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**THREE METAPHORS FOR A NEW CONCEPTION
OF LAW: THE FRONTIER, THE BAROQUE
AND THE SOUTH**

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We are entering a period of paradigmatic transition. From the paradigm of modernity we have come to a new paradigm which by now can only be defined inadequately. The inevitability of such inadequacy lends to the name of postmodernity its grain of truth. Periods of paradigmatic transition are periods of fierce competition among rival epistemologies and knowledges. They are, therefore, periods of radical thinking both deconstructive and reconstructive thinking. When viewed from the old outgoing paradigm, they are periods of unthinking or of utopia. When viewed from the new, incoming paradigm, they are periods of temporary and fragile scaffoldings, emergent ruins sustaining nothing but themselves, witnessing nothing but the future. In periods of paradigmatic transition, all competing knowledges reveal themselves as rhetorical in nature, bundles of arguments and of premises of argumentation which circulate inside rhetorical audiences. Indeed, what distinguishes the audiences are the specific arguments and premises of argumentation that they consider valid and convincing or persuasive. In the specific paradigmatic transition we are now entering, any given discipline, be it sociology of law or archeology, tends to be constituted by a larger or smaller number of rival rhetorical audiences. The level of real communication among them is very low and

* In this condensed form, this paper was the Luncheon Address presented to the *Law & Society Conference*, June 1-4, 1995, Toronto. It is an adapted and simplified version of Chapter VIII of *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (New York: Routledge, 1995).

whatever they do in common — books, journals and conferences — has much more to do with the dominant institutional production of knowledge than with the knowledge produced. In the early stages of the paradigmatic transition, such as the one we are in now, the most fundamental cleavage is between the audiences that deny the very existence of the paradigmatic transition — these we may call the subparadigmatic audiences — and the audiences that assume the existence of such transition. The latter I call the paradigmatic audiences¹. I would imagine that in this room we have both types of audiences. My argument, being a paradigmatic one, will no doubt be unequally convincing for the different audiences present here today; as such, it will contribute to confirming the different audiences in their differences.

My argument is constituted by three arguments. The first argument runs as follows. The paradigm of modernity is an ambitious and revolutionary socio-cultural paradigm which evolves from the sixteenth century on in Europe, to be imposed, almost always by violence, upon other regions of the world in the subsequent centuries. It is based on a dynamic equilibrium between social regulation and social emancipation brought about by a new conception of rationality. Alternative modes of conceiving regulation and emancipation in Europe and elsewhere were thereby discredited, both by the destruction of the knowledges upon which they were grounded (by epistemicide, that is) and by the oppression and, in extreme cases, genocide of the social groups whose practices sustained such knowledges.

From the mid-nineteenth century on, modern science was entrusted with the fulfillment of the equation regulation/emancipation in an ever widening range of social fields. Even politics became a provisional social field of less-than-optimal solutions for problems that could only be adequately solved once transformed into scientific, technical problems. Since the scientific management of society was a long-run

¹ The contrast between paradigmatic and subparadigmatic audiences is today most visible in the debate on the nature of the "globalization process". On the distinction between paradigmatic and subparadigmatic audiences see Santos, 1995: 258-262.

project, in the short-run the centrality of modern science required the subordinate but equally central participation of modern law. As long as the scientific depoliticization of social life was not completed, social rebellion and social conflict were to be controlled by their conversion into juridical problems for which juridical (non-political) solutions were provided. Legal management of society became thus a second order and provisional form of rational management of society. In order to perform this role adequately, law was reduced to a state prerogative and became itself scientific: from the German pandect and the codification movement, to Kelsen's pure theory of law, legal positivism and autopoiesis.

This cooperative relationship and circulation of meaning between science and law under the aegis of science, is one of the basic features of modernity. In my view, therefore Foucault overstates the mutual incompatibility of juridical power and disciplinary power and overlooks the deep interpenetrations between them².

My second argument is that the paradigm of modernity is undergoing a deep and irreversible crisis. Having exhausted its possibilities of renovation, its continuing prevalence as the dominant paradigm is due to historical inertia. The clearest symptom of such an exhaustion is the impossibility of thinking social regulation and social emancipation consistently within this paradigm. We are witnessing today a

² Foucault is rather confusing about the relationships between juridical power and disciplinary power. The following are some of the relationships 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. (Foucault, 1976, 1977, 1980). In my view, both the presentation of normative claims as scientific claims and the presentation of scientific claims as normative claims are endemic in the paradigm of modernity. Giambattista Vico saw this very early on (1725) and better than anyone else (Vico, 1961: 20).

generalized crisis of social regulation which, far from being confronted by the strengthening of emancipatory practices, reproduces itself by and through an equally generalized crisis of social emancipation. The collapse of emancipation into regulation symbolizes the exhaustion of the paradigm of modernity.

The crisis of the paradigm of modernity implies the crisis of modern science and indeed the paradigmatic transition is today most visible and consensual at the epistemological level. The idea that there is a scientific technological solution for all our problems is being ever more widely recognized as our most fundamental problem. But because of the historical complicity of modern law with modern science in the collapsing of emancipation into regulation, the paradigmatic crisis of modern science necessarily entails the crisis of modern law. The major symptom of this crisis is that, once deprived of its emancipatory antidote, the general crisis of legal regulation has become another form of excessive regulation. Legal despotism presents itself as legal anarchy³.

These are the fundamental problems we are confronted with at the end of the century. In 1841, Charles Fourier, the great utopian thinker, launched an attack against social scientists — whom he called "the philosophers of the uncertain sciences" — for systematically neglecting the fundamental problems of the sciences they deal with. "When dealing with administration", says Fourier:

They fail to consider the means of accomplishing the administrative unity of the globe, without which empires will never have permanent order or guaranty of future, ... dealing with morals, they forget to recognize and demand the rights of women, whose oppression undermines the basis of justice, ... dealing with human rights, they forget to recognize the right to

³ An analysis of the paradigm of modern law and modern science and of its crisis can be read in Santos, 1995: 1-109.

work, which is actually not possible in the present society but without which all the other rights are useless (1967: 181).

Fourier's conclusion is that social scientists have the "odd property", the "*étourderie méthodique*" of neglecting precisely the fundamental problems, the primordial questions.

One hundred and fifty years later, the reasons and examples invoked by Fourier are still so convincing that it seems appropriate to ask if the situation has since changed significantly at all. Could it be that the social sciences are today better equipped to deal with the fundamental problems or, on the contrary, are they still forgetting them systematically? Are the social sciences today more or less "uncertain" than one hundred and fifty years ago?

In my view, the uncertainty of social sciences has increased since Fourier's time. By mid-nineteenth century Fourier still believed that the uncertainty of the social sciences would come to an end if they adopted the patterns of the "certain" knowledge of the natural sciences. This epistemological optimism has been defeated by the social experience of the last one hundred and fifty years. Natural sciences have themselves become uncertain sciences. In a sense, our fundamental problems are more fundamental than Fourier's. At least, Fourier was certain that the future was on his side.

"The future is no longer what it used to be," says a graffito on a wall in Buenos Aires. To be sure, the future promised by modernity has no future. The great majority of people in the periphery of the world system no longer believe in it, for in its name they have lost other futures, perhaps less bright and closer to their past, but at least capable of guaranteeing the communitarian subsistence which seems so precarious today. Nor do large sectors of people in core countries believe in the future either, because the risks the future involves begin to appear more unlimited even than the future itself.

My third argument is that we must reinvent the future by opening up a new horizon of possibilities mapped out by new radical alternatives. Merely to criticize the dominant paradigm, though crucial, is not enough. We must also define the emergent paradigm, this being the really important and difficult task. It is a difficult task because modernity has a peculiar way of combining the greatness of the future with its miniaturization by classifying and fragmenting the great objectives of infinite progress into technical solutions whose main characteristic is being credible beyond what is technically warranted. That is why such solutions do not encourage us to think of the future, even when they have long stopped thinking of it themselves.

What is to be done, then? The only route, it seems to me, is utopia. By utopia I mean using the imagination to explore new modes of human possibility and styles of will and to oppose the necessity of what exists on behalf of something radically better that is worth fighting for, and to which humanity is fully entitled. Utopian thinking calls attention to what does not exist as being the integral, if silenced, (counter)part of what does exist; that is to say, that which is part of a particular epoch by the way it stands apart from it. On the borderline between inside and outside, utopia is as much possessed of *Zeitgeist* as of *Weltschmerz*.

Our century has been relatively poor in utopian thinking: as if utopia had been made obsolete by the progress of science and the subsequent global rationalization of social life⁴. However, our current loss of epistemological trust in modern science forces us to interrogate this explanation. Could it be that the death of the future, which we so deeply fear today, has been long announced by the death of utopia? Sartre said once that before it is realized, an idea bears a strange resemblance to utopia.

⁴ Nonetheless, utopia has remained an important undercurrent of modern thought in our century, particularly in the case of the feminist utopianism in the form of science fiction. See Sargent, 1974, 1976, 1978. See also Piercy, 1976; Moylan, 1986. For a fascinating account of the feminist designs of domestic work (collectivized domestic workplace, cooperative housekeeping, kitchenless houses) in the nineteenth and early twentieth century, see Hayden, 1981.

The two conditions of utopia are a new epistemology and a new psychology. As a new epistemology, utopia refuses the closure of the horizons and offers alternatives; as a new psychology, utopia refuses the subjectivity of conformity and creates the will to struggle for alternatives. As Cassirer (1960, 1963) and, more recently, Toulmin (1990) have shown in the cases of the Renaissance and the Enlightenment, a paradigmatic transition always implies a new epistemology and a new psychology. Utopian thinking has thus a double purpose: to reinvent maps of social emancipation and subjectivities with the capacity and desire for using them. No paradigmatic transformation of modern law would be possible without an utopian legal subjectivity. From the law-abiding citizen to the law-inventing citizen.

What I am about to propose is not strictly speaking a utopia. Let me call it a heterotopia. Rather than the invention of a place elsewhere or nowhere, I propose a radical displacement within the same place: our own place. From orthotopia to heterotopia, from the center to the margin. The purpose of this displacement is to allow for a telescopic vision of the center and a microscopic vision of what the center is led to reject in order to reproduce its credibility as the center. The aim is to experiment with the frontiers of sociability as a form of sociability.

The construction of oppositional postmodern subjectivities competent enough to face the forthcoming paradigmatic competitions and willing to explore the emancipatory possibilities opened up by them, must be guided, to my mind, by three major *topoi* or metaphors: the frontier, the baroque, and the South. In the following, I will deal with each one of them separately⁵. As much as modern subjectivity longs for ever more modern science and modern law, no matter how blatantly they have betrayed their promises, the emergent postmodern subjectivities long for ever more frontier knowledge and frontier law, baroque knowledge and baroque law, southern knowledge and southern law, no matter how unconvincing they are at first in their capacity to deliver a better future.

⁵ For a much more detailed presentation of these metaphors, see Santos, 1995: 489-519.

The frontier

The emergent subjectivity enjoys living in the frontier. In a period of paradigmatic transition and competition, the frontier appears to be a privileged form of sociability. It is up to the new subjectivity to make itself at home in the frontier. The main features of life in the frontier are: very selective and instrumental use of the traditions brought to the frontier by pioneers and emigrants; invention of new forms of sociability; weak hierarchies; plurality of powers and juridical orders; fluidity of social relations; promiscuity of strangers and intimates; mixes of heritages and inventions. I resort to historians of frontier life and sociability — mainly to Cronon, Miles and Gitlin (1992) in their recent critical reappraisal of Turner's view of the American West — in order to clarify what I mean by living in the frontier. I use their scholarship in a frontier-like fashion, that is to say, very selectively and instrumentally. The historical bias of their concrete descriptions I shall not consider here. I am solely interested in building an ideal-type of frontier sociability.

To live in the frontier is to live in abeyance, in an empty space, in a time between times. The novelty of the situation subverts all plans and predictions. Tradition must, therefore, be imagined to become what you need. To live in the frontier means to turn the world into a personal question, bearing a kind of personal responsibility that creates a total transparency of actions and consequences. In the frontier, you live off the feeling that you are sharing in the creation of a new world. The construction of frontier identities is always slow, precarious and difficult; it depends on very scarce resources, given the great distance between the frontier and the center, be it the center of power, law or knowledge. Frontier people divide their loyalty among different sources of power, and apply their energy in different forms of struggle against powers. They thus promote the existence of multiple sources of authority. I quote from Cronon, Miles and Gitlin:

North American frontiers were classically areas where the authority of the state was weak, where law was either the result of customary practice or makeshift invention (1992: 16).

The frontier is grossly delimited as a space, physically and mentally, and inadequately chartered. To live in the frontier means to live outside the fortress, to acknowledge in difference opportunities for mutual enrichment, and to acquire instant heritages.

Frontier sociability is also, in a sense, the frontier of sociability. Hence its great complexity and precariousness. It is grounded on limits, as well as on a constant transgression of limits. In the frontier we are all undocumented migrant workers or asylum seekers, so to speak. The immediate character of social relations, the vertigo of ahistoricity and the superficiality of roots render precious the connections that it is possible to establish in the frontier, precious precisely because of their rarity, precariousness and vital usefulness.

Though it has some resemblance to exile, the frontier is not exile. Said says that "The pathos of exile is that homecoming is out of the question." (1990: 361) Tormented by exile, and particularly by the internal exile to which he deemed himself doomed by World War II, Adorno remarked in his *Minima Moralia* that "it is part of morality not to be at home in one's home" (1985: 39). As far as the frontier is concerned, the presence of the center is not so strong as to distinguish clearly between those that are at home and those that are not, as is typical of exile situations. On the contrary, the frontier is promiscuous. While it hyper-territorializes the external limits vis a vis the excluded other, the frontier also deterritorializes the internal spaces of interaction and excels in being a home for those who live in it. Thus, frontier life follows Adorno's dictum, but complements it with another one: *the other part of morality is to be at home in what is not one's home.*

To live in the frontier is to live in the margins without living a marginal life. Reflecting on her experience as an African-American living in a small Kentucky town, bell hooks provides us with precious information about the phenomenology of life in the margin:

Living as we did — on the edge — we developed a particular way of seeing reality. We looked both from the outside in and from the inside out. We focused our attention on the center as well as on the margin. We understood both (1990: 341).

By displacing the center, frontier subjectivity is in a better position to understand the oppression that the center reproduces and hides by means of hegemonic strategies. The relative acentrism of frontier life results from a constant resetting of limits: experiencing limits without suffering them.

The baroque

The subjectivity of the paradigmatic transition is also a baroque subjectivity. Given the various semantic contexts in which the term baroque is used in contemporary discourse, I would like to be precise in my own use of it here. I am not using baroque as designating a postclassic style in art and architecture⁶, nor as identifying an historical epoch, the seventeenth century in Europe⁷, nor to designate the cultural ethos of some Latin American countries⁸. Again, as with my use of the concept of the frontier, I use baroque as a cultural metaphor, to signify a form of subjectivity and sociability. Whether as an artistic style or as an historical epoch, the

⁶ See, among many others, Wölfflin, 1979; Manrique, 1981. For a broader view of the baroque aesthetics, see Buci-Glucksmann, 1984; Hatherly, *et al.*, 1990.

⁷ See, for instance, Maravall, 1990; Roy and Tamen, 1990.

⁸ The debate on the baroque cultural ethos is particularly interesting in Mexico and Brazil. Echeverria *et al.* 1991-1993; Pastor *et al.*, 1993; Barrios, 1993; Coutinho, 1968, 1990; Ribeiro, 1990.

baroque is essentially an eccentric form of modernity. Its eccentricity derives, to a large extent, from the fact that it occurred in countries and historical moments in which the center of power was weak and tried to hide its weakness by dramatizing conformist sociability.

The relative lack of central power endows the baroque with an open-ended and unfinished character that allows for the autonomy and creativity of margins and peripheries. Because of its eccentricity and exaggeration, the center reproduces itself as if it were a margin. I mean a centrifugal imagination which becomes stronger as we go from the internal peripheries of the European power to its external peripheries in Latin America. From the seventeenth century onwards, the colonies were more or less left alone, a marginalization that made possible a specific cultural and social creativity, now highly codified, now chaotic, now erudite, now vernacular, now official, now illegal. Such *mestizaje* is so deeply rooted in the social practices of these countries that it came to be considered as grounding a cultural ethos that is typically Latin-American and has prevailed since the seventeenth century until today. I am interested in this form of baroque because, inasmuch as it is the manifestation of an extreme instance of the center's weakness, it constitutes a privileged field for the development of a centrifugal, subversive and blasphemous imagination. Because it takes shape in the furthest margins, the baroque becomes surprisingly congruent with the frontier.

Baroque subjectivity lives comfortably with the temporary suspension of order and canons. It depends on the exhaustion of canons. Because it is unable to plan its own repetition *ad infinitum*, baroque subjectivity invests in the local. But the local is not lived in a localist fashion as an orthotopia; it rather aspires to inventing another place, a heterotopia. Since it derives from a deep feeling of emptiness and disorientation caused by the exhaustion of the dominant canons, the comfort provided by the local is not the comfort of rest, but a sense of direction. As Wölfflin has taught us: "In contrast to Renaissance, which sought permanence and repose in

everything, the baroque had from the first a definite *sense of direction*" (1979: 58). For the same reason, baroque subjectivity is contemporaneous with all the elements that it integrates, and hence contemptuous of modernist evolutionism. Thus, we might say, baroque temporality is the temporality of interruption. Interruption allows for self-reflexivity. Without self-reflexivity, in a desert of canons the desert itself becomes canonical. Interruption is also suspension. By momentarily suspending itself, baroque subjectivity intensifies the will and arouses the passion.

Baroque subjectivity suspects the distinction between appearance and reality upon which modern science is grounded, mainly because this distinction hides hierarchization. Against such authoritarianism, which tends to label as appearance all practices that are not adequately knowable by hegemonic knowledge, baroque subjectivity privileges appearance, as a transitory and compensatory measure. In this respect it follows closely the lesson of German poet Friedrich Schiller, who speaks so eloquently of aesthetic appearance (*das aesthetische Schein*) in his letters *On the Aesthetic Education of Man*, published in 1795 (1967).

As regards baroque subjectivity, forms are the exercise of freedom *par excellence*. They are to be treated with extreme seriousness, though the extremism may result in the destruction of the forms themselves. The reason why Michelangelo is rightly considered one of the forefather's of the baroque is, according to Wölfflin, "because he treated forms with a violence, a terrible seriousness which could only find expression in formlessness" (1979: 82). This is what Michelangelo's contemporaries called *terribilità*.

The same extremism that produces forms, also devours them. This voracity takes on two forms: *sfumato* and *mestizaje*. In baroque painting, *sfumato* is the blurring of outlines and colors amongst objects, as clouds and mountains or the sea and the sky. *Sfumato* allows baroque subjectivity to create the near and the familiar among different intelligibilities, thus making cross-cultural dialogues possible and desirable. For instance, only resorting to *sfumato* is it possible to give multicultural

form to the dignity of human community in terms of Western (human rights), Hindu (dharma), and Islamic (umma) concepts at the same time⁹. *Sfumato* is, in sum, an anti-fortress militancy.

Mestizaje, in its turn, is a way of pushing *sfumato* to its utmost, or extreme. While *sfumato* operates through disintegration of forms and retrieval of fragments, *mestizaje* operates through the creation of new forms of constellations of meaning, which are truly unrecognizable or blasphemous in light of their constitutive fragments.

The extremism with which forms are lived by baroque subjectivity stresses the rhetorical artifactuality of practices, discourses, and modes of intelligibility. Through artifice, baroque subjectivity is ludic and subversive at one time, as the baroque feast so well illustrates.

The importance of the feast in baroque culture, both in Europe and in Latin America, is well documented¹⁰. The feast turned baroque culture into the first instance of mass culture of modernity. Its ostentatious and celebratory character was used by political and ecclesiastical power to dramatize their greatness and reinforce their control over the masses. What is important is to excavate from the baroque feast its emancipatory potential. Such potential resides in *disproportion, laughter* and *subversion*.

The baroque feast is out of proportion. Disproportion makes possible playful distance and laughter. Because laughter is not easily codifiable, capitalist modernity declared war on mirth and so laughter was considered frivolous, improper, eccentric, if not blasphemous. It was to be admitted only in highly codified contexts of the entertainment industry. The banishment of laughter and play is part of what Max

⁹ On a multicultural conception of human rights bringing together Western, Hindu and Islamic cultural forms, see Santos, 1995: 327-365.

¹⁰ 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 Fouriérism and "société festive" see Desroche, 1975.

Weber calls the *Entzäuberung* of the modern world. Emancipation cannot do away with the carnivalization of emancipatory social practices and the eroticism of laughter and play. The carnivalization of emancipatory social practice has an important self-reflexive dimension: it makes possible the decanonization and subversion of such practices. A decanonizing practice which does not know how to decanonize itself, falls easily into orthodoxy. Likewise, a subversive activity which does not know how to subvert itself, falls easily into regulatory routine.

The third emancipatory feature of the baroque feast is subversion. By carnivalizing social practices, the baroque feast displays a subversive potential that increases to the extent that the feast distances itself from the centers of power, and is always there, even when the centers of power themselves are the promoters of the feast. The Mexican anthropologist Garcia de Leon describes the subversive dimension of baroque feasts and religious processions in the Mexican port of Vera Cruz in the seventeenth century¹¹. Up front marched the highest dignitaries of the viceroyalty in their full regalia — politicians, clergymen and military men; at the end of the procession followed the populace, mimicking their betters in gesture and attire, and thus provoking laughter and merriment among the spectators. This symmetrical inversion of the beginning and end of the procession is a cultural metaphor for the upside-down world — *el mundo al revés* — which was typical of Vera Cruz sociability at the time.

All these characteristics turn the sociability generated by baroque subjectivity into a sub-codified sociability: somewhat chaotic, inspired by a centrifugal imagination, positioned between despair and vertigo, this is a kind of sociability that celebrates revolt and revolutionizes celebration.

¹¹ Leon, 1993. Processions were, as Maravall duly stresses, a privileged instrument of massification of baroque culture (1990, p. 507).

The South

The third *topos* I propose for the constitution of the subjectivity of the paradigmatic transition is the South. Like the frontier and the baroque, the South is here being used as a cultural metaphor. Just like the East, the South is a product of the empire. As a founding metaphor of emergent subjectivity, therefore, the South is here conceived as expressing all forms of subordination brought about by the capitalist world system: exploitation, expropriation, suppression, silencing, unequal differentiation, and so on. The South is spread out, though unequally distributed, all over the world, including the North and the West. The South signifies the form of human suffering caused by capitalist modernity.

Emergent subjectivity is a subjectivity of the South and flourishes in the South. Given the asymmetries of the world system, however, the constitution of a subjectivity of the South varies according to the regions of the world system in which it occurs. Thus, in core countries, it involves the defamiliarization vis-à-vis the imperial North. This process of defamiliarization is a very difficult one because the North has no memory of itself as other than imperial. Let me illustrate this difficulty with the example of Jürgen Habermas. When he was asked if his theory could be of any use to the socialist forces in the Third World and if, on the other hand, such forces could in turn be of any use to democratic socialist struggles in advanced countries, Habermas replied: "I am tempted to say 'no' in both cases. I am aware of the fact that this is a Eurocentric limited view. I would rather pass the question" (1985: 104). What this reply means is that Habermas' communicative rationality, in spite of its pretence of universality, starts out by excluding about 4/5 of the world population from participation in discourse.

Because of its difficulty, the critique of the imperial relation must proceed by phases. First of all, it is necessary to learn that there is a South that is to understand the imperial relation as imperial, as constituted by aggressors and victims. Second, it is necessary to learn to go south, meaning to side with the victim. Finally, it is

necessary to learn from the South, meaning to stop siding with the victim to become the victim.

While Habermas is a good example of the failure to construct a subjectivity of the South in the North of the world system, Noam Chomsky is a good example of how such a construction is possible¹². With Chomsky we take the first two steps: we learn that the South exists; we learn to go south. However, with the exception of anarchism, Chomsky pays little attention to the eccentric, peripheral traditions suppressed by Western modernity and no attention at all to knowledge produced in the South from a non-imperial standpoint. In other words, with Chomsky we do not learn how to learn from the South.

In order to learn from the South we must first of all let the South speak up, for what best identifies the South is the fact that it has been silenced. Because the epistemicide undertaken by the North was almost always accompanied by linguacide, the South was doubly excluded from discourse: both because it was supposed to have nothing to say and nothing (no language) to say it in. The construction of the subjectivity of the South is not easier in the South than in the North. As a product of empire, the South is the house of the South where the South is not at home. That is to say, the construction of the subjectivity of the South must also undergo a process of defamiliarization both vis-à-vis the imperial North and the imperial South.

One of the most distinguished masters for this process of learning with the South is Gandhi. Gandhi symbolizes the most radical rejection of the imperial North in our century. In 1909 he addressed the English colonialist like this:

We hold the civilization that you support to be the reverse of civilization. We consider your schools and law courts useless. We want our own ancient schools and courts to be restored (1956: 118).

¹² Among many other titles, Chomsky, 1969, 1982, 1985, 1987, 1988, 1989.

In Gandhi, defamiliarization vis-à-vis the imperial North is likewise defamiliarization vis-à-vis the imperial South. Speaking in 1938 about the practice of Satyagraha, Gandhi adverts: "Non-cooperation being a movement of purification is bringing to the surface all our weaknesses". (1951: 80) Gandhi's emancipatory aspiration is explicitly based on a diatopical hermeneutics, that is, an exacting interrogation of his own Hindu culture in order to learn how to engage in dialogue with other cultures with the greatest discursive tolerance, and recognize that other cultures also have similar emancipatory aspirations:

Non violence is therefore in its active form good will towards all life. It is pure love. I read it in the Hindu scriptures, in the Bible, in the Koran (1951: 77).

The subjectivity of the South constitutes the moment of solidarity in the construction of a topic for emancipation: The construction of a circle of reciprocity much vaster than that proposed by modernity, that is, a *Sorge* that cannot fail to be local and transnational, immediate and intergenerational at the same time. The path towards a non-imperial South has three main moments: the moments of rebellion, human suffering, and the continuity of victim and aggressor.

The *moment of rebellion* is when imperial order is destroyed, at least momentarily, and gives way to chaos. Conventional social sciences which constituted themselves upon and thrived on the imperial relation, do not provide a convincing analysis of moments of rebellion. For that we must look elsewhere, for example, at the giant collection of studies on Indian society gathered by Ranajit Guha in the several volumes of *Subaltern Studies* (1984-1989).

The *moment of human suffering* is the moment of contradiction between the life experience of the South and the idea of a decent life. It is a crucial moment because hegemonic domination lies primarily either in the occultation of human suffering or, whenever that is not possible, in its naturalization as a fatality or its trivialization as

showbusiness. The identification of human suffering requires, therefore, a great investment in oppositional representation and imagination.

As to *the moment of continuity of oppressor and victim*, nobody — not even Hegel — has ever formulated it better than Gandhi, when he clearly stressed that any system of domination brutalizes both the victim and the oppressor, and that the oppressor also needs to be liberated.

The *topoi* of the frontier, baroque and South preside over the reinvention of a subjectivity capable of and willing to explore the emancipatory potentialities of the paradigmatic transition. None of these three *topoi* guarantees, by itself, the creation of a topic for emancipation. On the contrary, each *topos* separately may sanction eccentric forms of regulation which in turn may contribute to discrediting the emancipatory projects and liquidating the will to emancipation. Left to itself, the *topos* of the frontier may give rise to a libertine subjectivity and sociability indulging in destructive creativities which, rather than making possible new forms of solidarities, opens new spaces for colonialism. This is, for instance, the case of extreme right militias. Likewise, left to itself, the *topos* of the baroque may be the source of manipulative forms of subjectivity and sociability prone to resort to artifice and extremism in order to excite the passions and promote acritical adherence to forms of colonialism disguised as solidarity. This is, for instance, the case of liberal democracy and human rights as political conditionalities imposed by the World Bank and the IMF. Finally, the *topos* of the South may result in putschistic and authoritarian subjectivities which, in their efforts to abolish colonialism, end up abolishing the possibilities of solidarity as well. This is, for instance, the case of some forms of Southern fundamentalism.

Emergent subjectivity and sociability are, thus, constellations of these three *topoi* and only as such will they be emancipatory. By the same token, modern law will only be successfully confronted in the paradigmatic transition by constellations of emergent frontier, baroque and Southern legality. Taken separately, each one of

these alternative legalities runs the risk of reproducing the collapse of emancipation into regulation, that is to say, of being coopted by the modernist canon.

It is characteristic of the paradigmatic transition we are now entering that, though constrained to formulate our fundamental problems in modern terms, we are aware that they are not to be solved by modern solutions. In this disjuncture lies our hope.

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