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# The Resilience of Abyssal Exclusions in Our Societies: Toward a Post-Abyssal Law

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### Abstract

At a time in which we are going through the ruins of two models of social transformation – social revolution and social reformism –, I identify a radical division between metropolitan and colonial social relations. I describe and denounce what I call an ‘abyssal line’ between these two realities. The difference between the two sides is that on the metropolitan side we can claim rights, as we are fully human. Conversely, on the colonial side, exclusion is abyssal, people are sub-human, and therefore have no rights. To denounce this abyssal exclusion, we should learn other types of knowledge that allow us to produce radical diagnoses of our societies. We should become more aware of the diversity of social experience in the world, an experience of untold and repugnantly unjust suffering, but also of neglected creativity and innovation. We should develop a law of common goods, democratic pluralism, interculturality, and dignity.

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## Keywords

Europe – post-abysal law – critical legal theories – democracy – abyssal line – sociology of law – dignity

### 1 Introduction

I just finished a large European Research Council (ERC) grant project entitled *ALICE, Strange Mirrors, Unsuspected Lessons: Leading Europe to a New Way of Sharing the World Experiences*.<sup>1</sup> The objective of this research is to develop new theoretical and political paradigms of social transformation. Throughout Europe and the Global North as a whole, there is a sentiment of intellectual and political exhaustion. After five centuries of providing solutions for the world, Europe seems incapable of solving its own problems. It should learn from the experiences of the Global South but, unfortunately, colonial prejudice still prevails in Europe, to such an extent, that Europe does not feel it could learn anything from the outside world. After all, Europeans consider themselves more developed; they have solved all the problems others are still wrestling with, and therefore nothing useful can come from there. This prevents Europe from learning from the world, which is today a fascinating field of innovation, alternatives, and creativity, which does not reach either our news or our universities. It does not reach our theories either because our theories are sometimes part of an epistemology of blindness,<sup>2</sup> in that they allow us to see certain things but blind us from seeing other things. The unseen things could be valuable but we do not have the adequate lenses to see them.

My inquiry starts at the beginning of 20th century when there was a huge social question in Europe. Europe was in turmoil; social conflicts, prostitution, delinquency, disease, sanitary problems, peasants expelled from their land and immigrating to the cities that did not have the capacity to house them. This set of problems caused by the first industrial revolution came to be called ‘the social question’ at that time when there was not much scientific knowledge to deal with these issues. At the end of the 19th and the beginning of the 20th century, we were only just starting with the social sciences, which actually were

1 It may be consulted in <<http://alice.ces.uc.pt/en/>> accessed 4 June 2017.

2 I develop this concept in ‘Toward an Epistemology of Blindness: Why the New Forms of “Cerimonial Adequacy” Neither Regulate Nor Emancipate’, chapter 5 of my book, Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Abingdon: Routledge 2014), 118–135.

developed in Europe to address the said social question. That was the main impetus behind the development of the social sciences.

## 2 Revolution and Reformism

The knowledge that was going to be developed then was aimed at consolidating two major forms of social transformation. The industrial revolution had happened around 1830 and we were living with the consequences of that revolution. But it was a kind of upward-looking time, a time of hope in the midst of fear. As you may remember, Spinoza had claimed two centuries before that our lives are run by two basic affects or emotions: fear and hope.<sup>3</sup> According to him there should be an equilibrium between the two because hope without fear creates voluntarism and sometimes disaster. Conversely, fear without hope takes us into paralysis, decadence and probably resignation. At that time, hope probably prevailed over fear in spite of all of the problems of the social question.

However, with different intensity there were in the political agenda two main models of social transformation: revolution and reformism. From the very beginning these camps were divided and splitting the working class movement. On one side, there were the revolutionary forces and the scientific knowledge behind them, namely Marxism. On the other, there were the reformists who thought that through law and liberal democracy the same objective aimed at by revolution could be achieved. It was the idea that the future society would be a socialist society, but there were two ways of reaching that goal: one broke with the current institutions, such as the Russian Revolution, while the other one called for an incremental type of peaceful transformation whereby, through legal and political institutions, basically the same type of society would be brought about. Particularly after the failure of the German revolution (1918–21), the idea came to prevail that revolution was appropriate for less developed countries such as Russia. For more developed countries, however, social transformation, meaning reformism, would be less traumatic. In any case, these were the two models of social transformation.

What happens today? We are at the beginning of 21<sup>st</sup> century, and we are left with no convincing model of progressive social transformation: neither revolution nor reformism. Since the 1980s, when Margaret Thatcher said that

3 More on this in Benedict de Spinoza, *On the Improvement of the Understanding/The Ethics/Correspondence* (RHM Elwes tr, 1<sup>st</sup> edition, Dover Publications 1955), 176 ('There is no hope unmingled with fear, and no fear unmingled with hope').

there is no alternative, Europe has apparently been content to manage current society as 'the end of history'. The two models of social transformation at the beginning of the 20th century were very different and the parties were polarized, but they had something in common. They both shared a faith in science and scientific knowledge as the privileged means to solve social problems. Secondly, they both focused on the idea that social transformation would come about through a centralized state and a uniform system of law. So, one law, one state, one education system, and later on, one healthcare system, and one welfare system.

At the beginning of the twenty-first century the most disturbing thing is that we have accumulated so much knowledge about social transformation and yet it is increasingly difficult to imagine a better society than the current one, even if the current one seems so fatally flawed, promoting unprecedented violence and repugnant social inequality. At the beginning of the 20th century, there was a real lack of scientific knowledge about society. One hundred years later, we know much more, and yet the results are not brilliant. We have so much knowledge about our societies, but this knowledge is apparently useless. The knowledge we developed at universities is not preventing our societies from living under massive forms of false consciousness. Think of the process by which victims turn against victims and oppressed elect their very oppressors into government.

Look at South Africa, where poor South Africans are turning against the immigrants from Nigeria, Mozambique and Zimbabwe. These immigrants, although they have less than 1 percent of the wealth in South Africa, are victims of racism and xenophobia. The white population makes up 8.4 percent of the population and they have 86 percent of the wealth in South-Africa. Victims turning against victims. In the 2016 presidential elections in the United States of America poor white workers turned against the poor Latino workers. In Europe, impoverished middle classes are led to believe that their enemies are the migrant workers and the refugees.

There was a time after WWII when people were almost ashamed of being rich and they would pay very heavy taxes – 70 percent or more – to build a welfare state. Today we live in a world where, according to Oxfam, the eight richest billionaires have as much wealth as the poorest half of all people (about 3.5 billion) in the world. Is this normal, or is it the banalization of horror, the trivialization of abnormality?

I will always remember that, when I was visiting at the London School of Economics in the 1980s, on my way home from school I would see two or three homeless people sleeping on the Strand, I would arrive home and could not

sleep. How was it possible that in such a developed society people would have no house to sleep in at night? On occasion, I would have to take a pill to go to sleep at night, because I was so anxious about the fate of those people. Today, between my house and my office in Madison, Wisconsin I see twenty to forty homeless people out on the streets every day, even when it is  $-2$  and  $-5$  degrees Celsius outside. And I do not take pills anymore in order to be able to sleep while thinking about the fate of these people. Horror has been trivialized. I got accustomed to this and many other people like me probably have too.

Has the knowledge about society that we accumulated over the last century contributed to making us more insensitive to social injustice or more cynical or skeptical about the possibilities of struggling for a better society? Should we develop other types of knowledge that allow us to produce radical diagnoses of our societies, becoming more aware of social experience in the world that is an experience of suffering, but also an experience of creativity and innovation that we are often not aware of?

The ALICE project was precisely about this. We conducted our research in some countries outside Europe, namely Ecuador, Bolivia, Brazil, South Africa, India and Mozambique. Then we compared results with issues in Portugal, Spain, the UK, France and Italy. We tried to understand how we could see realities arising from different continents. Could we learn from each one of them? Could we see the dangers or the possibilities of each one of them? It was a different kind of dialogue, but in order to carry it out we needed a different kind of knowledge. I will start with a radical diagnosis of our time.

### 3 Seven Threats

We live in difficult and unsettling times. The popular classes and oppressed social groups in general are today confronted with seven major threats to their already precarious livelihoods, their human security, and any prospects of a better life that they might still entertain. Such threats are not perceived in the same way or with the same intensity across the world or across social groups. They are not new, but the way they are articulated among themselves is, and in such a way that it creates dramatic levels of social vulnerability, generates institutional turbulence, dramatizes political discourse, and may lead to a *civilizational* crisis if the challenges they pose are not adequately and progressively addressed. They are not necessarily experienced as crises. They are often conceived of as 'the new normal' produced by more visible crises, such as the financial crises, which tend to become permanent and thereby naturalized.

### 3.1 *First Threat: Disfiguring the State*

The first threat is the disfigurement of the state. The modern liberal state was originally organized to serve the interests of the nascent bourgeois class. However, the social struggles of the last one hundred and fifty years have endowed the state's organization with a high level of contradiction and tension. On the one hand, the state secures the reproduction of capital by a wealth of mechanisms – disciplining labor, guaranteeing individual property rights, funding research whose fruits are collected by the enterprises, unfair taxation, economic diplomacy, military interventions, etc. On the other, that same state generates non-mercantile relationships among citizens as concessions resulting from the successes of the popular struggles. Hence the creation of public goods and services, such as public education and health, labor protection and social security legislation, minimum wages, etc. In Europe, the complex interplay of countervailing interests came to crystallize in a specific state form, known as the welfare state, and in a political regime that sustained it, known as social democracy.

This specific form of state organization is currently being disfigured and reconfigured. The objective is to undo the proliferation of non-mercantile relationships by turning them, as much as possible, into mercantile ones. This objective is being pursued by the following means. First, the ideological inculcation of the predatory nature of state action and the inefficiency of state administration and intervention in society. While once, according to the welfare state ideal, a strong state was a precondition for a strong civil society, now a strong civil society, as conceived by neoliberalism, demands a weak state. As a rule, state intervention tends to be seen as an illegitimate encroachment on opportunities for private investment and profitability. Second, the shift from tax-based state action to credit-based state action. In the case of taxation, the state takes an active stance by acting within internal boundaries and exercising sovereignty. In the case of credit, the state depends on creditors and has no sovereign prerogative (as we have seen recently with the crisis of the 'sovereign' debt of some European countries; for well-known reasons, the USA is exempted). Through consumer credit and privatization of the pension system, citizens become equally dependent on creditors, most particularly in the case of homeowners, constantly threatened by foreclosures, and of indebted students, education funding having shifted from grants to loans. Third, the demonization of the idea of collective responsibility for collective problems and its replacement by the idea of personal guilt or failure in the management of individual problems. Finally, the conversion of concerns for human security (freedom from fear and want) into concerns for national security and the replacement of welfare policies with vigilance or surveillance policies. The

principle of the state surrenders to the principle of the market granting the latter priority to organize social relations both outside and inside the state.

### 3.2 *Second Threat: Hollowing Out Democracy*

The second threat is the hollowing out of democracy. Modern liberal democracy is about rights, representation, and participation. Upon these pillars and the social struggles they made possible, democracy was at the core of the contradictory organization of the state mentioned above. In general, it was through struggles for more democracy that the state became a contested field, and a tension between democracy and capitalism emerged. A limited tension, however, since liberal democracy yielded to capitalism at crucial moments, as dramatically illustrated in European history during the last century. The difference between liberal and neoliberal democracy is that the latter is hostile to any kind of progressive social redistribution, that is to say, distribution in favor of the popular classes. On the contrary, regressive social redistribution, meaning accumulation of wealth and exponential growth of social inequality, is fine. As a result, a massive attack against social and economic rights has been going on for the past thirty years. As the attack on socio-economic rights deepens, the metanarrative of the social contract is replaced by the metanarrative of the individual contract. As enormous power and wealth differences separate (and bring together) the parties in the contract, the least powerful party tends to be at the mercy of the whims of the more powerful party and must surrender to its conditions, just like countries in the global South have surrendered to the IMF's and World Bank's conditions. The formal rule of the equality of the parties is undermined more than ever in the modern period by the informal rule of the veto power of the more powerful over the life chances of the less powerful. I call this social condition social fascism and submit that, as long as the rules of neoliberalism are undeterred by strong and credible countervailing forces, we will live in societies that are politically democratic and socially fascistic. Contrary to historical fascism, it is not the state that is fascistic; fascistic are the forms of sociability based on inequality and discrimination that the state fails to address effectively, or is actively complicit with. With the financial crisis, a new state of exception emerges whose repressive apparatus targets not only 'dangerous terrorists' and 'illegals' (undocumented migrant workers) but also law-abiding citizens, preying on their rights, salaries, and pensions.

### 3.3 *Third Threat: Destroying Nature*

The third threat is the destruction of nature. In historical terms, this is the threat that only most recently has appeared as a serious one. For many, it is now the most serious one and the one that manifests itself most globally and

randomly in the world, even if the ways of dealing with its dramatic manifestations (extreme events) varies widely. For the first time in history, capitalist development is seriously affecting the capacity of nature to restore its vital cycles, thus reaching ecological limits that are considered by independent and UN experts and commissions as constituting red lines beyond which the damage is irreversible and the life on earth is at risk. This threat illustrates most clearly the contradictory time frames of social action in our societies, which seem to be torn apart between two extreme temporalities: the temporality of urgency and the temporality of paradigmatic change, the former calling for immediate action, since tomorrow may be too late, the latter calling for changes of production and consumption, of social relations and conceptions of nature that will most likely take several generations to occur. As none of these temporalities coincides with the temporality that dominates democratic political action (the electoral cycle), and as neoliberal *extractivist* capitalism is more voracious of natural resources today than ever before, the destruction of nature seems to go on as unstoppable, being trivialized by public cynicism and denial or by pseudo-remedies, as in the case of green capitalism.

#### 3.4 *Fourth Threat: Devaluing Labor*

The fourth threat is the devaluation of labor. The historical struggles of the working classes for the right to work and labor rights were one of the main avenues through which the popular classes gained access to citizenship and got involved in the democratic processes. This is probably the area that shows most clearly the tense articulations among the three principles of modern regulation: the state, the market, and the community.<sup>4</sup> Through state intervention, often in the aftermath of social turmoil, the individual contract between worker and employer in a market without any specificity, the labor power market, was gradually conditioned by the social contract among social classes regulated by the state. Labor power was thus considered as a special commodity comprising important non-mercantile components. The community was left with the task of reproducing the labor power mainly through unpaid labor, carried out in most part by women. The regulation of the labor market and the workers' rights it guaranteed was a political process carried out at the national level. It was the core component of nationally regulated types of capitalism, which therefore differed from country to country. All this started to change with neoliberal globalization, whose main driving impulse was to transform labor power into a global resource while preventing it from becoming a unified

4 On the three pillars of modern social regulation, see Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (Butterworths 2002), 1–5.



global labor market. Gradually, salaried labor is becoming a commodity like any other, work without rights or without conditions to exercise them being the life experience of more and more workers around the world. In the process, two key distinctions of modern societies become more and more entangled: the distinction between paid and unpaid labor and between labor time and free/leisure time. As mentioned above, most of the labor involved in reproducing labor power has been historically unpaid labor and for the most part a burden of women. Today, precariat and cyberiat are blurring the paid/unpaid distinction within productive, supposedly salaried, labor itself. The blurring takes several forms: constant writing of CVs and letters of intention; time spent in interviews often in vain; preparing at home for next day work tasks; 24 hours availability at the employer's requests; non-payment of extra-work, etc. Some of them constitute what has been designated as wage theft.

The other distinction being blurred is the one between labor time and free/leisure time. By different mechanisms, freedom is being taken away from free time: prolonged unemployment and permanent anxiety concerning increasing insecurity of employment; obsession with fitness to perform productive labor well; industrialized leisure in such a way that leisure time is submitted to a rhythm similar to labor time.

### 3.5 *Fifth Threat: Commodifying Knowledge*

For the last thirty years, the relationship between science and capitalism has been changing, and such changes have had a decisive impact on the universities. The nature of knowledge in society has been changing under different designations, such as information and technology revolution, knowledge society, social innovation, entrepreneurship, social return. Rather than serving the long-term objectives of social progress, scientific knowledge is called upon to serve the immediate needs of capitalist accumulation. Hereby the value of knowledge is morphing into the market value of knowledge. In the political economy jargon, the use-value knowledge recedes before its exchange-value. Contradictorily, the public goodness of knowledge resides more and more in its being a private market good. In order to be productively at the service of producing commodities, scientific knowledge must become itself a commodity. In line with this, the university must not only produce skilled labor power for the market but also become a market itself and run as a market enterprise. As this ideology is translated into education and research policies and is internalized by large sectors of the academic community, what started as an external threat to the autonomy of science and university education may soon become an internal second nature. Deprived of adequate public funding, the branches of knowledge without market value and the departments of the

university where they are taught and researched will become dependent on private philanthropy.<sup>5</sup> Moreover, if worse comes to worst, such branches may be overtaken by a new malaise that can be described as patent *sehnsucht* or patent relative deprivation.

### 3.6 *Sixth Threat: Recolonizing Difference*

The sixth threat is the recolonization of difference. Colonial difference was the essence of historical colonialism. As we know, colonial difference has survived the end of historical colonialism and goes on haunting contemporary societies under several forms, such as racism and racial violence, xenophobia, islamophobia, ethnic cleansing and profiling, policies of (indeed, against) immigration and asylum, imperialist military interventions and regime changes, etc. Nothing of this is new. But its intensity is, particularly taking into consideration that it is occurring after decades of public discourses on the recognition of difference, multiculturalism, affirmative action, and dialogues among civilizations. It seems by now evident that the needs of capitalist accumulation prevail over the recognition of difference whenever the latter interferes with the imperatives of accumulation. The exponential rise of social inequality within countries and among countries caused by neoliberalism is leading to two seemingly unrelated phenomena which, in my view, are twin manifestations of the same historical condition that calls for the recolonization of difference. One is viewed as an international issue, the other, as a national one; but both are international and national issues at one and the same time. On the one hand, extreme social exclusion combined, in some countries, with dramatic environmental degradation is leading to massive flows of people, both south-south flows and south–north flows. Immigration is being dealt with as a national security issue and the repressive imagination seems to know no limits (internment camps, deportation, blocking access to basic services, preventing entrance by land or sea, knowingly putting lives at risk). The Mediterranean is becoming a liquid cemetery of people in search of a minimally dignified life, a cemetery that indeed collects the bodies that managed to escape war and the dry cemetery of the Sahara desert. On the other hand, in countries with vast natural resources, the boom of commodities in the first decade of the millennium led to a new emphasis on the primary sector (indeed echoing the old colonial plundering of raw materials), to an extractivist model of development which has intensified internal colonialism, as peasants, indigenous people,

5 I develop this topic in my forthcoming book, Boaventura de Sousa Santos, *Decolonising the University: The challenge of deep cognitive justice* (Newcastle upon Tyne: Cambridge Scholars Publishing 2017).

afro-descendant, and dalits are being expelled from their ancestral territories in order to make the latter available for megaprojects of mining, oil exploration, hydroelectric energy, industrial monoculture agriculture, and forestry. As much as in colonial times, their resistance is viewed as an obstacle to progress, a product of ignorance, backwardness, or *infantility*. Colonialism is not over it has merely changed. We should face what was a mistake in Marxism while focusing on capitalism and disregarding the resilience and viciousness of colonialism in social relations. All along western modernity there have been three main forms of domination – colonialism, capitalism and patriarchy – even if the relations among them vary according to time and space.

### 3.7 *Seventh Threat: Criminalizing Social Protest*

The final threat is the criminalization of social protest. It is difficult to say if there is more social protest in the world today than yesterday. It is, however, safe to say that social protest is being increasingly criminalized. Two kinds of social processes, one basically urban and the other rural, seem to be at work, even if they are met with the same type of authoritarian, repressive response. Democracy is being deinstitutionalized due to the crisis of representation and the twin crisis of institutionalized participation. The alternative left to indignant citizens is social protest. The root causes are very often the erosion of social and economic rights and the consequent degradation of public services, particularly felt in urban settings by the lower middle classes, both old and new. Due to the financial and economic crises, these classes fall abruptly into poverty or, less dramatically, see their old or new expectations of a decent life suddenly frustrated. In the absence of institutional responses to their frustrations, they protest on the streets and squares.<sup>6</sup>

The other process refers to the rural populations being affected by the development projects referred to above. Their resistance against such projects, often by blocking roads in order to prevent mining and timber companies from entering their territories and lands, is being met with by repressive measures, often involving military forces.<sup>7</sup> Many leaders of resistance are incarcerated and sometimes assassinated by mercenaries at the service of the companies or

6 I develop this topic in Boaventura de Sousa Santos, 'Towards a Socio-Legal Theory of Indignation' in Baxi, Upendra; McCrudden, Christopher; Paliwala, Abdul (eds), *Law's Ethical, Global and Theoretical Contexts. Essays in Honour of William Twining* (Cambridge: Cambridge University Press 2015), 115–142. See also my book, Boaventura de Sousa Santos, *Revueltas de indignación y otras conversas* (La Paz: OXFAM; CIDES-UMSA; Ministerio de Autonomías 2015).

7 I develop this topic in Boaventura de Sousa Santos and Marilena Chaui, *Direitos humanos, democracia e desenvolvimento* (São Paulo: Cortez Editora 2013).

landowners. The legal grounds for criminalization are often found in the anti-terrorist legislation promulgated in several countries following the directives of the Security Council of the UN after the 9/11.

The repressive reaction against these social protests tend to be more brutal in the rural areas than in the urban areas. But, in general, their deployment suggests the emergence of non-declared states of exception curtailing the rights of citizens, be they involved in the protests or not. This is, for instance, the case of generalized surveillance of movements and communications.

These seven threats are having a decisive impact on the ways institutions function and power is exercised. Following Antonio Gramsci, I view such an impact in the form of four monsters.

#### 4 Four Monsters

In political sociology the idea of monsters refers to Antonio Gramsci,<sup>8</sup> who is a very well-known Marxist of the early 20th-century Italy. He said that we were at a time in which the new was not yet born and the old resisted by blocking the emergence of the new. So, we are trapped in a transition, a time of malformations that are simultaneously familiar and threatening because of their size, their form, and the way they present themselves to us. In sum, a time of monsters. I identify four main monsters.

##### 4.1 *First Monster: Dronification of Power*

The first is the *dronification* of power. Military drones are the metonymy of a form of power so powerful that it does not have to worry about the retaliation of enemies. It does not imagine having to prepare itself for defeat, does not celebrate victory because victory is a computer routine, and does not have heroes, either, because its heroes are computer bytes that do not even know their masters. The major characteristic of this form of power is never to follow the same game rules as the adversary. That is why, rather than adversaries, there are enemies. To use Chantal Mouffe's concepts, the agonic and democratic conflict turns into antagonist and despotic conflict. The dronification of power is occurring in the conventional realms of politics (be it, as mentioned, non-declared state of exception or non-declared wars), of the economy (through the operation of largely unregulated financial markets), or

8 Antonio Gramsci, *Prison Notebooks* (Lawrence & Wishart Ltd 1973), 276 ('The crisis consists precisely in the fact that the old is dying and the new cannot be born, in this interregnum a great variety of morbid symptoms appear').

of the media (through the increasing concentration of the corporate media). In all three instances, large bodies of population may see their livelihoods dramatically affected from one day to the next by opaque decisions by largely unknown and unaccountable mega-actors.

Another form of extreme power is financial capital, the currently dominant social form of capitalism. It works like a drone in many countries. In the case of Europe, in the current decade, Greece, Portugal, and Spain. From one day to the next, their debt increases 10 or 20 percent because some people are playing on computers speculating the foreign debt of these countries. Nothing happens in the real economy, but the people are poorer the next day and those that caused this sudden impoverishment get much richer.

#### 4.2 *Second Monster: Parallel Institutionalities*

The second monster is that institutions are used to operate extra-institutionally. If you pay attention to what is going on in politics, sometimes our institutions are there but they are not working according to the rules of those institutions. It is a kind of informal exercise of power by formal authorities.

I will give you two examples from different countries. Donald Trump, at this point, is an informal power who legislates by Twitter. Can you imagine a more informal way of exercising 'democratic' power? We have seen investments by the automobile manufacturer Ford cancelled because of Trump's twitting. I know that, as business people, they are probably much smarter than this tweeting thing. They know that they are going to gain something from not investing in Mexico. In any case, deciding policies by Twitter is informal, but at the same time powerful because the President of the United States is the one twitting. Another example is President Rodrigo Duterte in the Philippines. He wants to get rid of criminals, mainly of drug addicts and drug dealers, by just killing them instead of taking them to court and sending them to prison. It is an exercise of informal power by the president of a republic who was democratically elected. These are two extreme examples of an emerging form of power consisting of using institutions to act extra-institutionally.

#### 4.3 *Third Monster: Sacrificial Violence*

The third monster is the sacrificial violence in our society, meaning that we sacrifice the most cherished values we have under the pretext of defending them. The Western modernity has repeatedly been under the illusion that it should try to save humanity by destroying part of it. This is a salvific and sacrificial destruction, committed in the name of the need to fulfill radically all the possibilities opened up by a given social and political reality over which it is supposed to have total power. This is how colonialism operated, bringing about

the genocide of indigenous peoples, i.e. eliminating them under the pretext of guaranteeing their salvation. This is how it was in the period of imperialist struggles, which caused millions of deaths in two world wars and many other colonial wars. This is how it was in Stalinism, with the Gulag, and in Nazism, with the holocaust. Today, this is how it is in neoliberalism, with the collective sacrifice of the periphery of the world system and of the popular classes everywhere.

#### 4.4 *Fourth Monster: Permanent Crisis*

The final monster is the concept of crisis. From its Greek root *krinein* 'decide', the word 'crisis' came to denote the turning point of a disease: to be sick and to have the opportunity to be cured and get healthy again. Whenever we have a crisis, we have to explain the crisis in order to restore the system back to normal. Be it our body or our society. What happens when the crisis becomes permanent? We live in societies that, for the past 30 years, have been in permanent crisis. When the crisis becomes permanent, an insidious and invisible twist occurs: rather than calling for an explanation, the crisis is used to explain everything. In social sciences, we say that the crisis ceases to be a dependent variable and becomes an independent variable. The government cuts salaries and pensions because of the crisis. It privatizes the system of pensions because of the crisis. It privatizes health, again because of the crisis. So, instead of being explained, the crisis explains everything. The only thing that is not in crisis in our society is the crisis itself. All the rest seems to be in crisis. This leads to the politics of resentment, when people turn against each other; victims against victims and the oppressed against the oppressed.

## 5 The Abyssal Line

This diagnosis has led me to the idea that we need an epistemological intervention. We need a different kind of knowledge because modern science and modern law have legitimated the seven threats in granting them scientific and legal status respectively and, in doing so; they have been complicit with the rise of monsters. Under these conditions, can law be emancipatory?<sup>9</sup> I have

9 I raise this question and try to answer it in the chapter 9 ('Can law be emancipatory?') of my book, Boaventura de Sousa Santos, *Toward a New Legal Common Sense. Law, globalization, and emancipation* (London: Butterworths 2002) 439–495.

been working with the landless movement in Brazil,<sup>10</sup> as well as with the indigenous people in Ecuador.<sup>11</sup> They use the courts and the constitution in order to promote their rights. Under which conditions can law be emancipatory? To answer positively to this question today is much harder than it was 10 years ago. It was much easier back then for me to say that law can be emancipatory; today I have many more doubts. In the meantime, in order to understand what is going on in Europe and in the world, I moved my work outside of Europe to see what was going on there; I also went back in history in order to see the root causes of the problem. I concluded that, from early modernity on, we have a division in our social theory that is invisible for European people in general. The division is what I call a very radical division between metropolitan social relations and colonial social relations. It started very early on in the 16th century and continues to exist today in different forms, having survived the end of historical colonialism. The idea is that what is valid for metropolitan social relations is not valid for colonial relations. An 'abyssal line' is drawn between these two realities so that they become incommensurable. Metropolitan social relations are run by the tension between regulation and emancipation, while colonial relations are run by the tension between violence and appropriation. The difference between the two sides is that on the metropolitan side of social relations there might be exclusion, but it is not a radical or abyssal exclusion, since the excluded groups can realistically claim rights. They are fully human, often even citizens; accordingly, they can claim rights. On the colonial side, the other side of the line, social exclusion is abyssal or radical, as the excluded groups cannot realistically claim rights because sometimes they are not even 'fully human'. I am going to explain this in detail, because it is important to understand that this abyssal line did not end with the end of colonialism. In our societies, cities and streets, there is an abyssal line separating the civilized, metropolitan way of doing social relations and the violent, colonial way of doing social relations. We are divided about this. I will give you some examples.

### 5.1 *Labor Law*

The struggle for labor rights was one of the vehicles through which the popular classes crossed the abyssal line and moved from the land of *coloniality*

10 See Boaventura de Sousa Santos and Flávia Carlet 'The movement of landless rural workers in Brazil and their struggles for access to law and justice' in *Marginalized communities and access to justice* Yash Ghai and Jill Cottrell (eds), (Abingdon: Routledge 2010) 60–82.

11 More on this in my co-edited book, Boaventura de Sousa Santos and Agustín Grijalva, *Justicia indígena, plurinacionalidad e interculturalidad en Ecuador* (Quito: Ediciones Abya Yala and Fundación Rosa Luxemburg 2012).

to the land of the metropolis.<sup>12</sup> In recent decades, however, as I mentioned above, neoliberal, global capitalism has been conducting a class war against work with rights, labor law, collective bargaining, and trade unions. The expansion of precarious labor, wage theft, and the rise, in many countries in all continents, of labor analogous to slavery, to use the UN expression, show that the non-abysal exploitation of workers (struggles in the regulation/emancipation framework) conquered through much struggle and suffering may indeed be sliding into abyssal exploitation carried out in the appropriation/violence framework.

## 5.2 *Citizenship*

We have always learned that citizenship is about inclusion, because a citizen is an upgraded status as a human being. A citizen has rights and duties, so citizenship is about inclusion. But we should bear in mind that the vast majority of people in the world are non-citizens. They do not belong to any citizenship with rights and duties. The theories of citizenship developed by western-centric modernity are as much theories of inclusion (in the metropolitan side of the abyssal line) as theories of exclusion (in the colonial side of the abyssal line). I call for a post-abysal thinking, a way of thinking about citizenship from the perspective of non-citizens; human rights, from the perspective of humans considered by dominant politics and ideologies as non-humans or as sub-humans; the welfare state and social protection, from the perspective of those thrown into what I have called the uncivil civil society, such as undocumented migrant workers and asylum seekers confined to concentration camps, often for several years. The zones of non-being are not inhabited by abstract general categories but by real groups of people in concrete historic and social contexts. For instance, thanks to the courageous struggles undertaken by the feminist movements, many women are today on the metropolitan side of the line and, accordingly, the discriminations they are victims of are non-abysal and can be fought within the regulation/emancipation framework. But women in the hands of Boko Haram, or the victims of *femicide* in Mexico, or the victims of gang rape in India are all in the zone of non-being, their exclusion being an abyssal one operating within the appropriation/violence framework. Moreover, and probably less noticed, women in our societies are often

12 The emergence of labor rights and of labor law as a protective legality took place in metropolitan societies, at the time basically Europe and North America. At that same time, in the colonies, labor law was penal law, the law of slave and forced labor. These two simultaneous realities were made incommensurable due to the abyssal line separating them. See Boaventura de Sousa Santos (n. 2) 118–135.



forced to live on the two sides of the line at the same time: they work in the formal sector of the economy as workers with rights (metropolitan sociability); but when they leave work and walk on the streets, ride public transportation or enter their homes they become targets of appropriation and violence (colonial sociability). Thus, these women actually cross the abyssal line every day. Let us see this case in more detail. A woman is working in a job where she has rights, but she is probably excluded because she does not get the same salary for the same type of work that a man does. This is non-abyssal exclusion; exclusion with rights. When she arrives home this woman is violated or even assassinated by her husband; or she is victim of a gang rape, as happens so often in India. This woman has crossed the abyssal line, because at that point she is not fully human; she does not have rights anymore. She does have rights while she is at her job, but she loses all her rights when she is not treated as a real human being. Similarly, a Muslim or a worker of Arab descent working at a restaurant may be discriminated against because his salary is lower than that of the workers of the host country, but he has rights. When this same worker leaves the restaurant, he may be an object of suspicion and deemed to be a perpetrator of terrorism; rights can barely be invoked in such case. The same is true of young black men in the United States: they are most likely going to be victims of police brutality. This is not only the case in the United States; the same thing happens in Brazil as well. In the city of Salvador da Bahía, where most of the population is black, four young black Brazilians on average are assassinated by the police every day. Do they have rights? No, because of their skin color they are considered sub-human. So, these people have rights when they are in school or at work, but when they leave work or school they cross the abyssal line, and when they cross it their rights are no longer there to protect them with minimal efficacy.

### 5.3 *Abyssal Resilience*

The theories developed by western-centric modernity leave out many people, which is why the majority of the population is not subject of human rights in real terms. They are rather object of dominant human rights discourses. Most people in the world today actually have no rights, but they are sometimes bombarded by our human rights discourses in Europe. There is, therefore, a resilient abyssal line: people that stay on the other side of the line are *abyssally* excluded, that is to say, exclusion without rights.

In our legal analyses of law, we should pay attention to this situation because the theories that we have developed are incomplete. I myself have written extensively on sociology of law and I have always focused on metropolitan forms of sociability. I was not so much aware of law operating in the colonial

type of relations, because the colonial types of relations were often happening elsewhere, outside of our societies. Now the abyssal line is moving from colonial geography to European societies, so the problem has to be faced by European law and politics. We may have to change our curriculum and our way of understanding. And even our history.

#### 5.4 *Innovation on the Other Side of the Line*

People on the colonial side of sociability are not just victims; they resist humiliation, discrimination, and exclusion. They are innovative and they find solutions because they are not cynical and they want to survive. They are alive today and they do not know if they will be alive tomorrow, so they create the means to survive. They have cooperatives, peasant economies, indigenous economies, women economies, and arts and crafts by women everywhere. These are not considered very relevant because these types of economies are not part of a capitalist economy. It is not the type of economy for which we train our people at business schools, because these economies are based on solidarity and reciprocity, not on the infinite accumulation of capital. Often the people that are involved in these struggles develop their own laws. There is a bottom-up law emerging from their struggle. As they do not have access to lawyers because lawyers are expensive or otherwise unavailable, they band together and create other forms of social ordering.

Many years ago, when preparing my doctoral dissertation at Yale, I lived for a few months in a *favela* of Rio de Janeiro. My work was basically about law and order inside that squatter settlement.<sup>13</sup> These people lived in an illegal settlement and as such they had no access to the courts where official law was adjudicated. They developed their own law; I called it *Pasargada* law. Herefrom comes my interest in legal pluralism. *Pasargada* is the fictitious name of the urban settlement. I used a fictitious name because, at the time, Brazil lived under a dictatorship and identifying the community could be risky for the people living there. They were considered dangerous, marginal populations and as such privileged targets of repressive policies. Then as today lots of interesting ideas and innovative practices have been emerging on the other side of the line but they have never reached us because we tend to ignore them or see them through European lenses, making them irrelevant. By bringing them into the global legal conversation we will develop what I call a post-abyssal law, that is to say, a conception of law that denounces the abyssal line in order to supersede it. If you do not denounce the abyssal line, you cannot supersede it. Some

13 More on this in my book Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (New York: Routledge 1995), 111–249.

time ago, when I was pleading for affirmative actions to overcome discrimination against black populations in Brazil, many of my leftist friends would tell me that I was producing racism in Brazil. According to them, Brazil was a racial democracy and by claiming that there was structural racism. I was indeed inciting racist practices. If there was no racism, why were 75 percent of the poor black? Why the darker their skin, the poorer they were? There was racism in the 'racial democracy'. In order to address structural racial discrimination, it is necessary to acknowledge and denounce its existence. To overcome the abyssal line, we must first denounce its existence.

## 6 Post-Abyssal Law

Once we denounce the abyssal line, then we have to move to a different idea of law. I cannot develop it very extensively here, but I can give you an idea. In any period of society we have to struggle and fight with instruments that are at our disposal. Our time is the time of the ruins of two modern models of social transformation: social revolution and social reformism. We cannot waste these ruins. We have to transform these ruins into seeds. The concept of a 'ruin seed' is a key concept in my work, as you can gather in my forthcoming book entitled *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South*.<sup>14</sup> A ruin is also a seed and we have to see the emergences that are coming out of these ruins. Democracy today is becoming a ruin, as revolution has been for some time now. We deliberate more and more about less and less, because the most important things in our world are outside of our deliberative powers. They are decided by Goldman Sacks, a metonym of global financial capital, not by us. If we go on further and further hollowing out democracy, we are soon to find ourselves before a ruin and legal reformism will equally be a ruin. In order to fight against this we need to bring together the two models of social transformation that the 20th century conceived of as polar opposites. In other words, we need to revolutionize democracy and democratize revolution.

14 Ruins-seeds are an absent present, both memory and alternative future at one and the same time. They represent all that the social groups acknowledge as conceptions, philosophies, and original and authentic practices, which, in spite of having been historically defeated by modern capitalism and colonialism, remain alive in their memory and in the most recondit crevices of their alienated daily lives. These are the sources of their dignity and hope for a post-capitalist and postcolonial future. More on this in Boaventura de Sousa Santos, *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (New York: Duke University Press, 2018).

We have to expand democratic deliberation beyond the narrowly defined political system. The ideas I present below should become important topics in the refoundation of law schools and social science schools.

### 6.1 *Post-Abyssal Topics*

#### Common Goods

The law of the common goods. We should start thinking about things that cannot be sold or bought, from outer space to water. We should claim that there are things that are both the common heritage of human kind and guarantors of the future of humankind. They should not be object of appropriation.

#### Democratic Pluralism

We should also develop the law of deep democratic pluralism a new constitutional law from below. For example, Article 11 of the Bolivian Constitution establishes three kinds of democracy to be equally respected by the citizens: representative democracy, participatory democracy, and communitarian democracy – democracy by consensus, which is typical of indigenous peoples. There was a time when we had all these kinds of democracies in Europe, but since the 1980's we have come to believe that the only legitimate form of democracy is liberal democracy, which consists in casting a vote once every 4 years. In a participatory democracy, we would make decisions in citizen councils instead of electing the decision-makers. The idea of participatory budgeting in Brazil and in Latin America is now being copied in Europe. In a few decades representative democracy will be a ruin if in the meantime it is not supported by participatory democracy.

#### Plurinational and Intercultural Law

A third idea is the law of the state as plurinational and intercultural law. Europe is more and more intercultural and there are two reactions to it. The first one is to deny it and go against it, which we see happening everywhere. The second one is to affirm this *interculturality* and sometimes *plurinationality*.<sup>15</sup> James Tully, wrote about why constitutionalism became the empire of uniformity.<sup>16</sup> There should be more diverse forms of state organization. Why does

15 See Boaventura de Sousa Santos, *Refundación del Estado en América Latina. Perspectivas desde una epistemología del Sur* (Lima: Instituto Internacional de Derecho y Sociedad; Programa Democracia y Transformación Global 2010).

16 See James Tully, 'The Imperialism of Modern Constitutional Democracy' in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, Martin Loughlin and Neil Walker (eds). (Oxford: Oxford University Press, 2007), 315–358.

everything have to be done the same way in the different regions? Different forms of governance must be considered.

### Dignity

A fourth idea is that we need a new law of dignity. We are stuck with the idea of human rights, but human rights are just one of the languages of dignity; there are other languages of dignity and we should pay attention to them.<sup>17</sup> Article 71 of the Ecuadorian Constitution lays down the rights of *Pacha Mama* (Mother Earth), the idea being that nature has rights. We cannot imagine nature having rights, because in our culture we are not Spinozians, we are Cartesians. The western conception of human rights is plagued by a very simplistic and mechanistic symmetry between rights and duties. It grants rights only to those from whom it can demand duties. This explains why, according to western human rights, nature has no rights: because it cannot have any duties imposed on it.<sup>18</sup> For the western-centric way of knowing, nature is a natural resource, not a sacred space. Rivers and forests are not sacred because we see ourselves as not part of that nature. Indeed, we are against nature as nature is against our humanization. European dominant thinking is a child of the Frankfurt school, with Adorno and Horkheimer making that polarization very clearly. When I was an advisor on the Ecuadorian Constitution, a member of the opposition came to me for confirmation that indigenous people were crazy in giving rights to an object such as nature. I told him that he was right because for the Eurocentric conception of nature granting rights to an object is crazy. I added that the problem was that the indigenous conception of nature is not Eurocentric. For the indigenous peoples, Mother Earth is a living entity that does not belong to us; rather, we belong to it.<sup>19</sup> Since there are different conceptions of dignity, why are we not studying them in our law schools and social science schools?

17 More on this in my book, Boaventura de Sousa Santos, *If God Were a Human Rights Activist* (Stanford: Stanford University Press 2015).

18 For the same reason, it is impossible to grant rights to future generations: they have no rights because they have no duties.

19 Very recently, New Zealand has also granted a legal status of personhood to specific rivers and forests, thus enabling the environment itself to have rights. Unlike Ecuador and Bolivia, New Zealand's rights of nature are not embedded in its constitutional law, but rather protect specific natural entities. Native communities in New Zealand were instrumental in creating new legal frameworks that give legal personhood, and thus rights, to land and rivers. As a matter of fact, New Zealand has bestowed legal personhood on the 821-square mile Te Urewera Park, and the Whanganui River, the nation's third-largest river. This was part of the government's reparation efforts for the historical injustice at the foundation of New Zealand's state: colonial conquest of land from native peoples.

Because they do not belong in them? Globalization has gotten so far ahead with information technologies that we realize now that these innovations are important not because they are good for the indigenous people, but because they are relevant to us as well. The concept of nature as *Pacha Mama* is good for us, it is not just good for them. There is some reason why 75 percent of biodiversity in the world is in indigenous territories and not in our territories.

## 7 Conclusion

If we look closely at these and other similar topics, we have a broader picture of law and knowledge; knowledge that develops from struggle, bottom-up from the knowledge of people. In order to account for the epistemological diversity of the world we have to engage in what I call ecology of legal knowledges. The concept of ecology of knowledges implies bringing scientific knowledge and non-academic knowledge together. Today I spend half my time in university environments and half my time in organizations and social movements. I do so because I see how other knowledges in those areas that are not academic feed so much into my theory and help me as I help them. Scientific knowledge is precious, but it is one kind of knowledge only. It is incomplete and we should be open to other kinds. If we do that, then we will be able to develop alternatives out of these 'ruin seeds'.

Dare I speak against myself? For more than 40 years I have been teaching at universities where we have often spent too much time training incompetent conformists. It is now time for us to train competent rebels.