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**TERRITORIAL PROJECTIONS OF LAW FROM
THE LEFT: CITIES, COMMUNITIES AND
TRANSNATIONAL SPACES.
THE CASE OF MEXICO IN THE CONTEXT OF
THE GLOBAL SOUTH.**

Miguel Rábago Dorbecker¹

INTRODUCTION

One of the most important contributions of Critical Legal Theory is the possibility of observing the socio-legal phenomenon from unorthodox channels, as far away from the power structure as possible. The use of interdisciplinary methodologies allows a separation from dominant legal formalism and helps avoid traditional categories that tend to be uncontested or “given”. Nevertheless, Critical Legal Theory in Latin America has been focused, mostly because of its urgency, on legal plu-

¹ Miguel Rábago Dorbecker is a Professor of Law at the Universidad Iberoamericana. This article is based on the discussions that originated during the South-North Exchange on Theory, Culture and Law (SNX) and the Critical Theory and Public Policies in Santiago de Chile during May 1-3, 2009.

ralism and the counter-hegemonic means of legal production, mostly regarding indigenous peoples. This focus has been redirected towards alternatives that confront orthodox means of legal production, such as the use of power in the legislative process, public policies, and judicial adjudication. As its first approach, this line of criticism has had significant results in order to confront legal dogmatism design as a mere justification of hegemonic decisions, but in other ways it has relied on traditional legal categories and discourse.

One way in which legal thought can avoid the categories created from power is the redefinition of the territories in which law is projected. The influence of left wing social movements in law has generally taken for granted some of the categories of conservative legal theory. In Mexico, the recognition of the vindications of social movements has been analyzed through legislative reform, changes in public policies, or judicial interpretation, most of which is on the national level. Grassroots or ground levels of analysis have not been used as extensively as other disciplines, such as social anthropology or ethnology. Some legal literature has taken into consideration state governments as well as municipal expressions, but the reference has always been constrained to federal forms of distribution of political power. One issue is that, although on a smaller scale, most state and municipal studies seem to be confined to somewhat artificial territorial circumscriptions. In a sense, the difference between the territorial expressions of power in Mexico presents some problems even with regards to mainstream recognition. This is true in the cases in which municipal and even state governments do not coincide in the same spaces of electoral distribution. For example, the local or federal electoral districts that contain various municipalities of mixed rural and urban nature, or prominently mestizo and indigenous peoples. In reality many people have more cultural, economic and social ties with their neighbors in other municipalities or states than with those people circumscribed by artificial divisions.

These divisions are sometimes created as structures in order to create division or as political bounty of the different dominant parties. But in reality such boundaries are mere illusions, except when they are maintained by imposition or violence. One example is the Mexican Megalopolis, like Mexico City, Guadalajara and Monterrey, that does not coincide in municipal distribution of power; and in some cases, such as in Mexico City, not even in the States territorial distribution. Other examples include the larger urban area of Torreon, which also transcends the limits of the states of Durango and Coahuila. This is also true in the case of indigenous communities that are divided by municipal or sub-

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municipal divisions, and in some cases even state or international borders.

Nevertheless, the revaluation of the territories in which law is defined, created, and projected can act as fertile ground for alternatives from the left. This new approach in spaces and time can avoid what Boaventura de Sousa Santos defines as common inheritance of modernity: the “politicization” of law through the distinction between the state and society.² Cities, indigenous communities, and transnational spaces can sometimes be used, with some sort of combination in order to push a progressive agenda. This is why the advancement through formal and informal legal expressions must be discussed through non-orthodox territorial expressions, and not constrained by traditional federal territorial division in Mexico, which is, in some sense, a reminiscence of colonial and neo-colonial political structures.³

Instead of proposing a complete taxonomy of the different windows of opportunity and the existing barriers for the legal projection of progressive movements, we must first take a look into the existing empirical evidence that may act as an example for action. In order to avoid a reductionism, the cases taken into account are some of the most representative because of their national implications. We must address the instability of such methodology, taking into account that, at least in the current Mexican political situation, such advances sometimes are means of a hegemonic consolidation of power. The very limited democratic changes have not yet guaranteed the consolidation of a minimum amount of legitimacy and social cohesion. Another important factor is that in the few spaces in which progressive legal expressions have triumphed, they are always in danger of democratic regression, and such conquest may be short lived. This is strikingly the case of the legal battle for the decriminalization of abortion, in which the historical advance in Mexico City has been contested by the advancement of reactionary reforms in most of the other states. Thus, some advances may open prolonged conservative opposition that may very well reduce the effects of progressive reform. All these problems must be addressed before mapping certain alternatives for

² See BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW LEGAL COMMON SENSE: LAW, GLOBALIZATION AND EMANCIPATION 48 (2002).

³ See Rafael Estrada Michel, *Monarquía y Nación*, MÉXICO: PORRÚA (2006) (Providing an excellent account of the influence of Colonial Spain’s territorial divisions in the formation of the divisions created in independent Mexico).

action.

There is an urgent need to transform the spaces and territories upon which critical legal thought from the left is projected. Unbound by formalist constrictions, unorthodox spaces must respond to critical theory. One of the most powerful elements of containment of libertarian ideas of the law has been, alongside a dominant political and judicial structure, the idea of territorial subdivisions of the State. The Leviathan state has not only survived as a dominant idea regarding national versus non national, or citizen versus alien hegemonies; it has also transcended the Unitarian, federal or national government. This transcendence has perpetuated the political subdivisions of States in many cases, and Provinces and Local Governments as mere reminiscences of the national hegemony. Nevertheless, the only way in which libertarian ideas of law and state can surpass these territorial limitations comes from the creation of new and different territories and spaces for dissent. As with imaginary spaces such as radio, television signals, or publishing houses, in which the only way of breaking the grip-hold of the dominant media is to create new alternatives such as internet broadcasting, zines, artistic performances or communal media project, Critical Legal thought also must navigate through the territorial projections of power and create its own parallel alternatives. In a sense, this is what social movements have done in the past decades.

The center of this proposal gravitates around three comparative group experiences regarding Indigenous People, gender issues in the Mexico City movement, and Worker's Unions. They are two very different strategies, with many different results. From these practices the analysis of their achievements and short comings will relate to their ability to obtain their demands and the way in which they could either infiltrate the territorially displayed political entities or evade them and create new spaces. Of course, the differences between both movements and their demands, and their ability to forge alliances with other movements, account for many distortions to this hypothesis. These differences too can also adversely or positively move the reaction of mainstream political power.

I. LOCAL ACTIONS

A. *Formal Territories: Municipalities and Indigenous Peoples*

As discussed above, Mexican federalism is a result of both colonial inheritance and liberal imposition, and sometimes presents artificially defined territories. Both the Spanish Colonial inheritance and post inde-

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pendence liberal tradition aimed on destroying the territorial basis of indigenous peoples.⁴ Political liberalization in Mexico in the 1990's and 2000 has not proposed important change in the territorial divisions. But the fact is that wider political competition has invigorated state and municipal autonomy from federal power. Parallel to these vindications, there has been a new rise and reproduction of authoritarianism through strong state governors, who act under the same political culture of the former *presidencialismo*. Under the former image of undisputed power of the Federal Executive, governors have exercised great concentration of power through various means, while maintaining legislatures and the judiciary. One representative case is Governor Ulises Ruiz of Oaxaca, whose election gave way to the strongest display of social unrest in recent Mexican History and to the social movement known as the *Asamblea Popular de los Pueblos de Oaxaca* or APPO.⁵

One paradoxical exception of a local government which has not yet been fulfilled because of faults in the Mexican political transition and its full equivalence with other Mexican federal states: the government of Mexico City or Distrito Federal. Since 1988 residents from Mexico City have had the right to vote for their local authorities, and they have voted constantly for left wing governments under the *Partido de la Revolución Democrática* (PRD). Such governments have been a channel for a progressive legislative agenda in Mexico City that has produced a reform of the Criminal Code revoking the penalization of abortion on the first twelve weeks of pregnancy, same sex marriage recognition, and legislation permitting euthanasia. Also, Mexico City is the only space in which there is a project of incorporating an indigenous language (*náhuatl*) as an official language through its incorporation in local schools and the publication of a bilingual dictionary, although its implementation has been more than frustrating. Some other examples of the progressive agenda under left-wing state governments have been indigenous laws in some states and the creation of a secretary for indigenous affairs in Chiapas and Michoacán. But regarding the consolidation of sexual and reproductive rights, the fact is that Mexico City has been the undisputed leading

⁴ See Guillermo Bonfil Batalla, *Las culturas indias como proyecto civilizatorio, Pensar Nuestra Cultura*, MEXICO: ALIANZA 92 (1991).

⁵ Margarita Zires, *Estrategias de Comunicación y Acción Política: Movimiento Social de la APPO 2006*, in *LA APPO: ¿REBELIÓN O MOVIMIENTO SOCIAL?* (NUEVAS FORMAS DE EXPRESIÓN ANTE LA CRISIS) 161 (Víctor Raúl Martínez Vásquez, ed., 2009).

space in the country. But these advances have been displayed in an area that is not considered a municipality or a state. The lack of equivalence between the borders of the Federal District and complex continuous urban area that surpasses these limitations is obvious, but also its limited constitutional attributions. One example is the limited legislative capacity of the local congress or *Asamblea de Representantes*.⁶ But beyond these limitations, one must understand the particular dynamics of social movements on a city environment.⁷ The special case is Mexico City, where an urban area not only includes but exceeds the territorial limits of a State entity shall be analyzed further on.

Regarding State demarcations, in Oaxaca, the most ethnically diverse state in Mexico, the experience of division of municipalities along the lines of cultural differences between indigenous communities has been a proposal of the local and federal powers which has received formal recognition and even electoral differentiation. This type of municipalization following ethnic divisions is the State of Oaxaca, has been imposed and sometimes even drawn in order to promote local decision and diminish local administrative capacities. The 570 *municipios* in Oaxaca, specially those governed through customary indigenous law or *usos y costumbres*, have very scarce financial resources and have to depend on state and federal authorities in order to attend meetings on major issues, especially regarding education and health. Also, this solution has increased the ability of the State authorities to subjugate autonomous ambitions and has been effectively used by the political machinery, first through the state-party *Partido Revolucionario Institucional* system and then perpetuating through the alternation of power between the three main political parties. Such territorial recognition has been used in order to divide communities and also has helped dominant political parties to “indigenize” their own power structures. This imposition of the *mestizo* power structure on indigenous affairs has not reduced all autonomous expressions. The toleration of indigenous customary law and the recognition of traditional authorities have been constant policies, but only when these actions do not imply some real threat to hegemony. Party influence in local communities has sometimes resulted in violence such as the massacre of Acteal in Chiapas, and has also played a part in the creation of paramilitary groups.⁸ The supposed respect for local indigenous

⁶ Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, arts. 44 and 122, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

⁷ *See generally* MANUEL CASTELLS, CITY, CLASS AND POWER 1-14 (Elizabeth Lebas trans., 1978).

⁸ *See generally* HERMANN BELLINGHAUSEN, ACTEAL CRIMEN DE ESTADO 93, 161-63

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customary law has been alleged by political and economic power groups as a way of distorting gender justice in some cases, such as the rejection of Eufrosina Cruz as a local candidate for her municipalities.⁹ An abnormal media attention on this case is no more than a strategy to reduce and portray indigenous customary law as gender biased and as having a direct conflict with constitutional provisions.

As stated, some of these divisions are not justified and can only be seen as a way of dividing autonomous vindications. However, even these realities did not prevent most of such municipalities from presenting law suits against the regime's answer to the 1994 Zapatista uprising, and the 2001 constitutional reform on indigenous issues. This reform was negotiated without support or consideration of the indigenous communities, and even with their widespread opposition. It is highly symbolic of the fact that the totality of municipalities that presented such actions were either majorly indigenous in their population or were governed by local indigenous law.¹⁰ Even if the Supreme Court dismissed this action, the fact that the reform did not reflect the former agreements between the Mexican government and the *Ejército Zapatista de Liberación Nacional (EZLN)*, known as the San Andres Accords, made a bad precedent for this reform.

Also, the territorial divisions of municipalities do not reflect another *mestizo* territorial institution, which changed considerably since the abandonment of Agrarian Reform through the constitutional changes and the Agrarian Law of 1991: the indigenous communities and the *ejidos* recognized this through the Mexican Constitution. These territorial expressions of property were the minimal territorial *mestizo* recognition of communal indigenous organization. With all their problems, the most important one being their populist abuse, the assemblies matter, in the center of decision-making in the communities, not only in agricultural or agrarian issues, but also in political, social, accountability and legal matters. Constitutional Municipalities did not consider communities and *aji-*

(2008).

⁹ See generally Eufrosina Cruz Mendoza, QUIEGO, AC, <http://www.qui-ego.org/> (last visited August 19, 2010).

¹⁰ See Guadalupe Espinoza Saucedo, Francisco López Bárcenas, Abigail Zúñiga Balderas, *Los Pueblos Indígenas Ante La Suprema Corte De Justicia De La Nación*, MEXICO: CENTRO DE ORIENTACIÓN Y ASESORÍA A PUEBLOS INDÍGENAS A.C.-CONVERGENCIA SOCIALISTA-COMISIÓN INDEPENDIENTE DE DERECHOS HUMANOS DE MORELOS A.C. (2002).

dos as territorial subdivisions, and only in some cases did they coincide. The coexistence of *mestizo* and indigenous territorial divisions, through the obvious dominance of the first over the second, in some sense controlled some social unrest. Nevertheless, the legal reform in 1991, which permitted the privatization of collective ownership of the agrarian properties and the active participation of government institutions in the recognition of legal tenure of land, created problems between land owners, ejidatarios and between indigenous communities even amongst themselves.

The artificially drawn divisions have made the collective organization that avoided predetermined spaces difficult, and in a way where designed for this effect. Nevertheless, through some loopholes in the Agrarian Legislation or through other forms of formal and informal organization, some coalition of movements gained local political recognition, such as the *Coalición de Obreroes, Campesinos y Estudiantes del Istmo* in Oaxaca, the *Unión de Comuneros Emiliano Zapata* in Michoacán or the *Organización de Pueblos Nahuas del Alto Balsas* in Guerrero.¹¹ Such coalitions also entered into alliances with political activists from the left, ex guerrilla members, students, academics, social workers and progressive catholic movements, which in turn lead the way to wider opposition of neoliberal policies. Nevertheless, the rise of a new “unified” left wing political party at the end of the 1980’s, the PRD first seemed like a natural ally for municipal representation against PRI *caciques*. But differences between the *mestizo* party members and the local indigenous communal assemblies began to appear.¹² These differences lead to disillusionment of the electoral option by indigenous organizations and gave way to social mobilization and even armed rebellion.

Some emphasis has to be made on the fact that recognition, if any, of indigenous customary law is made through the *mestizo* legal system and courts. This included a somewhat sympathetic judicial organization of territorial conflicts through special courts and high intervention of the state in these issues. Even with these shortcomings in legal infrastructure, some of these orthodox legal channels were used with very meager results. In some ways this is in sharp contrast with other achievements in local courts; for example, in Supreme Court of Brazil’s decision regard-

¹¹ See Guillermo de la Peña, *The Future of Mexican Indigenism: Form the Myth of Mestizaje to Neoliberal Fragmentation*, JCAS Symposium Series 15, 53 (2002) (discussing the History of the indigenous communities movement in Mexico and its relation to official state institutions specially the now extinct *Instituto Nacional Indigenista*).

¹² See Enrique Guerra Manzo, *Los pueblos indígenas: Entre la comunidad corporativa y el pluralismo, 1968-2001*, in Ilán Bizberg and Lorenzo Meyer, *Una Historia Contemporanea De Mexico*, vol. 2, MEXICO: OCEANO 335 (2005).

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ing indigenous land in the Amazon, or the internationalization of the land issues in Nicaragua in the *Awás Tingini* Case, or political participation in the *Yatama* Case under Inter-American Human Rights Court.¹³

B. The proposal by the organized indigenous movement in Chiapas: the Juntas de Buen Gobierno.

Before refereeing the revolutionary proposal of the EZLN of *Juntas de Buen Gobierno* (formerly known as *Caracoles*), we must take in to account two ideas that seem only superficially contradictory. On the one hand, there is an increasing urban indigenous population, but most indigenous peoples live in rural communities far from urban centers.¹⁴ In this sense, new spaces such as cities or *barrios* and *ejidos* or *comunidades indígenas* may very well serve as territorial entities for a more progressive development of law. But perhaps the most interesting social experiment regarding autonomous communities of indigenous peoples are the *Juntas de Buen Gobierno*. These communities appeared after the 1994 Chiapas insurrection as an alternative to local governments in the areas controlled by the EZLN. So far, there has been some academic analysis of these non-state political organizations, and their existence has been in some sense tolerated by the state and federal government in a very complex and often tense relationship. We cannot forget some especially conflicting issues regarding the difficult relationship between the informal EZLN-sponsored local authorities and the formal state and federal powers. The first of these is the Federal Government's promise of regularization and formal recognition of these manifestations of self government, was shattered by its noncompliance with the San Andrés Accords, which were a basis for the end of armed hostilities. These Accords were also a plan to end the systematic discrimination suffered historically by indigenous peoples at the hands of the Mexican state and the predominantly *mestizo* society. Instead, the federal government,

¹³ *Mayagna (Sumo) Awás Tingini Community. v. Nicaragua*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001), available at <http://www1.umn.edu/humanrts/iachr/AwasTingnicase.html>; *Yatama v. Nicaragua*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 127 (June 23, 2005).

¹⁴ In a 2001 study, Arturo Warman pointed out these apparently contradictory phenomena, caused by massive migration from traditional indigenous communities to large urban cities, especially Mexico City and some cities in the US like Los Angeles. See Arturo Warman, *Los indios de México (2001) [The Indians of Mexico]*, 5 (Apr. 2001), available at http://www.catedra-warman.org/articulos/2001_los_indios_de_mexico.pdf.

along with a coalition of the official party and the conservative party (PRI and PAN), passed an amendment of the Constitution regarding indigenous peoples rights, which was drafted without consulting the recipients of all its supposed blessings. The amendments introduced in 2001 fell very short of the agreements which the Federal Government negotiated with the EZLN in the San Andres Accords. This attitude is consistent with the racist, paternal, and assimilationist policies of the former *Instituto Nacional Indigenista* transformed more recently into the *Comisión Nacional de Pueblos Indígenas*.

The *Juntas de Buen Gobierno* were preceded by the *Municipios Autónomos Rebeldes Zapatistas* created shortly after the EZLN gained control of eight municipalities during their armed campaign in 1994. This creation of alternative and autonomous regions under indigenous customary law was one of the goals of the armed rebellion in the first place. Under the first form of collective organization, the *Municipios Autónomos Rebeldes Zapatistas* were formed by assemblies in charge of issues such as health, culture, justice, education, land, commerce, and information.¹⁵ Regarding the production of law, a main difference between the autonomous option and the dominant municipal model is that the former is a more open forum for the use of indigenous customary law. The issue is with the creation of communal governmental bodies and also with the historical separation from the continuous imposition of municipalities reminiscent of Colonial Spain. Also, municipalities under the Mexican constitutional system have no formal legislative initiative powers and have to rely on local or federal congress in order to formally recognize indigenous customary law in important issues such as health, agriculture and education.¹⁶ Further, the *Juntas de Buen Gobierno* act as mediators not only in inter-ethnic or trans-ethnic community issues, but also between indigenous peoples and the formal institutions. Due to the fact that municipalities are subject to the Mexican electoral system, only political parties can register candidates. This means that political representation of indigenous communities is mediated and contaminated by political parties.

Even if the *Juntas de Buen Gobierno* are the most ambitious project of autonomous self-government, the absence of formal legal recognition

¹⁵ See Lola Cubells Aguilar, *Las Juntas de Buen Gobierno Zapatistas: La construcción del pluralismo a través de la lucha por la autonomía in* PLURALISMO JURÍDICO Y PUEBLOS INDÍGENAS, XIII JORNADAS LASCASIANAS INTERNACIONALES 33, 39-40 (2005), <http://www.bibliojuridica.org/libros/4/16-70/4.pdf>.

¹⁶ Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 115, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

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of these spaces under Mexican constitutional law, complimented by the silence of mainstream academic critique of this reality, limits their effectiveness. In order to value the true opportunities of the model proposed by the *Juntas de Buen Gobierno*, academic production in the legal field has to be developed and not just directed towards neglect or outright disapproval. Their experiences on the management of real autonomy can represent a real alternative for existing official territorial bodies. One important issue is that the complicated and arbitrary process of recognition and non-recognition by all levels of the Mexican State can be avoided through an effective internationalization of certain social conflicts. The limitations posed by the Mexican hegemonic system can be diminished by access to some international fora such as World Bank panels or the Inter-American Court of Human Rights. Flexible categories by which not only *Juntas de Buen Gobierno*, but *ejidos*, *comunidades indígenas*, coalitions and alliances, as well as individuals or groups of individuals can have access to in these instances, may empower groups and organizations that have no formal recognition under Mexican territorial division. Also, these entities can pave the way for new territories for legal creation.

C. Cities: the case of sexual and reproductive rights in Mexico City.

The city as a space for progressive legal reform seems somewhat of a contradiction, since most cities like Mexico City, Monterrey, or Guadalajara are perhaps the clearest expressions of a capitalist society. Indeed one of the most important lessons of the Zapatista movement in 1994 was the false promise of modernity explained legally through the massive reform of economic law through harmonization with NAFTA, and a global hyper-capitalism as a source of an American way of life for the privileged in Mexico. As Mexican urban centers, especially in the north, implanted sectors of “modernity” surrounded by worsen conditions of public transportation, labor conditions, social security, housing, and education, the urban citizens turned to collective action as means of survival. Mexico City is perhaps the clearest example of the influence of the so-called urban pariah as the true agents of political change both locally and nationally. Nevertheless, the severe class differences in Mexico as well as old and new forms of ethnic, gender, or class stigmatiza-

tion, have served to neutralize change from below.¹⁷

After the Mexico City earthquake, Mexican civil society transformed itself from the collective experience during the rescue work and reconstruction and quickly identified the true source of the magnitude of the disaster: not on natural or act of god explanations, but on the systematic corruption and negligence of the political authorities. Also, a movement against demolition and forced eviction combined with the general disapproval for the authoritarian government in order to exercise pressure for democratization of the City's Government. This was a slow and difficult process, since it took almost ten years (1985-1994) for the people of Mexico City to elect their mayor in open elections. Since that experience, Mexico City has been governed by the center-left political party the PRD. The ascent to power of a left wing party in Mexico City has permitted an unprecedented progressive legislative agenda in some gender issues, such as same sex marriage, abortion, and gender violence.¹⁸

On April 26, 2007, the Criminal Code of Mexico City and its Health Law were amended in order to include the legal interruption of pregnancies in the first twelve weeks. Also, the amendment enabled the possibility of seeking legal abortions under the local public health system. This reform had an immediate reaction from the Federal Government (then controlled by the PAN, a party that includes a prolife position in its statutes), which presented a constitutional suit against such reform through the *Procuraduría General de la República*. Somewhat surprisingly, this suit was also presented by the National Human Rights Commission, which is a constitutionally independent body. Another interesting fact is that it was the first time that the National Human Rights Commission exercised its facility to present such suits. Being a federal organization, the personal choice of the then National Commissioner for Human Rights to present a suit against a local legislation that benefited women's sexual and reproductive rights was questioned even inside the National Human Rights Commission. This is especially true in the dis-

¹⁷ See LOÏC WACQUANT, *Territorial Stigmatization in the Age of Advanced Marginality*, in 91 *THESES ELEVEN* 66 (2007) (for the term "urban pariah" and about an interesting form of stigmatization through spatial discrimination), available at http://sociology.berkeley.edu/faculty/wacquant/wacquant_pdf/-TERRITORIALSTIGMATIZATION.pdf.

¹⁸ See Marta Lamas, *La despenalización del aborto en el Distrito Federal* and Adriana Ortiz Ortega, *Aborto y tendencias políticas actuales* in Javier Flores, *Foro Sobre Las Despenalización Del Aborto. Respuesta Social Frente A Las Controversias Constitucionales*, MEXICO: UNAM-LA JORNADA (2009) 29 (On the political context of the decriminalization of abortion in Mexico City).

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cussions held by independent counselors of the Commission.¹⁹

The described scenario is representative of how progressive reforms negotiated under certain territorial conditions, for example the highly urbanized and with strong levels of formal education of Mexico City, can encounter some backlash of federal organs. A similar scenario would be repeated years later regarding the amendment of the Civil Code of Mexico City that enabled same sex marriage. Both suits bring attention to the Mexican Supreme Court not only as the final arbitrator on federal disputes, but also its positions as the center of essential social discussions. Because of this fact, the Supreme Court decided to undertake an unprecedented transparency and social participation campaign through two main channels: an active communications policy and formalization of participation of civil society in the process. This last point is crucial to understand how progressive sectors, such as sexual and reproductive rights and feminist organizations, interacted with the city government on a common strategy at the Supreme Court. Regarding the Court's communication policy, it created a special website in which all documents related to the suit were posted along with a *dossier* for journalists. But more importantly, the Court enacted regulations in order to admit *amicus curiae* briefs. It also permitted representatives of civil society to participate in the hearings. Both decisions marked Mexican judicial history. Nevertheless, the strong presence and tradition of feminist movements in Mexico City was counteracted by reform in State Legislatures controlled by other political parties and pressured by conservative groups and the Catholic Church hierarchy.

II. TRANSNATIONAL SPACES

A. *World Bank Inspection Panels.*

As Boaventura de Sousa Santos states: “[w]ho needs cosmopolitanism? ... [Those who are] victim[s] of [local] intolerance and discrimination....”²⁰ This phrase summarizes the need for use of ingenious ways to transcend territorial limitations through subaltern cosmopolitanism. Such

¹⁹ *Acta de la Sesión Ordinaria Numero 229 [Minutes of the Regular Meeting Number 229]*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS (July 10, 2007), <http://www.cndh.org.mx/normat/acucons/acta229.pdf>.

²⁰ DE SOUSA SANTOS, *supra* note 2, at 460.

actions may implement alliances that can avoid some dangers of locality and implement new spaces for creation and recognition of law. But cosmopolitanism cannot be reduced to internationalization of local issues because international structures such as Human Rights protection bodies are designed by state interests and are defined and detailed by such limitations. In this sense the use of international spaces can be regarded as truly counter-hegemonic if it ingeniously uses the defined structures in order to achieve goals other than those drawn by state interests, or if they create transnational alliances that can challenge local powers.

One very interesting example of the first mode of counter-hegemonic use of international bodies is the use of the Inter-American Court of Human Rights to vindicate local claims regarding ethnicity and gender, as the *Awas Tingini* Case illustrates in the claim for ancestral and collective land property through the use of liberal property rights recognized in the Inter-American Convention on Human Rights.²¹ It is perhaps the most relevant case regarding the recognition of non-occidental conceptions of property in international law.²² Regarding gender issues, a nonconventional use of the Inter-American Human Rights System that involves Mexico is the *Campo Algodonero* case.²³

Human Rights protection organizations have been a traditional forum for internationalization of many issues concerning progressive social movements. Their use is beginning to become mainstream amongst NGO's and other social actors. This is why some other spaces must be viewed as an alternative to Human Rights bodies. These alternatives come from the most surprising places, such as hegemonic international organizations and systems of international trade and finance. This is the case of both World Bank inspection panels and the panels created under the North American Agreement on Labor Cooperation.

Regarding World Bank inspection panels, these can be used in order to forge alliances of local groups and also pressure local governments through financing and exposure in an international financial forum. Also recent policies regarding gender and indigenous peoples can help in the struggle against the imposition of such projects. Regarding the first

²¹ *Mayagna (Sumo) Awas Tingni Community. v. Nicaragua*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001), available at <http://www1.umn.edu/humanrts/iachr/AwasTingnicase.html>.

²² See Leonardo J. Alvarado, *Prospects and Challenges in the Implementation of Indigenous People's Human Rights in International Law: Lessons from the Case of Awas Tingni v. Nicaragua*, 24 *ARIZ. J. INT'L & COMP. LAW* 609 (2007).

²³ *Case of González et al. v. Mexico*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. E) No. 205 (Nov. 16, 2009), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf.

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aspect, a quick gaze of World Bank projects in Mexico shows that only six projects historically have had some reference to gender issues. Of those programs, only two of them (which are actually the same project since the savings and rural finance project have additional financing) are active.

Project Name	ID	Status	Approval Date
Savings and rural finance - second phase - additional financing ii	P111839	Active	9-SEP-2008
Savings and rural finance (bansefi) additional financing project	P103491	Active	21-MAR-2007
Basic Health Care Project (03)	P066321	Closed	21-JUN-2001
Gender Equity Project: Generosidad	P066938	Closed	16-JUN-2000
Basic Health Care Project (02)		Closed	
Labor Market and Productivity Enhancement Project	P007689	Closed	26-SEP-1995
Initial Education Project	P007724	Closed	15-DEC-1992

Such limited focus on gender seems to enable some future action, although to this date there has not been such. This can be contrasted with ethnicity issues, in which some action has been taken regarding forestry and biodiversity projects in Oaxaca. Jonathan Fox extensively describes the problems regarding respect for indigenous organization in World Bank financed projects, despite the implementation of an indigenous people’s policy in 1982 and revised in 1991.²⁴ One of the serious limitations of such action is the fact that many projects affecting indigenous communities and women are not financed by the World Bank and

²⁴ Jonathan A. Fox, *The World Bank and Social Capital: Lessons from Ten Rural Development Projects in the Philippines and Mexico*, 33 POL’Y SCI. 399, 404-05 (2000), available at <http://escholarship.org/uc/item/1vj8v86j>.

such guidelines may not be available under Mexican law.

B. The experience of panels under the North American Labor Cooperation Agreement.

Given the fact that NAFTA had no intention of creating strong institutions, it is no surprise that side agreement on Labor issues followed that example. But this approach has to be taken with some caution because even if dispute resolution panels in NAFTA are not permanent or create international bureaucracies, they exercise fundamental pressure on governmental policies through mixed legal and political channels.²⁵ Such is the case of investor-state arbitration, antidumping panels, and the general dispute resolution system. Nevertheless, side agreement decisions on environmental and labor issues are not subject to the political muscle of state representatives, they can only serve as means of legitimizing the different array of organizations that promote them.

Formally the NAFTA's side agreement of labor creates the Commission for Labor Cooperation integrated by a Council of Ministers that consists of the three labor ministers of the states, and a trinational Secretariat.²⁶ The Council of Ministers may create Independent Evaluation Committees of Experts and Arbitral Panels. The first type of dispute resolution is non-adversarial and it regards matters related to occupational safety and health or other technical labor standards. In the case of Arbitral Panel they are recommendatory in nature, but may issue fines or suggest trade sanctions and only act when a State party believes that after a Independent Evaluation Committee report, there is still a persistent pattern of failure to enforce occupational safety, health, child labor, minimum wage, or technical labor standards. Both of these mechanisms are basically state driven, so at first glance they do not seem as a natural forum for active social participation.

This possibility is vaguely envisaged under the public communications procedure of the NAALC, filed by individuals, unions, employers, NGOs, and other private parties in the National Administrative Offices.²⁷ Public communications are filed in order to seek the National Administrative Office review of local labor law standards in another country, and in turn this has had a very interesting effect regarding the

²⁵ See Cesar A. Rodriguez-Garavito, *Nike's Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle over International Labor Rights in the Americas*, in *LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY* 64 (Boaventura de Sousa Santos and César A. Rodríguez-Garavito eds., 2005).

²⁶ Arts. 8-19 of the NAALC.

²⁷ Art. 16.3 of the NAALC.

transnationalization of the labor movement in North America.

Even with the very limited margin of access to international organs, similar to those created under the International Labor Organization, and the domination of anti-state policies in NAFTA, which more often privatize conflicts of a very public nature, that include citizen's rights and environmental or cultural matters, the system of public communications is a way of promoting transnational activism. As with the counter-hegemonic movement against an imposed model for international trade, labor issues regarding trade have forged non-traditional alliances between unions, NGOs, some academics, and other non-state actors. Such plethora of actors can only be understood as a hybrid between traditional labor organizations and new actors in the labor scene.²⁸ These alliances may have been regarded as ephemeral but provide new sources of legitimacy while waging a very unequal battle against the fusion of State and Corporations. This is why the power of recognition by an international organization of the demands of some labor sectors cannot be diminished. Such recognition can force some solidarity by social sectors that are traditionally skeptical of social causes, such as traditional political parties, unions, and the media. Another factor is the possibility of exposing on an international arena the web of complicities and corruption under local labor justice in Mexico.

The subordination of state interests to the political and economic elite weakens the possibility of using local public institutions as neutral forms for resolution of social conflicts, especially because the Federal and State Executives have a direct call on labor matters, such as declaring the legality of strikes, influence over the election of union leaders, and administration of labor justice. Delocalization of conflicts through international fora may in certain ways avoid the absence of partiality in local remedies. Although transnationalization has to be regarded as only one of the many strategies that can solve labor conflicts, some of them may very well be resolved through local remedies. So local jurisdictions and local political options are not to be seen as mere steps incomplying with the exhaustion of local remedies rule, in order to access international instances. Indeed, much of the effort of unions and workers rights organi-

²⁸ The concept of hybrids is borrowed from Néstor García Canclini's work on Latin-American cultural studies, especially the hybrid of popular culture with traditional folklore. See NÉSTOR GARCÍA CANCLINI ET AL., *HYBRID CULTURES: STRATEGIES FOR ENTERING AND LEAVING MODERNITY* (University of Minnesota Press 2001) (1990).

zations has to be targeted on reforms on local labor justice, but transnational efforts can very well blended in an effective strategy towards such goals. Also, it is important not to reduce Mexican labor legislation and legal institutions into a “failed law” discourse that would only lead to backward reforms pressured not only by the Mexican oligarchy, but also by transnational and US based corporate pressure.²⁹

CONCLUSION

Territories and spaces in which law is created, interpreted, and enforced may present other alternatives for progressive movements when these spaces are reconfigured. The crisis of modernity through hegemonic globalization has opened new windows of interpreting not only legal production but also of the relationship between social movements and these spaces. To constrain legal analysis to formal spaces will only limit the possibility to gain new ground for alternative conceptions of law. In the case of Mexico, the dominance of the main political parties, allied with strong corporate interest, has almost controlled all formally recognized territories for legal production and interpretation. This limits considerably the option of law as a way of recognizing and promoting social change. An ingenious way of avoiding these constrictions is a reconstruction of spaces through informal channels.

²⁹See Jorge L. Esquirol, *The Failed Law of Latin America*, 56 AM. J. COMP. L. 76, 119 (2008) (asserting that a strong protection for workers in Mexican Law and other Latin American countries is attacked by a hegemonic Law and Development conception as contrary to growth and rigid).