

Human Rights, Democracy and Development

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Introduction

The constellation of human rights is nowadays in turmoil. This state of affairs is emerging primarily as an impasse, revealing the limitations of conventional human rights, a language of dignity whose hegemony is nowadays indisputable. Since I reject any monolithic vision of human rights, recognizing the different power relations and bodies that mobilize them, it is necessary to explain what I have in mind when I refer to the hegemonic or conventional version of human rights. I consider that any conventional understanding of human rights has the following characteristics: rights are universally valid regardless of the social, political and cultural context in which they operate and the different human rights systems that exist in different parts of the world; they are based on a concept of human nature which sees it as individual, self-sustaining and qualitatively different from non-human nature; violations of human rights are defined by universal declarations, multilateral institutions (courts and commissions) and non-governmental organizations (which are mainly based in the North); the recurring phenomenon of the double standards deployed to assess the observance of human rights does not in any way compromise the universal validity of human rights; respect for human rights is much more problematic in the global South than in the global North (Santos, 2015).

This current turmoil within the constellation of human rights also enables us to discern promising horizons for emancipatory agendas which aim to transcend conventional understandings of human rights. These horizons, which are being defined in various regions of the world, point towards effective recognition for the limitless experiences of the world in the light of the epistemologies of the South, in the belief that any understanding of the world far exceeds a Western understanding of the world. As I have formulated them, the epistemologies of the South are a set of inquiries into the construction and validation of knowledge that has emerged out of the struggles of those who have resisted the systematic oppression of capitalism, colonialism and patriarchy (Santos, 2014). Hence I have argued for an intercultural conceptualization, in the light of which human rights can, and should, be reformulated on the basis

of experiences which confront us with a pluriverse, composed of world views which permeate and extend beyond the borders of modern Western thinking (Santos, 1999).

As Arturo Escobar clearly notes (2016: 13), in taking the limitless experiences of the world as its premise, the epistemologies of the South lay claim to a distinct ontological dimension. Hence, I believe that activists and thinkers who still acknowledge the emancipatory possibilities of human rights should consider the challenge presented by the social struggles, epistemologies and political ontologies through which different populations and collectives have been reclaiming the world in which they live. Many of the appropriations of human dignity which nowadays shape the most promising emancipatory plans for a subaltern cosmopolitan legality (Santos and Rodríguez-Garavito, 2005) are associated with non-European concepts which, combined with ancestral world views and intercultural political ontologies, reveal the close bond between post-abysal humanity and non-human nature.

I would identify three tensions which are constitutive of the current turmoil and, at the same time, represent a challenge for any emancipatory resignification of human rights in the light of the epistemologies of the South. The first refers to the tension between the right to development and the ceaseless destruction of the environment. The second refers to the tension between the collective aspirations of indigenous and peasant communities of Africa, Latin America and Asia, and the individualism that defines the original human rights canon. The third refers to the tension that results from the inadequacy of the language of rights, in particular human rights, in terms of recognizing the existence of non-human subjects.

These three tensions reveal the abyssal genealogy of human rights—as discussed in the introduction to this book—which are the product of an itinerant characterized by the precedence and universalist ambitions of the liberal world views that have become hegemonic in Western modernity. As previously noted, the dominant versions of Western modernity are constructed on the basis of abyssal thinking, which divides the world abyssally into metropolitan and colonial societies (Santos, 2007, 2014). It has divided it in such a way that the realities and practices on the other side of the line, in the colonies, pose no threat to the universality of the theories and practices that prevail in the metropole, on this side of the line. As an emancipatory discourse, human rights was historically designed to apply only on this side of the abyssal line, in metropolitan societies. I have argued that, far from having been eradicated at the end of the colonial period, this abyssal line, which produces radical exclusions, continues in other forms (neocolonialism, racism, xenophobia, the permanent state of exception regarding terrorists, undocumented immigrant workers, asylum seekers or even ordinary citizens who are the victims of austerity measures dictated by financial capital). International law and conventional human rights doctrines have been used to ensure this continuity. Hence, it is crucial to distinguish between what are nowadays conventional

human rights and the possibility, identified in this text, of establishing human rights as part of an ecology of post-abysal dignities.

The Right to Development versus Environmental Degradation

In most countries the history of the different types of human rights is contingent, uneven and full of discontinuities, advances and retreats. Nevertheless, it is clear that in establishing different types of human rights, different political processes are set in motion. Civil and political rights were always at the heart of liberal theory, constituting rights won from the state in order to restrict state authoritarianism. In other words, human rights originated in an anti-state initiative which has contained contradictory political meanings over the last two hundred years. Unlike civil and political rights, economic and social rights consist of benefits provided by the state, assuming the active cooperation of the latter, and are based on a political struggle for the social appropriation of the surpluses amassed by the state through taxes and other sources of revenue. The realization of these human rights depends entirely on the state and therefore implies a change in the political nature of state activity. This transformation occurred with the transition from the liberal or constitutional state to the welfare constitutional state in the global North, and the developmentalist or neo-developmental state in the global South. These are very different political processes, although it may be said that, in general, whilst the democratic conservative camp maintained an anti-state position and favoured a liberal concept of human rights, focussing in particular on civil and political rights, the progressive camp of the anti-neocolonial nationalisms or the various democratic lefts has defended the central role of the state as crucial to building social cohesion and has tended to favour the social-democratic or Marxist concept of human rights, paying greater attention to economic and social rights. Over the years, the idea of the indivisibility of human rights has been gaining (more theoretical than practical) acceptance and, consequently, the idea that only recognition of the different types of human rights ensures respect for any individual right.

The collective right to development, claimed in particular by African countries, was only recognized much later and even then only very selectively. The first steps towards establishing the right to development came with the Declaration on Social Progress and Development (1969) and the African Charter on Human and Peoples' Rights (1981) and came to the fore following the United Nations Declaration on the Right to Development (1986) and the various UN World Conferences held during the 1990s. The right to development was based on ideas similar to those that would later be enshrined in dependency theory. The philosophy of the Non-Aligned Movement would come to fruition in the demands made by countries of the then Third World for international guarantees to ensure the essential conditions for their development, which basically involved contesting the unequal trading conditions on

the international market. One example of this inequality was the fact that Third World countries were condemned to exporting raw materials at prices fixed by the countries that needed them, rather than by the countries that were exporting them. However, it also emerged out of the Cold War. The right to development in the context of the Cold War meant that it was possible to choose between capitalism, enmeshed in a process of globalization, or the always latent socialist alternative for development. In the mid-1970s this demand evolved into the New International Economic Order movement, which the developed countries, led by the US, firmly and steadfastly opposed. The response of the global North, which intensified after the collapse of the Soviet Bloc, was neo-liberalism, through which the right to development became the obligation to develop. Having neutralized any potential for development that was not governed by the norms of the Washington Consensus, with compliance ensured by the International Monetary Fund, World Bank and later the World Trade Organisation, capitalist development was imposed as a cast-iron condition.

Within the ambivalent central position which the state has always occupied as a threat and guarantee of human rights, notwithstanding the accepted liberal and progressive versions, I believe it is important to emphasize how development, whether as a celebration of the civilization of the global North or an anti-imperialist aspiration of the global South, remains, even in the twenty-first century, the unchanging hallmark of state political projects, even those in the global South that claim to pursue social justice in the face of colonial and imperialist legacies. In fact, one of the most enduring legacies of colonialism, clearly reflecting a genealogy based on Western concepts, is precisely the representation of Asia, Africa and Latin America as underdeveloped Third World continents and the creation of developmentalism as a structural discursive field for the social reality and politics of the post-war world (Escobar, 1995).

The ubiquity of developmentalism is evident in the way in which, at the beginning of the twenty-first century, progressive governments which embraced developmentalism came to power in many states in the global South, particularly in Latin America, seeing the boom in natural resources as a great opportunity to give them the freedom to introduce social policies and redistribute income. This model, which some have called neo-developmentalism or neo-extractivism,¹ has without doubt enabled important policies based on redistribution and fighting poverty to be implemented. However, despite its more nationalist, statist profile, since this is a model based on neo-extractivism, it reflects a neo-liberal rationale which does nothing to contest the global argument for capitalist accumulation. The weaknesses of this model as a political proposal are easily exposed by the economic difficulties which are the immediate result of international fluctuations associated with natural resources.

The neo-developmental model is part of a concept of progress in which one of the deadliest consequences is environmental destruction. The driving forces behind mining, oil, natural gas and agricultural frontiers are becoming increasingly powerful, and anything that stands in their way and blocks their

path tends to be destroyed as an obstacle to development. These highly attractive forces excel in transforming the increasingly disturbing signs of the immense environmental and social debt they create into the inevitable cost of “progress”. It is difficult to produce any political assessment of this model because its relationship to human rights is complex and easily suggests that we are faced with incompatible, rather than indivisible, human rights. In other words, according to the frequently cited argument, we cannot aspire to improve social and economic rights, the right to food security for the majority of the population or the right to education without inevitably accepting violations of the right to health and the environmental and ancestral rights of indigenous and Afro-descendant peoples to their territories. It would only be possible to show that the said incompatibility masks a mismanagement of indivisibility through different time scales, which is virtually impossible given the urgent short-time demands. Under these conditions, it becomes difficult to activate precautionary principles or long-term arguments. And when will the boom in natural resources come to an end? When will it become clear that the investment in natural resources has not been duly offset by investment in human resources? When there is no money for generous compensation schemes and subtle impoverishment creates resentment that is difficult to manage in a democracy? When the levels of environmentally related diseases are unacceptable and overburden the public health systems until they become unsustainable? When water contamination, impoverishment of the land and destruction of the forests become irreversible? When indigenous populations and Afro-descendant and river-dwelling peoples who have been expelled from their land wander through the outskirts of cities, demanding the right to the city that will always be denied to them?

In an age in which the fight against global warming and environmental destruction, which is disproportionately affecting populations in the global South, is imposing itself as an agenda that forces us to question the system of capitalist accumulation (see, for example, Klein, 2014), it appears to make little sense to defend the sacrificial narrative that characterizes the ideology of progress. In fact, modern Eurocentric thinking is based on the idea that progress demands reasonable sacrifices in the interests of a future that will, as a result, be able to offer greater benefits. The issue here is that the fairness of these sacrifices has been justified by the existence of an abyssal line which ensures that the benefits produced in metropolitan societies and social interaction are recognized, whilst minimizing the sacrifices made in colonial societies and social interaction, where the present losses have never been offset by future benefits. Hence there are two faces to the ideology of progress: the one which shows a relative symmetry between sacrifice and benefits, and one showing the incommensurability of sacrifice and benefits. The abyssal line has prevented both from seeing each other in the mirror.

The Western capitalist and colonialist concept of humanity is unthinkable without the concept of subhumanity. Once those displaced by environmental disasters, megaprojects, mining and deforestation and those who are victims of

agribusiness and pesticides are considered fully human and their lives, knowledge and respect for non-human nature are recognized, we will be able to confront the unsustainability of developmentalism and review the incommensurability of the benefits and sacrifices imposed by the abyssal lines of modernity. At a time in which there is a growing consensus on the catastrophic consequences of global warming and the plundering of the earth's resources, the social and environmental costs of development are becoming increasingly clear. The current development model is reaching the limits of planet Earth's capacity. The voices of dissent continue to propose alternative development concepts, but the truth is that development has become more antisocial, more closely linked than ever before to growth, increasingly dominated by financial speculation and increasingly predatory on the natural environment.

For the first time in history, capitalist development is seriously threatening nature's capacity to restore its life cycles, reaching ecological limits that are recognized by independent and United Nations experts and various committees as red lines beyond which damage becomes irreversible, putting life on earth at risk. In 2020, the hottest year ever registered, various climate hazard records were broken in the US, India and the Arctic and extreme weather events are becoming more and more frequent and serious. We face drought, flooding, food crises, speculation involving agricultural produce, increasing shortages of drinking water, agricultural land turned over to biofuels and deforestation. Gradually, we are realizing that the crisis factors are increasingly linked and are ultimately manifestations of the same crisis which, given its dimensions, is a crisis of civilization. Everything is connected: the food crisis, environmental crisis, energy crisis, financial speculation in commodities and natural resources, land grabbing, unregulated expansion of agricultural borders, voracious profiteering from natural resources, scarcity of drinking water and privatization of water, violence in rural areas, expulsion of peoples from their ancestral lands to pave the way for major infrastructures and megaprojects, diseases created by damage to the environment that are shockingly exposed in the higher incidences of cancer in certain rural areas in comparison to urban zones, genetically modified organisms, consumption of pesticides, etc.

The Rio+20 Earth Summit (2012), together with the Paris Agreement (2015), proved a complete failure due to the barely concealed collusion between the elites of the global North and the emerging countries to prioritize the profits made by their businesses at the expense of the future of humanity. The current threat clearly reflects how the frameworks for social action in our societies are divided between two extreme time frames—one for urgency and the other for a paradigm shift—with the former calling for immediate action before it is too late and the latter demanding changes in production and consumption, social relations and concepts of nature that will probably take generations to realize. As neither of these time frames coincides with the one which governs democratic political action (the electoral cycle) and, given that capitalist extractivism is now greedier than ever before for natural resources, the destruction of

nature seems equally unstoppable and is trivialized by public cynicism, denial or pseudo-remedies such as green capitalism.

Collective World Views versus Individual Rights

The link between neo-liberalism, progress and development requires us to search for a subaltern cosmopolitanism, constructed from the bottom up by exchanging experiences and linking the struggles of the movements and organizations of the excluded and their allies in various parts of the world. Eurocentric modernity, including many of its critical traditions, is based on the “monoculture of linear time” (Santos, 2006), the idea that history has a single recognized meaning and direction. This meaning and direction has been formulated in various different ways in the last two hundred years as progress, revolution, modernization, development, growth and globalization. Common to all these formulations is the idea that time is linear, with the core countries in the world system at the forefront, together with the knowledge, institutions and forms of social interaction that prevail within them. This argument produces non-existence by declaring that, in terms of the temporal norm, anything that is asymmetrical in relation to what is defined as advanced, is backward. It is through this logic that Western modernity produces the non-contemporaneity of the contemporary, the idea that simultaneity hides the asymmetries of the historical times that converge within it.

The idea of linear time disqualifies forms of existence that are seen as backward or outside the accepted (modern) time and renders them invisible, thus marginalizing the cultures and ontologies that are most convincingly opposed to development or alternative development and moving closer to the imperative to accept alternatives to development, as the following examples show.

In October 2012, in a cry of despair, the Guarani-Kaiowá community in Pyelito Kue/Mbarakay-Iguatemi-Mato Grosso do Sul (MS) sent a letter to the government and Ministry of Justice in Brazil in response to an eviction order issued by the Federal Court of Navirai (MS). After describing a cruel list of threats, deaths, expulsions and gunmen, “in an indigenous community surrounded by soy, sugar cane and hate”, as Egon Heck, coordinator of the CIMI (*Conselho Indigenista Missionário*—Indigenous Missionary Council), reported, they stated that:

we want to be killed and buried with our ancestors right here, where we are today, and we therefore ask the government and the Federal Court not to issue the order for our eviction/expulsion but instead to decree our collective death and bury us all here. We ask, once and for all, for them to order our decimation and complete extinction and for tractors to be sent to dig a large hole for our bodies to be thrown in and buried. This is our request to the federal judges. We await the decision of the Federal Court. Decree the collective death of the Guarani and Kaiowá of Pyelito Kue/

Mbarakay and bury us here, since we have all decided not to leave, alive or dead.²

When I read this letter, it took me back 15 years to the time when the U'wa people of Colombia threatened to commit mass suicide if the project to drill for oil on their sacred land went ahead. At the time, I was doing research in Colombia and followed the case at close quarters. Although fighting for land with one's life—which was the message of the Guarani-Kaiowá—is not the same as contemplating mass suicide, it is impossible not to make the connection, since the U'wa were also fighting to save their territory from being contaminated by Western greed.³ The U'wa people won national and international support to stop the drilling under the terms in which it had been proposed. The fate of these and other indigenous and Afro-descendant peoples and peasants fighting to defend their collective rights is firmly linked to the planet as a whole, and calls on us to see these populations as key voices for thinking about alternatives in the contemporary world.

The question we should address is that of determining to what extent human rights constitutes a language capable of giving due recognition to long-established voices and existences that have been forced into the margins of modernity. The limitations of hegemonic human rights are evident here too, in some of the most decisive challenges of our time. The United Nations Universal Declaration of Human Rights, the first major universal declaration of the last century, which was followed by several others, only contemplates two subjects in law: the individual and the state. Peoples are only recognized insofar as they are transformed into states. It is important to note that in 1948, when the Declaration was adopted, there were many new peoples, nations and communities that did not have a state. From the perspective of the epistemologies of the South, the Declaration still cannot be considered as anything other than colonialist (Burke, 2010; Moyn, 2010; Terretta, 2012). In referring to equality in the eyes of the law, it should be recognized that, at the time when the Declaration was written, individuals in large parts of the world were not equal because they were subjected to collective domination, and individual rights offer no protection to those under collective subjugation. This was not contemplated in the Declaration, which emerged at a high point in bourgeois individualism, at a time when sexism was part of common sense, sexual orientation was taboo, class domination was an internal matter for each country and colonialism still had power as a historical agent, albeit significantly undermined by Indian independence. With the passing of time, sexism,⁴ colonialism⁵ and other, cruder forms of class domination have also been recognized as giving rise to violations of human rights. From the 1960s, anticolonial struggles became part of the United Nations agenda.⁶ However, self-determination as it was understood at the time only referred to peoples subjected to European colonialism. The exercise of self-determination on this basis relegated many peoples to the status of the internally colonized: indigenous peoples in various continents

are a good example of this. It would take 30 more years before the right of indigenous peoples to self-determination was recognized with the United Nations Declaration on the Rights of Indigenous Peoples, approved by the United Nations General Assembly in 2007. Prior to this, lengthy negotiations were required before the International Labour Organisation would approve Convention 169 on indigenous and tribal peoples, in 1989.

Since collective rights do not feature in the original canon of human rights, the tension between individual and collective rights emerges from the historical struggle of social groups subjected to exclusion or discrimination who could not therefore receive adequate protection through individual human rights. The struggles of women, indigenous peoples, Afro-descendant peoples, groups who are the victims of racism, gays and lesbians to achieve recognition for collective rights have shaped the last 50 years, in a process that has always been extremely contentious and always faced reversal. There is not necessarily a contradiction between individual and collective rights, except for the fact that there are many types of collective rights. It is possible to distinguish between two types of collective rights, namely primary and derived rights. We refer to derived collective rights when, for example, workers organize themselves into trade unions and give the latter the right to represent them in negotiations with employers. However, when a community of individuals is entitled to rights irrespective of their organization or decisions made by its members to renounce their individual rights in order to assert the right of the community, this is an instance of primary collective rights.

Collective rights exist to lessen or eliminate the insecurity and injustice experienced by collectives of individuals who face discrimination and systematic oppression because of who they are, not what they do. Very slowly, collective rights have begun to be included in both national and international political agendas. Nevertheless, the contradiction or tension with regard to the more individualist concepts of human rights is always present. Recently, the recognition of the collective rights of indigenous and Afro-descendant peoples has had a particularly visible political presence, above all in Latin America, and has become controversial whenever it translates into affirmative action in the form of extensive reviews of national history, education and health systems, administrative autonomy and collective rights to land and territory (see, for example, Rodríguez-Garavito, 2015).

The hegemony of a universal concept of human dignity underlying human rights, and based on Western presuppositions, reduces the world to the Western understanding of it, thus ignoring or trivializing crucial cultural and political experiences in countries in the global South. This is the case with movements that resist oppression, marginalization and exclusion which have emerged in recent decades and whose ideological bases have little or nothing to do with the Western cultural and political references which prevailed throughout the twentieth century. These movements do not formulate their demands in terms of human rights: on the contrary, they are frequently formulated in accordance

with principles which contradict the dominant principles of human rights. The roots of these movements often lie in historical identities, as is the case with the indigenous and Afro-descendant peoples' movements, particularly in Latin America, and the peasant movements in Africa and Asia. Despite the enormous differences between them, these movements share the fact that they have emerged from non-Western political references and were established, to a large extent, as resistance to Western domination. Conventional thinking on human rights lacks the theoretical and analytical tools that would enable it to position itself with some measure of credibility in relation to these movements and, even worse, does not consider it important that it should do so. It tends to apply the same abstract, generic prescription for human rights, hoping that the nature of the alternative ideologies and symbolic universes can be reduced to specifically local phenomena that will have no impact on the universal canon of human rights.

Human Rights versus the Rights of Nature

Abyssal cartography is inherent to modern knowledge and within it the colonial zone is the universe *par excellence* of incomprehensible beliefs and behaviour that can never be considered knowledge and is therefore beyond true and false. The disqualification of non-metropolitan realities and knowledge might lead us to suppose that there is no real knowledge on the other side of the line, only beliefs, opinions, magic, idolatry and intuitive or subjective understandings which, at best, could serve as the objects or raw material for scientific research. The utter strangeness of such knowledge and practices led to the actual denial of the human nature of its agents. The social contract theories of the seventeenth and eighteenth centuries stated that modern individuals or, in other words, metropolitan men, entered into the social contract by abandoning the state of nature in order to create civil society. The state of nature is therefore understood as the primordial state, in relation to which modern legality is constituted: it is both universal and also instrumentalized as a colonial zone, rendered invisible by the abyssal line, in which concepts of rights and legality do not apply. On the basis of these abyssal concepts of epistemology and legality, the universal tension between regulation and emancipation applied on this side of the line does not clash with the tension between appropriation and violence applied on the other side of the line.

In order to perceive the bond of meaning between emerging humanities, post-abyssal humanities and non-human nature, it is necessary to understand that the universal aspect of human rights has always coexisted with the idea of a primordial "deficiency" in humankind, namely the idea that not all beings with a human phenotype are fully human and therefore should not enjoy the status and dignity conferred on humanity. Without this, we would be incapable of understanding Voltaire's ambiguity with regard to the issue of slavery or the fact that John Locke, the great theorist of modern human rights, made a fortune

in the slave trade. It is possible to defend both the liberty and equality of all citizens and, at the same time, slavery because of the said abyssal line underlying human rights, which makes it possible to define who is truly human and therefore benefits from human rights and who is not and therefore does not enjoy these rights. The latter situation is a reversal of human rights, as brilliantly analyzed by Franz Hinkelammert (2004): the supposedly primordial nature of human rights is based on the denial of humanity imposed on certain groups of human beings. As clearly demonstrated within the limited scope of the declarations issued at the end of the eighteenth century announcing the inalienable rights of all men (see, for example, Hunt, 2007), the exclusion of humans underlies the modern concept of humanity. The Western patriarchal, capitalist and colonialist concept of humanity is unthinkable without the concept of subhumanity—both in the past and now, albeit in different ways.

From this selective attribution of humanness, which is a structural feature of Western human rights, the limits defined for expansion also emerge: even when conventional human rights imagined including all human beings, it never envisaged anything more than humans. The modern subjects of rights are exclusively human. In contrast, in other grammars of dignity humans are incorporated into much broader entities—the cosmic order, nature—on the understanding that the protection offered to humans is of little value if the former are not also protected. This is discussed by Marisol de la Cadena (2015) in her analysis of the rich and complex interdependent relationship established in Andean cosmology and ecology with non-human entities, the “earth beings”.

The perspective which sees the Western idea of nature as a “globalised localism”⁷⁷ (Santos, 2001: 71) reveals the singular nature of the prevailing concept of the human in Eurocentric modernity, which is constructed from an extraordinary dissociation between the meaning of human existence and the cosmic and natural order.⁸ In fact, Western Cartesian ideas about nature are as dominant as they are exceptional. All the cultures which European colonial expansion encountered from the sixteenth century onwards had a concept of nature that was closer to that of Baruch Spinoza (1632–1677), in which nature is seen as a living being (*natura naturans*, in Latin, as opposed to *natura naturata*) which we belong to and whose wellbeing is a condition of our own wellbeing: nature does not belong to us, we belong to nature. Spinoza’s vision, in which God and nature are coextensive (*Deus sive Natura*), was examined by the Inquisition due to allegations of pantheism. The prevailing concept for Eurocentric modernity was that of Descartes: nature as *res extensa*, a nature-object defined by Cartesian dualism and devoid of subjectivity and spiritual meaning. Since Western modernity was not monolithic in terms of ontologies, the colonial conquest had the effect of reducing or even eliminating its internal diversity. Any concepts within Western modernity that did not serve the conquest were abandoned or eradicated: it was for this reason that Pascal, Montaigne and Spinoza were discarded, being of no benefit either to missionaries or to the conquest. Thus it is not surprising that the concept of human rights which

claimed to be universal was, in fact, very specific—and this became very clear when it was confronted with other concepts of dignity and nature. Hence, it is necessary to perceive the cultural differences in how different populations conceive of relations with nature, time and the transcendent in terms that are close to the “political ontologies” (see, for example, Blaser, 2013; Cadena, 2015; Escobar, 2016) used to analyze “political strategies to defend or re-create worlds that retain important relational and communal dimensions, particularly from the perspective of the many present-day territorial struggles” (Escobar, 2017: 1616–1620).

The Western nature–society dichotomy conceals a hierarchy in which everything that is natural or closer to nature is considered inferior and flawed in terms of culture and valid knowledge. However, recent reality persists in showing us that we can only save the planet and preserve the dignity of life if we are willing to learn from the knowledge that has been excluded and oppressed. Thanks to the struggles of the populations most excluded by capitalist development (indigenous peoples, Afro-descendant peoples, women, peasants), a new generation of human rights is emerging, based on the idea that non-human beings essential to human life have human rights of their own, with a specific logic and broader scope than those of human beings, whether individual or collective. Due to its scope, Article 71 of the 2008 Constitution of the Republic of Ecuador, which is linked to the indigenous peoples’ philosophy of nature, may be considered pioneering in this respect. For the Andean peoples, far from being a natural resource that is available and can be appropriated on an unconditional basis, nature is the earth mother (*pachamama* in Quechua), the source and foundation of life and therefore the centre of the ethics of care. Article 71 states:

Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed. The state shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.⁹

The Constitution of the Republic of Ecuador also includes the concept of *sumak kawsay*, a Quechua expression which corresponds to the Spanish term *buena vida* (good life). The same is true of the 2009 Constitution of Bolivia, which includes *pachamama* concepts and, in Article 8, refers to *suma qamaña* (an Aymara word which corresponds to the Spanish *vivir bien*, or good living).¹⁰

This is a major example of what I have termed the “sociology of emergences” (Santos, 2006). It is known that this constitutional precept has been

systematically disrespected in the past decade for the usual reason (which has existed since the seventeenth century): the imperatives of capitalist development. Nevertheless, it is a legal and constitutional innovation that forms part of the struggle of humanity, since it reflects the insurgent, anticapitalist, anticolonial and antipatriarchal spirit of the times which is emerging in the margins of the dominant ideas and policies and is also flourishing in other places and contexts.

The most recent and famous case concerns the granting of human rights to the River Whanganui (also known as Te Awa Tupua), a sacred river for the indigenous Maori peoples of New Zealand because it is considered their ancestor. After 140 years of negotiations, the river has been recognized by the state as a living entity that must be protected to ensure the continuity of existence to the greatest possible extent. When they were completed, the minister in charge of the negotiations, which were “the longest in the history of New Zealand”, stated that “Te Awa Tupua will have its own legal identity with all the corresponding rights, duties and liabilities of a legal person”.

Recognizing this juridical and political innovation, the minister added: “The approach of granting a legal personality to a river is unique [...] it responds to the view of the iwi of the Whanganui river which has long recognized Te Awa Tupua through its traditions, customs and practice”. This acknowledgement of legal pluralism and the need for intercultural translation between the various concepts of law and the living being entitled to rights is not an empty statement, as Article 71 of the Constitution of the Republic of Ecuador proved to be, to some extent. In this case, the agreements include compensation for the Maori people for damage to the river amounting to 80,000,000 New Zealand dollars, and 1,000,000 dollars to establish the legal framework for the river. As has been noted, the decision to attribute a legal personality to the River Whanganui acknowledges the injustices in the colonial history of New Zealand, establishes legal pluralism in the face of the legacy of colonial law and may prove a valuable instrument in the environmental challenges that result from the exploitation of resources (Charpleix, 2017; Rodgers, 2017). Moreover, it exposes how

the ontological foundations of Western approaches to law, society and geography are generally based on a nature/culture hierarchy in which humans have assumed supremacy and the natural environment is viewed through utilitarian, resourcist and economic lenses.

(Charpleix, 2017: 27)

A few months later, using the same arguments, New Zealand granted a legal personality and autonomous human rights to the Taranaki Mountain. Under the terms of the law,

Eight local Māori tribes and the government will share guardianship of the sacred mountain [...] in a long-awaited acknowledgement of the

indigenous people's relationship to the mountain, who view it as an ancestor and whanau, or family member.

The new status of the mountain means that if someone abuses or harms it, it is the same legally as harming the tribe.¹¹

Far from remaining a New Zealand idiosyncrasy, legal struggles are emerging in India¹² (see, for example, O'Donnell, 2017) and other places with the aim of conferring the status of living being and the entitlement to human rights on non-human entities which are considered part of the natural world by Western culture,¹³ or *Res extensa*, in Descartes' terms.

The innovation of intercultural legality could not fail to be met with resistance from conservative politicians and jurists. One opposition politician sarcastically asked the New Zealand Prime Minister whether it was not absurd to attribute a legal personality and human rights to something which had no head, limbs or gender. The reply was unexpected: "and does a company or a corporation have a head, limbs and gender?" However, this resistance does not only stem from conventional conceptions of law and nature. The new post-human generation of human rights is completely changing the terms and amounts of compensation for damage caused to the wellbeing of these living beings which are now independent holders of rights. For example, the compensation that a company which contaminated a river is liable to pay cannot be restricted to the value of the fish which can no longer be caught because the river has died. It must include the recovery of all the ecosystems linked to the river and its banks and therefore the amount rises exponentially. In 1944, in his book *The Great Transformation*, Karl Polanyi (2012) had already demonstrated that if capitalist companies which caused irreparable damage to nature were made to pay adequate compensation, they would go bankrupt.

As a whole, these innovations point to a project for society that follows far more diverse paths than those adopted by capitalist, dependent and extractivist economies. These world views favour a social economy model (Acosta, 2009: 20; León, 2009: 65) based on harmonious relations with nature. In Gudynas' argument (2009: 39), nature ceases to be natural capital when it becomes natural heritage. This perspective does not rule out the acceptance of a capitalist economy but is opposed to the idea that global capitalist relations determine the logic and pace of change. The complexity of these new rights lies in the fact that they not only mobilize different cultural and cosmogonic identities but also new political economies that are firmly anchored in controlling natural resources.

Conclusion

The link between the different factors in the present crisis should, as soon as possible, lead to links between the social movements engaged in fighting them.

It is a slow process in which the weight of the history of each movement counts more than it should, although there is already evidence of links between the struggles for human rights and food sovereignty, against pesticides, genetically modified food, unpunished violence in rural areas, financial speculation in food products, and in favour of agricultural reform, the rights of nature, environmental rights, the rights of indigenous peoples and quilombola communities, the right to the city, the right to health, the solidarity economy, agroecology, taxation of international financial transactions, popular education, community health, the regulation of financial markets, etc.

Conferring human rights on a river or establishing constitutional recognition for the rights of nature are ways of raising the profile of peoples and struggles whose knowledge represents an external critique of the modern Eurocentric values underpinning conventional human rights, addressing post-abysal dignities based on relations with nature and the cosmos. In the context of resistance to colonial and neo-liberal extractivist developmentalism, they also constitute a perceptive dialogue with the central focus that the language of rights has acquired in Eurocentric grammars of dignity. In fact, taking the constitutional emergences in Latin America as an example, the idea of the rights of nature/*pachamama* is, in itself, an intercultural concept. In the indigenous world view, *pachamama* is the provider and protector of life and it therefore makes as little sense to talk of the rights of nature as the rights of God in the Christian world view. “Rights of nature” is a hybrid that combines Eurocentric concepts of rights with the indigenous concept of nature. It is, in my view, a contribution towards addressing the loss of meaningful critical thinking in Eurocentric theory which I have discussed in my previous work (Santos, 2014: 33–34).

In the early decades of the twenty-first century the recognition of rights for non-human nature is one of the most instructive examples of two procedures which form the basis of the epistemologies of the South, namely the ecology of knowledges and intercultural translation. The ecology of knowledges is based on the idea that different forms of knowledge are incomplete in different ways and that creating awareness of this reciprocal incompleteness is a precondition for achieving cognitive justice. Intercultural translation is an alternative both to the abstract universalism underpinning general Eurocentric theories and the idea of the incommensurability of cultures. Translation can take place between hegemonic and non-hegemonic forms of knowledge or between different forms of non-hegemonic knowledge. The importance of the latter lies in the fact that it is only through reciprocal intelligibility and the subsequent possibility of combining non-hegemonic forms of knowledge that it is possible to construct a counter-hegemony. Intercultural translation presupposes the existence of different cultures, but not the polarity of pristine, uncontaminated entities. The fact that indigenous concepts, world views or philosophies may be recognized in a hypermodern document (the political constitution of a country) is in itself an intercultural translation between oral ancestral knowledge

and written Eurocentric knowledge. We are contemplating hybrid forms that create new phenomena which cannot be reduced to their constituent parts. This pragmatic, non-essentialist perspective which aims to strengthen social struggles opens up new possibilities for intercultural translation involving struggles and movements in different parts of the world. The possibility emerges of a paradigm shift that will enable us to move beyond an anthropocentric vision to a biocentric concept of human rights, in the light of colonized ontologies and world views that have been disqualified for so long. Nothing could make better sense, given that we are living in a world that presents us with modern problems for which there are no modern solutions. Drawing on concepts of humanity that are as much emerging as ancestral, we can grasp some indications of the future of the urgent intercultural and post-abysal reconstruction of human rights.

Notes

- 1 According to Alberto Acosta, “extractivism is a mode of accumulation that started to be established on a massive scale five hundred years ago [...] We will use the term extractivism to refer to those activities which remove large quantities of natural resources that are not processed (or processed only to a limited degree), especially for export. Extractivism is not limited to minerals or oil. Extractivism is also present in farming, forestry and even fishing” (2013: 62).
- 2 The full text of the letter is available in the Articulação dos Povos Indígenas do Brasil (APIB) blog: <<http://blogapib.blogspot.pt/2012/10/carta-da-comunidade-guarani-kaiowa-de.html>>.
- 3 See Beatriz Eugenia Sánchez (2001: 5–142).
- 4 In 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in order to legally implement the Declaration on the Elimination of Discrimination against Women. Described as the Magna Carta of women’s rights, it came into force on 3 September 1981. The Convention defines “discrimination against women” (Article 1) as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. The Resolution “Human rights, sexual orientation and gender identity” was approved by the United Nations Human Rights Council on 14 June 2011. The proposed Declaration includes a condemnation of violence, harassment, discrimination, exclusion, stigmatization and prejudice on the basis of sexual orientation and gender identity.
- 5 The United Nations Declaration on the Elimination of All Forms of Racial Discrimination (1963), states: “Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples proclaims in particular the necessity of bringing colonialism to a speedy and unconditional end”.
- 6 Hoping to speed up the process of decolonization, in 1960 the United Nations General Assembly adopted Resolution 1514, also known as the “Declaration on the Granting of Independence to Colonial Countries and Peoples” or simply the “Declaration on

Decolonisation”. It stated that all peoples had the right to self-determination, solemnly proclaiming the need to bring colonialism in all its forms and manifestations to a speedy and unconditional end. The Special Committee on Decolonisation (also known as the Committee of the 24 for Decolonisation, Committee of 24 or simply the Decolonisation Committee) was created in 1961 by the UN General Assembly for the purpose of monitoring the implementation of the Declaration and making recommendations on its application.

- 7 Globalized localism “is the process by which a particular phenomenon is successfully globalized, whether it be the worldwide activities of the multinational, the transformation of the English language into a lingua franca, the globalisation of American fast food or popular music or the worldwide adoption of the same laws of intellectual property, patents or telecommunications aggressively promoted by the USA. In this mode of production of globalisation, what is globalised is the winner in a struggle for the appropriation or valuation of resources or the recognition of difference. This victory translates into the capacity to dictate the terms of integration, competition and inclusion. In the case of the recognition of difference, the globalised localism implies the conversion of the triumphant difference into a universal condition and the consequent exclusion or subordinate inclusion of alternative differences” (Santos, 2001: 71).
- 8 The actual notion of a “biological individual” can be problematized in modern Western science itself in the light of the vital symbiotic relationships involving plants and animals, and the infinite number of microorganisms that are essential for metabolic processes and physiological functions (see, for example, Gilbert et al., 2012).
- 9 Available at: <www.asambleanacional.gob.ec/sites/default/files/documents/old/constitucion_de_bolsillo.pdf>.
- 10 A vast bibliography is available nowadays on the concept of *sumak kawsay*. See, amongst other works, Chancosa (2010), Gudynas (2011: 441–447), Walsh (2010: 15–21), Tortosa (2011), Acosta (2013: 61–86; 2014: 93–122), Giraldo (2014), Hidalgo Capitán et al. (2010: 17–21), Unceta (2014: 59–92) and Waldmüller (2014).
- 11 *The Guardian*, 22 December 2017. Available at: <www.theguardian.com/world/2017/dec/22/new-zealand-gives-mount-taranaki-same-legal-rights-as-a-person>.
- 12 This legal opening in India, in the meantime reversed by the Supreme Court, is the result of a decision by the High Court of Uttarakhand dating from March 2017 which granted legal rights to the Ganges and Yamuna rivers and the Gangotri and Yamunotri glaciers. In the light of this decision, the status of legal minor should be granted to the said rivers and glaciers, whilst their guardianship would be attributed to various individuals in the State of Uttarakhand.
- 13 It is also worth considering how, in the context of southern Africa, Godfrey Museka and Manasa Madondo (2012) describe the power of an environmental pedagogy anchored in the Shona/Ndebele cosmology and the values found in Ubuntu philosophy.

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