
NOTES

Notes to Introduction to Part One

1. The relationship between modernity and capitalism is itself a historical process that is far from linear, and in which it is possible to distinguish different moments, temporalities or "phases." Elsewhere I have tried to trace this historical process along three periods: liberal capitalism, organized capitalism and disorganized capitalism. Santos, 1991, pp. 79–118. See Chapter Two.

2. Kelsen, 1967.

3. See Habermas, 1973, pp. 118ff; Bürger, 1984; Huyssen, 1986. On the debate between Habermas and Bürger about the epistemological and historical meaning of the avant-garde, see Schulte-Sasse, 1984; and Jay, 1985, p. 125.

4. Foucault, 1976; 1977; 1980.

5. The following are some of the relations between juridical power and disciplinary power most commonly found in Foucault's work: juridical power is the wrong conception of power, while disciplinary power is the right one; juridical power is the agent of disciplinary power; disciplinary power goes beyond juridical power; disciplinary power is less legal, or exists where juridical power itself is less legal ("at the extremities"); disciplinary power is colonized by juridical power; juridical power and disciplinary power are the two sides of the same general mechanism of power; they coexist though they are incompatible; juridical power conceals and legitimates the domination generated by disciplinary power.

6. Handler, 1983, p. 62.

7. Vico, 1961, p. 20.

Notes to Chapter One

1. Piaget (ed.), 1967, p. 7.

2. Fourier, 1967, p. 162.

3. Giddens, 1990, p. 34.

4. According to the FAO, 500 million people are dying of hunger. In the year 2000, of the 25 cities with more than 11 million people, 22 will be Third World cities.

5. This historical process has been far from linear. For instance, in the core countries, the second period of capitalism (the period of organized capitalism) has witnessed a more balanced articulation between the principle of the market and the principle of the state, which has led to a new state form: the welfare state. More on this in Chapter Two.

6. A powerful analysis of the sense of exhaustion and global blockage in the core countries can be found in Offe, 1987.

7. Jonas, 1985.

8. Haken, 1977.

9. Rousseau, 1971, p. 52.

10. Kepler, 1939, p. 280.

11. Descartes, 1984, p. 6.
12. *Ibid.*, p. 16.
13. Einstein, 1970, p. xvii.
14. Bacon, 1933. According to Bacon, "the ways that lead man to power and to science are very close, indeed they are almost the same" (p. 110). Bacon also says that, if the aim of science is to dominate nature, it is equally true that "[n]ature to be commanded must be obeyed" (p. 6). The latter assertion, however, has not always been duly stressed in interpretations of Bacon's theories of science.
15. Koyré, 1981, p. 30.
16. Einstein, 1970, p. xix.
17. Among many other passages of Galileo's *Dialogue Concerning the Two Chief World Systems*, cf. the following speech by Salviati: "... Taking man's understanding intensively, in so far as this term denotes understanding some proposition perfectly, I say that the human intellect does understand some of them perfectly, and thus in this it has as much absolute certainty as Nature itself has. Of such are the mathematical sciences alone; that is, geometry and arithmetic, in which the Divine intellect indeed knows infinitely more propositions, since it knows all. But with regard to those few which the human intellect does understand, I believe that its knowledge equals the Divine in objective certainty, for here it succeeds in understanding necessity, beyond which there can be no greater sureness" (p. 103).
18. Einstein's admiration for Galileo is well expressed in his Preface to Galileo's *Dialogue*. His radical way of "seeing" the mathematical nature of the structure of matter partly explains his long struggle over the interpretation of quantum mechanics (especially against the Copenhagen interpretation). On this point, see Hoffmann, 1973, pp. 173ff.
19. Descartes, 1984, p. 17.
20. Wigner, 1970, p. 3.
21. *Ibid.*, p. 226.
22. See, among many others, Pollard, 1971, p. 39.
23. Bacon, 1933.
24. Vico, 1953.
25. Montesquieu, 1950.
26. Durkheim, 1980.
27. Durkheim, 1973.
28. Nagel, 1961.
29. Weber, 1968.
30. Winch, 1970.
31. Reichenbach, 1970, p. 60.
32. *Ibid.*, p. 68.
33. Wigner, 1970, p. 7.
34. Heisenberg, 1971.
35. The impact of Gödel's theorems on philosophy of science has been assessed in different ways. See, e.g., Ladrière, 1967, pp. 312ff; Jones, 1982, p. 158; Parain-Vial, 1983, pp. 52ff; Thom, 1985, p. 36; Briggs and Peat, 1985, p. 22.
36. Prigogine and Stengers, 1979; Prigogine, 1980; Prigogine, 1981, pp. 73ff.
37. Jantsch, 1980.
38. Haken, 1977; Haken, 1985, pp. 205ff.
39. Eigen and Schuster, 1979.
40. Maturana and Varela, 1973. See also Benseleer, Heijl and Koch (eds.), 1980.
41. Thom, 1985.
42. Jantsch, 1981, pp. 83ff.
43. Bohm, 1984. See also Bateson, 1985.
44. Chew, 1968, pp. 762ff; Chew, 1970, pp. 23ff. See also Capra, 1979, pp. 11ff.

45. See, for the old view, Merton, 1968.
46. Bunge, 1979.
47. Bunge writes: "The causal principle is, in short, neither a panacea nor a myth; it is a general hypothesis subsumed under the universal principle of determinacy, and having an approximate validity in its proper domain" (1979, p. 353).
48. Prigogine and Stengers, 1979, p. 13.
49. Brillouin, 1959. See also Parain-Vial, 1983, pp. 122ff.
50. Poirier, Preface to Parain-Vial, 1983, p. 10.
51. Prigogine and Stengers, 1979.
52. Capra, 1984.
53. Wigner, 1970.
54. Jantsch, 1980 and 1981.
55. Merleau-Ponty, 1968, p. 45.
56. Weitz, 1956, pp. 27–35. For an excellent overview of Weitz's argument and the debate it originated, see Davies, 1991.
57. See also Pease, 1990, pp. 105ff.
58. Paul A. Bové is right in recalling Foucault's assertion that no one is interested in denying the existence of the writer as a cause in the production of literature or any other form of written discourse. Bové, 1990, p. 62.
59. W. James, 1969, p. 380.
60. P. Ricoeur, 1969, pp. 67, 148–153.
61. Anthropology, between postwar decolonization and the Vietnam War, and sociology, from the late sixties on, were forced to question this methodological status quo, as well as its underlying notions of social detachment. All of a sudden, the "savages" were seen within and amongst us in our societies, and sociology proceeded to utilize more often methods (like participant observation) which earlier had been almost the monopoly of anthropology. At the same time, in anthropology, the "objects" of study became peers, rightfully members of the United Nations Organization, and had to be studied according to sociological methods. These commotions affecting the distinction between subject and object in the social sciences finally exploded in the poststructuralist period. See Chapter Six.
62. Durkheim, 1980.
63. Without such categories as space, time, matter and number—the cardinal metaphors of modern physics (Jones, 1982)—we are incapable of thinking, even if we are now capable of conceiving them as conventional and metaphorical categories.
64. Descartes, 1984, p. 3.
65. See Hubbard, 1983, p. 51; Gross and Averill, 1983, p. 73.
66. The influence of Herbert Spencer on Darwin is so obvious that Marvin Harris has argued that Darwinism should be called biological Spencerism; instead, the consecrated formula for Spencerism is Social Darwinism. See Harris, 1968.
67. Hubbard, 1983, p. 51.
68. *Ibid.*, p. 50.
69. Haraway, 1989.
70. There is today an abundant feminist critique of modern epistemology. Among many others, see the following anthologies: Harding and Hintikka (eds.), 1983; Bowles and Klein (eds.), 1983; and Nicholson (ed.), 1990. See also Bleier, 1984; the excellent work of Haraway, 1989, and 1985, pp. 65–107; Irigaray, 1985, p. 73.
71. Bleier, 1984, p. 46.
72. Moulton, 1983, p. 149.
73. In general, the feminist critiques of dominant epistemology converge in arguing for a specific cultural, social, historical and personal female experience, but they diverge as to the conclusions to be drawn from this argument. For some, the goal is to turn female expe-

rience into an objective universal experience, much as Marx endowed with objectivity and universality the point of view of workers. For others, such a transformation is a male trap, in that it fails to recognize the diversity of women's needs and experiences. They argue for "epistemological tolerance," and for the explicit admission of partial points of view. Of the latter type is the postmodern feminist theory proposed by Nancy Fraser and Linda Nicholson, a theory that "would look more like a tapestry composed of threads of many different hues than one woven in a single color." See Fraser and Nicholson, 1990, p. 35.

On different feminist epistemologies see, besides the works cited in Note 69, Hawkesworth, 1989. See also Epstein, 1988, chaps. 2 and 3; the articles included in *Differences* 1 (Summer 1989), a volume dedicated to "the essential difference, another look at essentialism"; and Sandoval, 1991.

74. See above, Notes 36, 38, 43, and 44.

75. Wigner, 1970, p. 271.

76. Panpsychist theories speak of a psychic dimension to nature. Bateson's "wider consciousness" refers to a psychic dimension of nature, of which the human mind is but a part, a mind immanent to global planetary ecology. Bateson also asserts that while Freud has expanded the mind concept inwardly (allowing us to grasp the subconscious and the unconscious), we need now to expand it outwardly (by recognizing the existence of mental phenomena other than the individual and human). Bateson, 1985. Somewhat convergent views can be read in Capra, 1983 and 1984, and Bohm, 1984. See also Bowen, 1985, pp. 213ff.

77. This relative collapsing of dichotomous distinctions has its repercussions in the scientific disciplines that derived from them. As a matter of fact, there have been sciences that never felt very comfortable with these distinctions, so much so that they had to fracture internally in order to conform to them minimally. I have in mind anthropology, geography and psychology. More than any others, they have reflected the contradictions brought about by the separation between natural and social sciences. That is why, in this period of paradigmatic transition, it is so important, from an epistemological point of view, to observe what is going on in these sciences.

78. According to the Gaia hypothesis, formulated by Lovelock for the sciences of life, our bodies are made up of cell co-operatives. Lovelock, 1979.

79. Allen, 1981, pp. 25ff.

80. Haken, 1985.

81. Jones (1982, p. 41) asserts that Newton's system is a work of art as much as a work of science. On the cross-contamination of scientific and literary discourse, see Lecourt, 1972, pp. 37ff, and the many complementarities she discovers in the work of Gaston Bachelard between his epistemology and his poetics, in spite of his strenuous effort to ground an autonomous science. See also Bachelard, 1972, particularly his discussion on the use of metaphors in science (pp. 38, 81).

82. The most striking example is Harold Bloom, who calls his *Anxiety of Influence* a "severe poem." It should also be noted that literary theorists are often studied in courses as "originals." See Ramalho, 1984.

83. While referring to some of these analogies, Clifford Geertz (1983, p. 19) restricts their use to the social sciences. I conceive them as broader categories of intelligibility.

84. The moral-practical rationality is also an unfinished representation of modernity, but its efficacy in the construction of an emancipatory knowledge lies in its being a point of arrival, rather than a starting point.

85. Borda, 1987.

86. Curtius, 1953, pp. 64ff; Giuliani, 1963, p. 54; Barthes, 1970, p. 172; Castro, 1973.

87. Stanley Fish makes a similar point, without, however, referring to the paradigmatic transition. See Fish, 1990, p. 208. See also Ong, 1971; Barthes, 1970; Todorov, 1973, p. 93;

Ducrot and Todorov, 1972, p. 99; Logan, 1978, p. 624; Lausberg, 1966, p. 13; Ijsseling, 1976; Kremer-Marietti, 1978.

88. Koyré, 1986; Kuhn, 1970.

89. Perelman, 1969, p. 230.

90. On the distinction between persuasion and conviction, see Perelman, 1969, p. 26.

91. Perelman, 1969, p. 67. By changing and expanding the relevant audience, feminist and critical race theory—and, before them, Western Marxism—have converted facts and truths of conventional social science into mere arguments.

92. Ong, 1977, p. 149.

93. Lausberg, 1966, Section 383.

94. Perelman, 1969, p. 84.

95. See Ong, 1977, p. 149.

96. Perelman, 1969, p. 19.

97. *Ibid.*, p. 23.

98. *Ibid.*, p. 33.

99. Perelman distinguishes among quasilogical arguments, arguments based on the structure of reality, arguments of the relations establishing the structure of reality, etc. (*ibid.*, pp. 185ff).

100. One of the most recent examples in the social sciences is Simons, 1989. See also Donald McCloskey, 1985; Breuer and Shanze, 1981; Nelson, 1987. For the relations between law and rhetoric, see, among others, Viehweg, 1963, 1969, 1981; Esser, 1956, 1970; Perelman, 1951, 1965; Alexy, 1978; Recasens-Siches, 1962; Levi, 1949; Santos, 1980, 1990; Ball, 1985, 1990; White, 1985.

101. Polanyi, 1962; Feyerabend, 1982. I will not deal here with Feyerabend's position. I have already dealt with it at some length in Santos, 1990, pp. 121ff. The rhetorical analysis of science in its weak version (rhetoric in science) is much more common. A good example can be found in Bourdieu, 1982, p. 238; Bourdieu speaks here of the rhetorical use of scientific discourse in nonscientific contexts.

102. The same type of analysis could be carried out by focusing on the predominance of the *topos* of the superiority of the *eternal* in modern science, and on the current re-emergence of the *topos* of the superiority of the *ephemeral*.

103. In the following chapters I will elaborate on the dialectics between argumentative and nonargumentative moments in the field of law.

104. Gadamer, 1965, pp. 477ff.

105. See Santos, 1990, pp. 33ff. The concept of epistemological break is taken from Bachelard, 1972, but while G. Bachelard speaks of only one epistemological break, I speak of two. More on that in the following.

106. From a different perspective, J. Dewey stresses the mutual relations between science and common sense as both being transactions. See Dewey and Bentley, 1949, pp. 270ff.

107. Dewey and Bentley, 1949, p. 276.

108. Wittgenstein, 1973, Section 4.116 (my translation).

109. Nietzsche, 1971, pp. 99–142.

110. In the late sixties, Oskar Negt used the concept of social topic, but with a different meaning. See Schumann, 1981, p. 196. See also Moser, 1981, pp. 200ff.

111. See also Moser, 1981, p. 207.

112. Jonas, 1985.

113. *Ibid.*, p. 186.

114. From a very different perspective, Michel Serres proposes in a recent book the celebration of "a natural contract" with nature. Serres, 1990.

115. A critique of the liberal conception of freedom as a prepolitical essence can be read in Hannah Arendt's work. See, for instance, Arendt, 1963, p. 149.

116. Polanyi, 1962, p. 173.
117. Sontag, 1987, p. 125.
118. Dewey, 1949, p. 282.
119. Gellner, 1987, p. 153.
120. Schor, 1992, has forcefully demonstrated that in the last twenty years the amount of time Americans spend at their jobs has risen steadily.
121. Saint-Simon, 1975, p. 203.
122. *Ibid.*, p. 203.

Notes to Chapter Two

1. One of the best analyses is Wieacker, 1967, pp. 45–80. See also Von Mehren and Gordley, 1977, pp. 7–93; Merryman, 1985, pp. 6–14.
2. Berman, 1983, pp. 85–119. See also Wieacker, 1967, pp. 71–80.
3. Tigar and Levy, 1977, pp. 8–52.
4. Braudel, 1979, p. 413.
5. Levi Bruhl, 1971, p. 12; Wieacker, 1967, pp. 97–203; Poggi, 1978, p. 73.
6. In view of this structural fragmentation, historians have increasingly become “allergic” to the concept of feudalism, as is the case of Fernand Braudel, 1979, p. 413.
7. Tigar and Levy, 1977, p. 9.
8. Berman, 1983, p. 10.
9. *Ibid.*, p. 10.
10. Such legal rationalization of social life became most evident after the fourteenth century in the work of the post-glossators, Bartolus (1313–1356) being the most distinguished among them.
11. Merryman, 1985, p. 11.
12. Von Mehren and Gordley, 1977, p. 7; Wieacker, 1967, p. 47.
13. Wieacker, 1967, pp. 48, 52, 69.
14. *Ibid.*, p. 53.
15. *Ibid.*, p. 52; Von Mehren and Gordley, 1977, p. 8ff.
16. Toulmin, 1990, p. 34.
17. Ihering, 1915, pp. 121–122.
18. It is illustrative in this respect to trace the debate in the sixteenth century between the *mos gallicus* and the *mos italicus*, particularly the way French jurists questioned the universalism of Roman law, in light of French customary law, with the objective of urging the independence and even superiority of French monarchy and its traditions. See D. R. Kelley, 1984 (Chapter on “The Development and Context of Bodin’s Method”), p. 277ff.
19. The natural law school or movement includes many other social thinkers besides Grotius. Grotius belonged to the first phase of the school, together with late Spanish scholastics and Althusius. Other prominent philosophers in the school were Pufendorf, Christian Wolff, Leibniz, Spinoza, Thomasius and Hobbes (see Wieacker, 1967, p. 270).
20. See Grotius, 1964, pp. 11–13 (Prolegomena, Sections 6–11). It is worth noting that the epistemological claim of validity is argued by Grotius in a manner strikingly similar to Galileo’s, when he says that, “with regard to those few [propositions] which the human intellect does understand, I believe that its knowledge equals the Divine in objective certainty, for here it succeeds in understanding necessity, beyond which there can be no greater sureness.” Galileo, 1970, p. 103. This convergence illustrates the early mutual connection between modern science and modern law, as I am arguing in Part One. Cassirer, 1946, p. 165, cites a letter written by Grotius in which he expresses the greatest admiration for Galileo’s work.
21. In Book 1, Prolegomena Section 40, Grotius’s Cartesian attitude is shown when he emphasizes that the authority of the past can only be resorted to in a highly selective way if

the new universal methodology is to impose itself: “In order to prove the existence of this law of nature I have, furthermore, availed myself of the testimony of philosophers, historians, poets, finally also of orators. Not that confidence is to be reposed in them without discrimination; for they were accustomed to serve the interests of their sect, their subject or their cause” (1964, p. 23). As theory and reality never matches, Grotius served several political agendas during his life. Sixteen years prior to *De Jure* he published anonymously his famous pamphlet on the freedom of the seas (*Mare Liberum*) to refute the Portuguese position on the access to the high seas (*mare clausum*).

22. Grotius, Book I, Section XII, 1 (1964, p. 42).
23. On the relations between the *Vernunftsrecht* and the Enlightenment, see Wieacker, 1967, pp. 312–322.
24. Tuck, 1979, p. 79.
25. See Buckle, 1991, p. 3.
26. See Gurvitch, 1942, p. 81.
27. See above, Note 20. See also Kelly, 1984 (Chapter on “Gaius Noster: Substructures on Western Social Thought”), p. 637; Wieacker, 1967, p. 253. See also Toulmin, 1990.
28. Cited by Zweigert and Kötz, 1987, I, p. 49. See also Cassirer, 1946, p. 165.
29. Vico, 1961.
30. The idea of break with the past in Galileo and Descartes (see Chapter One) is also present in Vico: “So, for purposes of this inquiry, we must reckon as if there were no books in the world” (1961, p. 52). In formulating his purposes as the “discovery of the principles of history,” Vico anticipates, by a century and a half, Karl Marx, who originally wanted to dedicate the first volume of *Das Kapital* to Charles Darwin because he felt that in his book he was doing for the evolution of society what Darwin had done for the evolution of nature in the *Origin of the Species*. See also Kelly, 1984 (Chapter XII on “Vico’s Road: From Philology to Jurisprudence and Back”), pp. 16–29.
31. Vico, 1961, pp. 64–65. Isaiah Berlin, 1976, considers that one of the major innovations of Vico’s thought is the idea “that those who make or create something can understand as mere observers of it cannot” (p. xvi). Here lies the radical distinction between the sciences of nature and the sciences of society: it is possible to have an “inside” view of language, not of nature; the realm of nature obeys (knowable but not intelligible) laws, while the man-made is subjected to (intelligible) rules (p. xxi). In Vico’s words: “[W]hoever reflects on this cannot but marvel that the philosophers should have bent all their energies to the study of the world of nature, which, since God made it, he alone knows; and that they should have neglected the study of the world of nations or civil world, which, since men had made it, men could come to know” (1961, p. 53).
32. Kelly, 1984, xii, p. 19.
33. *Ibid.*, xii, p. 27.
34. Vico, 1961, pp. 50–51.
35. See d’Entreves, 1972, p. 160.
36. It exists at least since the stoic idea of the *consociatio humana*, expounded by Cicero. This is indeed the myth of the origin, or *fabula docet*, of the European political tradition.
37. Lessnoff, 1990, p. 5. See also Wieacker 1967, pp. 267–269.
38. Weinreb, 1987, p. 67.
39. See Hobbes, 1946, p. 21.
40. Rousseau, 1973, p. 165.
41. *Ibid.*, p. 165.
42. As Cassirer (1946, p. 174) rightly points out, “[w]hat we are looking for is an origin in reason, not in time.”
43. Rousseau, 1973, pp. 174, 177.

44. Cobban, 1964, p. 74.
45. Rousseau, 1973, Book II, chap. 3 (pp. 184–186).
46. *Ibid.*, p. 192.
47. *Ibid.*, p. 191.
48. See also Colletti, 1974; and Medina, 1990, p. 61.
49. See also Cobban, 1964, p. 46.
50. Rousseau, 1973, pp. 185–186.
51. See Cobban, 1964, p. 47.
52. See Hobbes, 1946, pp. 113–129. According to Cassirer (1946, p. 175), this unconditional and absolute transfer of rights to the ruler led the most influential writers on politics in the seventeenth century to reject the conclusions drawn by Hobbes.
53. Weinreb, 1987, p. 74. See also Medina, 1990, p. 12.
54. See also Buckle, 1991, p. 55, and Toulmin, 1990.
55. For a convergent interpretation of Hobbes, see Medina, 1990, pp. 13–26.
56. Locke, 1952, p. 53.
57. Weinreb, 1987, p. 80.
58. See Locke, 1952, p. 71.
59. The debate is also over the evolution of Locke's thought on property from the *Essays on the Law of Nature* to the *Two Treatises of Government*. For contrasting views, see Buckle, 1991, p. 152, and Macpherson, 1962, p. 237. See also Medina, 1990, pp. 29–41.
60. Locke, 1952, pp. 24–25.
61. *Ibid.*, p. 28.
62. Buckle's critique of Macpherson, for whom Locke defended unlimited accumulation, does not sound, in this respect, very compelling. See Buckle, 1991, p. 152.
63. Rousseau, 1973, p. 204.
64. Locke, 1952, p. 29.
65. For a contrast between Locke and Smith, see Buckle, 1991, p. 156.
66. As is well observed by Macpherson, 1962. See also Medina, 1990, p. 34.
67. See, above all, Buckle, 1991, pp. 169 and 183.
68. Hobbes, 1946, p. 116.
69. Locke, 1952, p. 71.
70. See Offe, 1985; Hilferding, 1981; Lash and Urry, 1987. See also Winckler, 1974.
71. On the relations between scientific and legal positivism, see Wieacker, 1967, pp. 458–468.
72. Weber, 1978, II, pp. 865–900.
73. Hunt, 1978, p. 114; Weber, 1978, I, pp. 212–226. See also Trubek, 1985.
74. See also Weinreb, 1987, p. 87.
75. Poggi, 1978, p. 98.
76. See Hauke Brunkhorst (1987), for whom "romantic modernism edges bewilderingly close to the conservative or reactionary fundamental opposition to modern culture and its utopian rationalism" (p. 409). Similarly, according to Gouldner (1970), "the revolutionary potential of Romanticism derived, in part, from the fact that although basically a critique of industrialism, it could as well be used as a critique of capitalism and its culture" (p. 115). In Chapter Eight, I analyze one possible contribution of Romanticism to the paradigmatic transition.
77. According to Georg Lukács (1972), "the central category and criterion of realist literature is the type, a peculiar synthesis which originally binds together the general and the particular both in characters and structures" (p. 5). Hence, his definition of realism: "a correct dialectical conception of the relationship between being and consciousness" (p. 119). See also Auerbach, 1968, pp. 454ff; and Swingewood, 1975, chap. 3.

78. Dicey, 1948, p. 306.
79. Durkheim, 1984.
80. See Poggi, 1978, p. 115. The transitional period between liberal capitalism and organized capitalism is particularly illuminating in this respect. See, on this, Romein, 1978.
81. See, on this development, among others, Preuss, 1988.
82. A vivid account is in Romein, 1978, pp. 271ff.
83. Poggi, 1978, p. 131; see also Romein, 1978, p. 276. On the distinction between state and civil society, see below and Chapter Six.
84. On the French regulation theory and its focus on fordism, see Chapter Four.
85. See T. H. Marshall, 1950.
86. This legal utopia is trapped in a kind of Sisyphean myth: each set of legal interventions, motivated by some "external" development, calling for a new set of legal interventions, in an endless process.
87. For a complex analysis of this process, see Teubner, 1987; and Preuss, 1988.
88. Preuss, 1988, p. 371.
89. See Chapter Four. A good overview is in Harvey, 1989.
90. On the dramatic intensification of transnational interactions in the last two decades, and its impact on the state, see Chapter Four.
91. See, in general, Teubner (ed.), 1986. Pierson, 1991, has recently surveyed the most important critiques of the welfare state (or diagnoses of its crisis). First, the exceptionally favorable circumstances for economic growth of the postwar period allowed for a simultaneous expansion of the economy and the welfare state. Such conditions were historically unique, and therefore the welfare state has grown to its limits. The welfare aspirations embodied in the idea of the welfare state can only be met by the transformation of society towards socialism. Second, the powers of national governments, national labor movements and nationally based capital—between whom agreements about national welfare states were typically constructed—have been undermined by the greater internationalization and deregulation of the world economy. Third, the postwar welfare state represented a "historic compromise" between capital and organized labor. Though it served then the interests of both, it is now becoming less and less attractive to either. Under these circumstances, the only appropriate strategy for contemporary social democratic movements is to reactivate their traditional commitment to the socialization of the capital investment function, "bracketed out" in the compromise of the Keynesian welfare state. Fourth, the welfare state has generated changes in class structures that undermine the class basis of its own continuation. They undermine, for instance, the alliance between the middle classes and the working classes upon which the welfare state was built, thus giving rise to the defection of important sectors of the population from the welfare state. Fifth, the welfare state was an appropriate institutional means for delivering certain welfare services at a given level of social and economic development. Beyond this level it becomes inappropriate: the expansion of choice/affluence within Western core countries engenders increasing dissatisfaction with state-administered welfare and a greater defection of consumers to market-provided welfare services. Finally, while the welfare state was historically progressive, further progress cannot be effected through conventional welfare policies. This is so because the welfare state is tied to a productivist/economic growth strategy which is no longer consonant with meeting real human needs and securing genuine social welfare. For an excellent feminist critique of the welfare state, see Gordon (ed.), 1991. See also Gordon, 1990.
92. Rosanvalon, 1981; Ewald, 1986a, 1986b; Lipietz, 1989.
93. Habermas, 1986, p. 211; See also Habermas, 1987.
94. Teubner, 1986, p. 311.
95. *Ibid.*, p. 309.
96. Wietholter, 1986, p. 221. See also Eder, 1986, 1987.

97. Febraro, 1986, p. 141.
98. Teubner, 1986, p. 321; Willke, 1986.
99. Peters, 1986.
100. Habermas, 1986.
101. Luhmann, 1984, 1986, 1988a, 1988b; Teubner (ed.), 1988, 1988, 1989, 1991, 1992. For differences between Luhmann's and Teubner's conceptions of legal autopoiesis, see Teubner, 1989.
102. Teubner, 1989, 1991.
103. Teubner, 1992.
104. Among others, Blankenburg, 1984; Jessop, 1990, pp. 320–337.
105. See Teubner, 1992, p. 1447.
106. Teubner, 1986, p. 311.
107. Jessop, 1990, p. 334.
108. Santos, 1990, 1993.
109. Even if social systems are epistemic subjects, as is claimed by autopoieticists, it is hardly conceivable that law be such an epistemic subject as Teubner wants (see, for instance, Teubner, 1989, pp. 739–746). The reduction of modern law to state law is but the process by which law relinquishes its subjectivity in favor of the state. The instrumentality of modern state law is thus an original condition, rather than a subsequent adulteration of a previous state of affairs.
110. Pierson, 1991. See Note 91.
111. Wallerstein, 1991a, p. 19. To these three social sciences, we should add anthropology and orientalism, the two social sciences in charge of the study of the colonial other, whether “savage” or “civilized.”
112. Wallerstein, 1991a.
113. See below, Chapter Eight.
114. See also Wallerstein, 1991a, p. 254.
115. Wallerstein (1991a) has recently emphasized the complicities between liberalism and Marxism. In a lecture on “The Ideas of Natural Law and Humanity in World Politics,” delivered in Berlin in 1922, the German theologian Troeltsch commented that whenever the socialists felt compelled to enunciate principles, they generally resorted to the idea of “a totally unhistorical passion for revolution, to be achieved in the name of Humanity and Equality.” And he added: “[W]hen that happens, socialistic principles become practically indistinguishable, in spite of the Socialist challenge to the bourgeoisie, from the bourgeois philosophy of the west; and the individualistic and utilitarian basis of that philosophy, in particular, is simply adopted wholesale” (1934, p. 222).
116. Wallerstein, 1991a, p. 248.
117. Smith, 1988, pp. 174–208; Guidieri and Pellizzi, 1988, p. 10.
118. Keane, 1988a, 1988b; Jessop, 1990, pp. 338–369; see also Pierson, 1991, p. 205.
119. Keane, 1988a.
120. Gramsci, 1971.
121. Skinner, 1989, p. 90–131.
122. *Ibid.*, p. 106.
123. Ellul, 1965, p. 89.
124. On the distinction between instrumental and symbolic effectiveness, see M. Edelman, 1964; L. Friedman, 1975.
125. Trubek and Galanter, 1974; Gardner, 1980. See also Chapter Four.
126. On the paradox of the state, though being a part, acting as if it were the society in its entirety, see Jessop, 1990, p. 360.
127. Luhmann, 1979, 1988a, 1988b.
128. Giddens, 1991.

129. Giddens, 1991, p. 21.
130. See *Ibid.*, p. 34.
131. *Ibid.*, p. 83.
132. Berman, 1983, p. 15.
133. *Ibid.*, p. 16.
134. *Ibid.*, p. 15.
135. *Ibid.*, p. 21.

Notes to Introduction to Part Two

1. Santos, 1980, pp. 379–397.
2. Ong, 1971, 1977. See also Chapter Three.
3. Santos, 1980, p. 387.
4. Erlich, 1936; Bobbio, 1942; Del Vecchio, 1957; Carbonnier, 1979.
5. See, among others, Nader, 1969; Hooker, 1975; Moore, 1978; Galanter, 1981; Macaulay, 1983; Fitzpatrick, 1983; Griffiths, 1986; Merry, 1988; Starr and Collier, 1989; Chiba, 1989; Benda-Beckmann, 1988, 1991; Tamanaha, 1993.
6. See, lastly, Starr and Collier, 1989; Benda-Beckmann, 1991; and Tamanaha, 1993.
7. Sally Merry, 1988. The author confines her periodization to the debate in the sociology and anthropology of law as we know them today. As I mentioned above, the first context of the debate was the European legal philosophy (and also legal sociology) at the turn of the century.
8. Van Onselen, 1976.
9. Lacan, 1977, pp. 2–4.
10. *Ibid.*, pp. 1–2.
11. Montaigne, 1958, p. 406.

Notes to Chapter Three

1. Gluckman, 1955.
2. Fallers, 1969.
3. Bohannan, 1957.
4. Kantorowicz, 1958, p. 79.
5. *Ibid.*, p. 69.
6. *Ibid.*, p. 80.
7. Abel, 1973, p. 247, uses the term “intervener” because, although “an ugly neologism,” it is “free of the connotations which attach to such alternatives as judge, mediator, or dispute settler.” “Third party” is at least as ugly.
8. Gulliver, 1969, p. 14.
9. A similar point is made by Epstein, 1967, p. 205; van Velsen, 1967, p. 129; and Gluckman, 1955, p. xi in their discussion of the extended case method, or of the situational analysis, as van Velsen prefers to call it. But while these authors want to emphasize the existence of conflicting norms which, by imposing normative choice upon the parties, become a source of dispute whose social meaning can only be captured by a close diachronic analysis, I am mainly concerned with the fact that a given norm, or a set of nonconflicting norms, may also, over time, be a source of conflict within specific social relations, determining both the creation and the settlement of disputes. Our point of agreement is a common concern with social processes, with the dynamic dimension of the social structure or, as Gluckman says, “[with] an ongoing process of social relations between specific persons and groups in a social system and culture” (1955, p. xv).

On the other hand, my interest in the role of law in creating disputes seems to be at odds with the view, common among sociologists of social conflict, that law is created and modified by conflicts. Coser, referring both to Simmel, 1955, and Weber, 1954, concludes: "We need hardly document in detail the fact that legislative enactment of new statutory laws tends to occur in areas in which conflict has pointed out the need for the creation of new rules. . . . Conflicts may be said to be 'productive' in two related ways: (1) they lead to the modification and the creation of laws; (2) the application of new rules leads to the growth of new institutional structures centering on the enforcement of these new rules and laws" (1956, p. 126). Indeed, the two perspectives are complementary: law is both a product and a producer of social conflict.

10. Richard Abel has convincingly argued that, in any given society, we may find different styles or types of dispute settlement, or "outcomes," as he prefers to call them (1973, p. 228). Criticizing Nader, he asserts that either/or decisions are extremely rare in any legal system. Abel has also helped to elucidate, both at the microsocial and at the macrosocial level, possible correlations between dispute structure and dispute process, by means of an elaborate set of variables. My point in the text is merely that, in order to account for the actualization of law in the dispute context, both dispute structure and dispute process must be analyzed in terms of the creation and prevention of disputes, as well as their settlement.

11. Gluckman, 1955, p. 69.

12. *Ibid.*, pp. 67-78.

13. Fallers, 1969.

14. Gluckman, 1955.

15. Bohannan, 1957.

16. Gulliver, 1963.

17. Fallers, 1969, p. 329.

18. Gluckman, 1955, p. 270.

19. Fallers, 1969, p. 107.

20. Esser, 1970, p. 140.

21. Fallers, 1969, p. 314.

22. Perelman, 1969, pp. 122ff.

23. Based on Fallers and other ethnographical material, Abel (1973, p. 273) analyzes the changes in the temporal limitation.

24. In manuals of magic, written charms and curses are always considered more powerful, more dangerous, and more difficult to neutralize. In some love manuals one is advised to keep all letters received, and to write none, because to write a letter is to commit oneself.

25. Swett, 1969, pp. 97-98.

26. Black, 1971, p. 1087.

27. But see Steiner, 1967, p. vii, who addresses himself to the following question: "Are we passing out of an historical era of verbal primacy—out of the classic period of literate expression—into a phase of decayed language, of 'post-linguistic' forms, and perhaps of partial silence?" Goffman has also discussed communication through silence (1971a and 1971b). And John Cage has written about silence in music (1966).

28. Hegel, 1969.

29. Shankara, 1970.

30. Arjuna, the warrior, in the *Bhagavad Gita*, is in possession of such knowledge when he asks Krishna: "How is the man of tranquil wisdom, who abides in divine contemplation? What are his words? *What is his silence?* What is his work?" (2, 54, my italics). Arjuna recognizes that words alone will not tell him the full meaning of an attitude or behavior. That is why he asks about silence and about works. Words, silence and works are thus conceived as a necessary triad of communication and knowledge. Arjuna also shows that he is not

interested in knowing just any kind of silence, but rather the silence of the man of wisdom, that is, a positive and delimited reality.

31. Nader, 1969, pp. 69ff.

32. Yngvesson, 1970.

33. Louis Renou contrasts them in the following way. The *botr*, who was originally the libation pourer (as the etymology of the word suggests), later becomes primarily a reciter; but his invocations, though impressive, play only a small part in the liturgy, rather like the music of the chanters. The *brahman* is the repository of the unexpressed power of the formula, a silent spectator who is responsible for seeing that the ritual is carried out with accuracy; he is a professional expert, like the Roman Catholic priest. *His silence is just as valuable as the speech and melodies of his colleagues.* Renou, 1968, p. 32.

34. For a detailed analysis of the ecological, socioeconomic, political, religious, associational and cultural characteristics of the *favelas* of Rio, and of Pasargada in particular, see Santos, 1974, chaps. I and II.

35. In what follows, I will use the anthropological present to refer to the period of the fieldwork (1970). Since then, social and political life in Pasargada has changed dramatically, in great part due to the control of drug dealers over community action, occurring mainly in the eighties, but due also to the process of democratization of the Brazilian state in the same decade. See, for instance, Junqueira and Rodrigues, 1992.

36. A detailed analysis of the RA's statutory objectives can be found in Santos, 1974, pp. 98ff.

37. I borrow the term basic norm (*Grundnorm*) from H. Kelsen (1962, pp. 2ff), though I use it in the broader sense of the norm or set of norms that establish the general legal foundation for the regulation of specific areas of social life, rather than in Kelsen's sense of the constitutional norm, conceived as the logico-transcendental presupposition of the legal pyramid.

38. Legal documents in Pasargada contain references to the "laws in force," a technical expression meaning the "official laws." In more informal oral discourse, Pasargadians refer to the official laws and to the official legal systems in general as the "law of the asphalt" because it is the law that governs social relations in the urbanized areas which, unlike Pasargada, have paved (asphalt) roads and streets. Depending on the circumstances, this folk category is used to connote either that the law of the asphalt is also applicable to Pasargada or that, because Pasargada is not in the asphalt, official law does not apply. I use the expressions "law of the asphalt" and "official legal system" interchangeably.

39. The right of first refusal appears in Pasargada documents in much the same form as it does in legal documents in the official system, because Pasargadians have been socialized in the official legal culture, and neither conditions in Pasargada nor relations between Pasargada law and the official legal system require in this case the normative autonomy of Pasargada. More on this in the following.

40. Pasargadians could not possibly have their legal transactions certified by the public documents of the asphalt, not only because their land tenure is illegal, but also because their houses violate the housing code (they have not been granted the *habite-se*). From the point of view of the law of the asphalt, the private documents used in Pasargada might be viewed as valid transfers of rights to possession, not property. But Pasargadians only make this distinction when referring to the official legal system. Under Pasargada law, these transactions transfer property, and indeed the rights transferred exceed mere rights of possession as these are conceived by the law of the asphalt.

41. One may wonder why the parties should be concerned about an appeal by Mrs. G.M. to the law of the asphalt, since the latter does not recognize rights and transactions established by Pasargada law. However, one should not forget that in this situation of legal pluralism the informal legal system is dominated by the official legal system, and represents the legal behavior of dominated classes within a capitalist society. Pasargadians experience this discrimination every day, and thus know that the autonomous legality tolerated in

Pasargada may easily be destroyed whenever the state is interested in doing so, under the guise of any one of those slogans through which it reproduces class domination, e.g., "urban development," "the fight against crime," "law and order," "down with unhealthy slums." (John Steinbeck describes, in *The Grapes of Wrath*, how Hoovervilles were burned in the Depression in the United States in the name of law, order and human decency.)

42. One day I was chatting with the *presidente*, when a sixteen-year-old girl entered the association, carrying her four-month-old daughter in her arms. She explained that she had been living with her mother in her stepfather's shack, her stepfather had just forcibly raped her, she had fled, and now she had no place to live. The *presidente* then said: "Look, I don't know in what way I can be helpful. Do you want me to invite your mother and your stepfather for a discussion of the case? In fact, I think that your case with your stepfather is of a criminal nature. It cannot be resolved by the Residents' Association. It is a question for the police." The girl replied: "No. I don't want to denounce them. I don't even want to talk to them. I just thought that the Association might know of any shack or room for rent." Trapped between an inaccessible criminal justice and an impotent and insensitive RA, the woman was left without any way of redressing her grievance.

43. The use of the invitation as an *ersatz* summons is not limited to Pasargada law. It is used in general by lawyers operating within the framework of the state legal system. The lawyers at Rio's offices of the legal aid, for instance, who also lack the power to summon, invite the defendant to meet with them to try to reach an out-of-court settlement. They believe that, because the invitation is printed on the official paper of the state prosecutor and sometimes served by a court clerk, it will be interpreted by the addressee as a summons. I have no evidence that the Pasargada law has borrowed this strategy from the law of the asphalt. It seems more likely that these are independent responses to similar conditions.

44. All amounts are given in Brazilian *cruzeiros*, which, at the time, were worth approximately twenty-six cents in U.S. money.

45. One night, some time after the decision of this case, I managed to talk to Mr. S.B. He always carried a loaded gun, wrapped in an old newspaper, and intended to use it, not to resist arrest, but rather to kill Mr. J.Q.'s brother. (The latter had fled from Pasargada and gone into hiding in the interior of Rio State. His wife, who had always been mistreated by him, was hesitant about telling Mr. S.B. the whereabouts of her husband, but she never did.) We talked about the case. He manifested his agreement with the decision "because, after all, Mr. J.Q. should not pay for what his brother did." He was only annoyed that he could not sell the shack again, because he needed money desperately. This shows clearly the discrepancy between the processed and the real dispute and how, in fact, the settlement of the former might have reached the latter.

46. The accuracy of his doubts was confirmed in a conversation I had, later the same day, with the defendant. She was completely drunk, but she could still articulate her ideas fairly well: "I won't leave the shack. I just talked to a friend of mine who is a sergeant in the military police and he told me that nobody can force me out. Besides, the Residents' Association of Pasargada has nothing to do with my case because the land where the shack is located does not belong to Pasargada."

47. Renner, 1949.

48. See Santos, 1974, pp. 74ff.

49. The mixed results of the "back to the community" initiatives have been analyzed and exposed. One of the first critical analyses is in Scull, 1977.

Notes to Chapter E (Chapter Three-in-the-Mirror)

1. Saint Augustine, 1991, p. 180. On the relations between autobiography and self-portrait, see Beaujour, 1977, pp. 44ff.

2. Renza, 1977, p. 1.
3. Saint Augustine, 1991, p. 192.
4. Renza, 1977, p. 3.
5. Rousseau, 1967, I, p. 226.
6. Barthes, 1975, p. 140. See also Buck, 1980.
7. Hume, 1888, pp. 252-253.
8. Rousseau, 1967, I, pp. 117-375.
9. Montaigne, 1958.
10. Adams, 1961.
11. Teresa de Jesus, 1982, pp. 25-191.
12. Kierkegaard, 1946, p. 323.
13. Gluckman, 1969, p. xviii.
14. Nietzsche, 1956, p. 157.
15. Deleuze, 1968, p. 4.
16. Carroll, 1976, pp. 760-61.
17. Santos, 1971.

Notes to Chapter Four

1. In Zweigert and Kötz, 1987, I, p. 3.
2. Marx and Engels, 1967, p. 102.
3. In Zweigert and Kötz, 1987, I, p. 3.
4. Feuerbach, 1989, p. 618.
5. Among others, see Featherstone, 1990; Giddens, 1990; Albrow and King, 1990.
6. Chase-Dunn, 1991. But note that Chase-Dunn stresses the continuity of recent developments.
7. Appadurai, 1990.
8. Giddens, 1990, p. 64.
9. Featherstone, 1990, p. 2.
10. Robertson, 1990, p. 27.
11. Giddens, 1990, p. 69.
12. Robertson, 1990, p. 16.
13. Chase-Dunn, 1991, for example.
14. Wallerstein, 1991a, 1991b; Balibar and Wallerstein, 1991.
15. Fröbel, Heinrichs and Kreye, 1980. Walton, 1985, speaks of three successive forms of "new international divisions of labor," the last and current one being characterized by the globalization of production carried out by transnational firms. A review of the different approaches to the "new international division of labor" is in Jenkins, 1984; see also Gordon, 1988.
16. Stallings, 1992, p. 3.
17. In this sense, see Becker and Sklar, 1987, p. 2.
18. Evans, 1979, 1986.
19. Becker and Sklar, 1987, p. 7.
20. Evans, 1979, p. 288.
21. Evans, 1987.
22. Becker and Sklar, 1987, p. 6.
23. *Ibid.*, p. 2.
24. Chase-Dunn, 1991, p. 262.
25. *Ibid.*, p. 263. See also Kennedy, 1993, pp. 193-228. According to Maizels, 1992, the primary commodities exports from the Third World increased in volume by almost

100% in the period 1980 to 1988. But the revenue obtained was, in 1988, 30% less than the one obtained in 1980. See also Singh, 1993.

26. Featherstone, 1990; Appadurai, 1990; Berman, 1983; W. Meyer, 1987; Giddens, 1990, 1991; Bauman, 1992. See also Wuthnow, 1985, 1987; Bergesen, 1980.
 27. Chase-Dunn, 1991, p. 88.
 28. Meyer, 1987; Bergeson, 1990.
 29. Wallerstein, 1991b, p. 198.
 30. Appadurai, 1990. See also King, 1984; Hall and Gleben, 1992.
 31. Sklair, 1991.
 32. Smith, 1990.
 33. Keohane and Nye, 1977; Keohane, 1985; Krasner, 1983; Haggard and Simmons, 1987.
 34. G. Thomas *et al.*, 1987.
 35. Toulmin, 1990.
 36. Wallerstein, 1991b, p. 187.
 37. Smith, 1990, p. 187.
 38. Featherstone, 1990, p. 10, Wallerstein, 1991b, p. 184; Chase-Dunn, 1991, p. 103.
- For Wallerstein, the contrast between the modern world system and earlier world empires lies in the fact that the former combines a single division of labor with a system of independent states and multiple cultural systems. Wallerstein, 1979, p. 5.
39. Hannerz, 1990, p. 239.
 40. Parsons, 1971.
 41. Chase-Dunn, 1991, p. 105.
 42. Wallerstein, 1991b, p. 199.
 43. Wright, Levine and Sober, 1992.
 44. Wallerstein, 1991b. See also the research project on "Hegemony and the World System, 1600–2025" directed by Wallerstein. Provisional results were presented at the Workshop on Trajectory of the World-System. Binghamton, December 4–5, 1992.
 45. Wallerstein, 1991b, p. 134.
 46. Wallerstein, 1991a, p. 270.
 47. Aglietta, 1979; Boyer, 1986, 1990. See also Jessop, 1990a, 1990b; Kotz, 1990; Mahnkopf, 1988; Noel, 1987; Vroey, 1984.
 48. McMichael and Myhre, 1990.
 49. Ominami, 1986; Boyer and Ralle, 1986; Aglietta, 1986; Mistral, 1986. See also Jessop, 1990a, p. 317.
 50. Picciotto, 1989, p. 12.
 51. Toulmin, 1990.
 52. Clark, 1990.
 53. Miller, 1992, p. 54.
 54. UNCED Alternative Treaties, 1992.
 55. Hunter and Trubek, 1992. A bibliography on TANGOs is in Hunter, 1992. See also Elkins, 1992; Slater, 1991; Boulding, 1991; Korten, 1990; Alger, 1990; Chekki, 1988; Drabek, 1987; Berg, 1987.
 56. Moyo and Katerere, 1991. See also Shaw, 1990; Barrow, 1985. Drawing on examples from Kenya and Zimbabwe, Bratton, 1989, analyzes the strategies used by governments to exercise control over NGOs, and by NGOs to assert autonomy.
 57. Wallerstein, 1984, p. 5.
 58. Skocpol, 1977. Cochrane and Anderson, 1986, defend a *via per mezzo* between Wallerstein and Skocpol. See also Zolberg, 1981; Garst, 1985; Zeitlin, 1988; Evans, 1992; Haggard and Kaufman, 1992.
 59. Chase-Dunn, 1991, p. 111.

60. Therborn, 1992.
 61. Esmein, in Zweigert and Kötz, 1987, I, p. 64.
 62. Sauser-Hall, in Zweigert and Kötz, 1987, I, p. 64.
 63. Levy-Ullmann, in Zweigert and Kötz, 1987, I, p. 64.
 64. Arminjon, Nolde and Wolff, 1950, p. 47.
 65. David, 1950, pp. 215–393; David and Brierley, 1978.
 66. Zweigert and Kötz, 1987, p. 75.
67. Supporters of the Law and Development Movement, who sought to export Weberian legal rationality throughout the world, would be less surprised with the "irrational" outcomes of their undertaking if they had taken good cognizance of the work of legal comparatists. See Trubek and Galanter, 1974; Gardner, 1980; Snyder, 1980, 1982; van den Bergh, 1984; Benda-Beckmann, 1989. For a reassessment of Gardner in light of the new wave of law and development, see Heller, 1992. From a different perspective, Schmidhauser, 1992, examines the expansion of several major families of law as a concomitant of military conquest, colonial aggrandizement, and/or economic penetration. See also Sajo, 1990 on the "new legalism" in East Central Europe.
68. van der Velden, 1984, p. 233.
 69. Cowhey, 1990, p. 184. I follow Cowhey closely in the analysis of this example. See also Nugter and Smits, 1989.
 70. Cowhey, 1990, p. 188.
 71. See also Riess, 1991; Huet and Maisl, 1989.
 72. Cowhey, 1990, p. 191.
 73. On dependency theory, see Cardoso and Faletto, 1979; Evans, 1979.
 74. See Note 58 above.
 75. Frieden, 1987, p. 180.
 76. Picciotto, 1989, reaches that conclusion from another perspective. See also Picciotto, 1988.
 77. McMichael and Myhre, 1990.
 78. Stallings, 1992, p. 43.
 79. Moore, 1978, pp. 54–81.
 80. Schaefer, 1991, p. 683.
 81. Among many others, Snyder, 1990; Weiler, 1981, 1991a, 1991b; Moravcsik, 1991; Joerges, 1991; Lodge, 1989; Mancini, 1989.
 82. Santos, 1990; 1993, pp. 49–53.
 83. This being the case, the EC integration process is a decisive modifying factor of the economical and political meaning of the above mentioned relative strength of the individual states in the interstate system, as elaborated by the world system theory.
 84. Weiler, 1991a, p. 2478.
 85. *Ibid.*, p. 2479.
 86. *Ibid.*, p. 2410.
 87. Maduro, 1992; Reich, 1992; Charny, 1991; Sbragia, 1991.
 88. Weiler, 1991a, p. 2471. On the European Community and human rights issues, see below, Section II.6. On social cohesion, see, among many others, Schulte, 1991; Teague, 1989.
 89. Streeck and Schmitter, 1991. See also Sugarman and Teubner, 1990.
 90. Santos, 1990b.
 91. Allott, 1991.
 92. Tigar and Levy, 1977, p. 4. Also Trakman, 1983; Mustill, 1988; Stoecker, 1990; Berman, 1988; Berman and Dasser, 1990; Draetta, Lake and Nanda, 1992.
 93. Draetta, Lake and Nanda, 1992, p. 5.

94. B. Goldman was one of the most influential jurists in the development of the notion of *lex mercatoria*. Goldman, 1964.
95. Farjat, 1982.
96. Draetta, Lake and Nanda, 1992, p. 13; Trakman, 1983, pp. 23ff.
97. On the evolution of international property rules since the mid-nineteenth century, see Lipson, 1985.
98. *Ibid.*, p. 9.
99. Gessner and Schade, 1990.
100. Draetta, Lake and Nanda, 1992, p. 27.
101. Galanter, 1983.
102. Dezalay, 1990.
103. Dezalay, 1990, 1992. See also Trubek *et al.*, 1993, pp. 3–36.
104. Gessner, 1990, p. 8.
105. *Ibid.*, p. 8. See also Gessner and Schade, 1990.
106. For the case of Indonesia, see Trubek *et al.*, 1993, pp. 50–65.
107. See Jones, 1993, p. 16.
108. See *ibid.*; and Ghai, 1993; Potter, 1993; Winn, 1993; Siu-Kai and Hsin-Chi, 1988; Wong, 1985.
109. Sohn and Buergenthal, 1992, p. v.
110. Portes and Böröcz, 1989, p. 606. Also, Portes and Walton, 1981.
111. Wallerstein, 1974, p. 127. For a partial critique, see Cohen, 1987, pp. 66ff.
112. Cohen, 1987, p. 4.
113. Portes and Walton, 1981, chap. 2; Portes and Böröcz, 1989, p. 608.
114. Portes and Böröcz, 1989, p. 608.
115. *Ibid.* Also Portes, 1979.
116. UN Chronicle, December 1992, p. 72.
117. See Prothero, 1990, for an introductory analysis of labor recruiting organizations in the developing world.
118. Zolberg, 1989, p. 407; Cohen, 1987, p. 50.
119. The case of Germany is particularly striking. The federal labor office set up labor bureaux in the Mediterranean countries, encouraging German employers wanting laborers to pay this government agency a recruitment fee. The work of the FLO was supplemented by intergovernmental labor supply contracts with Greece (1960), Turkey (1961 and 1964), Morocco (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968). Castles *et al.*, 1984, p. 72. Also Cohen, 1987, p. 157.
120. Salt, 1987, p. 241.
121. Fröbel, Heinrichs and Kreye, 1980.
122. Piore, 1986; Zolberg, 1989, p. 410.
123. Petras, 1980, p. 174. Also Cohen, 1987, p. 175.
124. Portes and Böröcz, 1989, p. 612. Also Portes and Zhou, 1992, pp. 491–522. For a different view, Salt, 1989.
125. This fact has been emphasized, among others, by Zolberg, 1981; Zolberg, 1989, p. 405.
126. In this perspective must be analyzed the opposition of the AFL-CIO against NAFTA. See Trubek *et al.*, 1993, pp. 37–49.
127. Dijk, 1987.
128. Rogers, 1992.
129. *Migration News Sheet*, February 1991, p. 3.
130. Bosniak, 1991, p. 747. Also Warzazi, 1986; Cohen, 1987; Selby, 1989.
131. Davis, 1993, p. 14.
132. Bosniak, 1991, p. 744.

133. Rogers, 1992, p. 45.
134. In the following analysis, I draw on Bosniak, 1991. See also Nafziger and Bartel, 1989; Martin, 1989; Fontenau, 1992; Goodwin-Gill, 1989.
135. Bosniak, 1991, p. 741.
136. *Ibid.*, p. 742.
137. In the mid-eighties, 24% of illegal workers were paid less than the minimum wage. Friedman, 1986, p. 1715.
138. Hakovirta, 1993, p. 37.
139. Rogers, 1992, p. 35.
140. Hakovirta, 1993, p. 37. The 1992 Report of the United Nations High Commissioner for Refugees affirms that in 1992 the global refugee situation had again deteriorated—particularly in the Persian Gulf, the Horn of Africa, South West Asia and Europe—“despite far-reaching changes in the world order which, it was hoped, augured improved prospects for solution” (p. 1).
141. Sohn and Buergenthal, 1992, p. 100.
142. On the African refugees policy, Anthony, 1991.
143. Sohn and Buergenthal, 1992, p. 102; Hathaway, 1991.
144. Wöhlcke, 1992; Westing, 1992.
145. Sohn and Buergenthal, 1992, p. 109.
146. Hakovirta, 1993, p. 45.
147. Copeland, 1992, p. 995.
148. Zolberg, 1989, p. 415.
149. A general overview of EC migration policy is in Niessen, 1992, and of refugee policy in Boer, 1992. See also Heisler, 1992. A brief comparison between European and North American international migration is in Hammar, 1989.
150. For an illuminating critical analysis of the Schengen Agreements, see Meijers *et al.*, 1992. See also Real, 1993. More generally, on the free movement of persons in Europe, see lastly, Schermers *et al.*, 1993.
151. Curiously enough, for more than forty years, since the end of World War II, millions of refugees have fled from Eastern Europe because of the existence of the Soviet Union and the Communist bloc. During that period, Austria alone, as one of the adjacent countries, offered refuge to 2 million people. About two-thirds of them were subsequently resettled in third countries, primarily in traditional overseas immigration countries, like the United States, Canada and Australia. Nonetheless, 600,000 refugees and displaced persons chose to settle in Austria. Kussbach, 1992, p. 646. On the asymmetric axes of European migration policy, East-West and North-South, see Manfrass, 1992.
152. Boltin, 1992; Swart, 1992; Hooogenboom, 1992; Boeles, 1992.
153. Dijk, 1987, pp. 81–122. In general, on minorities in Europe, see *L'événement européen*, October 1991, special issue on “Minorities: What Chances for Europe?”
154. Weiler, 1992, p. 70. See also Cassese, Clapham and Weiler, 1991a, 1991b.
155. Weiler, 1992, p. 68. As reported by Clapham (1991, p. 84), at the discussion between ministers in the ACP (African, Caribbean and Pacific countries)/EEC Council of Ministers, on March 28–29, 1990, ACP states said they would have liked a joint expert group to be established to deliberate on how to combat racist attacks on their citizens in the Community. The Community opposed this idea on the grounds that these questions were of the competence of the member states. As Clapham commented: “One cannot ignore the fact that community integration may exhibit nasty side effects which can rebound on ‘extra-communitari’ in a particularly brutal way.”
156. Little, 1993, pp. 270–271.
157. *Ibid.*, p. 290.
158. Lennox, 1993, p. 712.

159. Little, 1993, p. 289.
160. Lennox, 1993, p. 711.
161. A different conception of cosmopolitanism is in Pogge, 1992.
162. In Chapter Eight, I develop the idea of learning from the South as one of the key epistemological innovations in the paradigmatic transition.
163. Within the "international regime" literature, see Hartigan's analysis of how nation-states attempt to match humanitarian norms with "cold, hard [national] interests" (Hartigan, 1992).
164. Walzer, 1981, p. 10. A contrasting view is in Nett, 1971.
165. Who speaks for the undocumented immigrants, for instance? See Delgado, 1983.
166. Brubaker, 1989, p. 14.
167. *Ibid.*, p. 3.
168. *Ibid.*, pp. 6ff.
169. For the prolegomena of a new theory of citizenship, see Chapter Eight.
170. Examples of mass destruction of lifestyles and coercive resettlements in consequence of "development" projects abound in recent times: forest clearing in Canada and Malaysia; construction of hydro-electric plants in Mexico, Brazil, Bangladesh, Canada, Guyana, India, Malaysia, the Philippines, Norway, Sweden and the U.S.; mining and extraction of oil in Brazil, Ecuador, Canada, Australia. A few examples of sociological research in progress with a specific focus on the legal aspects: Maivân Lãm, 1985, 1991, has been studying the role of courts in dispossessing native Hawaiians from traditional land tenure. David Delaney, 1991, does research on the contract between Conoco Oil Co. (a subsidiary of DuPont) and the government of Ecuador for the exploration and extraction of oil from an area (called Block 16) located in Ecuadorian Amazon, land immemorally held by the Huaorani people. Armando Guevara Gil, 1992, does research on the impact of Peruvian development projects on the territorial and fishing rights of Quechua and Aymara people living on the shores of Lake Titicaca.
171. Heintze, 1992, p. 38.
172. Stavenhagen, 1990, p. 2.
173. Stavenhagen, 1990, 1988.
174. Stavenhagen, 1990, p. 100.
175. Heintze, 1992, p. 39.
176. There is a politics of classification underlying the demographic criteria to establish the size of the indigenous population. As Varese (1982), puts it, "[c]ensus statistics on Indo-ethnic populations are perhaps one of the areas of social knowledge and information which most clearly shows the reductive and manipulative intervention of the colonial mode of thought" (p. 33).
177. Heintze, 1992, p. 59.
178. Geertz, 1973. For a distinction between race and ethnicity, see, lastly, Oommen, 1993.
179. Stavenhagen, 1990, p. 6.
180. Smith, 1981, p. xii.
181. Bauer, 1924. See also Bottomore and Goode, 1978, pp. 102-135.
182. See Balibar and Wallerstein, 1991.
183. Stavenhagen, 1990, p. 55. For a comprehensive view of peoples and minorities in international law, see, lastly, Brölmann, Lefeber and Zieck, 1993.
184. Stavenhagen, 1990, p. 65. See also *America Indigena*, 1989, I.
185. For an extended critical comment, see Stavenhagen, 1990, p. 61.
186. See UN-DOC E/CN.4/Sub.2/1991/40/Rev. 1 of October 3, 1991.
187. See, for instance, Brandt, 1986. For contrasting views, see Stavenhagen and Iturralde, 1990.

188. According to Stavenhagen (cited in Heintze, 1992, p. 57), "a principal factor which has enabled indigenous and tribal peoples to survive in the face of the persistent assaults against them by the dominant society, is their internal coherence, their social organization, as well as the maintenance of their own traditions, laws and customs, including local political authority."
189. Aguirre, 1980; Cifuentes, 1993. On indigenous customary law, see *America Indigena*, 1989, II.
190. Stavenhagen, 1988, p. 19.
191. On the contrast between "indigenism" (*indigenismo*)—as the philosophy underlying the neocolonial state policies to deal with the "Indian question"—and "indianity" (*indianidad*)—as the philosophy underlying the Indian Liberation Movement on the American continent in the last two decades—see Varese, 1982, pp. 29ff; Bataillon *et al.*, 1982; and *America Indigena*, 1990.
192. Lãm, 1991, p. 21.
193. Latin American Amerindians prefer the designation "peoples," while the North American Amerindians or Native Americans also use the designation "nations."
194. Heintze, 1992, p. 45.
195. See Roxanne Ortiz, 1987, p. 49: "The new revolutionary government, lacking experience and understanding of the Atlantic Coast region, initiated programs that were unrelated to the regional and ethnic reality."
196. In Hanne Bach, 1991, p. 40.
197. See, for different readings of the law of regional autonomy, Ortiz, 1987 (on the project of the law); Buvollen, 1989; and Bach, 1991.
198. Bach, 1991, p. 40.
199. Among others, Tambiah, 1989; and Sheth, 1989. Lastly, Ghai, 1993.
200. Sheth, 1989, p. 381. See also Breton, 1989.
201. Sheth, 1989, p. 388. For a comprehensive sociolegal analysis of the "untouchables" and tribal peoples in India, see Galanter, 1991.
202. Delaney, 1991. See also Shutkin, 1991, pp. 493-500.
203. Lãm, 1991, p. 8.
204. *Ibid.*, p. 15.
205. *Ibid.*, pp. 15, 34. See also Burger, 1987.
206. Bataillon *et al.*, 1982, p. 352.
207. On learning from the South, see Chapter Eight.
208. Varese, 1982, p. 36.
209. Tambiah, 1989, p. 348.
210. Varese, 1982, p. 40.
211. Donnelly, 1989, p. 206.
212. Chase-Dunn, 1991, p. 88.
213. In the interwar period, the International Labor Organization (ILO) was a partial exception to the state-centered conception of human rights in the field of workers' rights.
214. In general, on this topic, see Falk, 1981.
215. Donnelly, 1989, p. 213.
216. *Ibid.* Leary, 1990; Welch, Jr., 1990. On Asian perspectives on human rights, see Ghai, 1993a.
217. Clapham, 1991, pp. 84ff.
218. Clapham, 1991, p. 82; Buergenthal, 1991, pp. 333-386.
219. Clapham, 1991, p. 103.
220. Donnelly, 1992, p. 252.
221. *Ibid.*, p. 265.
222. Two alternative African views: J. Shivji, 1989; O. Eze 1984.

223. Howard, 1984, p. 164.
224. Shivji, 1989, p. 93; Falk, 1981, pp. 185–195.
225. On the problematic nature of comparisons in this field, see Howard, 1984.
226. Parmentier, 1993.
227. *Ibid.*, pp. 6–12.
228. See lastly, the South-South Conference on the Rule of Law and Human Rights: Exchanging Experiences and Breaking New Paths, Lund, May 10–14, 1993. Proceedings. Also, Lewellen, 1985; Bowen, 1985; Brockett, 1985; H. Fruhling, 1992; Chomsky and Herman, 1979.
229. Donnelly 1989, p. 268; 1992, p. 265.
230. See, among many others, R. Howard, 1984; F. Olaeghulom, 1985; Wright, 1985; Shivji, 1989.
231. Zeidan, 1985; Donnelly, 1992.
232. Thomas, 1985; Muzaffar, 1990; Joshi, 1990; Rubin, 1990; Jahangir, 1990; Feldman, 1990; Cascio, 1990; Galanter, 1991; Ghai, 1993c.
233. Donnelly, 1992, pp. 254–265; Nanda, Scarritt and Shepherd, Jr., 1981; Chomsky and Herman, 1979.
234. Falk, 1981, p. 4.
235. *Ibid.*, p. 5.
236. Chomsky and Herman, 1979, p. 16.
237. Donnelly, 1992, p. 258.
238. For two contrasting views, see Donnelly, 1989; Renteln, 1990. See also Schwab and Polis, 1982; K. Thompson, 1980; A. Henkin, 1979; A. Diemer, 1986.
239. A perceptive analysis from an Eastern perspective is in Panikkar, 1984, p. 30.
240. See, for instance, Pollis and Schwab, 1979; Pollis, 1982; An-na'im, 1992.
241. As in Donnelly, 1989, pp. 109–124.
242. See also Panikkar, 1984, p. 28. In my view, the diatopical hermeneutics is the procedural solution for the debates going on, in the different cultural regions of the world system, on the general issues of universalism, relativism, cultural frames of social transformation, traditionalism and cultural revival. For the African debate, see O. Oladipo, 1989; Oruka, 1990; K. Wiredu, 1990; Wamba dia Wamba, 1991a, 1991b; H. Procee, 1992; M.B. Ramose, 1992. A sample of the rich debate in India is in A. Nandy, 1987a, 1987b, 1988; P. Chatterjee, 1984; T. Pantham, 1988. A bird's-eye view of cultural differences is in Galtung 1981.
243. Panikkar, 1984, p. 39. See also K. Inada, 1990; K. Mitra, 1982; R. Thapar, 1966.
244. See R. Falk, 1992, p. 45, for whom “without mediating international human rights through the web of cultural circumstances, it will be impossible for human rights norms and practices to take deep hold in non-Western societies except to the partial, and often distorting, degree that these societies—or, more likely, their governing elites—have been to some extent westernized.” See also Pollis and Schwab, 1979.
245. An-na'im, 1990, 1992; Dwyer, 1991; Mayer, 1991; Leites, 1991; Tibi, 1993. See also Hassan, 1982; Al Faruqi, 1983. On the broader issue of the relationships between modernity and Islamic revival see, lastly, Sharabi, 1992. Also Shariati, 1986.
246. According to reliable estimates, the Arab world is around one sixth of the world population: the total Muslim population of the world is over 830 million people, and Muslims constitute at least 70 percent of the total population in about forty countries. An-na'im, 1990, p. xiii.
247. In the review of the Islamic debate I follow closely An-na'im, 1990.
248. An-na'im, 1990, p. 42.
249. *Ibid.*, p. 62.

250. *Ibid.*, p. 161.
251. *Ibid.*, p. 164.
252. *Ibid.*, p. 165.
253. Said, 1993, p. 37. Gilroy, 1993, criticizes the “overintegrated conceptions of pure and homogeneous cultures which mean that black political struggles are construed as somehow automatically *expressive* of the national or ethnic differences with which they are associated” (p. 31).
254. Shariati, 1982, p. 19.
255. Said, 1993, p. 38.
256. The cross-cultural reconstruction of human rights is particularly problematic in the cases in which the reciprocal impoverishment of victim and victimizer has occurred within an historical process of extremely brutal asymmetries as, for instance, in the case of “contacts” between Western culture and the cultures of indigenous people. Most recently, on North American Indians, J. Zion, 1992; on specifically Canadian aboriginal peoples, A. McChesney, 1992; on Brazilian Indians, M. Cunha, 1992; on Australian indigenous peoples, P. Hyndman, 1992; on the Sami people in Scandinavia, T. Svensson, 1992. On the broader issue of the relations between victims and victimizers, see below, Chapter Eight.
257. Pieterse, 1989, p. 369.
258. Bernal, 1987.
259. In Chapter Eight, I deal with the role of utopia in the paradigmatic transition.
260. Falk, 1992, p. 55.
261. *Ibid.*, p. 55. See also Falk, Kim and Mendlowitz, 1982.
262. K. Sikkink, 1992.
263. On the imbalanced regional distribution of NGO activity in the world system, see Blaser, 1985. See also Nanda, Scarritt and Shepherd, Jr., 1981.
264. Shepherd, 1981, p. 214. See also Nanda, Scarritt and Shepherd, Jr., 1981, Part 3.
265. Shivji, 1989, p. 61.
266. See, among others, Rojas, 1986.
267. See, among others, Lev, 1990. See also, for India, Baxi, 1982; Galanter, 1991.
268. In the same sense, An-na'im, 1992, pp. 1–43.
269. Donnelly, 1989, pp. 109–124.
270. Howard, 1992.
271. See Lindholm, 1992. Two recent sophisticated discussions on human rights from a Marxist perspective are in L. Oliveira, 1989; R. Nordahl, 1992.
272. Lindholm, 1992, p. 391.
273. *Ibid.*, p. 397.
274. Donnelly, 1989 p. 164.
275. See Lippman, 1985; T. Donaldson, 1989. A critique of Donaldson is in G. Brenkert, 1992.
276. Lippman, 1985, p. 254.
277. See *ibid.*, p. 262.
278. Donnelly, 1989, p. 166.
279. *Ibid.*, p. 180.
280. Nanda, 1985, p. 295.
281. Shivji, 1989, p. 29.
282. See lastly, M'Baye, 1991.
283. A strong emphasis on the right to development as a defensive argument in light of international criticism of human rights violations is the touchstone of Chinese human rights diplomacy nowadays. See Li Daoyu, 1992.
284. M'Baye, 1991, p. 220.

285. For other positions on the right to development, see Shepherd, Jr. and Nanda, 1985.
286. Donnelly, 1984, p. 261.
287. Howard, 1983, p. 478.
288. Shivji, 1989, p. 82.
289. *Ibid.*, p. 82.
290. *Ibid.*, p. 72. A different African view of the right to self-determination is in Eze, 1984, pp. 65–102.
291. Shepherd, 1985, pp. 13–25.
292. See Wallerstein, 1991b, p. 5. An extended analysis of the rights of peoples in our century is in J. Crawford, 1992.
293. Cassesse, 1979, p. 137.
294. *Ibid.*, p. 139.
295. *Ibid.*, p. 157.
296. *Ibid.*, p. 148.
297. For an analysis of the Helsinki Final Act and the Conference on Security and Cooperation in Europe (the CSCE rights system), see Buergenthal, 1991.
298. See Falk, 1981, pp. 185–194.
299. Shivji, 1989, p. 80.
300. *Ibid.*, p. 83, subscribes to a more restricted conception of the right to organize.
301. Falk, 1992, p. 48.
302. Unger, 1989, p. 530.
303. Pardo, 1968, p. 225–226.
304. Pureza, 1993, p. 19; Zieck, 1992, pp. 177–197; *Pacem in Maribus XX*, 1992; Blaser, 1990; Weiss, 1989; Joyner, 1986; Kiss, 1985; White, 1982; Dupuy, 1974.
305. Kiss, 1985, p. 426.
306. *Ibid.*, pp. 426–427.
307. Pureza, 1993, p. 19. An overview of recent transformations of international law is in Bilder, 1992.
308. In what follows, I draw on Kiss, 1985, pp. 432–435.
309. Janis, 1988, p. 156; Kimball, 1983.
310. Kimball, 1983, p. 41. On the relations between NIEO and the common heritage of humankind, see Joyner, 1986, p. 192.
311. Kimball, 1983, p. 16.
312. *Pacem in Maribus XX*, 1992, p. 1.
313. Joyner, 1986, p. 196; Williams, 1981.
314. Bilder *et al.*, 1989, p. 1.
315. Blaser, 1990, p. 79.
316. *Ibid.*, p. 91.
317. *Ibid.*, p. 98.
318. Jasentuliyana, 1990.
319. Potter, 1989.
320. Lanzerotti *et al.*, 1993, pp. 32–46; Grolin, 1987; Thakur and Gold, 1983.
321. *Ibid.*, p. 34.
322. White, 1982, p. 541.
323. Kiss, 1985, p. 433; 1989, pp. 67–103.
324. Lovelock, 1979. Also Goldsmith, 1988.
325. It is true that the principle of the state has provided some linguistic innovation (“world state,” “world government”), but as *topoi* for the new spatiality these terms are much less credible than those provided by the principle of the community.
326. Koskenniemi, 1989.

Notes to Chapter Five

1. This research project was part of a larger project on urban land invasions in Recife conducted by Professor Joaquim Falcão. My own project developed out of an invitation extended to me by Falcão to assist in the field research and in the data analysis of his project. Since some of the analytical issues in which I was particularly interested were not central to the larger project, I developed a separate research project with Falcão's full support. To him and to his research assistant, Alexandrina Moura, who also assisted me in my research, I express my thanks. Though I extensively used the data already collected for the larger project, I collected new data during my field research in September and October of 1980. Thirteen urban conflicts were analyzed, most of them having taken place between 1977 and 1980. The field research consisted basically of in-depth interviews (with squatter settlers, community leaders, lawyers, priests, state officials, etc.) and document analysis. For an overview of the larger project, see Falcão (1984). Falcão's project inspired other studies on urban conflicts in Recife throughout the decade, of which the most important one was done by Moura (1986).
2. See, among others, two influential books on the military regime by F. H. Cardoso, 1977, 1979. See also O'Donnell (1978, 1986) on the authoritarian bureaucratic regime.
3. There is an immense bibliography on the role of the Catholic Church in contemporary Brazil. See, among others, Cava, 1975; Alves, 1979; Kruschke, 1979; Rolim, 1980.
4. Though the research project involved thirteen urban conflicts, the ones analyzed here illustrate most of the theoretical issues raised in the study particularly well.
5. These data, as well as other official data mentioned below, were those available at the time of the field research.
6. The term “swelling” (*inchação*) was coined by Freyre in 1938 (1951).
7. There is an extensive bibliography on the history of Recife, e.g. Castro, 1945; Freyre, 1951; Bezerra, 1965; Melo, 1978; Andrade, 1974, 1979.
8. Andrade, 1979, p. 58.
9. For a more detailed analysis of the Skylab, see Santos, 1983.
10. Thompson, 1975, p. 259.
11. Among the Marxist analyses of law in which the individualization of the legal subject is specifically dealt with, see Reich, 1972; Bankowski and Mungham, 1976; Brandes *et al.*, 1977; Holloway and Picciotto, 1978; Pashukanis, 1978; Poulantzas, 1978; Cain and Hunt, 1979; Beirne and Quinney, 1982; Sugarman, 1983; Jessop, 1980, 1990. On the critical legal studies, see four important overviews: Kairys, 1982; Critical Legal Studies Symposium, 1984; Tushnet, 1984; Unger, 1986; Kelman, 1987. For a thorough treatment of this issue, see Hunt, 1993.
12. Bankowski and Mungham, 1976.
13. Lipietz, 1974; Topalov, 1974, 1977.
14. On the debate over the similarities and differences between Marx's and Ricardo's theory of rent, see, for two opposing views, Lipietz, 1974, pp. 257ff; and Ball, 1977, pp. 380ff.
15. For the work on this topic at the Center for Social Studies (University of Coimbra), see also Hespanha, 1981, 1990; and Reis 1981, 1991.
16. Marx develops his theory of the ground rent in Volume III of *Das Kapital* (1970).
17. Santos, 1982, pp. 35ff.
18. Santos, 1982, pp. 51ff. The question of the articulation between the ground rent and the forms of land property is very complex. While in the case of the absolute ground rent, it is generally agreed that it is an effect of the private appropriation of land, in the case of the differential ground rent, it is debatable whether it is a purely economic category (an effect of unequal conditions of production—fertility, localization—as they are valorized by the capitalist mode of production) or rather a sociopolitical category (given the fact that the

amount of the rent cannot be calculated regardless of the form of property, that is, regardless of sociopolitical factors). In my view, the second, noneconomic perspective is the correct one. See, among others, Coulomb, 1973; Ball, 1977; Massey, 1977; Bentivegna, 1980; Lojkine, 1981.

19. But see Santos, 1982, pp. 35ff.

20. Marx, 1970, I, p. 299. For another analysis of the factory legislation, developed out of Marx's analysis, see Carson, 1979.

21. Marx's analysis of the articulation between the legal and the illegal (1970, I, pp. 280ff) has lost none of its interest or relevance.

Notes to Chapter Six

1. Sartre, 1976.

2. Bourdieu, 1980.

3. Giddens, 1979, 1984.

4. See Massey, 1984; Gregory and Urry (eds.), 1985; Peet and Thrift (eds.), 1989.

5. Foucault, 1976, 1977, 1980.

6. Foucault is pervasively present in feminist theorists. Some examples are Young, 1990; Connell, 1987; Cocks, 1989; Fraser and Nicholson, 1990. In Butler and Scott, 1992, Foucault shares with Derrida and Freud the biggest number of references, and exactly the same occurs (if we exclude the references to feminist theorists) in Hirsch and Keller, 1990.

7. A third enrichment and expansion of Foucault by feminism is of an epistemological nature, and has already been dealt with in Chapter One: the critique of the multiple vectors of sexism in modern science undermines the latter's foundationalism, and shows the extent to which scientific truth is nothing but a discourse of truth.

8. Young, 1990, pp. 39ff.

9. I disagree with Young's restricted conception of distribution (restricted to the distribution of material goods) for the reasons stated below.

10. Lukes, 1974, p. 34.

11. *Ibid.*, p. 26.

12. Young, 1990, p. 8.

13. Baudrillard, 1981.

14. Sklair, 1991.

15. Distribution and capacitation are also the two sides of rights, when conceived from a radical perspective. In this context, the juridical roots of the concept of emancipation are worth noting, and semantic history may be helpful here. In classical Roman law, *emancipatio* was the juridical act by which the child was released from paternal power (*patria potestas*). Later on, it came to mean the freeing of slaves and, in an even broader sense, the lifting of legal restrictions on certain social groups, as when we speak of the emancipation of Jews in eighteenth- and nineteenth-century Europe, of serfs in nineteenth-century Russia, or of Roman Catholics in early nineteenth-century England, or still of women, at least in the early and first-wave feminist movements, for whom the concept of emancipation was central in their campaigns for equal rights. For Roman law, see, among others, Berger, 1953, p. 451. For the feminist movement, see Humm, 1990, p. 61; and Smith-Rosenberg, 1985.

16. Gamble, 1982, p. 45.

17. Hayek, 1979, p. 140.

18. Montesquieu, 1989.

19. Smith, 1937.

20. There has been some debate about the role of political and legal institutions in A. Smith's thought. Against what is becoming a widely accepted view (Viner, 1927; Billet, 1975; Samuels, 1979), Hirschman tends to minimize such a role. But he also recognizes that

"it appears that Smith advocated less a state with minimal functions than one whose capacity for folly would have some ceiling" (1977, p. 104).

21. Billet, 1975, p. 430.

22. Smith, 1937, p. 509.

23. Viner, 1927, p. 218; Billet, 1975, p. 439.

24. Mill, 1921, p. 950.

25. Taylor, 1972, p. 12.

26. It should therefore not be surprising that the current "crisis of the welfare state" or the "crisis of the regulatory state" is viewed by some as a return to *laissez-faire* (free trade fundamentalism) and by others as the emergence of a new, more authoritarian state form (the new welfare state as guarantor of the welfare of business rather than people).

27. Dicey, 1905, p. 306.

28. Hegel, 1981.

29. *Ibid.*, p. 140.

30. Stein, 1988.

31. Adler, 1922.

32. Poulantzas, 1978a.

33. *Ibid.*, p. 26.

34. *Ibid.*, p. 67.

35. Poulantzas, 1978b.

36. I mentioned above (Chapter Two) how gradual and difficult it was to conceptualize the conversion of the state into a *republica* between the twelfth and eighteenth centuries. A remarkable residue of such difficulty can be seen in the "theory" of the "King's Two Bodies," as divulged by English jurists of the Tudor period and thereafter. See Ernst Kantorowicz, 1957. The "privatization" of the preconstitutional state was not only political, but also bureaucratic. One of the best examples of the latter was the sale of offices, pervasive until the eighteenth century. See Swart, 1949.

37. Wood, 1981, p. 91.

38. Marx, 1970.

39. Braverman, 1974.

40. As is well known, the separation of the workplace from the householdplace was a direct result of capitalist development. In the early stages, the workplace collapsed partially with the "citizenplace" (before the emergence of the liberal state there is no citizenplace in the modern sense). In the sixteenth century, textile workers in Milan worked under oath, sanctioned by the state, that they would not abandon the city, and in 1682 Colbert sentenced to death the workers who abandoned France to work abroad (Adler, n.d., pp. 72-73). This complex intertwining of the coercive apparatus of the state with that of production prompted Adler (n.d.) and later on Rusche and Kirchheimer (1968) to argue for the original twin functions of the prison and the factory. A recent restatement of this argument can be found in Melossi and Pavarini (1981). See below Note 131. In the colonial periphery of the world system, this functional promiscuity continued well into the twentieth century.

41. See Ghai, 1993, for an excellent overview of the ongoing tensions and conflicts between the citizenplace (state governance) and the communityplace (ethnicity) in Asia.

42. An excellent account of women in Korean ritual life is in Kendall, 1985. See also Bynum, Harrell and Richman, 1986.

43. This structural place is defined in terms of the household, rather than in terms of the family, in order to stress the multiple sharing relationships (namely, the income-pooling practices). Since the institutional and ideological reproduction of the household occurs mainly through the family, I use the latter to define the institutional and epistemological form of the householdplace. With similar purposes, Michèle Barrett speaks of "households"

and of "familial ideology" "as terms that avoid some of the naturalism and mystification engendered by the 'family'" (1980, p. 199). See also Donzelot, 1977.

44. Karl Polanyi, 1944, insistently called attention to the destructive features of capitalist development (destruction of both the social and the natural environment).

45. O'Connor, 1988, 1991a, 1991b.

46. O'Connor, 1991b, p. 2.

47. *Ibid.*, p. 1.

48. *Ibid.*, p. 4.

49. *Ibid.*, p. 9.

50. Engels, 1966.

51. According to Tickner, "even in the United States, where considerable advances have been made in the economic position of women, full-time working women in 1987 earned an average of 71 percent of the earnings of full-time working men . . . women frequently experience harassment and intimidation in the workplace and taking time off for bearing and raising children may impede opportunities for promotion" (1991, p. 200).

52. Connell (1987), shows that feminist thought, which around 1970 commonly identified the family as the strategic site, the key to the oppression of women, moved subsequently to emphasize other sites of oppression and comments: "If anything the pendulum has now swung too far the other way" (p. 110). On non-Western women and the world-place, see, lastly, Rao, 1991. See also Boserup, 1970; Benaria and Sen, 1981.

53. Vogel, 1983.

54. Rao, 1991; Tickner, 1991, pp. 204–205.

55. Kuletz, 1992; Mellor, 1992. Also Diamond and Orenstein (eds.), 1990.

56. See B. Holland-Cunz, in Kuletz, 1992, pp. 64ff.

57. Marx, 1963, p. 41.

58. Baudrillard, 1981.

59. Said, 1985.

60. See Chapter Eight.

61. Emmanuel, 1972.

62. Chase-Dunn, 1991, p. 231.

63. Maizels, 1992.

64. After summarizing a wide variety of theories that have been elaborated to account for the hierarchy between the core and the periphery of the world system, Chase-Dunn points in the right direction by identifying a set of economic, social and political factors—power-bloc formation, state formation, unequal exchange and class struggle—whose interaction produces and reproduces the core/periphery hierarchy. Chase-Dunn, 1991, pp. 238ff.

65. In the same sense, Wallerstein, in Balibar and Wallerstein, 1991, p. 112.

66. As exploitation of women increases (paid labor in the factory and unpaid labor at home), it seems that patriarchy decreases or, at least, loses some of its most traditional forms of exercise.

67. Donzelot, 1977.

68. Massell, 1968.

69. Santos, 1993.

70. Dahl and Snare (1978) use the concept of "coercion of privacy" to highlight the persistence of women's subordination in spite of the laws passed to eliminate some forms of sexual discrimination; a forceful argument on the social construction of victims of sexual discrimination can be read in Bumiller, 1988. In my conception, the coercion of privacy is the realm of domestic law.

71. According to Weber (1948) and Hobsbawm (1975), given the incapacity of precapitalist family-based industries to establish the organizational model for the large enterprises emerging in the eighteenth century, such a model was sought in the military organization

and in the emerging state bureaucracy, a transplant particularly evident in the case of railways.

72. Macaulay, 1963.

73. Galanter, 1991.

74. Henry and Milovanovic, 1993, p. 2.

75. On detection and regulation thresholds, see Chapter Seven.

76. Though in a different sense, Hunt also uses the concept of local hegemony (1993, pp. 227–248).

77. Geertz, 1983.

78. With Taylorism, the workplace itself became a scientific endeavor in the form of scientific management. To quote Taylor himself, "best management is a true science, resting upon clearly defined laws, rules and principles" (1911, p. 1, in Clegg and Dunkerley, 1980, p. 87).

79. Merton, 1968.

80. Lecourt, 1976.

81. Wuthnow, 1987, p. 69.

82. *Ibid.*, chap. 3.

83. Wright, 1979; p. 594, 1978 (under Erik Wright).

84. *Ibid.*

85. Wallerstein, 1974.

86. Wright, Levine and Sober, 1992.

87. Wallerstein, 1991a, pp. 228ff; Wallerstein, in Balibar and Wallerstein, 1991.

88. Giddens, 1981.

89. Habermas, 1978.

90. Cohen, 1978.

91. Elster, 1985.

92. Skocpol, 1979, 1985.

93. Wright, Levine and Sober, 1992, p. 129.

94. *Ibid.*, p. 150.

95. *Ibid.*, p. 170.

96. *Ibid.*, p. 172.

97. *Ibid.*, p. 174.

98. In a study on the empirical relationship between the location of households in class structure and gender inequalities in performance of housework, Wright *et al.* found that class location is not a powerful or systematic determinant of variations in the gendered domestic division of labor (1992).

99. Wright, Levine and Sober, 1992, also presuppose that synchronic and dynamic analyses may generate different and logically unrelated causal asymmetries and causal primacy claims, which is also highly problematic.

100. This conception is also more congruent with the rhetorical reconstruction of scientific knowledge for which facts and (theoretical) truths are different arguments within the same discourse.

101. Chase-Dunn, 1991, p. 94.

102. *Ibid.*, p. 88.

103. Wallerstein, 1984.

104. Wallerstein, 1991b.

105. Balibar and Wallerstein, 1991.

106. *Ibid.*, p. 231.

107. Wallerstein, 1991a, p. 270.

108. Balibar and Wallerstein, 1991, p. 232. See also Wallerstein, 1991a, p. 254.

109. Marx, 1973, p. 769.

110. Marx, 1970, p. 734.
 111. *Ibid.*, p. 236.
 112. *Ibid.*, p. 737.
 113. As late as 1949, Kahn-Freund could say that: "the regulation of hours of work by legislation or collective agreements was the earliest and remains the most notable restriction of the command power which is the concomitant of the ownership of means of production" (in Renner, 1976, p. 161).
 114. Marx, 1970, p. 298.
 115. *Ibid.*, p. 480.
 116. *Ibid.*, p. 475.
 117. *Ibid.*, p. 266.
 118. Marx describes in great detail the different forms of resistance against the laws: frontal violation; the relay system, making it difficult for faculty inspectors to detect violations; restriction of the inspectors' access to the factories; wage cuts; changes in the legal concept of "child" (what Marx calls "capitalist anthropology": 1970, p. 280); the use of the "economic crisis" as a justification for not enforcing the laws; the denial of responsibility; the negotiation over the range and degree of violation. See also Carson, 1979.
 119. Marx, 1970, p. 270.
 120. *Ibid.*, p. 299.
 121. The history of this failure is well documented at least since Gramsci's workers' councils in 1919 Turin. See, for an overview, Clegg and Dunkerly, 1980, p. 512.
 122. Marx, 1970, pp. 355ff.
 123. *Ibid.*, p. 330.
 124. *Ibid.*, p. 331.
 125. *Ibid.*, p. 334.
 126. *Ibid.*, p. 424.
 127. Adler, n.d.
 128. Renner, 1976.
 129. Rusche and Kirchheimer, 1968.
 130. Foucault, 1977.
 131. Melossi and Pavarini, 1981. Though M. Adler is one of the most innovative Marxist thinkers, nobody, to my knowledge, has acknowledged his original contribution to the analysis of the articulation between economic production and punishment. The most influential analysis has remained Rusche's and Kirchheimer's. It has been critically assessed and expanded in different directions (Foucault, 1977; Jankovic, 1977; Melossi, 1978; Ignatieff, 1978; Melossi and Pavarini, 1981). In general, the functionalist and economist biases in Rusche's analysis have been transcended by an emphasis on structural correspondences or homologies, which is particularly the case of Foucault and of Melossi and Pavarini. But, in my view, these authors exaggerate such an emphasis by collapsing the mechanisms of social power of the workplace with those of the citizenplace. I will come back to Foucault later on in the text. As to Melossi and Pavarini, they try to combine Rusche and Kirchheimer with Pashukanis (1978) and derive the structural isomorphism between prisoners and workers from the logic of capital: "If the punishment as deprivation of liberty is structured, then, on the model of 'exchange' (in terms of retribution by equivalent), its execution (read: penitentiary) is modeled on the hypothesis of manufacture, of the 'factory' (in terms of discipline and subordination)" (1981, p. 186).
 132. Renner, 1976, p. 81.
 133. *Ibid.*, p. 106.
 134. *Ibid.*, p. 107.
 135. *Ibid.*, p. 115.
 136. *Ibid.*, p. 114.

137. *Ibid.*, p. 115.
 138. Brenner, 1977; Wood, 1981, p. 86.
 139. Burawoy, 1979, p. 27.
 140. Selznick, 1969.
 141. Burawoy, 1979, p. 110.
 142. *Ibid.*, p. 110.
 143. Edwards and Scullion have criticized Burawoy for focusing mainly on the creation of consent (1982, p. 9). Based on broader empirical data, they try to analyze how the control in the workplace relates to both consent and resistance.
 144. Thompson, 1975.
 145. Hay, 1975.
 146. High wages and "work humanization" have been the two most important factors of factory hegemony. Their strict dependence on the production cycle distinguishes them from the factors of the other forms of hegemony.
 147. Wood, 1981.
 148. *Ibid.*, 1981, pp. 79ff. One of the most stimulating aspects of Burawoy's research is his concern with the comparative analysis of the labor process (U.S., Zambia, Hungary and Russia). His empirical research is particularly relevant to determine the impact of the world-place upon the workplace in any given country.

Notes to Chapter Seven

1. Koselleck, 1985.
2. In a somewhat different sense, see Fabian, 1983.
3. James, 1969.
4. Bloom, 1975.
5. Konwitz, 1980, p. 314. On maps as *the* fundamental analogy, see Robinson and Petchnik, 1976, p. 2. In epistemological terms, cartography is a very complex science, in that it combines "features" of the natural and the social sciences. The paradigmatic transition from modern science to postmodern knowledge, analyzed in Chapter One, is likely to reverberate a great deal in cartography, a scientific field in which technological progresses have a very direct political and ethical impact. See McHaffie *et al.*, 1990; Monmonier, 1991a, 1991b; see also, Harley, 1989, 1990. My use of cartography in this chapter is due to the virtuosity of cartographic analytical tools; but also, more importantly, because cartography is a science in which modern science's epistemological foundationalism and the correspondence theory of truth are bound to be "naturally" disproved.
6. Borges, 1970, p. 90.
7. Monmonier, 1981, p. 1.
8. See Hodgkiss, 1981, p. 103. In the sixteenth century, Mercator, the famous Flemish geographer who developed the type of map projections that now bears his name, wrote the following instruction on his famous chart of 1569: "If you wish to sail from one port to another, here is a chart, and a straight line on it, and if you follow carefully this line you will certainly arrive at your port of destination. But the length of the line may not be correct. You may get there sooner or you may not get there as soon as you expected, but you will certainly get there." Quoted in Jervis, 1936, p. 27. On the history of maps, see, among others, M.J. Blakemore and J.B. Harley, 1980.
9. See Wahl, 1980, p. 42.
10. Monmonier, 1981, p. 4.
11. *Ibid.* In nontechnical discourses, large-scale and small-scale are usually understood in ways opposite to the technical meaning, e.g. when we designate as large-scale an analysis covering a large, wide-ranging object, however, not in great detail. Elsewhere in the book I

use large-scale/small-scale in this more conventional meaning. In this chapter I will follow the technical meaning.

12. Keates, 1982, p. 73.
13. Monmonier, 1981, p. 4.
14. Muehrcke, 1986, p. 10.
15. Monmonier, 1981, p. 4.
16. See Lacoste, 1976, p. 61; 1980, p. 17.
17. See Racine, 1982, p. 126.
18. See, among others, Monmonier, 1981, p. 15; Keates, 1982, p. 72; Muehrcke, 1986, p. 456; Muracciole, 1980, p. 235; Hodgkiss, 1981, p. 32.
19. On the use of maps for propaganda purposes, see Monmonier, 1981, p. 43; Hodgkiss, 1981, p. 15; Muehrcke, 1986, p. 395; Rivière, 1980, p. 351; Speier, 1941, p. 310; Quam, 1943, p. 21; Boggs, 1947, p. 469; Sharkey, 1984, p. 148.
20. See Hodgkiss, 1981, p. 29. For a slightly different view, showing the way the map center changed as the Middle Ages developed, see Woodward, 1985, p. 510. Henrikson, 1980, p. 73, shows how the progressive shift of the U.S. from the periphery to the center of world affairs—a shift completed with World War II—resulted in changes in the types of map projections adopted or favored: “The relationship of the United States to the major theatres of battle was such that a new picture of the world—a new global strategic map—was needed. Cylindrical map projections, such as the conventional Equator-based Mercator, failed to show the continuity, unity, and organisation of the ‘world wide arena’ as Roosevelt called it. Hence, other map projections came into fashion, notably the North Pole-centered azimuthal projection. . . . The position of the United States on these polar maps was usually a central one.” (p. 83). See also, Henrikson, 1975, p. 19. On propaganda and cartography, see Burnett, 1985. See also Reitan, 1986.
21. Muehrcke, 1986, p. 6.
22. Carroll, 1976, p. 757.
23. *Ibid.*, pp. 760–61.
24. Keates, 1982, p. 66.
25. Monmonier, 1981, p. 6.
26. See Caron, 1980, p. 9.
27. See Keates, 1982, p. 69.
28. Geertz, 1983, p. 232, refers to law as a way of imagining the real.
29. See Perelman, 1971, p. 405.
30. Santos, 1982, p. 251; Santos, 1985, p. 45; Santos, 1979, p. 151.
31. Santos, 1984.
32. In the Introduction to Part Two, I designate the spaces of legality as time-spaces to emphasize the fact that different spatialities are also different temporalities. In this chapter I am primarily concerned with the spatial dimension.
33. See Santos, 1984, p. 33.
34. Nevertheless, it should be pointed out that, whenever they felt the need to represent their life experiences, and in defining their positions, the squatter settlers relied on local legality, that is to say, on the internal normative orderings of social interaction in the squatter settlements.
35. For the distinction between molar and molecular struggles, see Miller, 1972, p. 59.
36. See Santos, 1982, p. 272.
37. This distinction is also used, in a slightly different sense, in the analysis of cognitive mapping (egocentric and geocentric mental maps). See Muehrcke, 1986, p. 4.
38. Weber, 1978, p. 695.
39. *Ibid.*, pp. 698, 724.
40. See *Ibid.*, p. 697.

41. For an analysis of conflicts between the new transnational legal space and the national legal space, see, among others, Kahn, 1982; Farjat, 1982; Wallace, 1982; Marques, 1987.
42. See Farjat, 1982, p. 65.
43. See Goldman, 1964, p. 180.
44. See Farjat, 1982, p. 57.
45. Geertz, 1983, p. 167.
46. *Ibid.*, p. 173.
47. Pospisil, 1971, p. 23.
48. Auerbach, 1968, p. 23.
49. See, for instance, Farjat, 1982, p. 65.
50. See Santos, 1984, p. 105.
51. See Chapter Five.
52. See Santos, 1982, p. 254.
53. Perelman, 1971, p. 390.
54. It is not by accident that postmodernism started as a debate within architecture, the art of space created by people. See, among others, Jameson, 1984, p. 53; C. Jencks, 1987.
55. Macaulay, 1987, p. 185.
56. On the vulgar and trivial nature of our daily encounters with maps, see Hodgkiss, 1981, p. 11: “It is difficult to avoid being confronted by at least one or two maps during the daily routine. Perusing the morning paper in the commuter train we are likely to see small black-and-white maps serving to locate and explain some significant contemporary event. At home, in the evening, similar maps face us on the television screen, as a feature of the television news. The current state of the weather is indicated in the press and on television with the aid of satellite photographs and maps which have been specially designed so that their meaning should be clear to the untrained map user.” The new, legal, common sense aims at equally trivializing our daily encounters with the laws, so that their meaning becomes clear to the untrained law user.

Notes to Introduction to Part Four

1. Fourier, 1967, p. 181.

Notes to Chapter Eight

1. Fourier, 1967, pp. 86, 129. Fourier, 1971, p. 101: “I soon recognized that the laws of passionate attraction were in complete accord with the laws of material attraction, as explained by Newton and Leibniz, and that there was a unified system of movement governing the material and the spiritual world.”
2. Nonetheless, utopia has remained an important undercurrent of modern thought in our century. In the sixties, the erotopias dominated (Norman O. Brown, Marcuse), and in the seventies, the ecotopias (Reich, Schumacher, Callenbach, LeGuin). The utopian elements in recent prophecies by leading researchers in such fields as genetics, bioengineering and artificial intelligence have been eloquently analyzed in Martins, 1993. On alternative visions of society drawing from non-Western cultures, see Masini, 1983.
3. Writing in 1922, Hertzler concluded his history of utopian thought by saying: “We of today, millenniums or centuries afterward, with our fuller knowledge of society and our sounder social philosophy, are able to discern in the schemes of the Utopians weaknesses and limitations of which they were unconscious” (1965, p. 301). For a creative reconstruction of utopian thought, published in the same year, see Mumford, 1922. Mumford, however critical of “the fake utopias and social myths that have proved either so sterile or so disastrous during the last few centuries” (p. 300), recognized that “[I]f our knowledge of

human behavior counts for anything, however, we cannot put aside old myths without creating new ones" (p. 301).

4. Similarly, Margaret Mead calls for "vivid utopias": "yet it is by visions of a better world or place or state that men make positive efforts. . . . Why human imaginations are, apparently, so handicapped in the creation of such visions . . . we need more vivid utopias" (1971, p. 46).

5. Hertzler, 1965, pp. 268-300. Mumford, 1922, p. 24: "Nowhere may be an imaginary country, but news from nowhere is real news."

6. Fontenelle, 1955, p. 92.

7. Cassirer, 1960, 1963; Toulmin, 1990. See also Lima, 1988.

8. For a fascinating account of feminist designs of domestic work (collectivized domestic workplace, cooperative housekeeping, kitchenless houses) in the nineteenth and early twentieth centuries, see Hayden, 1981.

9. See, among others, Tipton, 1982.

10. As I said above, the design of alternative, nonsexually stereotyped forms of domesticity has been in recent times a particularly impoverished field of utopian thinking. Nonetheless, in our century there is an important trend of feminist utopianism in the form of science fiction, covering not just the householdplace, but all the other structural places. See Sargent, 1974, 1976, 1978. See also Piercy, 1976; Moylan, 1986.

11. In a convergent but broader sense, Wolff speaks of affective community as "the reciprocal consciousness of a shared culture" (1968, p. 187).

12. Forceful arguments in favor of workplace democracy can be read in Dahl, 1985. See also, Bowles and Gintis, 1986; Bowles, Gordon and Weisskopf, 1983, 1990. Roemer, 1992 has presented a model of market socialism based on a radical reorganization of property rights in firms and the equalization of the distribution of profits. The idea of economic democracy based on participation and self-management has, of course, a long tradition in socialist thought. In the late twenties, Naphtali developed, for the General Federation of German Trade Unions, a very sophisticated model of economic democracy (Naphtali, 1977). In this tradition, Szell (1988, 1990) is today one of the most consistent proponents of economic democracy. See also Lammers and Szell, 1989; Greenberg, 1986, on cooperative production (the case of Mondragon); and Linn, 1987, on "socially useful production" (the experiments by the Greater London Council).

13. The literature on economic democracy (see previous note) has traditionally ignored the ecological and antiproductivist dimension of the emergent workplace. This was due, in part, to the productivist orientation of classical Marxism. In recent times, however, eco-socialist utopian thinking has been flourishing in a variety of forms. The most sophisticated proposals derive from the work of Illich (1970; 1971; 1973; 1976; 1977; 1978; 1981), Bahro (1978) and the German green movement, Gorz (1980, 1982, 1992), Bookchin (1970, 1974, 1980, 1987, 1990), O'Connor (1973, 1987, 1991a, 1991b) and the group around the journal *Capitalism Nature Socialism*. See also, Daly and Cobb, 1989. In very different ways, all these proposals explicitly connect the workplace with the marketplace and community-place: the alternative visions encompass production, consumption and, in general, "*le monde vécu*." In fact, "*le front est partout*." In 1947 Goodman and Goodman presented their "models for thinking" the elimination of the difference between production and consumption in the new community (Goodman and Goodman, 1960). For an overview, see Frankel, 1987. See also, Goodin, 1992.

14. In Chapter Four, while analyzing the problems facing refugees and undocumented migrant workers in a globalized capitalist world, I called for a new epistemology of need and satisfaction.

15. Heller, 1976. Very recently, Heller, 1993, has revisited her theory of radical needs. Though she still believes that radical needs exist, she rejects the "temporalization of the rad-

ical needs in the project of a grand narrative" (1993, p. 33). This turn makes her theory even more consonant with my main argument in this book. I have been insisting that the emergent paradigm is indeed a set of paradigms, and that they most probably lack the coherence and totalizing ambition that characterizes the paradigm of modernity.

16. The citizenplace is, without any doubt, the structural place that has inspired the richest utopian thinking in our century. Drawing on an eccentric nonhegemonic tradition of modernity that goes back to Rousseau, Wollstonecraft, Marx, Engels and J. Stuart Mill, the ideas of direct democracy and participatory democracy have been reelaborated in a myriad of proposals for radical democracy (Mouffe, 1992; Laclau and Mouffe, 1985), unitary democracy (Mansbridge, 1983), strong democracy (Barber, 1984), democratic autonomy/liberal socialism (Held, 1987), democratic community (Berry, 1989), associative democracy (Cohen and Rogers, 1992), democratic socialism (Cunningham, 1988).

17. Concerning rights and rights policy, the emergent paradigm enlarges and deepens counterhegemonic conceptions of rights proposed by A. Hunt, 1993; P. Williams, 1992. See also, Laclau and Mouffe, 1985.

18. Sen (1990) draws our attention to the specificity of "cooperative conflicts" in the household, adding that the difficulties in eliminating biases unfavorable to women are related to the "obvious difficulties in extending the entitlement analysis to the problem of intrahousehold distribution" (p. 140).

19. The alternative visions of the workplace have emerged in the context of the analysis of the final crisis of the world system and of the interstate system. Thus, as I mentioned in Chapter Two, Wallerstein (1991a) has been calling for a debate about the new paradigm. Focusing specifically on the interstate system, Falk (1975, 1982a, 1982b, 1987, 1992) and associates have been proposing new models of world government (World Order Models Project). Out of the new social movements (ecological, peace, communitarian, sustainable development movements) a wealth of utopian proposals has emerged in recent years, focusing on world-scale social action. See, for instance, Pieterse, 1989; Walker, 1988; Daly and Cobb, 1989; Addo, 1985. See also Stauffer, 1990.

20. For the notion of the nonimperial South, see below, in the discussion on the subjectivity of the South.

21. Locke, 1956.

22. Voltaire, 1950, p. 177.

23. See also Cassirer, 1960, pp. 93-133.

24. Condillac, 1984, p. 288.

25. Nietzsche, 1973, p. 453.

26. Cronon, Miles and Gitlin (1992) have been a major inspiration for the development of the *topos* of the frontier.

27. Cronon, Miles and Gitlin, 1992, pp. 9-10.

28. *Ibid.*, p. 10.

29. *Ibid.*

30. *Ibid.*, p. 16.

31. *Ibid.*, p. 17.

32. *Ibid.*, pp. 10-11.

33. *Ibid.*, p. 17.

34. *Ibid.*, p. 23.

35. Said, 1990, p. 359.

36. *Ibid.*, p. 361.

37. Adorno, 1985, p. 39.

38. Said, 1990, p. 365.

39. hooks, 1990, p. 341. In a similar vein, Gilroy borrows from Du Bois the concept of "double consciousness" to express the specificity of modern black cultural experience as

"being both inside and outside the West," leading to "inescapable pluralities involved in the movements of black people, in Africa and in exile," in which claims of national identity are weighed against other contrasting varieties of subjectivity (1993, p. 30).

40. Jung, 1983, p. 113. See the study on Paracelsus as a spiritual phenomenon in Jung, 1983, pp. 109ff.

41. Merkel, 1987, p. 27.

42. See, among many others, Wölfflin, 1979; Manrique, 1981. For a broader view of the baroque aesthetics see Buci-Glucksmann, 1984; Hatherly *et al.*, 1990.

43. Maravall, 1990; Roy and Tamen, 1990.

44. Echeverria *et al.*, 1991–1993; Pastor *et al.*, 1993; Barrios, 1993; Coutinho, 1968, 1990; Ribeiro, 1990.

45. Maravall, 1990, p. 57.

46. Wölfflin, 1979, p. 58.

47. Maravall, 1990, p. 445.

48. Wölfflin, 1979, p. 67.

49. Maravall, 1990, p. 421.

50. Schiller, 1967.

51. *Ibid.*, p. 215. Schiller's *Schein*, far from being a mere deception, is a higher reality (*höhere Wirklichkeit*), and as such has a distinctive utopian dimension. For the concept of *Schein* in Schiller, see, for instance, Wilkinson, 1955.

52. Schiller, 1967, p. 51. Starting with Franz Mehring's study on Schiller—*Schiller, Ein Lebensbild für Deutsche Arbeiter* in 1905—the Marxist readings of Schiller (Schiller as a *petit bourgeois*, idealist revolutionary) are symptomatic of the subparadigmatic character of the Marxist critique of capitalist modernity. A collection of such readings is in Dahlke, 1959. For a critique, see Witte, 1955. See also Lukács, 1947.

53. Wölfflin, 1979, p. 82.

54. Maravall, 1990, p. 426.

55. Wölfflin 1979, p. 64, speaks of formlessness.

56. Among others, see Pastor *et al.*, 1993; Leon, 1993; Alberro, 1992. Coutinho, 1990, p. 16 speaks of "a complex baroque-*mestizaje*." Lastly see the concept of "black Atlantic" used by Gilroy (1993) to express the distinctive *mestizaje* of black cultural experience, a culture that is not specifically African, American, Caribbean or British, but all of these at once.

57. Maravall, 1990, p. 487. The relationships of feast, and of baroque feast in particular, with utopian thinking are still to be explored. On the relations between Fourierism and "*société festive*," see Desroche, 1975.

58. Maravall, 1990, p. 488.

59. Leon (1993, p. 4) characterizes the popular culture of seventeenth-century Vera Cruz as "the empire of laughter." Leon's analysis eloquently highlights the local-transnational linkages of the popular culture of this city harbor, fully integrated in the world economy of the seventeenth century.

60. Marietegui, 1974, p. 127. Originally published in *Mundial* of February 24, 1925 and February 27, 1928.

61. Leon, 1993. Processions were, as Maravall duly stresses, a privileged instrument of massification of baroque culture (1990, p. 507).

62. Toulmin, 1990, p. 199.

63. Hirschman, 1977, p. 32.

64. *Ibid.*, p. 54.

65. *Ibid.*, p. 132.

66. Montaigne, 1958, p. 370.

67. Schiller, 1967, p. 49.

68. *Ibid.*, p. 53.

69. Fourier, 1967, pp. 79, 114.

70. Habermas, 1985, p. 104.

71. Slater, 1992.

72. Among other political writings by Chomsky, see 1969, 1970, 1975, 1982, 1983, 1985, 1987, 1989. Chomsky and Herman, 1979, 1988. Chomsky and Zinn, 1972.

73. Wolin, in *Contemporary Authors*, 1981–1994, p. 103.

74. Chomsky, 1987, p. 30.

75. *Ibid.*, p. 35.

76. Chomsky's acritical acceptance of the modern distinction between science and politics explains some eventual contradictions between his anti-imperialistic political activism and his scientific and professional politics. A progressive stance, in the former, may thereby coexist with a conservative one, in the latter. On the politics of linguistics and, in particular, on the politics of Chomsky's conception of "autonomous linguistics," see Newmeyer, 1986.

77. Lastly, on epistemicide, see Nencel and Pels, 1991; and on linguicide, Phillipson, 1993, and Skutnabb-Kangas, 1993. On endangered languages, see *Language* 68(1); and specially Krauss, 1992; and Craig, 1992. See also the debate between Ladefoged, 1992, and Dorian, 1993.

78. Said, 1985.

79. Tucker, 1992, p. 20. In a similar vein, Jameson (1986, p. 85) states that "the view from the top is epistemologically crippling and reduces its subjects to the illusion of a host of fragmented subjectivities."

80. Novelists and poets in the South have been in the forefront of the struggle for a non-imperial South. Jameson argues that in the Third World novel the allegories are national, rather than individual (as in the First World novel): "the story of the private individual destiny is always an allegory of the embattled situation of the public third world culture and society" (1986, p. 79).

81. In the following, I concentrate on Gandhi, but as the crisis of modernity deepens and its imperialistic character becomes more evident, a new intellectual and political ferment has emerged in the South in recent times, inspired by a conception of the nonimperial South, and attempting to develop an emancipatory politics outside the Western mold. Among many examples, Wamba dia Wamba calls for a new emancipatory politics in Africa, informed by a new philosophical paradigm capable of refuting and dislodging the "social epistemology of domination" (1991a, 1991b). For the debate it has sparked, see, for instance, Ramose, 1992. In what concerns Asia, starting from the idea that a significant aspect of postcolonial structures of knowledges in the Third World is a peculiar form of "imperialism of categories," Nandy sets out to establish a foundation for ethnic and religious tolerance that is independent from the hegemonic language of secularism popularized by Westernized intellectuals and middle classes exposed to the globally dominant language of the nation-state in South Asia (1988, p. 177). See also Nandy, 1987a. Lastly, Gilroy (1993) argues forcefully for a "black Atlantic culture" as a counterculture of modernity, inviting us to learn from the South *within* the imperial North.

82. Gandhi, 1956, p. 118.

83. Nandy, 1987b, p. 35.

84. Gandhi, 1951, p. 78.

85. *Ibid.*, p. 80.

86. Cited by Pantham, 1988, pp. 207–208.

87. Gandhi, 1956, p. 110.

88. *Ibid.*, p. 100.

89. Pantham, 1988, p. 206. The ideas and politics of Gandhi are object of much debate. Nandy (1987) emphasizes the fact that Gandhi escaped colonial cultural domination, thus formulating an authentic and effective Indian nationalism. Based on a Gramscian frame-

work, Chatterjee (1984) considers that Gandhian ideology, while fundamentally subverting elite-nationalist thought, provided at the same time the historical opportunity for the political appropriation of the popular classes within the evolving forms of the new Indian state (p. 156). Fox (1987) stresses the dilemmas of Gandhi's cultural resistance in a world system of cultural domination.

90. Gandhi, 1951, p. 240.

91. *Ibid.*, p. 77.

92. Chomsky, 1987, p. 192.

93. Gandhi, 1956, p. 327.

94. Gandhi, 1951, p. 244.

95. A series of collections of essays on South Asian history and society published during the eighties under the editorship of Ranajit Guha. Among many studies, see one by Guha himself on colonialist historiography in India. Guha, 1989.

96. Das, 1989, p. 312.

97. Gandhi, 1956, p. 118.

98. Nandy, 1987b, p. 22.

99. *Ibid.*, p. 35.

100. *Ibid.*, p. 43.

101. Gutierrez, 1991.