may be strategy for another and

19. Subcomandante Insurgente Marcos, cited by Ceceña, 1998, p. 145.

20. Ceceña, 2001, p. 28.

21. Debray, 1967, p. 27.

the terms may mean different things for different struggles in different parts of the world and in some of them may even be utterly meaningless. Moreover, no unified theory can possibly render the immense mosaic of movements, struggles and initiatives in a coherent way. Under the modern revolutionary paradigm the belief in a unified theory was so entrenched that the different revolutionary movements had to subscribe to the most simplistic descriptions of their empirical reality so that they fit the theoretical demands.²²

From the point of view of subaltern cosmopolitanism, such an effort is not only ludicrous but it is also dangerous. The theory, whatever its value, will always be last, not first. Instead of a theory that unifies the immense variety of struggles and movements, what we need is a work of translation—that is, a work or procedure that rather than aiming at creating another (theoretical) reality over and above the movements, seeks to create mutual understanding, mutual intelligibility among them so that they may benefit from the experiences of others and network with them. Instead of our rarified descriptions the procedure of translation rests on broad descriptions. Indeed, there is never enough specificity in the accounts of two or more movements or struggles to guarantee an unproblematic translation among them.

Another old idea of twentieth century revolutionary politics that is abandoned here is the idea of stages of struggle—i.e., the idea of transition from the phase of coalition with democratic forces to the phase of socialist takeover—which consumed so much of the time and energy of the revolutionaries and was responsible for so many splits and fratricidal confrontations. Given the mosaic of subaltern cosmopolitan movements at work under such different circumstances around the globe, it makes no sense to speak of stages, not only because there is no end point or final stage nor is there any general definition of the initial conditions that are responsible for the first stage. Instead of an evolutionist modernist paradigm of a transformative movement, subaltern cosmopolitan struggles—as illustrated by Zapatismo—are guided by a pragmatic principle based on commonsensical rather than on theoretical knowledge: to make the world less and less comfortable for global capital. The idea of stages is replaced by the idea of destabilizing potential, a potential which, irrespective of the scale of the movements, is strengthened by the networking among them. A given local struggle may be the “small motor” that helps the larger motor of a global movement to get started. But, conversely, a global movement may equally be the small motor that helps the larger motor of a local struggle to get started.

Finally, in subaltern cosmopolitanism the question of the compatibility of a given struggle or movement with global capitalism, which in the past led to heated debates, has become a moot one. Since taking over state power is not a privileged objective and since there is no organization unifying the mosaic of counter-hege-

22. The most salient and nonetheless brilliant manifestation of this theoretical work was Regis Debray's analysis of social revolution in different Latin American countries in the 1960s. See Debray, 1967.

monic movements under a single banner, all cosmopolitan initiatives are allowed to engage without apology with their particular roots and their empirical reality. As they live in a world largely governed by global capital they are by definition compatible with the latter, and whenever they represent a more radical break with a given state of affairs, they may be easily dismissed as an island of difference, as a microcosm of social innovation which is easily accommodated within the overall picture of hegemonic governance. The question of compatibility is then the question of whether the world is made less and less comfortable for global capitalism by subaltern insurgent practices or whether, on the contrary, global capitalism has managed to co-opt the latter and transform them into means of its own reproduction.

The question of compatibility is for all practical purposes replaced by the question of the political direction of the cumulative processes of mutual learning, reciprocal adaptation and transformation between dominant hegemonic social practices and subaltern, insurgent practices. This is a crucial question indeed as the future of the competing globalizations will depend on the answer to it. The form of globalization that learns most and fastest will forge ahead in the confrontation. If history repeated itself one could predict that hegemonic globalization would more likely learn more and faster from counter-hegemonic than vice versa. Indeed, notwithstanding the difference in context, times and interests at stake, it is useful to recall here Debray's admonition that the U.S. and its counter-revolutionary strategy in Latin America in the 1960s learned faster from the Cuban Revolution than the other revolutionary groups that were active at the time in other parts of the continent —Venezuela, Brasil, Bolivia, Argentina, Peru, etc.²³

5. SUBALTERN COSMOPOLITANISM AND LAW: THE CONDITIONS FOR COSMOPOLITAN LEGALITY

Subaltern cosmopolitanism, as understood here, is a cultural, political and social project of which there are only embryonic manifestations. Accordingly, an inquiry into the place of law in subaltern cosmopolitanism and the nascent practices that may embody a subaltern cosmopolitan legality must be done in a rather prospective and prescriptive spirit. In the following I will be laying out —rather than fully fleshing out— a research agenda on subaltern cosmopolitan legal theory and practice and at mapping some of the key sites in which such theory and practice are currently being tried out.²⁴

23. Debray, 1967.

24. In presenting the research agenda and mapping the sites of subaltern cosmopolitan legality, I draw heavily on the results of an ongoing collective research project that —under my direction and with the participation of more than sixty scholars and activists from India, Brazil, Portugal, South Africa, Mozambique and Colombia— has been exploring forms of counter-hegemonic globalization in the South. The case studies and the overall results of the project are published in Portuguese (Santos

To this purpose, the approach I adopt here is, as I have it elsewhere,²⁵ a sociology of emergence, which entails interpreting in an expansive way the initiatives, movements or organizations that resist neoliberal globalization and social exclusion, and offer alternatives to them. The traits of the struggles are amplified and elaborated upon in such a way as to make visible and credible the potential that lies implicit or hidden in the actual counter-hegemonic actions. The symbolic enlargement brought about by the sociology of emergence aims to analyze the tendencies or possibilities inscribed in a given practice, experience or form of knowledge. It acts upon both possibilities and capacities. It identifies signals, clues, or traces of future possibilities in whatever exists. This approach allows us to identify emergent qualities and entities at a moment and in a context in which they can be easily discarded as having no future-bearing quality, as being insignificant, or indeed as being past-oriented. This approach corresponds in prospective analysis to the extended case method in sociological analysis.

I am not going to deal with the whole spectrum of initiatives or movements but rather only with those whose legal strategies seem more prominent. Indeed I am going to deal with the legal strategies themselves—that is, with subaltern cosmopolitan legality (in short, cosmopolitan legality). Cosmopolitan legality furthers counter-hegemonic globalization. And since in our current conditions counter-hegemonic globalization is a necessary condition of social emancipation, the inquiry into cosmopolitan legality is my way of responding to the question I started out with: can law be emancipatory?

I will start out by presenting, in the form of theses accompanied by brief explanatory notes, the conditions or presuppositions of subaltern cosmopolitan legality.²⁶ They are in a condensed form the main results of the sociology of emergence. Together they form an ideal typical image of cosmopolitan legality. I will then move on in the next section to refer offer some illustrations of struggles against neoliberal globalization in which law has been a significant component. It will become clear that the concrete illustrations represent different degrees of approximation to cosmopolitan legality.

As for the conditions for cosmopolitan legality, they can be summed up in the following eight theses:

(ed.), 2002d, 2002e, 2000f, 2002g, 2002h) and will be also available in English and Spanish. See also the project's website at <http://www.ces.fe.uc.pt/emancipa/>.

25. See Santos, 2004.

26. For decades US scholars have debated the question of whether rights strategies facilitate “progressive social change” or whether they legitimate and reinforce social inequalities. A good overview can be read in Levitsky, 2001. In the narrow terms in which it has been discussed—as a debate within demoliberalism—this debate is undecidable.

5.1. It is one thing to use a hegemonic instrument in a given political struggle. It is another thing to use it in a hegemonic fashion.

This applies both to law and the politics of rights. As I will show below, according to subaltern cosmopolitanism, law is not reduced to state law nor rights to individual rights. This, however, does not mean that state law and individual rights are to be excluded from cosmopolitan legal practices. On the contrary, they may be used if integrated into broader struggles that take them out of the hegemonic mold. This mold is basically the idea of autonomy and the idea that rights are both means to and ends of social practice. In this view, law and rights are autonomous as their validity is not contingent upon the conditions of their social efficacy. They are autonomous also because they operate through specific sets of state institutions established for this purpose —courts, legislatures, etc. Moreover, law and rights are conceived of as preempting the use of any other social tool. Laws are authoritative state-produced normative standards of social action, while rights are authoritative state-guaranteed individual entitlements derived from laws. Thus conceived law and rights determine their own boundaries and beyond them nothing can be claimed either as law or as right. Because they are produced and guaranteed by the state, it has the monopoly over the declaration of legality or illegality, of right or wrong.

In opposition to this conception, cosmopolitanism makes two assertions: first it is possible to use these hegemonic tools for non-hegemonic objectives; secondly, there are alternative, non-hegemonic conceptions of such tools. To this I turn in the following thesis.

5.2. A non-hegemonic use of hegemonic legal tools is premised upon the possibility of integrating them in broader political mobilizations that may include legal as well as illegal actions

Contrary to the critical legal studies movement, cosmopolitan legality subscribes to a non-essentialist view of state law and rights. What makes the latter hegemonic is the specific use that the dominant classes or groups make of them. Used as autonomous exclusive instruments of social action they are indeed part of top-down politics. They are unstable, contingent, manipulable and confirm the structures of power they are supposed to change. In sum, conceived and utilized in this way they are of no use to cosmopolitan legality.

There is, however, the possibility of law and rights being used as non-autonomous and nonexclusive. Such a possibility is premised upon the “integration” of law and rights in broader political mobilizations that allow for the struggles to be politicized before they are legalized. Once law and rights are resorted to, political mobilization must be intensified, so as to avoid the depoliticization of the struggle which law and rights, left alone, are bound to produce. A strong politics of law and rights is one that does not rely solely on law or on rights. Paradoxically, one

way of showing defiance for law and rights is to struggle for increasingly inclusive laws and rights. Manipulability, contingency and instability from below is the most efficient way of confronting manipulability, contingency and instability from above. A strong politics of rights is a dual politics based on the dual management of legal and political tools under the aegis of the latter.

The most intense moments of cosmopolitan legality are likely to involve direct action, civil disobedience, strikes, demonstrations, media-oriented performances, etc. Some of these will be illegal, while others will be located in spheres not regulated by state law. Subaltern illegality may be used to confront both dominant legality and dominant illegality. The latter is particularly pervasive and aggressive in the case of the parallel state to which I referred above. In societies with some historical experience of demoliberal legality, state law and rights, once viewed from the margins, from the oppressed and excluded, are contradictorily sites both of exclusion and sites of inclusion. The nature and the direction of political struggles will determine which will prevail. In societies with little or no historical experience of demoliberal legality it is highly improbable that hegemonic laws and rights be put to a non-hegemonic use.

5.3. Non-hegemonic forms of law do not necessarily favor or promote subaltern cosmopolitanism

The question of non-hegemony in the realm of law is today a rather complex one. Demoliberal legality has traditionally been understood as state law or state sanctioned law and such has been the hegemonic concept of law. Today, in a period of intense globalizations and intense localizations there are multiple sources of law and not all of them can be said to be sanctioned by the state. Non-hegemonic forms of law are not necessarily counter-hegemonic ones. On the contrary, they may rather be at the service of hegemonic law contributing to its reproduction under new conditions and indeed accentuating its exclusionary traits. The new forms of global legality “from above”, produced by powerful transnational actors, such as the new *lex mercatoria* are a case in point as they combine or articulate with state legality in a kind of legal co-management that furthers neoliberal globalization and deepens social exclusion.

There is also much legality being generated from below —traditional law, indigenous law, community law, popular law, etc. As is the case with non-state legality from above, such non-hegemonic legality is not necessarily counter-hegemonic as it may be used in conjuncture with state law to pursue exclusionary purposes. But it may also be used to confront demoliberal state legality and to fight for social inclusion and against neo-liberal globalization in which case it assumes a counter-hegemonic political role. In this case, non-hegemonic legalities from below are part and parcel of cosmopolitan legality.

Legal pluralism plays a central role in cosmopolitan legality but must be always subjected to a kind of litmus to determine which forms of legal pluralism are con-

ductive to cosmopolitan legality and which are not. The test consists in evaluating whether legal pluralism contributes to reducing the inequality of power relations, thereby reducing social exclusion or upgrading the quality of social inclusion or whether, on the contrary, it rigidifies unequal exchanges and reproduces social exclusion. In the first case we are before cosmopolitan legal plurality.

5.4. Cosmopolitan legality is voracious in terms of the scales of legality

Cosmopolitan legality can be developed at the local, national and global level. The forms of legal-political mobilization and their concrete objectives will determine which scale or level must be privileged. The privilege granted to a given scale does not mean that the other scales will not be mobilized. On the contrary, cosmopolitan legality tends to combine different scales of legality and indeed to subvert them in the sense of targeting the global in the local and the local in the global. It is a transcalar legality.

5.5. Cosmopolitan legality is a subaltern legality targeting the non-civil and the strange civil society

Cosmopolitan legality targets first and foremost the non-civil civil society as it aims to eradicate social exclusion, particularly its most extreme form, social fascism. But it reaches out also to the lowest strata of the strange civil society in which often massive social exclusion takes place. While fighting social exclusion cosmopolitan legality is aware of the danger of thereby confirming and legitimating the modern liberal social contract and therefore also the systematic exclusion it produces, as happens with demoliberal legality and its selective concessions to selected excluded groups. To avoid this, cosmopolitan legality seeks to address systematic harm and not just the victim/perpetrator relationship as it is the case with demoliberal legality. This explains why political mobilization and confrontational, rebellious moments are not complements but rather intrinsic components of cosmopolitan legality. To address systematic harm involves claiming a new radically more inclusive social contract. Restorative justice, which is the demoliberal conception of justice *par excellence*, must therefore be replaced by transformative justice, that is, by a project of social justice that reaches beyond the horizon of global capitalism. Herein lies the oppositional and counter-hegemonic character of cosmopolitan legality.

5.6. As a subaltern form of legality cosmopolitanism submits the three modern principles of regulation to a hermeneutics of suspicion

Contrary to demoliberal legality, cosmopolitan legality conceives of power relations as not being restricted to the state but rather “inhabiting” both the market

and the community. Accordingly, it distinguishes between dominant market and subaltern market, and between dominant community and subaltern community. The objective of cosmopolitan legality resides in empowering subaltern markets and subaltern communities. Together they are the building blocs of subaltern public spheres.

5.7. The gap between the excess of meaning and the deficit of task is inherent to a politics of legality. Cosmopolitan legality is haunted by this gap

Even if cosmopolitan legality, whenever it resorts to state law, does so in the context of a counter-hegemonic strategy, the fact remains that the gap between excess of meaning (symbolic expansion through abstract promises) and the deficit of task (the narrowness of concrete achievements) may end up discrediting the cosmopolitan struggles as a whole. The crisis of the modern social contract resides in the inversion of the discrepancy between social experience and social expectation. After a long period of positive expectations about the future, at least in core and semiperipheral countries, we have entered a period of negative expectations for large bodies of populations around the world. The cosmopolitan project consists precisely in restoring the modern discrepancy between social experiences and social expectations even if through oppositional postmodern practices and pointing to radical political transformations. In light of this, however, a tension may develop between cosmopolitanism as a whole and cosmopolitan legality. Indeed in a period in which social expectations are negative when compared with current social experiences, cosmopolitan legality may find itself in the position of being most effective when defending the legal status quo, the effective enforcement of laws as they exist in the books. The dilemma for cosmopolitanism lies in having to struggle both for deep social transformation and for the status quo.

5.8. In spite of the deep differences between demoliberal legality and cosmopolitan legality, the relations between them are dynamic and complex

Demoliberal legality makes a hegemonic use of hegemonic conceptions of law and rights. It has no place for political infringements of law's autonomy and much less for illegal actions. It targets both the intimate and the strange civil society, and the concessions it makes to the severely excluded (the non-civil civil society) are made in such a way as to confirm and legitimate the social contract and its systemic exclusions. It gets its regulatory resources from the state, where according to it all the relevant power relations reside, and from the dominant market and the dominant community. Finally, since it does not aspire to any form of deep, structural social transformation, it excels in restorative justice and uses the gap between excess of meaning and deficit of task to advance adaptive manipulations of the status quo.

This shows how much cosmopolitan legality differs from demoliberal legality. However, in spite of these differences, cosmopolitan struggles may profitably combine cosmopolitan legal strategies with demoliberal strategies, thus giving rise to political and legal hybrids of different sorts. Human rights struggles offer themselves to this kind of legal hybridization. Emancipatory projects, guided by principles of good order and good society, always combine different sets of objectives, some of which may be pursued within limits through demoliberal strategies when they are available. It may also happen that the political, cultural and social context in which cosmopolitan struggles take place forces them to be formulated in demoliberal terms. This is likely to occur in two contrasting situations in which more radical struggles may be met with efficient repression: in societies in which a strong political and legal demoliberal culture coexists with overarching conservative ideologies as is most notably the case of the U.S.; and in dictatorial or quasi-dictatorial regimes, and, more generally, in situations of extremely low intensity democracy as is the case of many peripheral countries and of some semiperipheral countries. In both situations, transnational coalitions and transnational advocacy will be often necessary to sustain cosmopolitan legality.

But the legal hybridization between cosmopolitanism and demoliberalism has a deeper source. It stems from the concept of social emancipation itself. Substantive concepts of social emancipation are always contextual and embedded. In any given context, however, it is possible to define degrees of social emancipation. I distinguish between thin conceptions and thick conceptions of social emancipation, according to the degree and quality of liberation or social inclusion they carry. The thin conception of social emancipation underlies, for instance, the struggles by which vicious forms of oppression or extreme forms of social exclusion are replaced by milder forms of oppression or by non-fascist forms of social exclusion. As illustrated below with the case of San José de Apartadó in Colombia, sheer physical survival and protection against arbitrary violence may be the only and simultaneously the most cherished emancipatory objective. On the other hand, the thick conception of emancipation entails not just human survival but human flourishing guided by radical needs, as Agnes Heller has called them. According to Heller, radical needs are qualitative and remain unquantifiable; they cannot be satisfied in a world based on subordination and superordination; they drive people toward ideas and practices that abolish subordination and superordination.²⁷ Although the distinction between thin and thick conceptions of social emancipation may be made in general terms, the kinds of objectives that fall in one or the other term of the distinction can only be determined in specific contexts. It may well be the case that what counts as a thin conception of emancipation for a given cosmopolitan struggle in a given society and historical moment may count as a thick conception for another cosmopolitan struggle in another geographical and temporal context.

27. Heller, 1976, 1993.

In light of this distinction, it can be said that cosmopolitan and demoliberal legal strategies are more likely to be combined whenever thin conceptions of social emancipation tend to dominate the emancipatory projects of cosmopolitan groups and struggles. This will be, for instance, the case of cosmopolitan groups fighting for basic civic and political rights without which they can neither mobilize nor organize.

6. COSMOPOLITAN LEGALITY IN ACTION

I will now briefly mention some instances in which legal practices and claims are constitutive components of cosmopolitan struggles against neoliberal globalization and social fascism. As I said above, rather than an exhaustive analysis of the myriad manifestations of legal cosmopolitan practices around the world, I seek to map some of the most salient and promising ones as a way to lay out a research agenda on cosmopolitan legality and spot the potential for linkages among seemingly disparate struggles.²⁸ Specifically, I will deal with five clusters of cosmopolitan legalities: law in the contact zones, law and the democratic rediscovery of labor, law and non-capitalist production, law for non-citizens, and the law of the state as the newest social movement.

6.1. Law in the contact zones

Contact zones are social fields in which different normative life worlds meet and clash. Cosmopolitan struggles often take place in such social fields. Normative life worlds, besides providing patterns of authorized or legitimate social, political and economic experiences and expectations, appeal to expansive cultural postulates and therefore the conflicts among them tend to involve issues and mobilize resources and energies far beyond what seems to be at stake in the manifest version of the conflicts. The contact zones that concern me here are those in which different legal cultures clash in highly asymmetrical ways, that is, in clashes that mobilize very unequal power exchanges. For instance, indigenous peoples enter asymmetric encounters with dominant national cultures, as do illegal immigrants or refugees trying to survive in a country not their own.

28. As I said above, in mapping cosmopolitan legal practices I draw heavily from the research project "Reinventing Social Emancipation", which I directed between 1998-2002 and whose results have been published as Santos (org), 2002d, 2002e, 2000f, 2002g, 2002h. Although the project did not have an explicit sociolegal dimension to it, many of the case studies carried out by the project's participants from Brazil, India, Colombia, Mozambique, South Africa and Portugal document subaltern struggles in those countries that resort to legal strategies.

Contact zones are therefore zones in which rival normative ideas, knowledges, power forms, symbolic universes and agencies meet in unequal conditions and resist, reject, assimilate, imitate, subvert each other giving rise to hybrid legal and political constellations in which the inequality of exchanges are traceable. Legal hybrids are legal and political phenomena that mix heterogeneous entities operating through disintegration of forms and retrieval of fragments, giving rise to new constellations of legal and political meaning. As a result of the interactions that take place in the contact zone both the nature of the different powers involved and the power differences among them are affected. The latter may indeed intensify or attenuate as a result of the encounter.

Complexity is intrinsic to the definition of the contact zone itself. Who defines who or what belongs to the contact zone and what does not? To whom belongs the line that delimits the contact zone both externally and internally? Indeed the struggle for the appropriation of such line is the meta-struggle for cosmopolitan legality in the contact zone. Another source of complexity lies in that the differences between cultures or normative life worlds present in the contact zone may be so wide that they are incommensurable. The first task is then to approximate the cultural and normative universes, to bring them so to say, "within visual contact" so that there can be exchanges among them. Paradoxically, because of the multiplicity of cultural codes present, the contact zone is relatively uncoded or substandard, a zone for normative and cultural experimentation and innovation.

The question of power is the central one for cosmopolitan struggles as the subaltern groups fight for equality and recognition and the dominant groups against them. Cosmopolitan legality is thus the legal component of struggles that refuse to accept the power status quo and the systematic harm it produces and fights them in the name of alternative cultural and normative legitimacies. Cosmopolitan legality in the contact zone is anti-monopolistic in that it recognizes rival legal claims and organizes the struggle around the competition among them. Legal plurality is therefore inherent to the contact zone.

What is at stake in the contact zone is never a simple determination of equality or inequality since alternative concepts of equality are present and in conflict. In other words, in the contact zones the law of equality does not operate in separation from the law of recognition of difference. Cosmopolitan legal struggle in the contact zone is a pluralist one that fights for transcultural or intercultural equality of differences. This equality of differences includes the transcultural equal right of each group involved in the contact zone to decide whether to remain different or mix with others and form hybrids.

Cosmopolitan legal struggles in the contact zone are particularly complex and the legal constellations that emerge from it tend to be unstable, provisory and reversible. Cosmopolitan legal struggle is not, of course, the only type of legal struggle that may intervene in the contact zone.

The contrast between demoliberal legality and cosmopolitan legality is best highlighted by the types of contact zone sociability that each legal paradigm tends to privilege or sanction. I distinguish four types of sociability: violence, coexis-

tence, reconciliation, and conviviality. *Violence* is the type of encounter in which the dominant culture or normative life world vindicates full control over the contact zone and as such feels legitimated to suppress, marginalize or even destroy the subaltern culture or normative life world. *Coexistence* is the sociability typical of cultural apartheid in which different cultures are allowed to unfold separately and in which contacts, intermingling or hybridizations are strongly discouraged if not outright forbidden. *Reconciliation* is the type of sociability based on restorative justice, on healing past grievances. It is a past-oriented rather than a future-oriented sociability. For this reason the power imbalances of the past are often allowed to go on reproducing themselves under new guises. Finally, *conviviality* is, in a sense, a future-oriented reconciliation. Past grievances are settled in such a way as to make possible sociabilities grounded in tendentially equal exchanges and shared authority.

Each of these sociabilities is both the producer and the product of a specific legal constellation. A legal constellation dominated by demoliberalism tends to favor reconciliation and, whenever impossible, coexistence or even violence. A legal constellation dominated by cosmopolitanism tends to favor conviviality.

In the following, I identify the main instances in which cosmopolitan legal strategies intervene today in the contact zones. In most cases such interventions take place through legally hybrid strategies, in which cosmopolitanism combines with demoliberalism. As mentioned above, depending on the direction of political mobilization, such strategies may end up favoring cosmopolitan or demoliberal outcomes.

6.1.1. Multicultural human rights

The crisis of Western modernity has shown that the failure of progressive projects concerning the improvement of life chances and life conditions of subordinate groups both inside and outside the western world was in part due to lack of cultural legitimacy. This is the case with human rights and human rights movements since the universality of human rights cannot be taken for granted. The idea of human dignity can be formulated in different “languages”. Rather than being suppressed in the name of postulated universalisms, such differences must be mutually intelligible through translation and what I called diatopical hermeneutics.²⁹

Human rights are an issue that transcends the law in the contact zone. In the contact zone what is at stake is the encounter between human rights as a specific cultural conception of human dignity and other rival or alternative conceptions. While demoliberal legality will defend, at best, a sociability of reconciliation premised upon the superiority of Western human rights culture, cosmopolitan legality

29. I will not dwell on human right and multiculturalism here, as I have discussed this issue elsewhere (Santos, 2002b).

will seek, through diatopical hermeneutics, to build a sociability of conviviality based on a virtuous hybridization among the most comprehensive and emancipatory conceptions of human dignity subscribed both by the human rights tradition and by the other traditions of human dignity present in the contact zone.

This cross-cultural reconstruction is premised upon a politics of recognition of difference able to link local embeddedness and grassroots relevance and organization, on one hand, and translocal intelligibility and emancipation, on the other. One of such linkages lies in the issue of group rights or collective rights, an issue that is suppressed or trivialized by demoliberal legality. Cosmopolitan legality propounds a politics of rights in which individual and collective rights, rather than cannibalizing each other, strengthen each other. As is the case with all the other instances of cosmopolitan legality, cosmopolitan human rights in the contact zone are to be carried out or struggled for by local, national and global actors capable of integrating human rights in more encompassing cosmopolitan emancipatory projects.

6.1.2. The Traditional and the Modern: The other modernities of indigenous peoples and traditional authorities

This is another contact zone in which the politics of legality plays an important role and in which demoliberalism and cosmopolitanism offer alternative conceptions.

The politics of legality in this contact zone expresses itself through alternative conceptions of legal plurality. As I mentioned above, the first and probably the central issue concerning the contact zone is the one of who defines the external and internal boundaries of the contact zone and with which criteria. This is a particularly burning issue in this contact zone since in the last two hundred years Western modernity has claimed for itself in practice the prerogative of defining what is modern and what is traditional. This contact zone, more than any other, has been the creation of one of the cultural formations that meet and clash in the contact zone and as such the traditional is as modern as modernity itself. It is the other face of modernity. Thus constructed this dichotomy was one of the main organizing principles of colonial rule and has continued under different forms in the post-colonial period. As has happened with other empirical dichotomies, it has often been appropriated by subordinate groups to resist colonial or post-colonial oppression, and it has also resulted in different kinds of legal hybrids.

Based on my own field research I identify two instances in which the dichotomy traditional/modern is played out in legal strategies. The first concerns the role of traditional authorities in Africa today.³⁰ For instance, in Mozambique, during the post-independence revolutionary period (1975-1989) traditional authorities were

30. See Santos and Trindade, 2003.

viewed as remnants of colonialism and as such marginalized. In the following period, the adoption of liberal democracy and the imposition of structural adjustment by the IMF converged to open the space for a new role for the traditional authorities. The internal transformations they underwent to respond to new tasks and adapt to new roles such as participation in land management bear witness to the possibilities underlying the invention of tradition. The second instance of the unfolding of the traditional/modern dichotomy through legal strategies is the struggle of indigenous people for the recognition of their ancestral political and legal systems in Latin America.³¹

In both cases, despite the difficult conditions in which the struggles unfold, there is room for cosmopolitanism. In both cases, though in different ways, the traditional has become a successful way of claiming modernity, another modernity. Under the violent impact of neoliberal globalization and in light of the collapse of the state, it has come to symbolize what cannot be globalized. In its own specific way it is a form of globalization that presents itself as resistance against globalization.

Thus reinvented, the dichotomy between the traditional and the modern is today more crucial than ever. This is a privileged field for the emergence of legal hybrids. In different regions, such hybrids display different traits. For instance, legal hybrids molded by traditional authorities in Africa differ from those resulting from the interaction between national state laws and indigenous legal systems in Latin America as well as in Canada, India, New Zealand, and Australia. In Latin America the rise of multicultural constitutionalism has become a privileged ground for the disputes in the contact zone between demoliberalism and cosmopolitanism.

6.1.3. Cultural citizenship

This is a contact zone of great importance in which different political and legal strategies have been fiercely disputing the terms of conflict and negotiation between principles of equality (citizenship) and principles of difference (cultural identities). Though thus far theorized to convey critically the experience of Latinos in general and Mexicans in particular in the U.S. in their struggle to claim belonging without surrendering cultural identity, the concept is of a much broader scope and is relevant to describe similar struggles throughout Europe, and indeed in all continents.

In the U.S., the growing LatCrit literature has cogently articulated the central issues of cultural citizenship as they relate to Latino migrants and their descendants. Central to this literature are legal struggles located at the intersection —indeed,

31. See Santos and García-Villegas, 2001.

“intersectionality” is a key concept in this body of literature— of Latino and North American cultures and life experiences, such as those revolving around immigration, education, and language.³² In Europe, as Sassen³³ has shown, regulations and legal struggles on immigration and cultural citizenship are no longer played out exclusively at the national level. Instead, the “de-facto transnationalization of immigration policy making” resulting from globalization, on the one hand, and “the growth of a broad network of rights and court decisions,” on the other, mean that today cultural citizenship is increasingly a site of legal struggles at the regional scale.³⁴

This site of cosmopolitan legality thus entails a cultural and political process by means of which oppressed, excluded or marginalized groups create subaltern public spheres or insurgent civil societies out of the non-civil society in which they have been thrown into by the dominant power structures. Here lies the oppositional character of the quest for cultural citizenship and its success depends on the capacity of subaltern groups to mobilize cosmopolitan legal and political strategies. The objective is to promote sociabilities of conviviality between different cultural identities as they meet in and dispute a potentially common ground of inclusion and belonging. Through conviviality, the common ground while becoming more inclusive, becomes also less common in the sense of less homogeneously common to all those claiming to belong to it.

6.1.4. Intellectual property rights, biodiversity and human health

The discussion on the meaning of intellectual property rights is today the epicenter of a debate about the roots of modern knowledge. By transforming one among many worldviews into a global, hegemonic view, Western science localized and condensed the remaining forms of wisdom as “the other”. Thus, these other forms became indigenous —because distinct—, and particular —because located. In this paradigm, knowledge and technology are things —objects which can be valued and traded. To allow for this valuing and trading, knowledge and technology must be regarded as property, and orthodox intellectual property rights are the rules for the ownership of this form of property.

This topic constitutes today the battleground for one of the most serious conflicts between the North and the South.³⁵ It covers multiple issues, each with

32. A useful survey of these and other topics within the LatCrit debate can be found in Stefania, 1998.

33. Sassen, 1999.

34. *Ibid.*, p. 156.

35. The literature on this topics is immense. See, for example, Brush and Stablinsky (eds.), 1996; Shiva, 1997; Visvanathan, 1997; Posey, 1999. Different case studies of conflicts and possible dialogues among knowledges can be found in the results of project “Reinventing Social Emancipation” See www.ces.fe.uc.pt/emancipa/ and Santos 2002f and 2002g.

a variety of legal, political and cultural ramifications. Under this heading I will deal exclusively with those that involve the contact zone. The contact zone here is the time-space where alternative and rival knowledges meet: on one side, the Western-based modern science and technology; on the other side, the local, community-based, indigenous, peasant knowledges that have been the guardians of biodiversity. This is not a new contact zone but it is one that has gained great prominence in recent years due to the microchip and biotechnology revolution. This scientific innovation has made it possible to develop in a short time new pharmaceutical products out of plants known to cure certain diseases. Mostly beyond the reach of biotechnological and pharmaceutical industries, the knowledge of the therapeutic value of plants is in the hands of *shamans*, *mamos*, *taitas*, *tinyanga*, *vanyamusoro*, *curandeiros* or traditional healers. In sum, it is a non-western knowledge which, because not produced according to the rules and criteria of modern scientific knowledge is conceived of as traditional. The key question in this area is, thus: while biotechnology and pharmaceutical firms claim intellectual property rights over the processes by which they obtain the active ingredient in plants, can the holders of traditional knowledge equally protect, in ways that suit them, their knowledge of the curative properties of the plants without which biodiversity cannot be put to industrial use?

In this contact zone, the clash is therefore a double one, between distinct knowledges and between rival conceptions of property. The dichotomy traditional/modern is very much present in this contact zone. What is “traditional” about traditional knowledge is not the fact that it is old, but the way it is acquired and used, that is, the social process of learning and sharing knowledge, which is unique to each local culture. Much of this knowledge is very often quite new, but it has a social meaning and legal character, entirely different from the knowledge that indigenous peoples have acquired from settlers and industrialized societies.

The contact zone between traditional herbal knowledge and modern scientific knowledge of biodiversity is a social field of fierce political and legal disputes. Since most of the biodiversity exists in the South, particularly in indigenous peoples’ territories, the legal and political issue that arises is under what conditions can access to biodiversity be granted, as well as what type of compensation must be awarded to the concerned states or communities for the knowledge —given the huge profits made by biotechnology and pharmaceutical firms through the exploitation of biodiversity. Even assuming that traditional knowledge must be protected, who will protect it and how? With which kinds of controls over the protection mechanisms?

The stakes for indigenous and local communities have risen dramatically as a result of the growing use of biotechnology in production of goods for export and the adoption of the 1995 WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).³⁶ These two factors have created a large potential

36. See Correa, 2000; The Crucible Group, 1994.

market for the knowledge and resources of indigenous and local communities and raised significant fears that these resources will be misappropriated. As a consequence, indigenous and local knowledge is receiving increasing international attention—not only because of its relationship to indigenous and communal struggles for self-determination and group rights, but also because of its linkage with the clash between traditional knowledge and modern science. Recent high-profile cases involving ayahuasca (a traditional herb used as medicine and hallucinogen) from South America, turmeric from India, and the soapberry from Africa, for example, have drawn international attention and have put the topic on the agenda of cosmopolitan social movements and organizations around the world.³⁷

The resolution of the conflict will depend on the type of legal paradigm that prevails and will give rise to a certain type of sociability in the contact zone. So far demoliberalism has been the dominant paradigm engendering a sociability of violence which in this case assumes the form of biopiracy³⁸ or at best reconciliation. Some indigenous leaders have called for coexistence —i.e., granting access to indigenous knowledge subject to conditions established by the indigenous peoples— a proposal which, except in some restricted cases, seems quite unrealistic given the pressure, coming from opposing sides, for hybrid sociabilities which in these cases mean often informal arrangements that are easily manipulated by the stronger partner. Whenever reconciliation is favored, a past-oriented settlement is reached that, through compensation (monetary or otherwise), makes some concessions to indigenous/traditional knowledge while confirming the overriding interest of biotechnological knowledge.

The subaltern cosmopolitan agenda calls for conviviality ruled both by the principle of equality and the principle of difference. In its terms the cultural integrity of non-western knowledge should be fully respected through the recognition on an equal basis of the rival knowledges and rival conceptions of property at play. The indigenous movements and allied transnational social movements contest this contact zone and the powers that constitute it, and fight for the creation of other, non-imperial contact zones, where relations among the different knowledges may be more horizontal, bringing a stronger case to the translation between biomedical and traditional knowledges. Accordingly, it would be up to the indigenous/traditional communities to determine the conditions under which a possible entry in the sphere of modern capitalist economy might further their communitarian interests in the future. In this and similar struggles³⁹ undertaken by movements confronting the global orthodoxy of intellectual property rights and the monopoly of scientific modern knowledge, subaltern cosmopolitan legality has a key role to play.

37. Kothari, 1999.

38. Shiva, 1997.

39. Case studies of such struggles can be found in Posey (ed.), 1999; Meneses, 2002; Xaba, 2002; Escobar and Pardo, 2002; Flórez, 2002; Coelho, 2002; Santos, 2002 (under Laymert Santos); Randeria, 2002.

Finally, another instance of cosmopolitan legality in the field of intellectual property rights has arisen over the last few years. Here the contact zone is not as visible, although the clash between different conceptions of property and of health indeed is. It relates to the global HIV/AIDS pandemic. According to Klug, HIV/AIDS activists and non-government organizations such as *Medecins Sans Frontieres* and *Oxfam* have identified patent protection as one of the core causes of the high drug prices that effectively deny access to life-saving medicines to millions of poor people in developing countries. Thus, their campaigns have now focused on the newly patented medicines to treat opportunistic infections and the retro-viral drugs that have made HIV/AIDS a chronic illness in the developed world rather than a death sentence.⁴⁰ It seems that the counter-hegemonic global coalitions against intellectual property rights in this field are yielding some fruits. Klug reports on the withdrawal of two major legal cases at the root of which is HIV/AIDS— one against South Africa, in a South African court, based on a complaint by the pharmaceutical industry, and the other against Brazil, in the WTO dispute settlement panel, brought by the U.S.⁴¹ Moreover, due to international pressure the WTO, in its annual meeting in Doha, Qatar (November, 2001), has agreed that the TRIPS agreement “does not and should not prevent members from taking measures to protect public health...[and] that the agreement can and should be interpreted and implemented in a manner supportive of WTO members’ rights to protect public health and, in particular, to promote access to medicines for all”. In light of this Klug concludes that “the recognition that international economic law, and TRIPS in particular, may have profound implications for a country’s public health strategy has reopened the debate over the impact of trade rules on human rights and public policies aimed at addressing issues of poverty, inequality and health”.⁴²

6.2. Law and Democratic Rediscovery of Labor

The democratic rediscovery of labor is a central factor in the construction of cosmopolitan sociabilities. Labor is for that reason one of the social fields in which the clashes between demoliberalism and cosmopolitanism are most violent at the local, national and global levels. The disembedding of the economy from society brought about by neoliberal globalization, which reduces labor to a mere factor of production, has curtailed the possibility of labor to sustain and be a conduit for the enjoyment of rights of citizenship even in the core countries. This has involved a massive intervention of neoconservative legality against the labor laws and labor rights that liberalism and demosocialism had promoted under the pressure of labor movements.

40. Klug, 2001a, 2001b.

41. Klug, 2000.

42. Klug, 2001, p. 4.

Most particularly in this area, demoliberalism has been in recent years unable or unwilling to confront the neoconservative tide. It has mostly surrendered to it. This has occurred mainly through drastic changes in the relevant scales of political and legal intervention. Neoliberal globalization has managed to move the nerve system of labor regulation to the global scale and has delivered it to unfettered neoconservative politics and legality. As demoliberalism has remained a national politics and legality, its credibility has been eroded as the national scale of labor regulation has yielded to the global scale. This is, therefore, a field in which the confrontation in the years to come will most likely be between conservative demoliberalism and cosmopolitanism.

Contrary to the expectations of the nineteenth-century labor movement, capitalists of the entire world, not the workers, have united. While capital globalized itself, labor unions built their strength at the national level. In order to confront global capital, the labor movement must restructure itself profoundly. It must incorporate the local and the transnational scales as efficiently as it once incorporated the national scale. It is also the new task of the union movement to reinvent the tradition of workers' solidarity and the strategies of social antagonism. A new, wider circle of solidarity must be designed in order to meet the new conditions of social exclusion and the forms of oppression existing in relations *in* production, thus going beyond the conventional scope of union demands—i.e., those concerning the relations *of* production, that is, the wage relation. On the other hand, the strategies of social antagonism must be reconstructed. A more political labor movement is called for to fight for a civilizing alternative, where everything is connected to everything else: work and the environment; work and the educational system; work and feminism; work and collective social and cultural needs; work and the welfare state; work and the elderly, etc. In a word, the workers' demands must not leave out anything affecting the life of the workers and the unemployed. This is the spirit, for instance, of the type of "social movement unionism" that, as Moody⁴³ has shown, has slowly emerged in some countries of the global South.⁴⁴

The most sustained instances of cosmopolitan legality in place today can be brought together under the same normative idea—i.e., the idea that labor must be democratically shared on a global scale. The permanent technological revolution in which we find ourselves allows for the creation of wealth without creating jobs. The available stock of work must, therefore, be redistributed on a world scale. This is no easy task for, even if labor, while a factor of production, is today globalized, the wage relation and labor markets are as segmented and territorialized as before. Four initiatives seem most promising. They are all of global dimension, even if unequally distributed in the global economy.

43. Moody, 1998.

44. For a discussion of strategies for forging links of solidarity among unions around the world, see in general Gordon and Turner, 2000.

The first initiative entails the *reduction of working hours*. Although this is a crucial initiative to redistribute labor, it has so far had very little success except in a few European countries. For that reason I will leave it as an item on the agenda of cosmopolitan legality without pursuing it any further here.

The second initiative concerns the implementation of *international labor standards*, that is, the definition of basic rights that must be guaranteed to workers around the world and whose protection is a prerequisite for the free circulation of products in the global market. The issue of international labor standards constitutes today a fascinating site of scholarly discussion and political mobilization. It comprises a wide range of proposals and alternatives aimed at stopping the race to the bottom in which countries in the South are forced to engage in the absence of international labor regulation. Some of the strategies being discussed and developed around the world include the reinforcement and effective application of ILO conventions, the inclusion of social clauses in global trade agreements like the WTO or in regional ones like NAFTA, the adoption of codes of conduct by transnational corporations under pressure from consumers in the North and the creation of mechanisms for monitoring compliance with such codes, and the use of unilateral sanctions against countries sponsoring exploitative work conditions.⁴⁵

In order not to generate discriminatory protectionism, international labor standards must be adopted alongside two other initiatives: the aforementioned reduction of working hours, and the flexibilization of migration laws with a view to the progressive denationalization of citizenship. The latter will encourage a more egalitarian sharing of labor worldwide, promoting population flows from the peripheral regions to the core regions. Nowadays, and contrary to what the propaganda of xenophobic nationalism in core countries, such flows take place predominantly between peripheral countries and constitute for them an unbearable burden. Against the social apartheid to which precontractualism and postcontractualism subjects immigrants, citizenship must be denationalized, in order to grant immigrants conditions that guarantee both equality and respect of difference, so that the sharing of labor may also become a multicultural sharing of sociability.

The third initiative, very much connected with the previous one, concerns the *anti-sweatshop movement*. The movement is based on a network of different organizations, rather than on a centralized body. It has thus far focused on raising consumer consciousness and creating consumer pressure against firms that have been found to violate workers' rights in their offshore facilities or to tolerate such violations in factories with which they subcontract. Through consumer pressure, anti-sweatshop organizations have been pushing for the adoption of codes of conduct by large firms, particularly in the apparel and footwear industries.⁴⁶

45. For a survey of these different strategies, see Compa and Diamond, 1996.

46. See Ross, 1997, for a survey of the political and legal strategies undertaken by transnational coalitions for the defense of workers' rights. For a discussion of the advantages and drawbacks of codes of conduct as means to stem sweatshops, see Sabel *et al.*, 2001.

Currently, transnational cosmopolitan coalitions for the elimination of sweatshops include labor unions, consumers' organizations, religious groups, human rights NGOs, independent monitoring agencies, students' organizations, umbrella agencies like the Workers Rights Consortium and the Fair Labor Association—and, though still with notorious reluctance, some transnational corporations. In light of the aggressive and pervasive impieties of global neoliberalism and the incapacity or unwillingness of demoliberal state legality, wherever still present, to offer any credible resistance, cosmopolitan struggles in this area must give a special priority to the political and ethical construction of the conflict before any legal strategy is attempted. Such strategy will have a double focus.

First, the subaltern groups involved in this struggle and their allies know by experience how unreliable demoliberal politics and legality is today in the social field of labor and labor relations. On the other hand, given the unfavorable conditions, the movement cannot afford not to use whatever legal tools are available. However, to avoid the frustration caused by unjust defeats and the negative impact it may have on the motivation of activists, it is imperative that the cosmopolitan groups try to mobilize demoliberal legality in a non-hegemonic fashion by putting pressure on courts and legislators through innovative political mobilization. The main objective of such mobilization resides in the symbolic amplification of the violation of labor rights by transforming the legal matter at hand into a moral one—the moral and unjust denial of human dignity. This has indeed been the tactics used in the most visible successful struggles against sweatshops, which have managed to combine legal strategies in local courts with constant international pressure from sympathetic organizations and social movements.⁴⁷

The second focus of cosmopolitan legality resides in the subaltern global legality as it is emerging from the abovementioned struggle for international labor standards and also from a new convergence between human rights and labor rights which by now is very embryonic and full of ambiguities. The objective here is to explore the extent to which what has been lost, in terms of labor rights, at the national scale, can be recovered at the global level. Recent discussions within the ILO to define a list of “core labor rights” to be protected as basic human rights around the world go in this direction, although which rights are to be included in such a list is a matter of contention.

Finally, the fourth initiative toward a rediscovery of labor resides in the *recognition of the polymorphism of labor*, that is, the idea that the flexibility of work designs and labor processes do not necessarily entail the precariousness of the labor relation. A regular full-time job for an indeterminate period of time was the ideal-type of labor that has guided the workers' movement since the nineteenth century. However, such ideal-type has some sort of equivalent in reality only in the core countries, and only during the brief period of Fordism. To the extent

47. *Ibid.*

that the so-called atypical forms of labor proliferate and the state promotes the flexibilization of wage relations, this ideal-type is getting farther and farther away from the reality of labor relations. The atypical forms of labor have been used by global capital as a means of transforming labor into a criterion of exclusion, which happens whenever the wages do not allow workers to rise above the poverty line. In such cases, recognizing labor polymorphism, far from being a democratic exercise, foreshadows an act of contractual fascism. In this domain, the cosmopolitan agenda assumes two forms. On the one hand, the recognition of the different types of labor is democratic only in so far as it creates for each type a minimal threshold of inclusion. That is to say, labor polymorphism is acceptable only to the extent that labor remains a criterion for inclusion. On the other hand, professional training must be incorporated in the wage relation no matter what the type and duration of the job.

6.3. Law and Non-Capitalist Production

A market economy is within limits desirable. On the contrary, a market society, if possible, would be morally repugnant and most probably ungovernable. It would amount to generalized social fascism. This is, however, the project that neoliberal globalization is trying to put into practice on a global scale. Global capitalism is not just the global extension of free markets and the production of goods and services as unrestricted as possible from state regulation but also the commodification of as many aspects of social life as possible. Commodification means both the creation *ab ovo* of commodities—that is, the creation of products and services valued and exchanged according to market rules, and the transformation into commodities of products and services which have been produced and distributed before on a non-market basis. The latter case means, for instance, that social institutions—such as education, health care or social security—are converted into and treated as service commodities often to competitive forces and the dictates of the market and commercial interests.

In the social field conventionally known as the economy, cosmopolitanism has a four-fold objective. The first one refers to the conditions and relations of production of commodities, namely the wage relation. This is the focus of the strategies aimed at the democratic rediscovery of labor analyzed above. The second objective is decommodification, that is, seeking that public goods and services and social institutions are not privatized, or if privatized, are not fully subjected to the capitalistic market rules. This is the struggle, for instance, of impoverished communities around the world—most notably in recent times in Bolivia—against the takeover of communal and affordable forms of water distribution by TNCs. The third objective is the promotion of subaltern non-capitalistic markets, that is, markets run by solidarity rather than by greed. Finally, the fourth objective is to further alternative systems of production, non-capitalistic production for either capitalistic or non-capitalistic markets. As I have argued

elsewhere in surveying case studies on initiatives undertaken along these four lines,⁴⁸ alternative economies currently combine ideas and practices taken from multifarious traditions, from cooperativism to alternative development to market socialism.

The second objective has been the ground for progressive alliances of cosmopolitanism with demoliberalism. The third and fourth aims (together with the first one) are those most characteristic of cosmopolitanism and probably the most promising in spite of the odds against them. As it is the case in general with cosmopolitanism, law is here a subordinate component of the cosmopolitan struggles. For precise purposes or in specific political contexts law may however be an important tool if not the most important tool of a given struggle. As it is characteristic of cosmopolitan legality in general, law here means not just state law but also cosmopolitan global law, subaltern community law, etc.

The initiatives under way are multiple and highly diverse. For instance, cooperatives of informal workers —from garbage pickers in India⁴⁹ and Colombia⁵⁰ to housewives in the favelas of Sao Paolo⁵¹— as well as cooperatives of industrial workers laid off during process of corporate “downsizing”⁵² have used imaginatively the tools of state law —and its cracks— to advance solidaristic forms of production and distribution of goods and services. In many other cases, the third and fourth above-mentioned goals are pursued together as the two components of the same initiative. Alternative markets are often promoted for products and services produced by non-capitalist units of production. Concerning the third aim, the creation of alternative markets, the most salient cosmopolitan initiative is the fair trade movement. According to the Fair Trade Association: “The word ‘fair’ can mean a lot of different things to different people. In alternative trade organizations, ‘fair trade’ means that trading partners are based on reciprocal benefits and mutual respect; the prices paid to producers reflect the work they do; that workers have the right to organize; that national health, safety, and wage laws are enforced; and that products are environmentally sustainable and conserve natural resources”⁵³. Very much in the same vein, Mario Monroy, a Mexican fair trade activist and director of “Comercio Justo Mexico, A.C.,” affirms: “What is characteristic of fair trade is the co-responsibility between the producer and the consumer. The small producer is responsible for the production of a product of excellent quality, ecologically responsible and produced without human exploitation. Thus, fair trade is the means, the end is the person and the organization. The

48. Santos and Rodríguez, 2002. This and the other papers from the “Reinventing Social Emancipation” project are available in English at www.ces.fe.uc.pt/emancipa/.

49. Bhowmik, 2002.

50. Rodríguez, 2002.

51. Singer, 2002.

52. Bhowmik, 2002; Singer, 2002.

53. <http://www.fairtradefederation.com/faq.html>. Visited 07-02-02.

consumer is responsible for paying a just price, which is not an alms, but rather a product of much quality, caring in nature and produced with love".⁵⁴

Fair trade is a promising tiny island in the unjust ocean of capitalist world trade. Of \$3.6 trillion of all goods exchanged globally, fair trade accounts for only .01%. But it is growing. Cosmopolitan legality may operate at two levels in the fair trade movement: through the legal challenge of global legality for violating national laws resorting for that to demoliberal legal tools and through the struggle for cosmopolitan global law in this field by pressing for the inclusion of fair trade clauses in international trade agreements. The first legal strategy is being used, for instance, by the United Steelworkers of America in their challenge to the constitutionality of NAFTA. The latter strategy is a constitutive component of the fair trade movement, as it fights for the principles upon which fair trade agreements should be based: multilateralism, democracy, transparency, representation, equity, subsidiarity, decentralization, diversity and accountability.

The legal component of these cosmopolitan struggles consists often in pressing for local and national laws that establish special legal regimes for popular economic organizations to allow them to compete on fair terms without giving away the local values and local culture embedded in their products. As the nation states are in general incapable or unwilling to resist the neoliberal global law in principle hostile to what it sees as barriers to trade or the infringement of market rules, the local or community governments are often more open to such alternative legislation. In this way, local/global linkages may be developed.

Another instance of law and alternative production systems are the new forms of counter-hegemonic legal plurality being advanced by movements and organizations of landless peasants or of small farmers in their struggle for access to land and land reform. This new form of cosmopolitan legality may in some cases involve the facilitative cooperation of the state—as was the case for sometime in South Africa—but in most cases they confront the state and state legislation—as in India, Brazil⁵⁵ and Mexico. The fate of this type of cosmopolitan legality is strictly dependent on the political mobilization which the movement or organization can generate. Very often, subaltern legal enclaves are created in the occupied land—as the *assentamentos* (settlements) of the Movement of the Landless in Brazil—and they last as long as the occupation may be sustained. In some cases it is possible to develop alliances between this cosmopolitan legality and the demoliberal state legality as, for instance, when the state is forced to “regularize” the land occupation.

54. Mario Monroy, talk given at the University of Wisconsin-Madison in April, 2001. According to Transfair, a monitoring and certifying agency for fair trade, “the world price (of coffee) is 60 cents a pound and after the dealers take their cut, the small producers end up getting between 20 and 30 cents a pound. Thus through fair trade there is a considerable benefit for the producers; after paying the cooperative’s costs, they receive between \$1 and \$1.06 per pound”.

55. See Navarro, 2002; Carvalho, 2002; Lopes, 2002.

These types of alliances may also take place in urban areas. Such might be the case of the informal housing in the cities along the U.S.-Mexico border as studied by Jane Larson. According to her, poor households in the U.S. have been increasingly turning to informal housing in order to survive the lack of basic social guarantees, in particular the squeeze between falling real wages and declining governmental support for either affordable housing or income maintenance.⁵⁶ And indeed informal housing is already moving from the borderlands to the heartlands. Given the improbability that state housing policies will provide normal housing for the working poor Larson calls for a positive engagement with informality. Rather than declaring it illegal, “regularize” it. Regularization “scales back regulatory standards for some populations and “legalizes” some illegal housing conditions, in a program aimed at encouraging self-help investment in shelter.

As in the case of the landless peasants, the cosmopolitan potential of regularization lies in the space it opens for the political organization and mobilization of the working poor (residents’ associations, community organizations, etc.), and the pressure it can exert on the state to commit more resources to this area of social policy and to gradually upgrading informal housing to the level of adequate housing. This is what Larson calls “progressive realization”, an alternative model of legality.⁵⁷ Progressive realization, combined with the political mobilization that makes it possible as something other than state populism, distinguishes itself from both the neoconservative repression of informality without an alternative and the neoconservative celebration of informality *a la* Hernando de Soto.⁵⁸

6.4. Law for non-citizens

Citizenship as the sum total of rights effectively exercised by individuals or groups is a matter of degree in capitalist societies. There are the super-citizens—those that belong to the intimate civil society—and the rest. The rest which is the strange civil society includes multiple shades of citizenship. And then are the non-citizens, those individuals and social groups belonging to the non-civil civil society and to borderlands between the strange and the non-civil civil society. The life experiences of the people in the latter category correspond to this absence of citizenship and indeed characterizes not only their relations with the state but also their interactions with other people, including at times those sharing the non-civil civil society. Such life experiences differ according to whether the non-citizen has been expelled from some kind of a social contract and therefore of the social inclusion it made possible (post-contractualism) or whether the non-citizen has never experienced any kind of contractual social inclusion (pre-contractualism). In

56. Larson, 2002, p. 142.

57. *Ibid.*, p. 144.

58. De Soto, 1989.

the first case citizenship is lived as a ruin, or as a memory, while in the second it is either an unrealistic aspiration or an utterly unintelligible idea. Non-citizenship is the degree zero of social contract based inclusion. Whatever social inclusion is achieved at this level is achieved on a non-citizenship basis, on paternalistic philanthropy or, on genuine solidarity. It is in other words an inclusion that confirms if not fosters the system of social exclusion.

One may wonder what might be the role of law in situations of non-citizenship, let alone that of cosmopolitan law. Non-citizenship is the intended or unintended result of demoliberal legality. For demoliberalism, non-citizenship is a marker of its impotence as a political practice, while for cosmopolitanism non-citizenship is the negative imperative that generates a task for social inclusion and emancipation. Indeed cosmopolitanism focuses specifically on non-citizenship and the instances of cosmopolitan legality analyzed above illustrate this. After all the indigenous peoples and the landless peasants are, in Latin America at least, the most cruel example of non-citizenship.

Under this heading I refer more generally to situations in which minimal dignifying inclusion is sought and thus in which it is hard to think of social emancipation, even in its thinnest or weakest conception, as a realistic prospect. Often what is at stake is sheer survival since the nearest and most realistic probability at hand is death. From a cosmopolitan perspective, law is an almost dilemmatic necessity of the struggles around non-citizenship. On one side, the political mobilization of the law is here particularly adequate since this is a social field in which alliances with demoliberalism are likely to succeed. On the other side, the strength that the legal strategy may have in this field is a marker of the narrow limits of its being accomplished.

I distinguish three types of cosmopolitan legality in this area, covering different scales of legality. The first one is global law. It refers to the *political mobilization of international human rights* or of international conventions on humanitarian intervention in situations of extreme, life-threatening forms of social exclusion. The second one deals with state law whenever the state is pressed to *establish minimum standards of citizenship-based inclusion* —second-class or third-class citizenship. The most important instance of this kind of legal mobilization in the core countries is the issue of “regularization” of undocumented migrant workers. In the U.S. alone, the number of undocumented workers is estimated at 11 million. The struggle for general amnesty is today on the agenda of human rights organizations and of many labor unions. Indeed, the participation of labor unions in this struggle is quite recent and represents a radical change of perspective on the part of labor unions that before tended to see the undocumented workers as enemies taking away from them the jobs available. These cosmopolitan alliances involving labor unions and taking them beyond the confines of their conventional activism represent one of the most promising developments in the labor movement in the direction of what is being called “social movement labor unionism” or “citizen labor union”.

The third type of cosmopolitan law in this area is local law and refers to local communities which, having found themselves in a situation of non-citizenship vis-à-vis larger communities or the national society, establish local constitutions whereby a political and legal pact is sealed among the members of the communities with the purposes of better defending themselves against outside exclusionary forces be they the state or non-state agencies, legal or illegal agents. The most remarkable example of this type of local subaltern cosmopolitan legality is the peace community of San Jose de Apartadó, Colombia. The population of this small village located in the region of Urabá, in the worst possible conditions, set out in the late 1990s to establish an autonomous peace community in the middle of crossfire. Facing an intensification and deterioration of the armed conflict in its territory, this village opted for peace, subscribing to a public pact according to which its inhabitants committed to not becoming involved with armed parties—the paramilitary groups, the guerrillas and the army—and demanding respect from all of them, including the State, and to producing the village's own form of social organization. They thus sought to take a pacifist position and refused to abandon their plots of land and their homes. The public pact was written down and became the local Constitution binding all the villagers.⁵⁹

6.5. The Law of the State as the Newest Social Movement

The heading of this section may be somewhat surprising and calls for justification. In my view, the current decline of the regulatory power renders obsolete the theories of the state that have prevailed until now, both of liberal and Marxist origin. The depoliticization of the state and destatization of social regulation, resulting as stressed above from the erosion of the social contract, show that under the same name—the state—a new, larger form of political organization is emerging, articulated by the state itself, and composed of a hybrid set of flows, networks, and organizations, in which state and nonstate, national and global elements combine and interpenetrate.

The relative miniaturization of the state inside this new political organization is usually conceived of as erosion of the state's sovereignty and of its regulatory capacities. As a matter of fact, what is occurring is a transformation of sovereignty and the emergence of a new mode of regulation, in which the public goods up until now produced by the state—legitimacy, social and economic welfare, security, and cultural identity—are the object of permanent contention and painstaking negotiation among different social actors under state coordination. This new political organization does not have a center, and thus the coordination by the state functions in fact as imagination of the center. In the new political constellation, the state is a partial and fragmented political relation, open to competition among

59. Uribe, 2002.

agents of political subcontracting and franchising carrying alternative conceptions of the public goods to be delivered.

Under these new terms, rather than a homogeneous set of institutions, the state is an unregulated political battlefield where the struggles bear little resemblance to conventional political struggles. The various forms of social fascism look for opportunities to expand and consolidate their own despotic regulations, thus turning the state into a component of their private sphere. The cosmopolitan forces, in turn, must focus on models of high-intensity democracy comprising both state and nonstate actions, thus transforming the state into a component of a variety of nonstate public spheres. This state transformation is what I designate as *the state as the newest social movement*.

The major features of this transformation are as follows. In the emergent political organization the state shall coordinate the different organizations, interests, and networks that have emerged from the destatization of social regulation. The democratic struggle is, thus, before anything else, a struggle for the democratization of the tasks of coordination. While before the struggle was about democratizing the state's regulatory monopoly, today the struggle must be about democratizing the loss of such a monopoly. This struggle has several aspects. The coordinating tasks concern mainly the coordination of divergent, even contradictory, interests. While the modern state assumed as its own a version of these interests, nowadays the state only assumes as its own the task of coordinating interests that can be national or global. Having lost the monopoly of regulation, the state still keeps the monopoly of meta-regulation, that is to say, the monopoly of articulation and coordination among subcontracted private regulators. This means that, today, notwithstanding appearances to the contrary, the state is more than ever involved in the politics of social redistribution —and hence in the criteria of inclusion and exclusion, as well. This is why the tension between democracy and capitalism, which needs to be reconstructed urgently, can only be reconstructed once democracy is conceived of as distributive democracy comprising both state and nonstate action.

In a public sphere where the state incorporates nonstate interests and organizations whose actions it coordinates, redistributive democracy cannot be confined to representative democracy, since the latter was designed for conventional political action, that is, confined to the state realm. Actually, herein resides the mysterious disappearance of the tension between democracy and capitalism at the beginning of the twenty-first century. Indeed, representative democracy has lost the meager redistributive capabilities that it once had. Under the new conditions, social redistribution is premised upon participatory democracy, engaging both state actions and the actions of private agents, firms, NGOs, and social movements, whose interests and performances the state coordinates. In other words, it does not make sense to democratize the state if the nonstate sphere is not democratized at the same time. Only the convergence of the two processes of democratization guarantees the reconstitution of the public sphere.

Today, there are many concrete political experiences around the world of democratic redistribution of resources obtained by means of participatory democracy or a combination of participatory and representative democracy. In Brazil, for example, mention must be made of experiences of *participatory budgeting* in cities ruled by the Workers' Party (PT), particularly and with special success Porto Alegre⁶⁰. Although these experiences have been so far of a local scope, there is no reason why the application of the participatory budgeting could not be extended to regional or even national government.

The limit of experiences like participatory budgeting is that they only concern the use of state resources, not their collection. On the basis of the participatory democratic struggles and initiatives already taking place, I suggest that the participatory logic of redistributive democracy must concern itself also with obtaining state resources—thus, with fiscal policy. As concerns the tax system, redistributive democracy defines itself as fiscal solidarity. The fiscal solidarity of the modern state, to the extent that it exists (progressive taxation, etc.), is an abstract solidarity. Under the new political organization, and given the miniaturization of the state, such solidarity becomes even more abstract, and ends up being unintelligible to most citizens. Hence the various tax revolts we have witnessed for the past few years. Many such revolts are passive, rather than active, and have expression in massive tax evasion. A radical shift in the logic of taxation to adapt it to the new conditions of political domination is imperative. I speak, thus, of *participatory taxation*. Since the state's functions will concern more and more coordination rather than direct production of welfare, controlling the linkage between resource collection and resource allocation by means of the mechanisms of representative democracy becomes virtually impossible. Hence the need to resort to mechanisms of participatory democracy.

Participatory taxation is a possible means of recuperating the state's "extractive capacity," linking it to the fulfillment of social objectives defined in a participatory way. Once both the general levels of taxation and the set of objectives susceptible of being financed by the state budget are established at the national level by mechanisms combining representative and participatory democracy, citizens and families must be given the option of deciding collectively where and in what proportion their taxes should be spent. Some citizens or social groups may prefer to have their taxes mainly spent on health, whereas others may prefer education or social security, and so on and so forth.

Both participatory budgeting and participatory taxation are crucial pieces of the new redistributive democracy. Its political logic is the creation of public, nonstate spheres in which the state is the key agency of articulation and coordination. The creation of these public spheres is, in the present conditions, the only democratic alternative to the proliferation of fascist private spheres sanctioned

60. On the experience of participatory budgeting in Porto Alegre, see, among many others, Santos, 1998b, 2002c.

by the state. The new democratic struggle, as a struggle for a redistributive democracy, is an antifascist struggle, even though it occurs in a political field that is formally democratic. This struggle will not assume the forms that the previous one, against state fascism, once assumed. But neither can it limit itself to the forms of democratic struggle legitimated by the democratic states that rose from the ruins of state fascism. We are, therefore, about to create new constellations of democratic struggles allowing for more and ampler democratic deliberations on greater and more differentiated aspects of sociability. My own definition of socialism as democracy without end goes in this direction.

Besides participatory budgeting, which is already in place in some parts of the world, and participatory taxation, which in the form advanced here is a mere cosmopolitan aspiration, there is a third initiative which is already under way in several European countries and is being tried out at a smaller scale in other countries such as Brazil and South Africa. I mean universal basic income. By guaranteeing a minimum income to all citizens regardless of their employment status that covers the necessities of life, this institutional innovation is a powerful mechanism of social inclusion and opens the way for the effective exercise of all the other rights of citizenship.⁶¹ The struggles for guaranteed basic income are cosmopolitan struggles to the extent that their logic is to establish economic entitlements that are not dependent upon the upturns and downturns of the economy, and as such they are not mere responses to the accumulation needs of capital.

The emphasis on redistributive democracy is one precondition for the conversion of the state into the newest social movement. Another one is what I designate as the *experimental state*. In a phase of turbulent transformations concerning the role of the state in social regulation, the institutional matrix of the state, for all its rigidity, is bound to be subjected to strong vibrations that threaten its integrity and may produce perverse effects. Moreover, this institutional matrix is inscribed in a national state time-space that is undergoing the combined impact of local and global, instantaneous and glacial time-spaces. The conclusion must be drawn that the institutional design of the new emerging state form is still to be invented. It remains in fact to be seen whether the new institutional matrix will consist of formal organizations or of networks and flows, or even of hybrid forms, flexible devices, susceptible of being reprogrammed. It is, therefore, not difficult to predict that the democratic struggles of the coming years will be basically struggles for alternative institutional designs.

Since what characterizes periods of paradigmatic transition is the fact that in them old-paradigm and new-paradigm solutions coexist, and that the latter are often as contradictory among themselves as with the former, I think that this condition must be taken into account while designing new institutions. It would be unwise to adopt at this stage irreversible institutional options. Thus, the state must be transformed into a field of institutional experimentation, allowing for the coexis-

61. Van Parijs, 1992.

tence of and competition among different institutional solutions, as pilot-experiences, subjected to the permanent scrutiny of citizen collectives charged with the comparative assessment of the performances. The interpretation of public goods, specially in the realm of social policy, can thus occur in various forms, and the choice amongst them, if it is to take place, must occur only after the alternatives have been scrutinized by the citizens for their democratic efficacy and quality.

Two principles should be borne in mind in embarking on institutional experimentation. First, the state is only genuinely experimental in so far as the different institutional solutions are given equal conditions so that they can develop according to their own logic. That is to say, the experimental state is democratic to the extent that it confers equality of opportunities on the different proposals of democratic institutionalization. Only thus can the democratic struggle truly become a struggle for democratic alternatives. Only thus is it possible to fight democratically against democratic dogmatism. Institutional experimentation will necessarily cause some instability and incoherence in state action, which may eventually generate new unexpected exclusions. This is a serious risk, all the more so because, in the new political organization of which the state is part, it is still the duty of the democratic state to provide basic stability for the citizens' expectations and basic standards of security and inclusion.

Under these circumstances, the state must not only guarantee equality of opportunities for the various projects of democratic institutionalization, but also —and herein lies the second principle of political experimentation— basic standards of inclusion, in the absence of which the active citizenship required to observe, verify, and assess the performance of alternative projects will not be possible. The new welfare state is an experimental state, and the continuous experimentation through citizens' active participation is what guarantees the sustainability of welfare.

The state as the newest social movement carries with it a major transformation of state law as we know it under the current conditions of demoliberalism. Cosmopolitan law is here the legal component of struggles for democratic participation and experimentation in state policies and regulations. The field of cosmopolitan struggles emerging is vast; as vast as the forms of fascism that threaten us. The cosmopolitan struggles cannot, however, as results from the above, confine themselves to the national time-space. Many of the struggles presented above presuppose international coordination, that is to say, collaboration among states and among social movements aimed at reducing international competition amongst them and at enhancing cooperation. Just as social fascism legitimizes or naturalizes itself internally as pre-contractualism and post-contractualism imposed by insurmountable global or international imperatives, so it is up to the cosmopolitan forces to transform the national state into an element of an international network aimed at reducing or neutralizing the destructive and excluding impact of those imperatives, in search of an egalitarian redistribution of the globally produced wealth. The Southern States —particularly large semiperipheral states, like Brazil, India, South Africa, a future democratic China, or a Russia without mafias— have in this regard a decisive role to play. The increase of international competition among

them will be disastrous for the large majority of their inhabitants and fatal for the population of the peripheral countries. The struggle for a new, more democratic and participatory international law is, thus, part and parcel of the national struggle for a redistributive democracy.

CONCLUSION

My aim was to unfold the signs of the reconstruction of the tension between social regulation and social emancipation, as well as the role of law in such a reconstruction. Hence the question: “can law be emancipatory?” The wealth of the legal landscape identified made possible the sociology of emergences. In other words, a wide variety of struggles, initiatives, movements, and organizations, both local and national and global, in which law is one of the resources used for emancipatory purposes, were rendered credible. This use of law often goes beyond the modernist legal canon. Forms of law frequently not acknowledged as such (informal, nonofficial forms of law) are resorted to. Furthermore, when state, official law is resorted to, the use made of it is never conventional —rather, such law becomes part of a vaster set of political resources. Often law is present under the guise of illegal practices through which an alternative legality is fought for.

Finally, what is designated as legal, illegal or even a-legal consists of components of legal constellations that can be activated at the local, national, and global scale. I designated them as a whole as subaltern cosmopolitan legality. Once this trajectory has been completed it is possible to show that the question —can law be emancipatory?— turns out to be as profitable as inadequate. After all, law can be neither emancipatory nor nonemancipatory; emancipatory or nonemancipatory are the movements, the organizations of the subaltern cosmopolitan groups that resort to law to advance their struggles.

As I have stressed, under the logic of the sociology of emergences this subaltern cosmopolitan legality is as yet but in the bud; it is, above all, an aspiration and a project. But there are already enough signs to justify the adoption of broader conceptions of reality and realism. Such conceptions are to encompass not only what exists but also what is actively produced by society as nonexistent, as well as what only exists as a sign or trace of what can easily be disregarded. The best way to capture this reality is by means of an open research agenda. Such was my purpose in this paper.

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BIBLIOGRAPHY

- Ana María. 1996. "Discurso inaugural de la mayor Ana María en el Encuentro Intercontinental 'Por la humanidad y contra el neoliberalismo'". *Chiapas*, 3: 102-103.
- Beck, Ulrich; Giddens, Anthony and Scott Lash. 1994. *Reflexive Modernization: Politics, Tradition and Aesthetics in the Modern Social Order*. Cambridge: Polity Press.
- Beck, Ulrich. 1999. *World Risk Society*. London: Blackwell.
- Beck, Ulrich. 2000. *The Brave New World of Work*. London: Blackwell.
- Bowmik, Sharit. 2002. «As cooperativas e a emancipação dos marginalizados: estudos de caso de duas cidades na Índia»; in Santos (ed.) (2002e): 369-400.
- Brush, Stephen B., and Doreen Stablinisky (eds.). 1996. *Valuing Local Knowledge: Indigenous Peoples and Intellectual Property Rights*. Washington, D.C: Island Press.
- Caldeira, Teresa. 2000. *City of Walls. Crime, Segregation and Citizenship in São Paulo*. Berkeley: University of California Press.
- Carvalho, Horácio Martins de. 2002. "A emancipação do movimento no movimento de emancipação social continuada (resposta a Zander Navarro)"; in Santos (ed.) (2002g): 233-260.
- Ceceña, Ana Esther. 1998. "De cómo se construye la esperanza". *Chiapas*, 6: 135-147.
- Ceceña, Ana Esther. 1999. "La resistencia como espacio de construcción del nuevo mundo". *Chiapas*, 7: 93-114.
- Ceceña, Ana Esther. 2001. "Por la humanidad y contra el neoliberalismo. Líneas centrales del discurso zapatista". *Observatorio Social de América Latina*, 3: 25-30.
- Coelho, João Paulo Borges. 2002. "Estado, comunidades e calamidades naturais no Moçambique rural", in Santos (ed.) (2002d).
- Compa, Lance and Stephen Diamond (eds.). 1996. *Human Rights, Labor Rights, and International Trade*. Philadelphia: University of Pennsylvania Press.
- Correa, Carlos M. 2000. *Intellectual Property Rights, The WTO and developing countries: the TRIPS agreement and policy options*. London: Zed Books.
- Debray, Régis. 1967. *Strategy for Revolution*. New York: Monthly Review Press.
- Escobar, Arturo and Mauricio Pardo. 2002. "Movimentos sociais e biodiversidade no Pacífico Colombiano", in Santos (ed.) (2002g).
- Flórez Alonso, Margarita. 2002. "Proteção do conhecimento tradicional?" in Santos (ed.) (2002g).
- Foucault, Michel. 1976. *La volonté de savoir*. Paris: Gallimard.
- Foucault, Michel. 1977. *Discipline and Punish: the Birth of the Prison*. New York: Pantheon.
- Foucault, Michel. 1980. *Power and Knowledge*. New York: Pantheon.
- Fung, Archon, Dara O'Rourke and Charles Sabel. 2001. *Can We Put an End to Sweatshops?* Boston: Beacon Press.

- Giddens, Anthony. 1998. *The Third Way: the Renewal of Social Democracy*. Cambridge: Polity Press.
- Gordon, Michael E. and Lowell Turner. (eds.). 2000. *Transnational Cooperation among Labor Unions*. Ithaca: Cornell University Press.
- Gutiérrez, Francisco and Ana María Jaramillo. 2002. "Pactos paradoxais," in Santos (ed.) (2002f).
- Hall, Stuart. 1996. "Who Needs Identity?" in Hall and du Gay (eds.): 1-17.
- Heller, Agnès. 1976. *The Theory of Need in Marx*. London: Allison Busby.
- Heller, Agnès. 1993. "A Theory of Needs Revisited." *Thesis Eleven*, 35: 18-35.
- Hobbes, Thomas. 1946. *Leviathan*. Edited with an Introduction by Michael Oakeshott. Oxford: Basil Blackwell.
- Klug, Heinz. 2000. *Accidental Outcomes? The Contradictory Impact of Multiple Spheres of Politics on the Definition of Global Rules*. Paper presented at the Law and Society Association 2000 Annual Meeting, Miami.
- Klug, Heinz. 2001a. "From Floor to Ceiling? South Africa, Brazil, and the Impact of the HIV/AIDS Crisis on the Interpretations of TRIPS." *Socio-Legal Newsletter*, 34: 4-5.
- Klug, Heinz. 2001b. "WTO Puts Public Health Before Patents — but ..." *Socio-Legal Newsletter*, 35: 14.
- Kothari, Ashish. 1999. "Biodiversity and Intellectual Property Rights: Can the two Co-Exist?" *Linkages* 4(2). Available at <http://www.iisd.ca/linkages/journal/kothari.html>, accessed on June 6, 2002.
- Larson, Jane E. 2002. "Informality, Illegality, and Inequality." *Yale Law and Policy Review*, 20: 137-182.
- Levitsky, Sandra R. 2001. *Narrow, But Not Straight: Professionalized Rights Strategies in the Chicago GLBT Movement*. Thesis (MS) in Sociology, University of Wisconsin — Madison.
- Lopes, João Marcos de Almeida. 2002. "'O dorso da cidade': os sem-terra e a concepção de uma outra cidade", in Santos (ed.) (2002e): 288-326.
- Meneses, M. P. G. 2002. "'Quando não há problemas, estamos de boa saúde, sem azar nem nada': para uma concepção emancipatória da saúde e das medicinas", in Santos (ed.) (2002g).
- Moody, Kim. 1998. *Workers in a Lean World: Unions in the International Economy*. New York: Verso.
- Navarro, Zander. 2002. "'Mobilização sem emancipação' — as lutas sociais dos sem-terra no Brasil", in Santos (ed.) (2002e): 189-232.
- Posey, Darrell Addison (ed.). 1999. *Cultural and Spiritual Values of Biodiversity*. London: Intermediate Technology.
- Prigogine, I. 1980. *From Being to Becoming*. San Francisco: Freeman.
- Prigogine, I. and Stengers. 1979. *La nouvelle alliance: métamorphose de la science*. Paris: Gallimard.
- Randeria, Shalini. 2002. "Pluralismo jurídico, soberania fracturada e direitos de cidadania diferenciados: instituições internacionais, movimentos sociais e o Estado pós-colonial na Índia", in Santos (ed.) (2002c).

- Rodríguez, César A. 2002. “À procura de alternativas econômicas em tempos de globalização: o caso das cooperativas de recicladores de lixo na Colômbia”, in Santos (ed.) (2002): 329-367.
- Ross, Andrew (ed.). 1997. *No Sweat. Fashion, Free Trade and the Rights of Garment Workers*. New York: Verso.
- Rousseau, Jean-Jacques. 1971. «Discours sur le sciences et les arts», *Oeuvres Complètes*. Vol 2. Paris : Seuil.
- Santos, Boaventura de Sousa and César Rodríguez. 2002. “Introdução: para ampliar o cânone da produção”, in Santos (ed.) (2002b): 23-77.
- Santos, Boaventura de Sousa and João Carlos Trindade. 2003. *Conflito e Transformação Social: Uma Paisagem das Justiças em Moçambique*. 2 volumes. Porto: Afrontamento.
- Santos, Boaventura de Sousa and Mauricio García-Villegas. 2001. *El Caleidoscopio de las Justicias en Colombia*. 2 volumes. Bogotá: Colciencias-Uniandes-CES-Universidad Nacional-Siglo del Hombre.
- Santos, Boaventura de Sousa. 1995. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. London: Routledge.
- Santos, Boaventura de Sousa. 1998a. “Oppositional Postmodernism and Globalizations.” *Law and Social Inquiry*, 23: 121-39.
- Santos, Boaventura de Sousa. 1998b. *Reinventar a democracia*. Lisbon: Gradiva.
- Santos, Boaventura de Sousa. 2002a. *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*. London: Butterworths.
- Santos, Boaventura de Sousa. 2002b. “Toward a multicultural conception of human rights” in Berta Hernández-Truyol (Ed.) *Moral Imperialism: A Critical Anthology*, New York: New York University Press (2002).
- Santos, Boaventura de Sousa. 2002c. «Orçamento participativo em Porto Alegre: para uma democracia redistributiva”, in Santos (ed) (2002d): 455-597.
- Santos, Boaventura de Sousa (ed.). 2002d. *Democratizar a democracia. Os caminhos da democracia participativa*. Rio de Janeiro: Record.
- Santos, Boaventura de Sousa (ed.). 2002e. *Produzir para viver. Os caminhos da produção não capitalista*. Rio de Janeiro: Record.
- Santos, Boaventura de Sousa (ed.). 2002f. *Reconhecer para libertar. Os caminhos do cosmopolitismo multicultural*. Rio de Janeiro: Record.
- Santos, Boaventura de Sousa (ed.). 2002g. *Semear outras soluções. Os caminhos da biodiversidade e dos conhecimentos rivais*. Rio de Janeiro: Record.
- Santos, Boaventura de Sousa (ed.). 2002h. *Trabalhar o mundo. Os caminhos do novo internacionalismo operário*. Rio de Janeiro: Record.
- Santos, Boaventura de Sousa. 2004. “A critique of the lazy reason: against the waste of experience”. In Immanuel Wallerstein (ed.) *The modern world-system in the longue duree' boulder paradigm publishers*. Chapter 10.
- Santos, Laymert Garcia dos. 2002. “Quando o conhecimento tecnocientífico torna-se predação high tech: recursos genéticos e conhecimento tradicional no Brasil”, in Santos (ed.) (2002g).

- Sassen, Saskia. 1991. *The Global City: New York, London, Tokyo*. Princeton: Princeton University Press.
- Sassen, Saskia. 1999. *Guests and Aliens*. New York: The New Press.
- Shiva, Vandana. 1997. *Biopiracy*. Boston: South End Press.
- Singer, Paul. 2002. "A recente ressurreição da economia solidária no Brasil", in Santos (ed.) (2002e): 81-129.
- Soto Hernando de. 1989. *The Other Path. The Invisible Revolution in the Third World*. New York: Harper and Row Publishers.
- Stefanic, Jean. 1998. "Latino and Latina Critical Theory: An Annotated Bibliography". *La Raza Law Journal*, 10: 1509-1584.
- The Crucible Group. 1994. *People, Plants and Patents: the impact of property on trade, plant biodiversity and rural society*. Ottawa: IRDS.
- Uribe, María Teresa. 2002. "Emancipação social em um contexto de guerra prolongada: o caso da Comunidade de Paz de San José de Apartadó, Colombia", in Santos (ed.) (2002d): 217-253.
- van Parijs, Philippe. 1992. *Arguing for Basic Income: Ethical Foundations for a Radical Reform*. London: Verso.
- Visvanathan, Shiv. 1997. *A Carnival of Science: Essays on Science, Technology and Development*. Oxford: Oxford University Press.
- Warde, Alan. 1997. *Consumption, food and taste: culinary antinomies and commodity culture*. London: Thousand Oaks.
- Wilson, William J. 1987. *The Truly Disadvantaged. The Inner City, the Underclass, and Public Policy*. Chicago: University of Chicago Press.
- Xaba, Thokozani. 2002. "Prática médica marginalizada: a marginalização e transformação das medicinas indígenas na África do Sul", in Santos (ed.) (2002g).