Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality

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1. Introduction

Elsewhere, I have argued that there are two forms of globalization: neoliberal globalization and what I call counter-hegemonic globalization, which has been challenging the former for some time (Santos 2002:Chapters 5, 9). Counter-hegemonic globalization I define as the vast set of networks, initiatives, organizations and movements that fight against the economic, social and political outcomes of hegemonic globalization, challenge the conceptions of world development underlying the latter and propose alternative conceptions.

Counter-hegemonic globalization is focused on the struggles against social exclusion. Since social exclusion is always the product of unequal power relations, counter-hegemonic globalization is animated by a redistributive ethos in its broadest sense, involving redistribution of material, social, political, cultural and symbolic resources. In this sense, redistribution is based both on the principle of equality and on the principle of recognition of difference. At stake is the struggle for equal exchanges and authority (rather than power) relations. Because unequal exchanges and power relations are crystallized in politics and law, counter-hegemonic globalization unfolds as political and legal struggles guided by the idea that hegemonic legal and political structures and practices can be challenged by alternative principles of law and politics. These alternative principles and the struggles for them I have called subaltern cosmopolitan politics and legality (Santos 2002). They comprise a vast social field of confrontational politics and law in which I distinguish two basic processes of counter-hegemonic globalization: global collective action through transnational networking of local/national/global linkages; and local or national struggles, whose success prompts reproduction in other locales or networking with parallel struggles elsewhere. In this chapter I deal with the first process by analyzing the politics and legality embodied by the World Social Forum (WSF) and contrasting it with neoliberal politics and legality. To this end, I divide the chapter into three sections. First, I focus on some of the legal innovations under neoliberal globalization, specifically on governance as an alleged mode of post-state social

regulation. Then, I analyze the WSF as an expression of counter-hegemonic globalization within which a subaltern cosmopolitan politics and legality is being forged. Finally, I draw an explicit contrast between these forms of hegemonic and counter-hegemonic politics and legality.

Before proceeding, given the narrow view of law and politics dominant in legal scholarship, it is necessary to clarify the conception of law and politics that I use throughout the chapter. Underlying neoliberal globalization and counter-hegemonic globalization are different conceptions of legality and of politics of legality. Both, however, demand a radical expansion of the conventional understanding of legality and the politics of legality. To my mind, four conceptual expansions are needed to capture the politics of legality under globalization. The first concerns the breadth of legal actions, struggles, or disputes. Under conditions of conflicting globalizations, collective legal practices combine political mobilization with legal mobilization, and the latter may involve legal as well as illegal and non-legal actions. The second expansion concerns scale. The politics of legality needs to be conceptualized at three different scales –the local, the national, and the global. I most cases, all the scales involved interpenetrate each other. Power struggles over the relevant scale of law are today fought in a context of growing prevalence of the global scale. The third expansion concerns legal knowledge and legal expertise. The politics of law involves a variety of legal knowledges and expertise among which the professional legal knowledge is only one component. In an increasingly fragmented and transcalar legal field, rival legal knowledges (local or national vs. transnational; professional vs. lay; old legal doctrine vs. emergent conceptions) often collide in a context of increasing dominance of neoliberal economic knowledge. Finally, the fourth dimension of an expansive conception of the politics of law concerns the temporal dimension. This conceptual expansion is twofold. Modern state law is subjected to the time frame of state action (e.g., that of the judicial process, the electoral cycle, the legislative process, and bureaucracy). However, legal mobilization often involves contrasting time frames. On one hand, we find the instantaneous time of financial capital (for which the long term is the next ten minutes). On the other, we find the *longue durée* of capitalism and colonialism, or even the longest duration (glacial time) of the ecological deterioration or exhaustion of natural resources (e.g., in legal

conflicts involving indigenous peoples fighting against oil companies operating in their territories; see Rodríguez-Garavito and Arenas, this volume). Radically different conceptions of time are often present in legal struggles and the conflicts are fought in a context in which the dominant time frame seems to get closer and closer to the instantaneous time of financial capital. The second dimension concerns the contrast between the linear time presiding over the Western logic of development –based on an unilinear conception of development, according to which different pasts converge in a single future— and a pluralistic conception of time based on the idea that there are alternative development paths, and that therefore different pasts underlie different presents and may lead to different futures.

With such a reconceptualization in mind, it becomes possible to analyze the contours of the role of politics and the law in hegemonic and counter-hegemonic globalization. To this task I now turn.

2. Governance as Neoliberal Legality

From the beginning of recorded time until 1975, the British Library catalogue registered 47 titles with the word "governance." Since then this term has exploded in all the disciplines of the social sciences. This sudden and overwhelming presence has only one parallel, in the same period, in the term "globalization." This convergent trajectory is no coincidence. As I will try to show, since the mid 1990's, governance has become the political matrix of neoliberal globalization. I call it a matrix because it is both an embedding or grounding structure and a generative environment for an interconnected network of pragmatic ideas and cooperative patterns of behavior, shared by a group of selected actors and their interests, a self-activated network to deal with chaos in a context in which both outside-generated top-down normative order and autonomous bottom up non-pre-selected participatory ordering are unavailable or, if available, undesirable. Crucial to this matrix is the idea that it sees itself as cooperatively self-generated and, therefore, as inclusive as it can possibly be. As any other matrix, it is, in fact, based on a principle of selection, and, thus, on the binary inclusion/exclusion. However, in this case, the excluded, rather than being present as excluded, are utterly absent. Governance is

therefore a matrix that combines horizontality and verticality in a new way: both are self-generated, the former as all-existing, the latter, as non-existing. It operates through a false dialectics of governance and disgovernance, one in which the second term, rather than disconfirming governance by confronting it, ratifies it either by lacking object or agency.

Jessop (1998) calls this ideological and political phenomenon the "governance paradigm." Paradigm is probably too strong a concept to characterize this phenomenon, particularly if we take it in Kuhn's (1970) original formulation of paradigms as universally recognized scientific achievements that for a time provide model problems and solutions to a community of practitioners. Because different conceptions of governance abound, located differently in the political spectrum,[1] I prefer to use a weaker and narrower term — the governance matrix. Discernible is, therefore, both a governance matrix and a governance crowd. An elusive ideology and by and large an untested practice function as a vague call that manages to mobilize social scientists, policy makers and lawyers coming from different intellectual backgrounds and political loyalties.

I distinguish the governance matrix from the governance crowd because, however vague, the matrix is less heterogeneous than the groups that claim it. We are at a stage of the development of the concept of governance very similar to that of globalization in the mid-1990s, when the social practices had not allowed fully to discern the cleavages and contradictions being engendered by the processes of globalization themselves. In the following I will try to answer three questions: (1) how and why has governance come about? (2) what is its political meaning? and (3) are there other stories of governance?

2.1. The genealogy of governance

In order to understand the emergence of the governance matrix we have to go back to the early 1970s, the student movement and the crisis of legitimacy it gave rise to. As Offe (1985) and Habermas (1982) have shown, the crisis derived from the radical questioning both of the social and the democratic content of the social contract that

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[1]There is a vast literature on governance. A good overview can be read in Rodríguez-Garavito (2005).

underlay social democratic states since the end of Second World War. For the student movement, soon to be joined by the feminist and the ecological movements, the apparently inclusive social contract was indeed exclusionary. It completely excluded large social groups (minorities, immigrants) and important social issues (such as cultural diversity and environment), and included other groups by subordinating them to disempowering forms of inclusion –as was the case, most notably, of women. On the other hand, all this had been possible because democracy had failed to fulfill its promise of building free and equal societies. The ideas of popular sovereignty and popular participation had been hijacked by elitist forms of democratic rule with the complicity of the two social actors historically charged with the task of deepening democracy and bringing about social emancipation: the working-class parties and the labor unions. It was a crisis of legitimacy because it was a crisis of government by consent. It dominated the political contestation in the North in the first half of the 1970s (Monedero 2003).

The turning point occurred in 1975 when the Trilateral Commission published its report on the crisis of democracy authored by Crozier, Huntington and Watanuki (1975). According to them, there was indeed a crisis of democracy but not because there was too little democracy, but because there is too much democracy. Democracies were in crisis because they are overloaded with rights and claims, because the social contract rather than being exclusionary was too inclusive, precisely due to the pressures brought upon it by the historical social actors decried by the students (the working-class parties and the labor unions). The crisis of government by consent was thereby transformed into a crisis of government *tout court*, and the crisis of legitimacy became a crisis of governability.

The nature of political contestation was thereby profoundly changed. The focus shifted from the incapacity of the state to do justice to the new social movements and their demands to the need to contain and control society's claims on the state. Soon the diagnostic of the crisis as a crisis of governability became dominant, and so did the political therapy proposed by the Trilateral Commission: from the central state to devolution/decentralization; from the political to the technical; from popular participation to the expert system; from the public to the private; from the state to the market (Crozier et al 1975). The subsequent decade saw the construction of a new social and political regime based on these ideas, a regime soon to be imposed globally under the name of

Washington Consensus. It was a decade of profound political and ideological transformations that paved the way for the rise of the all-encompassing solution to the crisis of governability: the market rule.

While the crisis of legitimacy perspective saw the solution in state transformation and enhanced popular participation through autonomous new social movements, the crisis of governability stance saw the solution in the shrinking of the state (through the latter's withdrawal from the economic sphere and social services), and in the taming of popular participation (through policies constraining popular participation, based on an individualistic conception of civil society dominated by business organizations). The latter, whose belonging to civil society had been made problematic by the increasing autonomy of republican civil society vis-à-vis the market, were smuggled into civil society by a process of double identification, as both market agents and social actors.

By 1986, it was evident that all the other recommendations of the Trilateral Commission were to be accepted as "natural," once three ground-rules were put in place: privatization, marketization, and liberalization. These three ground rules became the three pillars of neoliberalism and neoliberal globalization. The following decade (1986-1996) was the high time of neoliberalism: withdrawal of the state from the social sector and economic regulation; market rule as both economic and social regulation; proliferation of civil society organizations, aggregated under the general designation of "third sector," whose goal is to fulfill the human needs that the market cannot fulfill and the state is not anymore in condition of fulfilling (Santos 2002:439-95; Santos and Jenson 2000). It is also the period in which the failures of the market, as the major principle of social regulation, become evident. The dramatic increase in income and wealth polarization, and its devastating effect on the reproduction of the livelihoods of large bodies of populations, the generalized rise of corruption, the perverse effects of the mix of market rule and non-redistributive democracy leading to the implosion of some states and inter-ethnic civil wars – all these facts became too pervasive to be discarded as anomalous deviations. It was at this juncture that governance emerged as a new political and social matrix.

The last thirty years can thus be summarized in this sequence of concepts: from legitimacy to governability; from governability to governance. To put it in Hegelian

terms, we can think of governance as being the synthesis that supersedes both the thesis (legitimacy) and the antithesis (governability). Governance seeks, indeed, to combine the demand for participation and inclusion called for by the legitimacy reading of the social crisis with the demand for autonomy and self-regulation called for by the governability reading. However, it is a false synthesis, since it operates entirely within the governability framework. Rather than resuscitating the legitimacy quest of the 1970s, it seeks to reconstruct governability in such a way as to turn it into an alternative conception of legitimacy.

2.2. The political meaning of neoliberal governance

In order to identify the political meaning of neoliberal governance we must pay attention not only to what it says but also to what it silences. The most important silences in the governance matrix are: social transformation, popular participation, social contract, social justice, power relations, and social conflict. These were the concepts with which the legitimacy crisis was formulated in the 1970s. They were also the concepts that grounded modern critical theory. By silencing them and offering no positive alternative to them, governance signals the defeat of critical theory in both social and political affairs. Indeed, the alternatives offered by governance to the silenced concepts are all of them negative in the sense that they define themselves by opposition to the legitimacy concepts: rather than social transformation, problem solving; rather than popular participation, selected-in stakeholders' participation; rather than social contract, self-regulation; rather than social justice, positive sum games and compensatory policies; rather than power relations, coordination and partnership; rather than social conflict, social cohesion and stability of flows.

These alternative concepts are not unequivocally negative. Indeed, some of them echo some of the aspirational features of deep democracy. They are negative in so far as they are used in opposition to the other silenced concepts, rather than as complementary parts of the same political constellation. Thereby, rather than being at the service of a project of social inclusion and social redistribution, they are at the service of social exclusion and economic polarization.

At the core of the legitimacy crisis was the idea of popular sovereignty and popular participation, which grounded the basic equation of enabling social transformation: there is no benefit without participation; there is no participation without benefit. This equation was based on the following premises: the right to determine benefit is vested on those who participate; the condition for such self-determination is the self-determination of participation. The governance matrix deals with this equation in a complex way. It accepts the equation on the condition of replacing self-determined participation with participation based on a principle of selection according to which some actors, interests or voices are selected in while others are selected out. Participation may be autonomous but not the criteria by which participants are chosen. Those who are selected in may benefit, but always at the cost of those who are selected out. The equation is thereby deradicalized and instrumentalized. If the principle of selection is questioned and the selected out enter the picture, they may be conceded some benefits, but on the condition of not participating. If the nature or range of the benefits is questioned by the selected-in participants, these may be granted the possibility of continuing participating but on the condition of not insisting in the self-determination of their benefits. In extreme cases, the benefit will be said to reside in participation per se.

Applying the sociology of absences (see Santos and Rodríguez-Garavito, this volume) to governance, two non-existing actors can be detected: the state and the excluded. They are made non-existent in different ways. The state per se is not absent, but rather the principle of sovereignty and the power of coercion that goes with it. The state is therefore a legitimate partner of governance, provided that it participates in a non-state capacity, ideally on an equal footing with other partners. But this is only part of the story. The movement from legitimacy to governability was brought about by the incapacitation of the state as a social regulator. But the state was not deprived of its role as meta-regulator, that is, as the entity responsible for creating the space for legitimate non-state regulators. Needless to say, this is a very different type of state intervention when compared with the one that presided over the social contract. In the latter case, the state selected two very well defined social actors (capital and labor) and brought them to the negotiation table, which was controlled by the state and sought to reach agreements that could be verified and enforced through state coercion if necessary. The political

formation being thereby generated was one of institutionalized conflicts rather than of stable flows; of peaceful coexistence rather than of common goals.

The excluded are made nonexistent in a very different way. They cannot be simply kept outside as they were in the social contract and the welfare state because, contrary to the latter, the governance matrix does not accept the binary inside/outside. Whatever is outside is not conceived as a source of an enabling power that can turn exclusion into inclusion. Inclusion and exclusion are thereby depoliticized. They are technical dimensions of coordination. In the absence of a sovereign command, exclusion only exists as the dilemma of exclusion: how to get power to fight for inclusion in the governance circle if all the power there is derives from belonging to the governance circle?

Critical theorists of law, myself included, have written that the modern juridification of social life –that is, the conception of social transformation as struggle for rights regulated by liberal democracy and rule of law– has meant the receding of politics as the protection of more and more social interests became a function of technically-minded legal experts rather than of political mobilization and political leverage (Santos 1995, 2002). In a retrospective comparison, the juridical paradigm appears as much more political than the governance matrix. Critical theorists have argued that the depolitization brought about by law was a highly political option. The same is true of governance.

The conception of governance as neoliberal governance may be disputed because, after all, the ideological and technical conceptual apparatus of governance is at odds with the one that underlies market rule. Instead of competition, coordination and partnership; instead of creative destruction, social problems; instead of profitability, social cohesion; instead of unintended consequences, consequences to be dealt with as if they were intended; instead of market, civil society. In sum, the governance matrix has emerged to correct market failures impelled by a social rather than an economic logic. The high period of neoliberalism saw indeed the exponential growth of civil society organizations and NGOs, many of them with the purpose of offering some relief to populations caught by the phasing out of the safety nets once provided by the welfare state and unable to buy welfare in the market.

The resurgence of civil society in the 1980s and 1990s is a complex phenomenon non susceptible of monocausal explanation. I distinguish three different processes. The

first process is comprised by the civil society organizations (CSOs) that emerged in Central and Eastern Europe to reclaim an autonomous non-state public sphere from where to fight against the authoritarian state socialist regimes. They were very influential in the period of democratic transition that followed the demise of the socialist regimes. A similar type of civil society emerged in many Latin American countries during the period of democratic transition that followed the demise of the military dictatorships that had ruled from mid-1960s or mid-1970s to mid-1990s. While in Central and Eastern Europe CSOs questioned both the political and the economic regime, in Latin America the CSOs questioned the authoritarian political regime but, in general, not the economic model being put in place concomitantly with democracy, i.e., neoliberalism. When the democratic transitions were completed, most of these CSOs disappeared, turned into political parties or consultancy or lobbying firms, or reconstructed themselves as to fit the third type of CSOs mentioned below.

The second process is the most closely related to the governability crisis and consists of CSOs that questioned neither the political regime (liberal democracy) nor the economic model (neoliberal capitalism) but rather saw themselves as solidarity organizations fulfilling the human needs of victims of economic restructuring, dispossession, discrimination, environmental degradation, warfare, massive violations of human rights, and so on. They are the bulk of the third sector or the NGOs field. Their focus is on the private, not on the public; on the social, not on the political; on the micro, not on the macro (liberal democracy, neoliberal capitalism).

Finally, there is a third process underlying the resurgence of civil society. It comprises the CSOs, many of them originating in new social movements, both in the South and in the North, that fight against neoliberal globalization. Although many of them provide services similar to those of the CSOs of the second type, they frame their actions in a broader concept of political activism. They question the hegemonic model of democracy and advocate participatory grassroots democracy. They refuse the idea that there is no alternative to neoliberal globalization, consider themselves anti-capitalistic and advocate alternative economies, alternative models of development or alternatives to development. Although most of them are locally based, they network with similar

organizations in other locals and with global organizations. These local/global linkages and networking constitute counter-hegemonic globalization.

The landscape of CSOs is thus very rich and diverse. The different processes that accounted for the resurgence of CSOs in the 1980s and 1990s led to two main types of civil society: the liberal civil society, constituted by the CSOs of the first kind described above. The second type of civil society is the subaltern, counter-hegemonic civil society, consisting of the social movements and CSOs that keep in unstable balance the macro and the micro, the public and the private, the social and the political by focusing on the deeper causes of the human suffering they seek to minimize. They are involved in the creation of subaltern non-state public spheres at the local, national and global scale.

This cleavage between two major types of civil society explains the centrality of the principle of selection in the governance matrix. The selected-in civil society is the liberal civil society because only its organizations share the values that underlie self-regulated coordination and partnership. Problem solving and social cohesion are best achieved when politics or ideology does not interfere with the construction of common goals and common interests. Only open-ended, fragmented, pragmatic conceptions of interests and benefits can be made intelligible to and have an impact on the market, the most flexible and indeterminate institution of all, thereby helping the markets to flourish unimpeded by its all too evident failures.

In light of this, neoliberal governance operates what De Angelis calls the "Polanyi's inversion" (2003: 23). While Polanyi argued that the economy is embedded in society, the governance matrix is premised upon the need to embed society in the economy. As the UN global compact states, "the rationale is that a commitment to corporate citizenship should begin with the organization itself by embedding universal principles and values into the strategic business vision, organizational cultural and daily operations" (UN 2000:3).

In other words, the "universal values" are good for business and on this premise lies the voluntary character of the compact (see Shamir, this volume). There is no possibility of such values or principles endangering the profitability that grounds the flourishing of economic organizations –as was the case, for instance, with taxation when it was first imposed. Because it was imposed, the public policy of taxation ended up selecting the

businesses that could survive under taxation. On the contrary, in the governance matrix it is up to businesses to select the values and principles they can live with.

Even when, under pressure from activists pursuing negative publicity campaigns, business agree to abide by basic codes of conduct, they do so based on economic (rather than social) calculations.

In light of this, I would suggest that governance is a genetically modified form of law and government that seeks to make itself resistant to two dangerous plagues: on one side, bottom up, potentially chaotic pressures; on the other, unpredictable changes in the rules of the game of capital accumulation brought about by state or inter-state regulation.

2.3. Social struggles within the governance frame

The historical relationship between democracy and capitalism is non-linear, if for no other reason because in the last two hundred years different models of democracy (Macpherson 1966, 1977; Held 1987) as well as different models of capitalism have been in place (Boyer 1986; Boyer and Drache 1996; Santos 2001). Throughout the twentieth century the tension between democracy and capitalism in the North centered around the question of social redistribution. This was one of the core questions underlying the crisis of legitimacy in the 1970s. The conversion of the crisis of legitimacy into the crisis of governability was the capitalist response to the pressures for wider and deeper social redistribution. Neoliberalism neutralized or strongly weakened the democratic mechanisms of social redistribution: social and economic rights and the welfare state. Deprived of its redistributive potential, democracy became fully compatible with capitalism, and to such an extent that they became the twin concepts presiding over the new global model of social and political affairs, being imposed worldwide by neoliberal globalization, structural adjustment policies and, lately, by neocolonial warfare as well.

Thirty years later, the question of redistribution is more serious than ever. The rates of exploitation have reached such high levels in some sectors of production and some regions of the world that, together with the mechanisms used to obtain them, they suggest that we are entering a new period of primitive capital accumulation. Moreover, the unexploited or unexploitable populations are in an even more dramatic situation as the

conditions of reproduction of their livelihoods have deteriorated due to economic restructuring and environmental degradation. They have been declared discardable populations. Finally, the triadic recipe of privatization, marketization and liberalization has eroded the state-sponsored commons and transformed it into a new generation of enclosures. A new form of indirect rule has emerged in which powerful economic actors hold an immense amount of unaccountable power of control over the basic livelihoods of people, be they water, energy, seeds, security or health.

Social redistribution is the most serious issue confronting us at the beginning of the twenty-first century. But it is not the only one. Since the 1980s, the issue of social redistribution has been compounded by the issue of the recognition of difference. Today we live in societies tremendously unequal, but equality is not the only value we cherish. We also cherish difference, equal difference, an aspiration which was not prominently present in the conception of the crisis of legitimacy of the 1970s.

The litmus test for governance is therefore the extent to which it can confront both the question of social redistribution and the question of the recognition of difference. In light of what I said above, I do not see any potential for meaningful social redistribution being generated in the governance matrix. Governance may better address the question of recognition of difference than the question of social redistribution, but even here the structural limitations of governance will surface.

This does not mean that governance arrangements will not bring some benefits to the more disadvantaged groups within the circle of partnership. Such benefits may even spill over to the excluded. But this does not entail any potential for enabling popular participation or for social redistribution as a matter of right. In other words, what is beneficial does not determine, by itself, what is emancipatory. If the population of the homeless is growing exponentially, it is a good thing that homeowners allow them to take shelter in the porches of their houses. It is better than nothing. But, because of its voluntary character, redistribution is achieved under the logic of philanthropy. That is, it does not occur in an enabling way, in recognition of both the right to the benefit and the right to reclaim the effectiveness of the economic right in an autonomous, participatory way.

It may be argued that, under certain circumstances, the voluntary character of compliance is more virtual than real, given the pressures exerted, upon the governance circle, often times from the outside. In this case, different social processes may be at work and they must be distinguished. In order to illustrate this I refer very briefly two examples of outside pressure brought about by the state. I take the first example from César Rodríguez-Garavito's (2005) study on the operation of codes of conduct in apparel sweatshops in Guatemala. In the process of negotiation of the Central America Free Trade Agreement (CAFTA), the Guatemalan state was pressured by the U.S. government to be more active in the repression of human rights violations in the workplace. Risking being excluded from CAFTA, the Guatemalan state, in turn, put pressure on the apparel brand (Liz Claiborne) and its supplier factory to comply with the former's code of conduct, which eventually allowed for the unionization of workers at the factory. In the second case, as analyzed by Heinz Klug in his chapter in this volume, the South African state, pressured by a strong social movement calling for free or affordable antiretroviral medicines for HIV/AIDS patients, successfully pressures the pharmaceutical companies to withdraw their suit against compulsory licensing and the production of generics and to lower the prices of their brand products.

It is important to note that in both cases the state, which had ejected itself from social regulation, intervenes supposedly from the outside, using its sovereign prerogative, if not formally at least informally, to put pressure on the governance circle and obtain a given outcome, considered politically important. But while in the Guatemalan case the state intervenes under pressure from above and the benefited workers are not called upon to participate in the deliberation over the benefits, in the South African case the state is pressured from below and yields to the pressure of the social movement. Indeed the state joins forces with the social movement for that particular purpose. In the first case, if the benefits are taken away from the workers, they will be as powerless as before to reclaim them. In the second case, the state action contributes to empower the social movement, to enhance its leverage in social contestation in a particular case and possibly in other future cases, eventually even against the state. In sum, these two cases show that the state is the present-absent structure of the governance matrix – a fact that is best revealed in conditions of institutional stress – which means that the governance matrix operates

inside the "self-outsidedness" of the state. The cases also show that, notwithstanding the unfavorable conditions of the present, the enabling struggle for the right to social redistribution – the right to have rights, in Arendt's formulation (1968:177) – may have some success, not because of governance, but in spite of governance.

Before concluding the examination of the governance matrix, it is important to stress that while I question the self-characterization of governance as "post-state," it is not my purpose to defend a return to the old forms of state-centered regulation --which in any case were always relatively underdeveloped in the U.S. (at least when compared with the European forms of regulation). My purpose is rather to advance a new form of regulation that without dispensing with the energy of civil society (both in its liberal and counter-hegemonic forms) attributes to the national state or to supranational democratic political institutions the strategic role of defining the inequalities of power within the governance circle as political problems to be dealt with in political terms. To this type of legality and governance I now turn.

2.4. Are there other stories of governance?

In this section I have so far dealt with neoliberal governance. It may appear to be "the only game in town." But it is not. As argued above, in recent years neoliberal globalization, albeit still the dominant form of globalization, has been confronted with another form of globalization –counter-hegemonic globalization. In the last ten years, and most clearly since the Seattle protests at the 1999 WTO meeting, another form of globalization has been emerging by force of the social movements and civil society organizations that, through local/global linkages, are conducting a global struggle against all the forms of oppression brought about or intensified by neoliberal globalization. In the next section I will elaborate on the political conditions for the emergence of a subaltern cosmopolitan legality as derived form the practices of the social movements and NGOs coming together at the WSF. I argue that in the womb of this alternative counter-hegemonic globalization, another governance matrix is being generated, an insurgent counter-hegemonic governance. It entails the articulation and coordination among an immense variety of social movements and civil society organizations with the purpose of

combining strategies and tactics, defining agendas and planning and carrying out collective actions.

Strikingly, the main features of the neoliberal governance matrix are also present in the insurgent governance matrix: voluntary participation, horizontality, autonomy, coordination, partnership, self-regulation, etc. Different historical trajectories have led to this surprising convergence. On the side of neoliberal governance, the driving impulse has been the rejection of state centralism and state coercion and the formulation of a new model of social regulation based on the interests and voluntary participation of the stakeholders. On the side of counter-hegemonic governance, as shown in the next section, the originating impulse has been the rejection of the working class parties and labor unions as the privileged historical agents and modes of organization of progressive social transformation and the formulation of a new model of social emancipation based on the recognition of the diversity of emancipatory agency and social transformative goals.

Even more striking is the fact that counter-hegemonic governance faces some of the challenges and dilemmas that confront neoliberal governance. For instance, in both cases a principle of selection is at work. In the case of counter-hegemonic governance, the most excluded social groups, those that would conceivably benefit most from a successful struggle against neoliberal globalization, do not participate and are unlikely to see their interests and aspirations taken into account. The negative utopia that aggregates all the movements and NGOs – the refusal of the idea that there is no alternative to the current capitalist global disorder – coexists with the different and even contradictory interests, strategies and agendas that divide them. The struggle to expand the circle of counter-hegemonic governance goes on and some of the movements and NGOs that participate in it are the same ones that struggle for the expansion of the circle of neoliberal governance.

Will neoliberal governance and counter-hegemonic governance ever meet in a dialectical synthesis of global governance? As I argue below, this is very improbable. Are they going to influence each other? This is possible and, indeed, it is already occurring, as the examination of the WSF in the next section will lay bare.

3. The World Social Forum as a subaltern cosmopolitan politics and legality of the global South

3.1. The WSF as Subaltern Cosmopolitan Politics and Legality

The WSF represents one of the most sustainable manifestations of an emergent subaltern, counter-hegemonic global civil society. In its broadest definition, the WSF is the set of initiatives of transnational exchange among social movements and NGOs, articulating local, national or global social struggles conducted (in accordance with the Porto Alegre Charter of Principles) against all the forms of oppression brought about or made possible by neoliberal globalization.

In practice, the WSF is the set of forums (global, regional thematic and local) that are organized according to the Charter of Principles. The WSF is not confined to the four meetings that have taken place in Porto Alegre (Brazil) in 2001, 2002, 2003 and 2005, and in Mumbai (India) in 2004. It also includes all the other forums that have been meeting parallel to the WSF: the several editions of thematic forums such as the Forum of Local Authorities, the World Parliamentary Forum, the World Education Forum, the World Forum of Judges, the World Trade Unions Forum, the World Water Forum, the World Choral Forum, the World Junior Forum, and the Forum of Sexual Diversity. It includes also all the forums that have taken place on their initiative for the past few years — national, regional, and thematic forums. These are too numerous to list fully. Among the regional ones are the several editions of the Pan-Amazonic Forum, the European Social Forum, the Africa Social Forum and the Social Forum of the Americas. Among the thematic forums, special mention should be made of the first thematic forum, held in Argentina in September of 2002, on The Crisis of Neoliberalism in Argentina and the Challenges for the Global Movement and the Forum on Democracy, Human Rights, War and Drug Trade held in Cartagena (Colombia) in June 2003. Also, the national or international meetings of movements or organizations to prepare the aforementioned forums must be also included in the WSF. Finally, even though the Charter of Principles prevents the WSF from organizing collective actions in its own name, regional and global actions carried out by the networks of movements and organizations that are part of the

WSF must be considered part of the WSF process, as long as they abide by the Charter of Principles. For instance, actions agreed upon by the assembly of the Global Network of Social Movements, which meets parallel to the WSF, are part of the WSF process. In the assembly that took place during the third WSF the decision was taken to convene a global march against the war and for peace on February 15, 2003. The same happened during the fourth WSF, the date set for the rally being this time March 20, 2004, the first anniversary of the invasion of Iraq. Although they are not carried out formally in the name of the WSF, these collective actions must be considered part of the WSF process.[2]

The WSF is a new political phenomenon. It is not an event, nor is it a mere succession of events, although it does try to dramatize the formal meetings it promotes. It is not a scholarly conference, although the contributions of many scholars converge into it. It is not a party or an international of parties, although militants and activists of many parties all over the world take part in it. It is not an NGO or a confederation of NGOs, even though its conception and organization owes a great deal to NGOs. It is not a social movement, even though many participants designate it as the movement of movements. Although it presents itself as an agent of social change, the WSF rejects the concept of a privileged historical subject, that is, it confers no priority on any specific social actor in this process of social change. It holds no clearly defined ideology, either in defining what it rejects or what it asserts.

The social struggles that find expression in the WSF do not adequately fit either avenue of social change sanctioned by Western modernity: reform and revolution. Aside from the consensus on nonviolence, its modes of struggle are extremely diverse and appear spread out in a continuum between the poles of legality/institutionality and direct action/insurgency. Even the concept of nonviolence is open to widely disparate interpretations. Finally, the WSF is not structured according to any of the models of modern political organization, be they democratic centralism, representative democracy, or participatory democracy. Nobody represents it or is allowed to speak in its name, let

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[2] The inclusion of these actions in the WSF process is not uncontroversial. The International Council of the WSF includes organizations whose representatives deny any organic relation between the WSF and the actions decided by the Global Network of Social Movements, or any other network of movements or organizations. According to them, the comprehensiveness and inclusiveness of the WSF can only be preserved if no specific collective action can be said to represent the WSF as a whole.

alone make decisions, even though it sees itself as a forum that facilitates the decisions of the movements and organizations that take part in it.[3]

In what follows, I begin by stating what the political novelty of the WSF is. I then proceed to analyze the problems and tensions that this novelty creates particularly in what concerns political strategy and political action, and their relation to institutional action and law.

3.2. The political novelty of the World Social Forum

The political innovations of the WSF can be formulated in the following way:

3.2.1. A new critical utopia

The WSF entails the reemergence of a critical utopia, that is to say, the radical critique of present-day reality and the aspiration to a better society. It has arisen as an alternative to the dominance of the conservative utopia of neoliberalism –the utopian belief in the unregulated market as the source of economic and social well-being and the standard by which all other alternatives are to be measured (or rather, discarded). As all conservative utopias, neoliberalism distinguishes itself from critical utopias by the fact that it identifies itself with present-day reality, so that its utopian dimension in the radicalization or complete fulfillment of the present (Hinkelammert 2002: 278).

The utopian dimension of the WSF consists in affirming the possibility of a counter-hegemonic globalization. Thus, the utopia of the WSF asserts itself more in negative terms (the definition of what it critiques) than in positive terms (the definition of that to which it aspires). As the first critical utopia of the twenty-first century, the WSF aims to break with the tradition of the critical utopias of Western modernity, many of which turned into conservative utopias. The openness of the utopian dimension of the WSF is its attempt to escape this perversion. For the WSF, the claim of alternatives is plural. The affirmation of alternatives goes hand in hand with the affirmation that there are alternatives to the alternatives.

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[3] For a better understanding of the political character and goals of the WSF, see Sen, Anand, Escobar and Waterman (2004). See also the Charter of Principles (http://www.forumsocialmundial.org.br)

Moreover, the utopia of the WSF is a radically democratic one. The WSF's focus on the processes of intercourse among the movements (rather than on an assessment of the movements' political agendas) is the main reason of its internal cohesion. It helps to maximize what unites and minimize what divides. This utopian design, which is clear in the WSF's Charter of Principles, is aimed at promoting consensuses beyond the ideological and political cleavages among the participating movements and organizations.

3.2.2. A very broad conception of power and oppression

Neoliberal globalization did not limit itself to submitting ever more interactions to the market, nor to raising the workers' exploitation rate by transforming the labor force into a global resource while preventing the emergence of a global labor market. Neoliberal globalization showed that exploitation is linked with many other forms of oppression that affect women, ethnic minorities, indigenous peoples, peasants, the unemployed, workers of the informal sector, legal and illegal immigrants, ghetto subclasses, gays and lesbians, children and the young. All these forms of power create exclusion. One cannot ascribe to any one of them, in abstract, nor to the practices that resist them, any priority as to the claim that "another world is possible." Political priorities are always situated and conjunctural. They depend on the concrete conditions of each country at a given historical moment. To respond to such conditions and their fluctuations, the movements and organizations must give priority to the articulations among them. This ultimately explains the organizational novelty of a WSF with no leaders, its rejection of hierarchies, and its emphasis on networks made possible by the internet.[4]

3.2.3. Equivalence between the principles of equality and of recognition of difference

We live in societies that are obscenely unequal, and yet equality is lacking as an emancipatory ideal. Equality, understood as the equivalence among the same, ends up excluding what is different. Herein lies the grounding of the aforementioned political and organizational novelty, as well as the grounding of the WSF's option for participatory

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[4] On this subject, see Waterman (2003a, 2003b) and Escobar (2003).

democracy as ruling principle of social emancipation, to the detriment of closed models such as that of state socialism.

3.2.4. Privileging rebellion and nonconformity to the detriment of revolution

There is no unique theory to guide the movements strategically, because the aim is not so much to seize power but rather to change the many faces of power as they present themselves in the institutions and sociabilities. Furthermore, even those for whom seizing power is a priority are divided as to the strategy. Some withih the WSF prefer drastic breaks to bring about a new order (revolution), while others prefer gradual changes by means of an engagement and dialogue with the enemy (reform). At this level, the novelty consists in the celebration of diversity and pluralism, experimentalism, and radical democracy as well.

3.3. The issue of strategy and political action

Given its political novelties, the translation of the WSF's utopia into strategic planning and political action cannot be but difficult. This task is marked by the historical trajectory of the political left throughout the twentieth century. The reality of the divergences is often a ghostly one, in which disagreements about concrete political options get mixed up with disagreements about codes and languages in which such options are articulated.

The WFS has managed so far to overcome political divergences. Contrary to what happened in the thinking and practice of the left in Western capitalist modernity, the WSF has created a style and an atmosphere of inclusion of and respect for disagreements that made it very difficult for the different political factions to self-exclude themselves at the start under the excuse that they were being excluded. A decisive contribution to this was the WSF's "minimalist" program stated in its Charter of Principles: emphatic assertion of respect for diversity; access hardly conditioned (only movements or groups that advocate violence are excluded); no voting or deliberations at the Forum as such; no representative entity to speak for the Forum.

All this has contributed to making the WSF's power of attraction greater than its capacity to repel. Even the movements that are most severely critical of the WSF, such as

the anarchists, have not been absent. There is definitely something new in the air, something that is chaotic, messy, ambiguous, and indefinite enough to deserve the benefit of the doubt or be susceptible to manipulation. Few would want to miss this train, particularly at a time in history when trains had ceased to ride. For all these reasons, the desire to highlight what the movements and organizations have in common has prevailed upon the desire to underscore what separates them. The manifestation of tensions or cleavages has been relatively tenuous and, above all, has not resulted in mutual exclusions. It remains to be seen for how long this will to convergence and this chaotic sharing of differences will last.

Neither the kinds of cleavages nor the way the movements relate to them are randomly distributed inside the WSF. On the contrary, they reflect a meta-cleavage between Western and non-Western political cultures. Up to a point, this meta-cleavage also exist between the North and the South. Thus, given the strong presence of movements and organizations of the North Atlantic and white Latin America, it is no wonder that the most salient cleavages reflect the political culture and historical trajectory of the left in this part of the world. This means, on the one hand, that many movements and organizations from Africa, Asia, the indigenous and black Americas, and the Europe of immigrants do not recognize themselves in these cleavages; on the other, that alternative cleavages that these movements and organizations might want to make explicit are perhaps being concealed or minimized by the prevailing ones.

Bearing this caveat in mind, let us examine briefly the main manifest cleavages. Taken together, they represent the horizon within which the possibilities and limitations of subaltern cosmopolitan legality unfold.

3.3.1. Reform or revolution

This cleavage carries the weight of the tradition of the Western left. It is the cleavage between those who think that another world is possible through the gradual transformation of the unjust world in which we live --through legal reform and mechanisms of representative democracy-- and those who believe that the world we live in is fundamentally a capitalist one that will never tolerate reforms that put it in question, and that it must therefore be overthrown and replaced by a socialist world. This is also

regarded as a cleavage between moderates and radicals. Either field comprises a wide variety of positions. For instance, among revolutionaries, there is a clear cleavage between the old left aspiring to a variety of state socialism, the radically anti-Statist anarchists, and some newer left rather ambivalent about the role of the state in a socialist society. Although they amount to a very minor proportion of the WSF, the anarchists are among the fiercest critics of reformism, which they claim controls the WSF's leadership.

This cleavage reverberates, albeit not linearly, in strategic options and options for legal and political action. As to legal action, the reformists are more willing to include legal and judicial mobilization in their political struggles, provided that political mobilization defines the framework for legal mobilization and not the opposite, while the revolutionaries are highly suspicious of law, even of bottom-up informal law or international human rights. In their view, there is a deep (strategic but also ideological) fault line between political mobilization and legal mobilization that makes the articulation between the two virtually impossible. Legal action tends to individualize the conflicts, to prioritize legal professional knowledge, to take away from the movements the rhythm of the struggle, to inflate small reversible achievements into major irreversible victories –in sum, it tends to have a demobilizing effect. Concerning more specific political choices, one of the most salient is the strategic choice between reforming and engaging the institutions of neoliberal globalization (the WTO and the International Financial Institutions), and confronting them and fighting for their elimination or replacement.

What is new about the WSF as a political entity is that the majority of the movements and organizations that participate in it do not recognize themselves in these cleavages and refuse to take part in them. There is great resistance to rigidly assuming a stance and even greater to labeling it according to the classificatory orthodoxies of the past. The majority of movements and organizations have political experiences in which moments of confrontation alternate or combine with moments of dialogue and engagement, in which long range visions of social change cohabit with the tactical possibilities of the political and social conjuncture in which the struggles take place, in which radical denunciations of capitalism do not paralyze the energy for small changes

when the big changes are not possible, in which resorting to courts is now considered useful and now detrimental.

Above all, for many movements and organizations, the cleavage reform/revolution is Western- or Northern-centric, and is more useful to understand the past of the left than its future. Indeed, many movements and organizations do not recognize themselves, for the same reasons, in the dichotomy between left and right.

Precisely because for many movements and organizations the priority is not to seize power but rather change the power relations in oppression's many faces, the political tasks, however radical, must be carried out here and now, in the society in which we live. Gramsci's (1971) concept of hegemony is useful to understand the movements' political actions. What is necessary is to create alternative, counter-hegemonic visions, capable of sustaining the daily practices and sociabilities of citizens and social groups. The work of the movements' leaderships is of course important, but it is not conceived of as the work of an enlightened vanguard that breaks the path for the masses, ever the victims of mystification and false consciousness. On the contrary, as Subcomandante Marcos has suggested, it behooves the leaderships to "walk with those who go more slowly." It is not a question of either revolution or reform. It is, for some, a question of rebellion and transgression; for others, a question of revolution in a non-Leninist sense, one about civilizational change occurring over a long period of time.

3.3.2. Socialism or social emancipation

This cleavage is related to the previous one but there is no perfect overlap between the two. Regardless of the position taken vis-à-vis the previous cleavage, or the refusal to take position, the movements and organizations diverge as to the political definition of the other possible world. For some, socialism is still an adequate designation, however abundant and disparate the conceptions of socialism may be. For the majority, however, socialism carries in itself the idea of a closed model of a future society, and must, therefore, be rejected. They prefer other, less politically charged designations, suggesting openness and constant search for alternatives. For example, social emancipation as the aspiration to a society in which the different power relations are replaced by relations of

shared authority. This is an inclusive designation focusing more on processes than on final stages of social change. Those framing their struggles in terms of social emancipation tend to have a more positive view of subaltern cosmopolitan legality based on the historical record of legal and judicial successful struggles that became known as landmarks of social emancipation.

But many movements of the South think that no general labels need be attached to the goals of the struggles. Labels run the risk of taking off from the practices that originated them, acquiring a life of their own, and giving rise to perverse results. As a matter of fact, according to some, the concept of socialism is Western-centric and Northern-centric, while the concept of emancipation is equally prey of the Western bias to create false universalisms. Hence many do not recognize themselves in either term of this dichotomy, and are wary of proposing an alternative one.

3.3.3. The state as an enemy or as a potential ally

This is also a cleavage in which movements of the North recognize themselves more easily than movements of the South. On the one hand, there are those who think that the state --although an important arena of struggle in the past-- for the past 25 years has been transnationalized and turned into an agent of neoliberal globalization. Either the state has become irrelevant or is today what it has always been — the expression of capitalism's general interests. The privileged target of counter-hegemonic struggles must, therefore, be the state –or, at a minimum, such struggles must be fought with total autonomy vis-à-vis the state. On the other hand, there are those who think that the state is a social relation and, as such, it is contradictory and continues to be an important arena of struggle. Neoliberal globalization did not rob the state of its centrality, it rather reoriented it better to serve the interests of global capital. Deregulation is a social regulation like any other, hence a political field where one must act if there are conditions for acting.

The majority of the movements, even those that acknowledge the existence of a cleavage in this regard, refuse to take a rigid and principled position on this issue. Their experiences of struggle show that the state, while sometimes the enemy, can often be a precious ally in the struggle against transnational impositions. In these circumstances, the

privileged stance with the WSF is, again, pragmatism. If in some situations confrontation is in order, in others collaboration is rather advised. In others still a combination of both is appropriate. What is highlighted in the discussions on this issue within the WSF is that that, at every moment or in every struggle, the movement or organization in question be clear and transparent regarding the reasons for the adopted option, so as to safeguard the autonomy of the action.

Here also the cleavage prolongs itself in the ways in which legal mobilization can or cannot be part of counter-hegemonic struggles. The pragmatic position vis-à-vis the state tends to go together with a more positive view about the progressive potential of legal and judicial action. While never considering the state as an unconditional ally, this stance is open to the possibility that in specific cases the institutionalization of arrangements embodying the convergence of state action with counter-hegemonic movements can be beneficial for the latter.

3.3.4. National or global struggles

This is the most evenly distributed cleavage among the movements and organizations that comprise the WSF. On one side, there are the movements that, while participating in the WSF, believe that the latter is no more than a meeting point and a cultural event, since the struggles that are truly important for the welfare of marginalized populations are fought at the national level against the state or the dominant national civil society. For instance, according to a report on the WSF prepared by the Movement for National Democracy in the Philippines that privileges the national scale:

(…) the World Social Forum still floats somewhere above, seeing and trying yet really unable to address actual conditions of poverty and powerlessness brought about by Imperialist globalization in many countries. Unless it finds definite ways of translating or even transcending its "globalness" into more practical interventions that address these conditions, it just might remain a huge but empty forum that is more a cultural affair than anything else... national struggles against globalization

are and should provide the anchor to any anti-globalization initiative at the international level (Gobrin-Morante 2002:19).

On the other side, there are the movements according to which the state is now transnationalized and thus is no longer the privileged center of political decision. This decentering of the state brought about as well the decentering of the civil society, which is subjected today to many processes of cultural and social globalization. Furthermore, in some situations, the object of the struggle (be it a decision of the WTO, a World Bank policy, or a TNC's decision to explore for oil in indigenous territory) is outside the national space and includes a plurality of countries simultaneously. This is why the scale of the struggle, from this viewpoint, must be increasingly global, a fact on which the WSF draws its relevance.

According to the large majority of the movements, this is again a cleavage that does not do justice to the concrete needs of concrete struggles. What is new about contemporary societies is that the scales of sociability –the local, the national and the global— are increasingly more interconnected. In the most remote village of the Amazon or India the effects of hegemonic globalization and the ways in which the national state engages with it are clearly felt. This applies also counter-hegemonic struggles. For movements participating in the WSF, although every political or social struggle privileges a particular scale, its success lies in the combination of different scales. The decision on which scale to privilege is a political one that is made on a case by case basis.

The impact of this cleavage on the politics of legality is shown in the relative weight given to international law, international human rights and transnational legal advocacy in framing political actions. Whenever the movements or NGOs regard legal mobilization as an integral part of political mobilization, they tend to resort to legal strategies at different scales. Such "transcalar" character is part and parcel of subaltern cosmopolitan legality -- the type of legal mobilization that, by targeting the global in the local and the local in the global, advances counter-hegemonic globalization (Santos, 2002: 468).

3.3.5. Direct or institutional action

This is the cleavage with the most direct impact on the politics of legality. It is clearly linked to the above-mentioned cleavages concerning reform/revolution and the role of the state. It is also a cleavage with a long tradition in the Western left. Those for whom this cleavage continues to have a great deal of importance are the same that slight the newness of neoliberal globalization in the historical process of capitalist domination.

On the one side, there are movements that believe that legal struggles, based on dialogue and engagement with state institutions or international agencies, are ineffectual because the political and legal system of the state and the institutions of capitalism are impervious to any legal or institutional measures capable of really improving the living conditions of the popular classes. Institutional struggles call for the intermediation of parties, and parties tend to put those struggles at the service of their party interests and constituencies. The success of an institutional struggle has, therefore, a very high price – the price of cooptation, denaturalization, and banalization. But even in the rare case in which an institutional struggle leads to legal measures that correspond to the movements' objectives, it is almost certain that the concrete application of such measures will end up being subjected to the legal-bureaucratic logic of the State, thereby frustrating the movements' expectations. This is why only direct action, mass protest, strikes will yield the success of the struggles. The popular classes have no weapon but external pressure on the system. If they venture into it, they are defeated from the start.

In contrast, the supporters of institutional struggles assume that the "system" is contradictory, a political and social relation where it is possible to fight and where failure is not the only possible outcome. In modernity, the state and specifically state law was the center of this system. In the course of the twentieth century the popular classes conquered important institutional and legal spaces, of which the welfare system is a good manifestation. The fact that the welfare system is now in crisis and the "opening" that it offered the popular classes is now being closed up, does not mean that the process is irreversible. Indeed, from this point of view, it may be reversed if the movements and organizations continue to struggle inside the institutions and the legal system.

In general, the stronger movements and organizations are those that more frequently privilege institutional struggles, whereas the less strong are those that more frequently privilege direct action. This cleavage is much more lively among movements and organizations of the North than of the South. The large majority of the movements, however, refuse to take sides in this cleavage. According to them, the concrete legal and political conditions must dictate the kind of struggle to be privileged. Conditions may actually recommend the sequential or simultaneous use of the two kinds of struggle. Historically, direct action was at the genesis of progressive institutional changes, and it was always necessary to combat the cooptation or even subversion of such changes through direct action.

In spite of the differences, all the movements and NGOs tend to agree that legal mobilization demands a double investment that most movements and NGOs cannot afford. One the one side, the choice of the most adequate legal forum oftentimes demands prohibitive legal and financial resources On the other, the kind of legal activism called for—in which high level of legal expertise must combine with a progressive political stance providing the stimulus to seek beyond conventional legal interpretation and adjudication—is rarely found. This explains why the stronger movements or NGOs, which often have a legal department of their own, tend to have a more positive view of legal, institutional action.

3.3.6. The principle of equality or the principle of respect for difference

As noted above, one of the novelties of the WSF is the fact that the large majority of its movements and organizations believe that social emancipation must be grounded on two principles — the principle of equality and the principle of respect for difference. The struggle for either of them must be articulated with the other, for the fulfillment of either is condition of the fulfillment of the other. Nonetheless, there is a cleavage among the movements and even, sometimes, inside the same movement on whether priority should be given to one of these principles, and in that case to which one. Among those that answer the first question in the affirmative, the cleavage is between those that give priority to the principle of equality (for equality alone may create real opportunities for

the recognition of difference) and those that give priority to the principle of the recognition of difference, for without such recognition equality conceals the exclusions and marginalities on which it lies, thus becoming doubly oppressive (for what it conceals and for what it shows).

This cleavage occurs among and within movements. It cuts across, among others, the workers', the feminist, the indigenous, and the black movements. For instance, whereas the workers' movement has privileged the principle of equality to the detriment of the principle of the recognition of difference, the feminist movement has, in general, privileged the latter in detriment to the former. But the most widespread position –most forcefully advanced by the indigenous movement-- is that both principles have priority, and that no principle should be privileged in the abstract. According to this view, concrete political conditions will dictate to each movement which one of the principles is to be privileged in a given concrete struggle. Any struggle conceived under the aegis of one of these two principles must be organized so as to open space for the other principle.

In the feminist movement of the WSF, this position is now dominant. Virginia Vargas (s/d) puts this position in the following terms:

> At the World Social Forum, feminists have begun (...) nourishing processes that integrate gender justice with economic justice, while recovering cultural subversion and subjectivity as a longer term strategy for transformation. This confronts two broad expressions of injustice: socio-economic injustice, rooted in societal political and economic structures, and cultural and symbolic injustice, rooted in societal patterns of representation, interpretation and communication. Both injustices affect women, along with many other racial, ethnic, sexual and geographical dimensions.

Vargas asks for new feminisms constituting a heterogeneous and expansive panorama, generating polycentric fields of action that spread over a range of civil society organizations and are not constrained to women's affairs, although women undoubtedly maintain them in many ways. And she concludes: "Our presence in the WSF, asking these very questions, is also an expression of this change."

The dynamic coexistence of the principle of equality and the principle of recognition of difference carries enormous weight in defining the position of the politics of legality in subaltern cosmopolitan struggles. The crisis of both demo-liberal and demo-socialist reformism had its most direct impact on the principle of equality, which, indeed had provided the rationale for the progressive reformist struggles of the twentieth century (Santos 2002:441). The crisis did not affect the principle of recognition of difference in the same way and it can even be said that, simultaneously with the deepening of the crisis of the principle of equality, important victories were obtained as regards the social validation of the principle of recognition of difference, as shown most notably both by the feminist movements from the 1970s onwards and by the indigenous movements from the 1980s onwards. These victories injected a new credibility into the politics of legality both in the North and in the South, a credibility likely to spill over to other areas of political struggle.

3.3.7. Trans-conflictuality

Many of the tensions and cleavages mentioned above are not specific to the WSF. They in fact belong to the historical legacy of the social forces that for the past 200 years have struggled against the *status quo* for a better society. The specificity of the WSF resides in the fact that all these cleavages coexist in its bosom without upsetting its aggregating power. To my mind, three factors contribute to this. First, the different cleavages are important in different ways for the different movements and organizations, and none of them is present in the practices or discourses of all the movements and organizations. Thus, all of them, at the same time that they tend towards factionalism, liberate potential for consensus. That is to say, all the movements and organizations have room for action and discourse in which to agree with all the other movements or organizations, whatever the cleavages among them. Second, there has so far been no tactical or strategic demand that would intensify the cleavages by radicalizing positions. On the contrary, cleavages have been fairly low intensity. For the movements and organizations in general, what unites has been more important than what divides. Third, even when cleavages are acknowledged, the different movements and organizations

distribute themselves amongst them in a nonlinear way. If a given movement opposes another in a given cleavage, it may well be on the same side in another cleavage. Thus, the different strategic alliances or common actions featured by each movement tend to have different partners. In this way are precluded the accumulation and strengthening of divergences that could result from the alignment of the movements in multiple cleavages. On the contrary, the cleavages end up neutralizing one another. In such trans-conflictuality, to my mind, lies the WSF's aggregating power.

4. The Politics of Legality in a Context of Conflicting Globalizations

I have described the WSF as a critical realist utopia. At this point it should be asked what kind of relation of law and politics (what I call politics of legality) is congruent with this utopia and what political strategies it has been giving rise to. Does it comprise a legal utopia? How does it compare to neoliberal governance, the privileged legal form of hegemonic globalization?

I have argued elsewhere that the transformation, in the nineteenth century, of the modern idea of progress into the idea of infinite and ever expanding repetition of bourgeois society entrusted both modern science (and, specifically, the social sciences) and law with the task of discovering and guaranteeing the regularities of social life and social transformation that made possible "normal change" (Santos 2002:71-82). Law, in the meantime reduced to state law, was available both as an instrument to fulfill the imperatives of social regulation and as a pre-understanding of the scientific knowledge of society still to be developed.

This unlimited availability of the law of the state for social engineering was at the roots of its conversion into a utopia of its own – a legal utopia. This legal utopia was the engine behind normal change –the idea that, through a dialectics of amelioration and repetition, social change was a continuous process proceeding through gradual transformations sanctioned by the state law, itself changing continuously and gradually.

This pattern of normal change is based on the following presuppositions. First, no matter how diverse its application from state to state, the pattern of normal change is the transnational political logic of the interstate system. Second, the national steering

mechanisms developed and deployed by the state are available and are efficacious throughout the national territory, whose boundaries are also guaranteed by the state. Third, the financial capacity of the state to implement all of its strategies depends above all on the sustainability of economic growth, and hence on the success of the accumulation strategies. Fourth, human aspirations and the well-being of the people can be fulfilled or guaranteed by mass-produced products and services designed according to a commodity form, even if not distributed by commodity markets. Fifth, the risks and dangers that the state is asked to protect its citizens from occur rarely, and are predominantly small-scale or medium-scale.

This legal utopia is undergoing a deep (final?) crisis that started in the early 1970s and continues today (Santos 2002:71-82, 447-58). It is in the shadow (if not in the ruins) of this legal utopia and its crisis that both neoliberal governance and subaltern cosmopolitan legality must be understood. They represent two contrasting interpretations of the conditions deriving from the crisis of modern legal utopia and, consequently, offer two contrasting prospective readings of our time. Neoliberal governance sees the crisis of the legal utopia not as a problem but as a solution. According to the governance matrix, modern legal utopia is part and parcel of a command-and-control bureaucratic rule, centered on the state and the judiciary, which, besides being authoritarian, rigid and non-participatory, is ridden by inefficiencies and haunted by the enactment/enforcement gap (Simon 2003). The above-mentioned features of governance are thus designed to offer the solution to the problems created by modern legal utopia, not by its crisis.

For subaltern cosmopolitan legality, modern legal utopia was a false solution to the very real problem of managing the tensions between democracy and capitalism. On one side, democratic struggles for inclusion in the social contract, which resulted in expanding rights, some measure of social redistribution and the growth of non-mercantile interactions among citizens made possible by the welfare state. On the other side, profit-driven capitalism viewing social redistribution as a form of expropriation. The modern legal utopia never managed to solve the contradiction between redistributive democracy and capitalism, but kept it within manageable boundaries, thus laying the foundation for the consensus politics that ruled the core countries from the second post-war period to the end of the 1960s. The crisis of the legal utopia has worsened the problem of social

distribution. Paradoxically, it has done so in such a way that the contradictions between democracy and capitalism seem to have vanished. Deprived of its redistributive potential, democracy is today globally promoted by the same agencies that promote capitalism around the world. The tension has dissolved in complementarity.

This, however, is only part of the story. The other part is a deep disjuncture between political regime and social regime, which I have described as the rise of social fascism (Santos 2002:453). It is a new socio-political constellation characterized by the confinement of democracy to an ever more narrowly defined political field that coexists (rather than interferes) with forms of sociability, in which the more powerful non-state actors assume veto power over the life and well-being of less powerful or powerless ones. It is a highly unstable political constellation, reproduced in the core countries by a hitherto efficacious transformation of consensus politics into resignation politics, and in the peripheral countries by the imposition of structural adjustment policies often coupled with the collaboration of corrupt local elites. Social fascism on a global scale is the problem that subaltern cosmopolitan legality sees itself confronted with. There is no point in trying to revive the modern legal utopia nor in inventing a new legal utopia. The solution lies in a critical realist utopia whose pragmatic unfolding may involve legal mobilization as part of broader political mobilization.

In order to be successfully mobilized in a counter-hegemonic context, law must undergo a deep process of revision. At stake is, first of all, the inquiry into the possibility of the counter-hegemonic use of a hegemonic tool such as law. Secondly, the inquiry is into non-hegemonic traditions of law and legality and the possibility of its mobilization in counter-hegemonic struggles. As I argued at the outset, this unthinking of law involves an expansion of the conception of the politics of legality. The legal struggles conducted by the movements and NGOs combined in the WSF bear witness to the need for such an expansion. I emphasized the internal diversity of the WSF by focusing on the main cleavages among the movements, which should suffice to caution us against the idea that a new paradigm is emerging. What can be said is that in spite of all differences they share the quest for the fourfold expansion of the politics of legality mentioned in the introductory section.

First, subaltern cosmopolitan legality is never formulated as a legal strategy but rather as a political strategy that comprises legal components. Moreover the struggles do not focus exclusively on the principle of equality (social redistribution), as was the case of modern legal utopia, but rather on a complex and dynamic balance between the principle of equality and the principle of recognition of difference.

Second, whenever law is resorted to, it is not necessarily the nation-state law; it may be the local unofficial law, as well as international or transnational law. Herein lies the transcalar nature of legal mobilization. The difference of subaltern cosmopolitan legality vis-à-vis modern legal utopia is evident as the latter focused exclusively on official state law.

Third, legal knowledges susceptible of being mobilized in subaltern cosmopolitan legal struggles are very diverse. Only rarely do the struggles rely exclusively on state-certified professional legal knowledge. Indigenous people, urban squatter settlers, over-exploited workers in sweatshops, landless peasants and peasants trying to secure traditional land tenure against market-led tenure regimes, discriminated women, minorities, religious groups and lower castes, migrants, workers in the informal economy, environmentalists and peace activists – all of them act under the assumption that law is a strange substance made of different ingredients and in different doses to be carried in different vessels and used (or discarded) in different ways along the road toward a more just society.

Fourth, the priority of political mobilization over legal mobilization and the diversity of political tools resorted to are congruent with a conception of social struggle whose time frame much more complex than the one that presided over legal mobilization under the aegis of modern legal utopia. One the one hand, the social groups involved in counter-hegemonic struggles refuse to be seen as residual, inferior, ignorant, unproductive, or local. On the other, they refuse to forget the long duration of capitalism and colonialism as a factor explaining both their grievances and their resistance.

In sum, the WSF's utopia is in the antipodes of the legal utopia that is at the core of modern capitalist societies. But, aware of the danger of throwing out the baby with the bath water, counter-hegemonic globalization struggles cannot afford not to use any non-violent means available to them against capitalist modernity, including those invented by

capitalist modernity to betray its promises of freedom, equality and non discrimination. Herein lies a transmodern conception of law.

References

Angelis, Massimo de. 2003. "Neoliberal Governance, Reproduction and Accumulation." *The Commoner* 7: 1-27.

Arendt, Hannah (1968 [1951]). *The Origins of Totalitarism*. New York: Harcourt Brace Jovanovich.

Boyer, Robert. 1986. *Capitalismes fin de siècle*. Paris: Maspero.

Boyer, Robert; Drache, Daniel (Eds.) .1996. *States Against Markets: the Limits of Globalization*. New York: Routledge.

Castells, Manuel. 1996. *The Rise of the Network Society*. Cambridge: Blackwell.

Crozier, Miche, Samuel Huntington and Joji Watanuki. 1975. *The Crisis of Democracy: Report on the governability of democracies to the Trilateral Commission*. New York: New York University Press.

Escobar, Arturo. 2003. *Other Worlds Are (already) Possible: Cyber-Internationalism and Post-Capitalist Cultures*. Paper presented at the Cyberspace Panel, Life After Capitalism Programme, 3rd World Social Forum, Porto Alegre, January 23-28.

Gobrin-Morante, C. (2002), "The World Social Forum Fights Imperialist Globalization", L. Nisula and K. Sehm-Patomäki (eds.) *We, the Peoples of the World Social Forum*. Network Institute for Global Democratization. Discussion Paper 2/2002, 19-21.

Habermas, Jurgen. 1982. *Theorie des Kommunikativen Handelns*. Frankfurt: Suhrkamp.

Held, David. 1987. *Models of Democracy*. Cambridge: Polity.

Hinkelammert, Franz .2002. *Crítica de la razón utópica*. Bilbau: Desclée de Brouwer.

Jessop, Bob. 1998. "The Rise of Governance and the Risks of Failure: The Case of Economic Development." *International Science Journal* 155: 29-45.

Kuhn, Thomas. 1970. *The Structure of Scientific Revolutions*. Chicago:University of Chicago Press

Macpherson, C. B. 1966. *The Real World of Democracy*. Oxford: Clarendon.
-----.1977. *The Life and Times of Liberal Democracy*. Oxford: Oxford University Press.

Monedero, Juan Carlos. 2003. *La Trampa de la Gobernanza: Nuevas Formas de Participacion Politica.* Mexico: Camara de Diputados.

Offe, Claus. 1985. *Disorganized Capitalism*. Oxford: Polity Press.

Rodríguez-Garavito, César. 2005. "Global Governance, Cross-Border Organizing, and Labor Rights: Codes of Conduct and Anti-Sweatshop Struggles in Global Apparel Factories in Mexico and Guatemala." *Politics & Society* 33.

Santos, Boaventura de Sousa. 1995. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. New York: Routledge.
-----2001. (Ed.). *Globalização: Fatalidade ou Utopia?*. Porto: Afrontamento.
-----2002. *Toward a New Legal Common Sense*. London: Butterworths.
----2004. "A Critique of Lazy Reason: Against the Waste of Experience." in *The Modern World System in the Longue Durée*, edited by Immanuel Wallerstein. New York: Free Press.

Santos, Boaventura de Sousa and Jane Jenson (Eds.). 2000. *Globalizing Institutions: Case studies in Regulation and Innovation*. Aldershot: Ashgate.

Sen, J.; Anand, A.; Escobar, A.; and Waterman, P. 2004. *World Social Forum. Challenging Empires*. New Delhi: The Viveka Foundation.

Simon, William. 2003. "Solving Problems v. Claiming Rights: The Pragmatist Challenge to Legal Liberalism", *Pub. Law Research Paper*, No 03-58, Stanford Law School; Columbia University - Columbia Law School.

United Nations. 2000. *Global Compact Primer* New York: United Nations (www.unglobalcompact.org)

Vargas, Virginia (s/d), *Los aportes y los retos feministas en el Foro Social Mundial.* (www.alainetorg)

Waterman, Peter. 2003a. *First Reflections on the World Social Forum, Porto Alegre, Brazil*. Library of Alternatives, WSF (www.forumsocialmundial.org.br).
-----2003b. *Second Thoughts on the WSF: Place, Space and the Reinvention of Social Emancipation on a Global Scale.* Library of Alternatives, WSF (www.forumsocialmundial.org.br).
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