CHAPTER 7

LAW: A MAP OF MISREADING

INTRODUCTION

The idioms of regulation and emancipation are inextricably linked together. The structural places analysed in Chapter Six are orthotopias, in that they are hegemonic modes of production of social action, power, law and knowledge, through which social, political and cultural inequality is reproduced and justified. But, as I have already mentioned, and will argue in greater detail in the last chapter, they are also heterotopias or even utopias, that is to say, sites of revolt, resistance and emancipation. The contradiction between regulation and emancipation—which manifests itself as latent or overt conflicts among concrete social groups—runs through even the most hegemonic constellations of power, legality and knowledge. There is no global or definitive *Aufhebung* for this contradiction. As a result, neither regulation nor emancipation will ever be complete or everlasting. There will always be social struggles between regulatory powers, laws and knowledges, on the one hand, and emancipatory powers, laws, and knowledges, on the other.

After having focused on regulation in Chapter Six, and before focusing on emancipation in the concluding chapter, it makes sense to pause for a close-up view of the intrinsic limits and possibilities of forms of power, law and knowledge as they become idioms of contradiction in regulation/emancipation struggles. In this chapter I will concentrate on forms of law, using them as revolving doors through which different forms of power and knowledge circulate. The type of close-up view I am calling for can only be obtained in the context of concrete struggles as they unfold, mobilizing, inventing, confronting, appropriating or rejecting different forms of legality and illegality. In the analysis that follows I will therefore draw on some of my own previous empirical studies of concrete social processes and legal struggles, some of which were already presented in the preceding chapters. I hope to show how this analysis might apply to the six structural forms of law once the research agenda laid out in Chapter Six has been carried out in concrete empirical studies.

The idea of space and spatiality is central to the theoretical construction I am presenting in Part Three. Needless to say, spaces are time-spaces, as spatialities are also temporalities. The focus on space is preferred only because it highlights copresence and contemporaneity as necessary conditions of social struggles, without thereby forgetting that encounters are always relatively asymmetric, inasmuch as

simultaneous occurrences are always made of different temporal experiences and expectations. A legal system is a more or less sedimented terrain, a geological construct made of different laws composing different layers, all of them in force together but never in a uniform fashion, all of them in the same moment but always as a momentary convergence of different temporal projections. Koselleck's conception of "the contemporaneity of the noncontemporaneous," which is derived from Heidegger and Gadamer,[1] may be useful to capture the complexity and unevenness of social, political, legal, or epistemological copresence. From a sociological perspective, however, the analytical potential of this conception is maximized, once it is made self-reflexive, complex, uneven and open to sociological variation itself. Indeed, although in general all social processes bring together in a given time-space different temporalities and spatialities, some social processes—which we may call performative—emphasize the contemporaneity, that is to say, the uniqueness of the encounter, while others—which we may call self-reflexive—emphasize the noncontemporaneous roots of what is brought together. Social struggles, whether they constellate around power, law or knowledge, tend to be performative, as they actively produce (rather than merely reproducing) the forms of power, law or knowledge that best suit their horizons of expectations. Whatever is brought into conflict (issues, social groups, cognitive maps, normative orderings) is somehow pulled by the roots, so as to become coeval with whatever else is brought together into conflict. The momentary and pragmatic suspension of noncontemporaneity favors the elimination of hierarchies among social temporalities, thereby preempting the possibility of one temporality absorbing other competing temporalities.[2] Not all social struggles achieve such pragmatic suspension of noncontemporaneity, and indeed, many of them convert such suspension into the main object of struggle, but it is only through coevalness that social struggles mark their uniqueness and their irreversibility, in sum, their historicity.

The emphasis on spatiality in Part Three is, therefore, also a temporal emphasis, an emphasis on coevalness. The identification of multiple sites and idioms of social struggles, constellating around forms of power, forms of law and forms of knowledge, suits my analytical purposes, but it is also adequate to the broader epistemological claims formulated in Part One. The recognition of the rhetorical nature of knowledge, and the quest for a new rhetoric, a dialogic rhetoric that is self-reflexively aware of its own limits (the unspoken, the unspeakable, silences, silencings) call for coeval and spatialized interpretive communities and rhetorical commonplaces (or *topoi*) through which structural locations become cultural belongings. In Chapter Six, I conceive of the six structural places as social relations endowed with specific spatialities, sites of production and reproduction of social agency, and institutions, of power, legality and knowledge; but also as rhetorical places or *topoi*, around which different common senses are built, ideological orthodoxies that, very much like moral codes, define symbolic boundaries and invite commitments from those located inside them.

This multilayered conception of structural places, that is, their multiplicity and mutual articulations, inspired me in Chapter Six to speak metaphorically of the structure-agency map of capitalist societies in the modern world system. In this chapter, I will try to take this metaphor as seriously as possible, to the point of lit-

eralizing it. As I cautioned above, the analysis will focus on forms of law; only latterly will the forms of power and the forms of knowledge be brought into the picture (or rather, into the map). The purpose of my analysis is to show that, since the struggles on regulation/emancipation are never fought in general but rather in specific social sites, involving specific issues and social groups, and drawing on specific instrumental and expressive resources, it is of crucial importance and strategic value to understand the limits and the possibilities of the different contexts of struggle, in this particular case, social struggle centered around law, legality and illegality. The central argument of this chapter is that laws are literally maps. Maps are ruled distortions of reality, organized misreadings of territories that create credible illusions of correspondence. By imagining the irreality of real illusions we convert illusory correspondences into pragmatic orientation, making true William James's dictum that "the important thing is to be guided."[3] Just like maps, laws are ruled distortions or misreadings of social territories. They share this characteristic with poems. According to Harold Bloom's theory of poetic creation—formulated in a book from whose title the title of this chapter was taken[4]—in order to be original, poets (poems) must misread the poetic tradition that comes down to them through the generations and generations of poets (and poems) that preceded them. Poets suffer from the anxiety of influence, and poetry is always the result of the poet's attempt to deny it. Poets overcome the anxiety of influence by misreading (or distorting) poetic reality.

Though for different reasons, maps, poems and laws all distort social realities, traditions or territories, and all according to certain rules. Maps distort reality in order to establish orientation; poems distort reality to establish originality; and laws distort reality in order to establish exclusivity. As far as laws are concerned, for example, irrespective of the plurality of normative orders circulating in society, each one of them, taken separately, aspires to be exclusive, to have the monopoly of regulation and control of social action within its legal territory. This is most patently the case with state laws. In order to operate adequately, a given labor law, for instance, not only must negate the existence of other normative orders or informal laws (such as factory codes, production laws and so on) that might interfere in its realm of application, but must also revoke all the state labor laws that have previously regulated the same labor relations. This is, as we well know, a double misreading of reality. On the one hand, as I argue in Chapter Six, other normative orders do operate, and are effective in the same legal territory. On the other hand, since law and society are mutually constitutive, the previous labor laws, once revoked, nevertheless leave their imprint on the labor relations they used to regulate. Though revoked, they remain present in the memories of things and people. Legal revocation is not social eradication.

This misreading of reality is not chaotic. It occurs through determinate and determinable mechanisms and operations. Leaving aside poetic misreading, I intend to show in this chapter the isomorphisms between the rules and procedures of cartographic misreading and the rules and procedures of legal misreading. In my view, the relations laws entertain with social reality are very similar to those between maps and spatial reality. Indeed, laws are maps; written laws are cartographic maps; customary, informal laws are mental maps. This is a strong metaphor, and as such it will be taken literally, hence the subtitle of this chapter

could very well be: "on taking metaphors literally." In the following, I will draw extensively on the work of cartographers, and I will try to show to what extent sociology of law may learn from cartography. As Josef Konwitz rightly notes, "it is a supreme irony that maps, though they are one of the most common cultural metaphors, are still far from occupying the place they deserve in the history of mentalities."[5] I will deal with the structural features of maps and mapmaking, as well as with the phenomenology of using maps.

UNDERSTANDING MAPS

The main structural feature of maps is that, in order to fulfill their function, they inevitably distort reality. Jorge Luis Borges told us the story of the emperor who ordered the production of an exact map of his empire. He insisted that the map should be exact to the most minute detail. The best cartographers of the time were engaged in this important project. Eventually, they produced the map and, indeed, it could not possibly be more exact, as it coincided point by point with the empire. However, to their frustration, it was not a very practical map, since it was of the same size as the empire.[6]

To be practical, a map cannot coincide point by point with reality. However, the distortion of reality thus produced will not automatically involve inaccuracy, if the mechanisms by which the distortion of reality is accomplished are known and can be controlled. And, indeed, that is always the case. Maps distort reality through three specific mechanisms which, since they are used systematically, become intrinsic or structural attributes of any map. Such mechanisms are: *scale, projection,* and *symbolization.* They are autonomous mechanisms that involve different procedures and require separate decisions. But they are also interdependent. As Monmonier puts it:

> . . . all advantages and limitations of maps derive from the degree to which maps reduce and generalise reality, compress or expand shapes and distances and portray selected phenomena with signs that communicate without necessarily resembling visible or invisible characteristics of the landscapes. The three elements of a map are interdependent. Scale influences the amount of detail that can be shown and determines whether or not a particular kind of symbol will be visually effective.[7]

Maps should be convenient to use, but there is a permanent tension in maps between representation and orientation. These are contradictory claims between which maps are always unstable compromises. Too much representation may hinder orientation, as we saw in Borges's map. Inversely, a very accurate orientation may result from a rather poor and elementary representation of reality. When we are invited to a party in a house whose location we do not know, the host will probably draw a map which will be very effective in orienting us, though very inaccurate in representing the features of the environment along the way to our destination. Another example might be seen in the medieval *portolans*, the maps

of ports and coasts well-known in the Middle Ages which, though very poor as far as representation of the globe goes, were very effective in orienting navigators at sea.[8] There are maps that solve the tension between representation and orientation in favor of representation. These I would call, borrowing from French cartography, *image maps*. Other maps solve the tension in favor of orientation. These are *instrumental maps*.[9]

Since I would like to suggest that this dialectic of representation and orientation applies to law as much as it applies to maps, and consequently that, in the analysis of "law in society," we should substitute the complex paradigm of scale/projection/symbolization for the simple paradigm of correspondence/non-correspondence (law in books/law in action), I will now proceed to analyze in more detail each one of the procedures through which maps distort reality.

The first procedure is *scale*. Scale, as Monmonier has defined it, "is the ratio of distance on the map to the corresponding distance on the ground."[10] Scale involves, then, a decision on more or less detail. "Since large-scale maps represent less land on a given size sheet of paper than do small-scale maps, large-scale maps can present more detail."[11] Since maps are "a miniaturised version" of reality,[12] mapmaking involves the filtering of details, "the selection of both meaningful details and relevant features."[13] As Muehrcke puts it, "what makes a map so useful is its genius of omission. It is reality uncluttered, pared down to its essence, stripped of all but the essentials."[14] One easily understands that the decision on scale conditions the decision on the use of the map, and vice versa: "Small-scale maps are not intended to permit accurate measurements of the width of roads, streams, etc., but rather to show with reasonable accuracy the relative positions of these and other features."[15]

Geography, which shares with cartography the concern for spaces and spatial relations, has also contributed important insights on scales, both scales of analysis and scales of action. As to the former, there are phenomena that can only be represented on a small scale, such as climate, while others, like erosion, for instance, can only be represented on a large scale.[16] This means that the differences in scale are not simply quantitative but also qualitative. A given phenomenon can only be represented on a given scale. To change the scale implies a change of the phenomenon. Each scale reveals a phenomenon and distorts or hides others. As in nuclear physics, the scale creates the phenomenon. Some of the fallacious correlations in geography derive from the superimposition of phenomena created and analyzed on different scales. The scale is "a coherent forgetting" that must be carried out coherently.[17] Mediating between intention and action, scale applies also to social action. Urban planners as well as military chiefs, administrators, business executives, legislators, judges and lawyers define strategies on a small scale and decide day-to-day tactics on a large scale. Power represents social and physical reality on a scale chosen for its capacity to create phenomena that maximize the conditions for the reproduction of power. The distortion and concealment of reality is thus a presupposition of the exercise of power (more on this below).

The second mechanism of representation/distortion of reality is *projection*. To be useful, maps must be easily carried about and stored away. Flat maps can be rolled and folded. It is by means of projection that the curved surfaces of the earth

are transformed into planes. The most convenient transformation cannot yield flat maps without distorting shapes and distance relationships. I will not elaborate on the specifics of projection, different types of projection and the distribution and degrees of distortion characteristic of each of them.[18] I will only make a few general remarks that are relevant to my argument. The first remark is that, as we might expect in light of the preceding, projections do not distort reality at random. Each type of projection creates a field of representation within which forms and degrees of distortion are unequally but determinably distributed. For instance, some projections distort the equatorial regions more than the polar regions, while others do the opposite. Moreover, the different projections distort the different features of the space differently. Some projections (called conformal projections) preserve areas but distort angles and shapes and directions, while other projections (called equivalent projections) do the inverse. We cannot get the same degree of accuracy in the representation of all the different features, and whatever we do to increase the accuracy in the representation of one given feature will increase the distortion in the representation of some other feature. It is very much like the Uncertainty Principle of Heisenberg in quantum physics, according to which—as mentioned in Chapter One—we cannot measure the velocity and the position of the particles simultaneously and with the same degree of precision, and whatever we do to increase accuracy in determining the position will distort the measurement of velocity. Every map projection is thus a compromise. The decision on which kind of distortion to prefer is conditioned by precise technical factors, but it is also based on the ideology of the cartographer and on the specific use intended for the map. For instance, during the Cold War, the Western mass media used to show the Soviet Union on a world map designed according to the cylindrical projection of Mercator. Since this kind of projection exaggerates the areas in high and median latitudes to the detriment of those in intertropical latitudes, such a map would inflate the size of the Soviet Union, thus dramatizing the extent of the Communist threat.[19]

The second remark on projection is that each map, each historical period or each cultural tradition of mapmaking has a center, a fixed point, a physical or symbolic space in a privileged position, around which the diversity, the direction and the meaning of other spaces are organized. For instance, medieval maps used to put a religious site at the center—Jerusalem in European maps, Mecca in Arab maps.[20] The same happens with mental maps, that is, with the cognitive visual images we have of the world around us. As Muehrcke puts it, "most of our mental maps would emphasize our own neighborhood, with its environments assuming less significance."[21]

Symbolization is the third mechanism of map representation/distortion of reality. It refers to the representation of selected features and details of reality in graphic symbols. Without signs the map will be as unusable as Borges's map. Such is the case of the captain's map in Lewis Carroll's *Hunting of the Snark*:[22]

> . . . One could see he was wise,
> The moment one looked in his face!
>
> He had brought a large map representing the sea,
> Without the least vestige of land:

And the crew were much pleased when they found it to be
A map they could all understand.

"What's the good of Mercator's North Poles and Equators,
Tropics, Zones and Meridian Lines?"
So the Bellman would cry: and the crew would reply,
"They are merely conventional signs!

"Other maps are such shapes, with their islands and capes!
But we've got our brave Captain to thank"
(So the crew would protest) "that he's brought *us* the best—
A perfect and absolute blank!"[23]

Cartographic language is a fascinating theme, and semiotics has provided its research with new analytical tools. The sign systems have evolved over time, and still today different systems may be chosen according to the specific cultural context of mapmaking or according to the purposes of the maps. In a study on this topic, J. S. Keates, drawing from semiotics, distinguishes between *iconic signs* and *conventional signs*.[24] Iconic signs are naturalistic signs that establish a relation of likeness with the reality represented (for instance, a bunch of trees to designate a forest), while conventional signs are far more arbitrary: "Convention holds that certain types of symbols are appropriate for certain types of phenomena; for instance, linear symbols for roads and boundaries and graduated circles for cities and towns."[25] If we look at the historical record we will see that the sign systems used in maps were initially more naturalistic, and gradually became more conventional.[26] But even today, according to many circumstances, maps may be more figurative or more abstract; they may rely on emotive/expressive signs or on referential/cognitive signs; they may be more readable or more visible.[27]

This digression on maps and on cartographic imagination will make it possible to compare, in the following section, cartographic imagination with legal imagination.[28] There are, in fact, striking similarities between laws and maps—both concerning their structural features and their use patterns. Obviously, laws are maps only in the metaphorical sense. But, as rhetoric also teaches us, the repeated use of a metaphor over a long period of time may gradually transform the metaphorical description into a literal description.[29] Today, laws are maps in a metaphorical sense. Tomorrow they may be maps in a literal sense.

A SYMBOLIC CARTOGRAPHY OF LAW

I will now present the outline of what I would call a symbolic cartography of law. As I indicated above, my examples will be drawn from my own empirical research conducted in Portugal, Brazil and the Cape Verde Islands. The research in Portugal deals with the contradictions between democratic legality and revolutionary legality during the revolutionary crisis of 1974 to 1975, in the aftermath of the fall of the dictatorial regime that ruled the country for almost fifty years.[30] The research conducted in Brazil provided the empirical data for my discussion of local and national law in Chapter Five. It deals, we recall, with the social and legal

battles of squatter settlers in the northeastern city of Recife, against the state and private landowners, to obtain a legal title over the land they had invaded, and upon which they had built their shacks and organized their urban lives. The research in the Cape Verde Islands, conducted in 1984 and 1985, is concerned with the popular courts that have been created by the state since independence from Portuguese colonialism in 1975. These are nonprofessional courts organized on a residential basis and with jurisdiction over small civil disputes and petty crimes.[31]

Law and Scale

One of the main reasons for recommending the symbolic cartography of law is its ability to analyze the effect of scale on the structure and use of law. I argued in Chapter Two that the modern state is based on the assumption that law operates on a single scale, the scale of the state. In Chapters Three through Six I presented, as an alternative conception, a complex and internally diversified legal landscape, consisting of a plurality of legal orders including, besides national or state law, local or infrastate as well as transnational or suprastate laws. Within this conception, we can therefore distinguish three major legal spaces: local, national and transnational legality.[32] My suggestion is that the analysis of these spaces in terms of scales of legal regulation will illuminate some black holes in the sociology of legal pluralism, particularly the existence of internal asymmetries in constellations of legalities whenever the different, competing, legal forms purport to regulate the same, or seemingly the same social process or action. Let us assume that local law is a *large-scale legality*, nation-state law, a *medium-scale legality* and transnational law, a *small-scale legality*. This means, first of all, that since scale creates the phenomenon, the different forms of law create different legal objects upon the same social objects. In other words, laws use different criteria to determine the meaningful details and the relevant features of the activity to be regulated, that is to say, they establish different networks of facts. In sum, different forms of law create different legal realities.

This may be illustrated with the analysis of a given labor conflict in a factory producing for a TNC through franchising or subcontracting. The factory code, that is, the production law of the workplace, as a form of local legality, regulates the relations in production in great detail, in order to maintain workplace discipline, to prevent labor conflicts, to reduce their scope whenever they occur and eventually to settle them. The labor conflict is the nuclear object of the factory code, because it confirms, *a contrario*, the continuity of the relations in production, which are the *raison d'être* of the factory code. In the wider context of national state labor law, the labor conflict is only a dimension, however important, of industrial relations. It is part of a broader network of social, political and economic facts in which we easily identify, among others, political stability, inflation rate, income policy and relations of power among labor unions, business and government. In the still-wider context of the transnational legality of international franchising or subcontracting, the labor conflict becomes a minute detail in international economic relations, hardly worth mentioning. Thus, the different legal orders operating on different scales translate the same social objects into different

legal objects. However, since in real sociolegal life, the different legal scales do not exist in isolation but rather interact in different ways—in our example the regulatory purposes of the three legal scales converge in the same social event—there may be the illusion that the three legal objects can be superimposed point by point. In fact, they do not coincide; neither do their "root images" of law and the social and legal struggles they legitimate coincide. Workers and sometimes the employer tend to have a large-scale view of the conflict, with all its details and relevant features, a concept molded by local legality. Union leaders and sometimes the employer tend to see the conflict as a crisis in a process of continuous industrial relations. Their view is predominantly molded by national state legality; consequently, their actions in the conflict aim at a compromise between the medium-scale and the large-scale view of the conflict. For the multinational corporation, the labor conflict is a tiny accident in a globally designed investment and production system; if not promptly overcome, it can be easily circumvented by moving the production to another country.

To analyze these discrepancies and unevennesses exclusively in terms of conflicting interests or degrees of class consciousness is to ignore the fact that law creates the reality that fits its application. Such a creation is, among other things, a technique that operates according to certain rules, one of them being the rule of the scale. That is why, in rigor, we can only compare or contrast social interests and degrees of class consciousness within the same legal space. The difficulty lies in the fact that sociolegal life is constituted by different legal spaces operating simultaneously on different scales and from different interpretive standpoints. To that extent, in phenomenological terms, and as a result of interaction and intersection among legal spaces, one cannot properly speak of law and legality, but rather, of interlaw and interlegality. More important than the identification of the different legal orders is tracing the complex and changing relations among them. But if while doing this we forget the question of scale, we may find ourselves in the same distressing situation as a tourist who forgot to pack the voltage transformer that would enable him to use his electric razor in a foreign country.

While doing my research on popular justice in the Cape Verde Islands, I was confronted with an intriguing fact. The philosophy underlying the organization of popular justice consisted in integrating local customary laws as much as possible. This integration was facilitated by the fact that the judges were laypeople, members of the local communities; the written laws governing the procedures and decisions of the courts were few and vague, and very often unknown to or disregarded by the judges. However, both the state and the ruling party (the PAICV) took great care in selecting the judges, and tended to favor young or middle-aged males considered politically reliable, a fact that was sometimes a source of tension in the local communities, for whom the exercise of justice was in general associated with old wise folks. It would seem that, while the state felt unable to control the creation of law and sought to compensate for that by tightening the control of the application of law, the local communities paid no attention whatsoever to the creation of law, and sought to keep control of its application (which for them, in fact, was nothing but its creation). On further reflection, this was a case of interlegality—a case of a complex relation between the customary law and the state law, using different scales. For the local communities, the customary law was the local

law, a large-scale legality well adapted to prevent and settle local disputes. For the state, the customary law was part of a broader network of social facts that included the consolidation of the newly independent state, the unity of the state legal order, political socialization, and so on. On this smaller scale, the customary law became part of state law, and the latter became an instrument, though a specific one, of political action.[33]

The first implication of a scale conception of law is that it draws our attention to the phenomenon of interlegality and the complex mechanics of its operation. The second implication has to do with what I call *regulation patterns* and *action packages* that are associated with each scale of legality. I will start by illustrating different *regulation patterns*, which have basically to do with the dialectical tension between representation and orientation. Representation and orientation are two antagonistic modes of imagining and constituting reality, one geared to identify position, the other geared to identify movement. Large-scale legality is rich in details and features; describes behavior and attitudes vividly; contextualizes them in their immediate surroundings; is sensitive to distinctions (and complex relations) between inside and outside, high and low, just and unjust. This applies to any social object of legal regulation, be it labor conflicts, family relations, contractual terms, crimes or political rights. What I mean is that this form of legality favors a pattern of regulation based on (and geared to) representation and position. On the contrary, small-scale legality is poor in details and features. It skeletonizes behavior and attitudes, and reduces them to general types of action. But, on the other hand, it determines with accuracy the relativity of positions (the angles between people and between people and things), provides sense of direction and schemes for shortcuts and, finally, is sensitive to distinctions (and complex relations) between part and whole, past and present, functional and nonfunctional. In sum, this form of legality favors a pattern of regulation based on (and geared to) orientation and movement. When I studied the informal law of the squatter settlements in Rio (see Chapter Three above), I had occasion to observe how adequately such local legality represented the sociolegal reality of urban marginality, and how it contributed to maintaining the status quo of the squatters' social positions as precarious inhabitants of shacks and houses built upon invaded land. When later on I studied the legal battles of squatter settlers in Recife (see Chapter Five above) that aimed at securing land tenure or, at least, a legal lease, the form of law resorted to was primarily the state law, a smaller-scale law that represented the sociolegal position of the squatter settlers very roughly but, on the other hand, a law that very clearly defined the relativity of their positions, the angles of their relations vis-à-vis the landowners and the state, and, lastly, a law that was the shortest path to move from a precarious to a secure position under the social and political circumstances of the time.[34]

Besides having different regulation patterns, different scales of legality also condition different *action packages*. An action package is a connected sequence of actions structurally determined by predefined boundaries. I identify two kinds of boundaries: those defined by range and those defined by ethics. According to range, we can distinguish two ideal-types of action packages: the *tactical* and the *strategic action package*. According to ethics, we can also distinguish two ideal-types of action packages: the *edifying* and the *instrumental action package*. In the

light of the previous examples, I would suggest that large-scale legality invites tactical and edifying action packages, while small-scale legality invites strategic and instrumental action packages. Social groups or classes that are predominantly socialized in one of these forms of legality tend to be specifically competent in the type of action package associated with it. In a situation of interlegality, that is, in a situation in which large-scale legality and small-scale legality intersect, the large-scale action package tends to be defensive and to regulate normal, routine interaction or, at the most, molecular struggles, while the small-scale action package tends to be aggressive and to regulate critical, exceptional situations, triggered by molar struggles.[35] These tendencies may hold true irrespective of the class nature of the social groups involved in the specific action package.

The third and last implication of the scale analysis of law is the least developed, but potentially very important. It refers to what I would call *regulation thresholds*. Irrespective of the social object it regulates and the purpose of regulation, each scale of legality has a specific regulation threshold which determines what belongs to its realm of law and what does not. This threshold is the product of the combined operation of the three thresholds: the detection threshold, the discrimination threshold and the evaluation threshold. The *detection threshold* refers to the smallest details of the social object that will be considered for regulation; it distinguishes between relevant and irrelevant issues. The *discrimination threshold* refers to the minimum detectable differences in the description of the social object that may justify qualitative differences in regulation; it distinguishes between the same—that which deserves equal treatment—and the different—that which deserves unequal treatment. Finally, the *evaluation threshold* refers to the minimum detectable differences in the ethical quality of the social object; it distinguishes between the legal and the illegal.

During the revolutionary crisis in Portugal in 1974 to 1975, a rural worker was indicted for the murder of a big landowner. In his defense, the worker invoked provocation and a long list of arbitrary and violent actions perpetrated by the *latifundiário* against the rural workers during the many years in which the Salazar dictatorship allowed him to rule the community despotically. From the point of view of "democratic legality"—as the sum total of state laws in force throughout the revolution was called by rightist, centrist and social democratic parties—the two sets of action—that of the rural worker and that of the landowner—were very different, both in structural and ethical terms. From the point of view of revolutionary legality, championed by leftist parties, and in light of its lower discrimination and evaluation thresholds, the two sets of actions were similar, in that they were both illegal. While for democratic legality, the rural worker, irrespective of past grievances, had committed an unpardonable murder, for revolutionary legality, the murder, though not a legitimate revolutionary act, could, as a reaction against the landowner's past arbitrariness, be justified, and accordingly, pardoned.[36]

The three thresholds vary according to the scale of the legal form, but the same scale of law may allow for internal differences in its regulation threshold. It may, for instance, have a high detection threshold but a low evaluation threshold, or vice versa, and the discrepancies may also occur across legal realms (for instance, state labor law may have a higher regulation threshold than criminal or social welfare law). Moreover, the regulation threshold is not a fixed entity. It may move up and down within certain limits. But its movement is always the result of the combined movements of the different thresholds that constitute it. In the current social and political context, calling for the deregulation of the economy and social interaction, the regulation threshold of state legality moves up as a result of higher detection and discrimination thresholds. But since, in practice, the sociolegal life always involves interlegality, the deregulation within state legality may be counteracted or compensated for by the increase of regulation within other forms of legality.

Law and Projection

Legal orders can also be distinguished by the type of projection they use. Projection is the procedure by which the legal order defines the limits of its operation, and organizes the legal space inside them. Like scale, and for the same reasons, projection is not a neutral procedure. Different types of projections create different legal objects upon the same social objects. Each legal object favors a specific formulation of interests and a specific concept of disputes and of modes of settling them.

Each legal order stands on a grounding fact, a *superfact* or a *supermetaphor*, as I would call it, which determines the specific interpretive standpoint or perspective that characterizes the adopted type of projection. The private economic relations in the market are the superfact underlying capitalist state legality, while land and housing, conceived as extraeconomic, social and political relations, are the superfact underlying the law of Pasargada. According to the type of projection adopted, each legal order has a *center* and a *periphery*. This means, first of all, that, as in the case of money capital, the legal capital of a given legal order is not equally distributed across the latter's legal space. The central regions are those in which the legal capital is more concentrated and owns greater returns. Here the space is mapped in greater detail, and absorbs greater inputs of institutional resources (legal professions, courts and so on) and symbolic resources (legal science, legal ideology and culture and so on). Conversely, the peripheral regions are those with less legal capital, holding mediocre returns. Here the legal space is only roughly and scarcely mapped, and absorbs meager institutional resources (inaccessible justice, understaffed courts, underfunded legal aid, third class lawyers) and symbolic resources (less-prestigious legal practice, less-sophisticated legal theorizing, less-quoted legal precedents).

The second implication is that conceptualizations, interpretive styles and techniques, as well as ideological configurations, dominant at the center, tend to be taken out of the context in which they originate and to be exported to (and imposed upon) the periphery. They are then applied in the legal periphery with little attention to local regulatory needs, since such needs are always interpreted and satisfied from the point of view of the center. It is very much a symbolic transfer of technology. Sticking to my examples, it is clear that the center of capitalist state legality is occupied by contracts, as witness the codification movement and, particularly, the Napoleonic Code. Contracts—their types, concepts, theories, interpretations, general principles—have been the center of modern legislation, legal

training and legal ideology. Moreover, the contractual perspective has been exported to other legal fields, be they constitutional, administrative or even criminal law. In spite of an alleged return from contract to status in late capitalism, contracts remain the privileged archeological site and, indeed, the ground metaphor of modern state law. The emergence, in recent years, of neocontractualism in political philosophy and constitutional law is a good illustration. Similarly, in Pasargada law, land and house transactions and the disputes they originate occupy the center of the legal space. As we saw in Chapter Three, whenever the Residents' Association ventures into criminal, public order or family matters, it always seeks a connection with land and housing matters, and applies to the former the popular legal technology and legal competence gained in the latter. The center/periphery effect of projection shows that the legal mapping of social reality is not equally distortive. It seems to become more distortive as we move from the center to the periphery. The periphery is also the legal region where the interpenetration between different legal orders is most frequent. It creates a twilight zone where the shadows of different legal orders converge.

The second effect of projection refers to the type of features of the social object that tend to be privileged no matter how central or how peripheral the social object. According to this effect, two general types of projection can be distinguished: the egocentric and the geocentric.[37] The *egocentric projection* favors the representation of personal and particularistic features, voluntary or consensual social action. The *geocentric projection* favors the representation of objective and generalizable features, patterned, bounded or conflictual social action. According to the dominant type of projection, two general forms of law can be distinguished: the *egocentric legality* and the *geocentric legality*.

In the light of these categories, it is illuminating to analyse some recent trends in legal change, as well as some long-range developments in legal history as they have been described by Max Weber. While analyzing, in *Economy and Society*, the forms of creation of rights, Weber drew our attention to the long and sinuous historical process by which geocentric legality gradually substituted for egocentric legality. In the past, Weber said, law arose as "volitive" and as "particularistic" law, based on the agreed enactment of consensual status groups. There were different legal communities, constituted in their membership by personal characteristics such as birth, political, ethnic or religious denomination, mode of life or occupation, and so on. Individuals or groups of individuals had their own personal legal quality, and carried their law, their *professio juris*, with them wherever they went.[38] The *jus civile* in Rome was the personal law of Roman citizens, and the *jus gentium* was created to cover the legal needs of noncitizens. The idea of a law of the land developed only very gradually—the *lex terrae*, which was applicable to everyone regardless of personal characteristics, and imposed as a heteronomous law within the boundaries of a given territory. In the development of a geocentric form of law, the extension of the market economy and the bureaucratization of consensual groups played a decisive role: "The ever-increasing integration of all individual and all fact situations into one compulsory institution which today, at least, rests in principle on formal 'legal equality' reached its climax in the French Revolution, after which the state appears as the all-embracing coercive institution."[39] Max Weber was aware that in modern society there are also volitive and particularistic laws but, unlike those in premodern times, they are based on economic or technical grounds, are never defined in terms of personal group membership, and are effective within the boundaries set by the national general law.[40]

In my view, this historical interplay between geocentric and egocentric legality cannot be definitely decided in favor of geocentric legality. Some recent trends in legal development seem to witness the emergence of new legal particularisms, that is to say, forms of egocentric legality that, by creating personal legal "enclosures," empty or neutralize the conditions for the application of the law of the land. To illustrate this, I resort to the new *lex mercatoria* analyzed in Chapter Four. I mean the new international commercial contracts, as well as a proliferation of charters, codes of ethics, codes of conduct or fair practices, which cover the activities of multinational corporations, and international economic and professional associations, in fields so diverse as transfers of technology, stock markets, publicity, sales promotion, market studies, insurance, technical assistance, turnkey contracts and so on. All these new forms of transnational legality create a transnational legal space that often conflicts with the national state legal space.[41] Such conflicts take several forms: the conception of liability in the new contracts is autonomous vis-à-vis national laws; the contracts introduce vague clauses on applicable law such as the general principles of law, the usages of commercial life, the only purpose being to eliminate or evade the application of state law; the arbitration system is often resorted to with the same purpose; commercial partners enter gentlemen's agreements or protocols that openly violate national laws (particularly those on fair competition); the national legislation enacted to police the contracts of transfer of technology has little efficacy; powerful multinational corporations impose their laws on the states. The violation of national state law is so widespread that the proposed code of ethics for multinational corporations includes the astonishing clause that "the multinational corporation will respect the laws of the state where it operates."[42]

All these latent or manifest conflicts are symptoms of a tension between the geocentric legality of the nation-state and the new egocentric legality of international private economic agents. Indeed, as already suggested in Chapter Four, we are witnessing the emergence of a new particularism that echoes the personalistic laws of the ancient and medieval world described by Weber. Like the old status groups, each transnational corporation or international economic association has its own personal legal quality, and carries its law wherever it goes. The new personalism derives also from the fact that this legality is closely tailored to the interests of the most powerful companies or banks. Goldman found that many "standard contracts" were created by a single corporation powerful enough to impose them on its partners.[43] This explains why a new economic practice by a powerful corporation may become an instant custom. This new form of status privileges (corporation privileges) can also be found in the codes of international professional associations (for example, the International Franchising Association), because in general, as Farjat notes, there is a coincidence between the powerful economic agents and the professional authorities that write the codes.[44]

To conceive of the tension between nation-state law and the new transnational legality as deriving from two forms of law, anchored in two different types of projection of social reality, prevents us from falling into a reductionist view (be it

economistic or otherwise) of the conflicts they express. To be sure, there are conflicting interests and power relations, but they are played out through the intermediation of specific projective devices with their hermeneutic logic. The legal forms thus ensuing have an autonomy of their own, and an efficacy that extends beyond the stakes of the conflicting interests or power positions. For instance, attention to types of projection shows the relativity of the distinction between law and fact. Clifford Geertz recently reminded us of such relativity when different legal cultures are compared.[45] But even within the same general culture, the distinction between law and fact seems to be largely an effect of projection. Because of its emphasis on objective and generalizable features of reality, geocentric law tends to polarize law and fact, and to be stronger on norms than on facts. Overridden by the fear of fact, it reacts by sterilizing or skeletonizing fact. As Geertz has put it, facts became "close edited diagrams of reality."[46] In Pospisil's terms, it results in "a justice of law."[47] On the contrary, egocentric law tends to soften the distinction between law and fact, and to be stronger on facts than on norms. It allows for the explosion of facts, as the case of instant customs mentioned above well documents. It results in a "justice of fact."

Law and Symbolization

Symbolization is the visible side of the cartographic and legal imagination of reality. It is the most complex procedure, because it operates on the basis of and conditioned by scale and projection. Rhetoric, semiotics and cultural anthropology have contributed important insights into the complexities of the legal symbolization of reality. From the synthetic perspective in which these contributions merge with that of literary criticism, I shall distinguish two contrasting, ideal-typical modes of legal symbolization: *the Homeric style of law* and *the biblical style of law*. These metaphorical designations refer to two polar ideal-types, which concrete legal orders approximate in different degrees. The designations are borrowed from Auerbach, in his classical account of the different forms of representation of reality in Western literature.[48] Auerbach identifies two basic types of literary representation of reality in European culture. He exemplifies the opposition between these two types by contrasting the *Odyssey* of Homer with the Bible. The *Odyssey* describes the tragic and sublime nature of heroic life: a fully externalized description, uniform illumination, uninterrupted connection, all events in the foreground, displaying unmistakable meanings, and few elements of historical development and of psychological perspective. On the contrary, the Bible represents the sublime and the tragic in the context of commonplace and everyday life, a description attentive to the multilayeredness of the human predicament—in which certain parts are brought into high relief, others left obscure—and to the multiplicity of meanings, the need for interpretation and the development of the concept of historical becoming.

I would like to suggest that this basic contrast in the literary representation of reality may also be found in the legal representation of reality. Accordingly, I identify two ideal-typical sign systems by means of which law symbolizes reality. I shall speak of a Homeric style of law when the legal symbolization of reality has the following characteristics: the conversion of the everyday continuous flux of

reality into a succession of disparate solemn moments (contracts, legal disputes and so on), described in abstract and formal terms through conventional cognitive and referential signs. This style of symbolization invites an instrumental mode of operation (instrumental legality). In contrast, what I call the biblical style of law invites an expressive mode of operation (image-based legality) characterized by a preoccupation with inscribing the discontinuities of legal interaction into the multilayered contexts in which they occur, and with describing them in figurative and informal terms through iconic, emotive and expressive signs. The biblical style of law is probably older than the Homeric, but in each historical period, no matter which one dominates, there is a tension between the two. For instance, the modern state legal order is predominantly a Homeric style of law, but the biblical style of law shows its vitality in many ways. Returning to the example of the particularistic law created by the new transnational legal subjects, it is apparent that this emerging transnational legality tends to be formulated in a biblical style of law. Some specialists have called attention to the moralistic rhetoric in the use of noncognitive, emotive and expressive signs in codes of ethics and standard contracts drawn by them, as illustrated in the recurrent use of expressions like concertation, common interest, reciprocal trust, trustworthiness, cooperation, assistance and so on.[49]

But the contrast between the two types of legal symbolization is most visible in those situations of legal pluralism in which social practice is a constant bridging between legal orders with different styles of symbolization. All of my case studies mentioned above involve situations of this type. In the case of popular justice in the Cape Verde Islands there is an attempt at a fusion between local customary law and nation-state law. The tensions between the two contrasting sign systems manifest themselves in the way judges settle the disputes. While some—generally older—judges adopt a local, image-based view of law, describing law and fact without much distinction, in figurative and informal terms, resorting to verbal and gestural signs of the iconic, expressive and emotive type, other—and generally younger—judges seek to impersonate the professional judge or even the political *cadre*, hence adopting an instrumental view of law that distinguishes law from fact, and describes both in abstract and formal terms by means of verbal and gestural signs of the conventional, cognitive and referential type. But the same judge may, in different situations, adopt different styles of law. Nha Bia, for instance, a remarkable woman judge presiding over the popular court of Lem Cachorro in the outskirts of the capital city of Praia (Santiago Island), adopts a biblical style of law in those cases she is most familiar with, and when she feels more autonomous to deliver justice "in her own way." These are, for example, the water disputes involving women—disputes usually occurring in water lines over the order of the women in the line to fill the water cans at the public fountains, or over the water supply to be used daily. Since droughts often last for several years, this is a very common type of dispute. On the other hand, Nha Bia tends to adopt a Homeric style of law whenever the dispute is less common, or in cases in which her legal competence or jurisdiction may be challenged, such as those with political overtones or involving powerful members of the community.[50]

In the case of the social struggles in Recife, both the urban poor, and the Catholic Church on their behalf, seek a momentary and unstable complementar-

ity between the unofficial law of the squatter settlements and the state official law. The social construction of reality in the two legal orders follows different sign systems, the biblical and the Homeric style respectively. Community leaders and lawyers hired by the church to represent the squatter settlers often find themselves in the position of having to translate one sign system into the other before the relevant audience of the moment—whether the audience is the people from the community, the state court or the state administrative agency for housing affairs. It may also occur that the two sign systems interpenetrate or superimpose, as when large groups of squatter settlers, attending the trial of one of the land disputes in the state court, start shouting slogans and singing religious songs.[51]

In the case of popular justice during the revolutionary crisis in Portugal, there is neither an attempted complementarity nor fusion, but rather an open contradiction between two forms of law—in this case, between democratic legality and revolutionary legality. The democratic legality tries to insulate the legal representation of reality from the everyday experience of a revolutionary crisis, and for that purpose it stresses the distinction between law and fact, and resorts to a formal and abstract description of reality in which the sign system characteristic of a Homeric style of law dominates. On the contrary, the revolutionary legality tries to integrate and even dissolve the legal representation into the social and political context in which it occurs, and for that purpose it softens the distinction between law and fact, thus allowing for the explosion of facts as a mechanism of law creation, and privileges a figurative and informal description of reality.[52] In sum, it is a biblical style of law.

SYMBOLIC CARTOGRAPHY AND POSTMODERN LAW

Chaim Perelman wrote, in his treatise on the new rhetoric, that while classical thought favored spatial metaphors, modern thought has favored temporal ones.[53] It seems to me that postmodern thought will return to spatial metaphors, even though inspired by new spaces and spatialities, and aware of the fact that spatialities express the measure of coevalness among temporal differences.[54] In light of the analysis in the preceding chapters, the theory of symbolic cartography of law sketched in this chapter may be considered a further step in the construction of a postmodern conception of law.

Scale, projection and symbolization are not neutral procedures. The choices made within each of them promote the expression of certain types of interests and disputes, and suppress that of others. We can only speak of the autonomy of law, as a specific way of representing, distorting and imagining reality, in relation to these procedures and the choices they make possible. The symbolic cartography of law, particularly when combined with a legal pluralistic conception of law, as is the case here, allows us to deal with the question of the specificities of legal imagination and legal construction of reality with greater analytical depth, and without falling into the traps of either legal fetishism or legal essentialism. More specifically, the symbolic cartography of law reinforces the conception of legal plurality that I have been presenting throughout this book—not the legal pluralism of traditional legal anthropology, in which the different legal orders are conceived as separate entities coexisting in the same political space, but rather, the conception of different legal spaces superimposed, interpenetrated and mixed in our minds, as much as in our actions, either on occasions of qualitative leaps or sweeping crises in our life trajectories, or in the dull routine of eventless everyday life. We live in a time of porous legality or of legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassings. Our legal life is constituted by an intersection of different legal orders, that is, by *interlegality*. Interlegality is the phenomenological counterpart of legal pluralism, and a key concept in a postmodern conception of law.

Interlegality is a highly dynamic process, because the different legal spaces are nonsynchronic, and thus result in uneven and unstable combinations of legal codes (codes in a semiotic sense). The mixing of codes is visible in all the case studies I mentioned. It is also visible in the ways in which the emerging transnational legal space appropriates local legal vernaculars. As I have shown, small-scale transnational legality mixes the telescopic view of reality with a moralistic rhetoric typical of large-scale legality. While broadening the legal space to a world or even planetary scale, it creates new particularisms and new personalisms, echoing the medieval privileges of the different *professiones juris*. The mixing of codes is still visible in popular images of law. In a study on images of law in the mass media, Macaulay has shown how the mass media, and particularly television, promote a fragmented and inconsistent view of law—a view of overlapping and contradictory legal messages, rules and offsetting counterrules, inciting both to obedience and disobedience, legal and illegal action.[55]

Such a conception of legal pluralism and interlegality calls for complex analytical tools. Those presented here, together with the ones presented in Chapter Six, intend to show not only that the fragmentation of legality is not chaotic, but also that each legal construction has an internal coherence. It is a construction built according to the rules of scale, projection and symbolization. In a polycentric legal world, the centrality of the state law, though increasingly shaken, is still a decisive political factor. But above all, it is reproduced by multiple mechanisms of acculturation and socialization. As there is a literary canon that establishes what is and what is not literature, there is also a legal canon that establishes what is and what is not law. Because people are permanently (even if inconsistently) socialized and acculturated in the types of scale, projection and symbolization that are characteristic of the national state legal order, they refuse to recognize as legal those normative orders that use different scales, projections and symbolizations. They are beyond the minimum and the maximum threshold of legal cognition. Some (infrastate, local) legal orders are too close to everyday reality to be viewed as a fact of law (a *legal* fact), while other (suprastate, transnational) legal orders are too remote from everyday reality to be viewed as a law of fact (a legal *fact*). The symbolic cartography of law, using as a metaphor such commonplace and vulgar objects as maps,[56] contributes to the creation of a *new legal common sense*, another key concept of a postmodern conception of law.