

## Decolonising Epistemologies, Politicising Rights: An Interview with Eduardo Mendieta

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THE BIRKBECK LAW REVIEW: *Professor Mendieta, thank you for leading a seminar at Birkbeck School of Law. In the seminar we had the opportunity to discuss some of your work, including your essays ‘Globalization, Cosmopolitics, Decoloniality: Politics for/of the Anthropocene’, and ‘Interspecies Cosmopolitanism’, among others. Could you say something about the ideas in these texts that led you to choose them for our discussion?*

EDUARDO MENDIETA:<sup>1</sup> Before I answer your question let me begin by thanking Kojo and Enrique for all the organising, co-ordinating, and promotions that you did for the seminar. It certainly would not have been so successful without your efforts. I also wanted to thank all the participants of the seminar over the two days I was at the Birkbeck School of Law. I was very honoured to have been invited by Professor Guardiola-Rivera to hold a seminar devoted to my work. It was a wonderful occasion for me both professionally and philosophically.

Now, when Professor Guardiola-Rivera invited me to organise a seminar on my work, he asked me to send him some texts that

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exemplified the kind of work I have been doing and that also embody my philosophical projects and commitments. I selected some recent texts, which were short, but also very illustrative of a series of lines of investigation. I sent six texts, all of which gravitated around three axes: first, there is the axis of the project of the decolonial turn that is part and parcel of the provincialising of the West, to use that wonderful expression by Dipesh Chakrabarty. In this work, however, I want to go beyond a dismantling and unmasking of eurocentrism.

I link the project of the decolonial turn to what we now call ‘epistemologies of ignorance’ that perpetuate the effects of colonialism and imperialism. It is not enough to say that Europe is an invention, a glorious fiction, and that a lot of what Europe claims as its own, or as its gift to humanity, it acquired from other cultures, or could not have produced without its engagement, friction and encounter with other cultures. I am interested in how what

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Anibal Quijano has called ‘the coloniality of power’ is sustained, fuelled, concealed and dissimulated by positive, produced, orchestrated ignorances, lacunae, neglects, and outright epistemic acts of pillage and expropriation. Second, there is the axis of the project of the transformation of ‘American’ philosophy through an engagement with marginalised thinkers within this tradition. Over the last two decades I have deliberately sought out to study and be both informed and formed by some African-American philosophers within the American philosophical tradition. I have studied intensely thinkers like Cornel West, Angela Y Davis, WEB Du Bois, Alain Locke, and bell hooks, to mention some of the most prominent. So, I sent a long interview I did with Cornel West. I should note that for me this is part of a larger agenda relating to the transformation of American philosophy due to what Professor Linda Alcoff has called the ‘demographic challenge and deficit’ of contemporary philosophy in the US, by which Alcoff meant the demographic growth of Latinos/as in the US. In fact, I have been working over the last decade on articulating what can be called ‘Latino/a Philosophy’ in the US.

Finally, there is the third axis of the work on animals and what I have called ‘interspecies cosmopolitanism’. I recently finished a book titled *The Philosophical Animal*, in which I develop a post-humanist, non-anthropocentric, and post-metaphysical grounding of animal rights, using the resources of critical theory inspired by the Frankfurt School.<sup>2</sup> Relying on the work of Jürgen Habermas, more specifically his discourse ethics and discourse theory of law and democracy, I lay out a ‘political and non-foundational’ theory of animal rights. This work is particularly motivated by the precarious ecological situation in which we find ourselves, and the severe weather that we are experiencing due to global warming.

Two main preoccupations converge on the focus on animals. Evidently, that the ecological devastation of the planet is having severe consequences on non-human animals. We are undergoing what has been called the ‘sixth extinction’, which is the extinction not only of fauna, but also of planetary flora. Our planet is becoming a planet of weeds, as Quammen called it, and jellyfish and sea bacteria. We have been engaging in a terraforming, but in the most tragic and destructive way. This is what is now being called the Anthropocene. But, for me, the Anthropocene also means the age of mega-cities, most of which over the last two decades have been growing at exponential rates. The mega-urbanisation of humanity in fact turns out to be but the mega-slummisation of the mega-urbs of the world, most of which we find in the developing world. So, the Anthropocene turns out to be the age of mega-slums and the ecological destruction of the planet. These two processes are entwined in a vicious logic. Still, I would say in retrospect that although there are these three distinct axes or lines of thinking, all of my work is motivated by ethical-political questions: the suffering of living beings, in general, and suffering of incredible number of human beings who have to bear disproportionately the devastating effects of the so-called development of the putatively developed world.

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<sup>2</sup> Eduardo Mendieta, *The Philosophical Animal: On Zoopoetics and Interspecies Cosmopolitanism* (SUNY Press, forthcoming).

BBKLR: *You seem to be saying that there is a relationship between ‘the decolonial turn’ and what you have termed as epistemologies of ignorance?*

EM: Yes, indeed: The decolonial turn refers to a multi-front approach that aims to dismantle eurocentrism, but not simply through a mere rejection of Europe, or the fiction of the West. The decolonial turn means to think with, through, and beyond the ‘Western’ canon. Otherwise we fall into a simplistic and untenable anti-Westernism and equally simplistic and untenable Third-Worldism. In order not to fall into those invidious dichotomies, we have to engage in archaeologies of thinking, of philosophemes, of entire traditions that begin with the realisation that for every bit of knowledge that is claimed, there is another bit of ‘unknowing’, of ‘ignorance’ produced. The decolonial turn is about educating us about the production of collective ignorances, about what we did in the past to indigenous cultures, for instance, but also about what we did to women, blacks, and so on.

*It is the active production of ignorance that the decolonial turn aims to confront.*

The other term that I sometimes use to refer to the ‘epistemologies of ignorance’ is agnotology, which means more or less the logos of not-knowing, that is, the logic of how we get not to know something. If you think about ‘epistemologies of ignorance’ as a philosophical task, it will sound *prima facie* oxymoronic.

Epistemology has to do with the conditions of possibility of knowledge, and thus its goal is to eradicate its other: ignorance, or non-knowing. What the term agnotology foregrounds, in contrast, is the positive aspect of the productivity of ignorance. By this I mean that ignorance is not simply the absence of something, but that it is something that is actively produced. It is the active production of ignorance that the decolonial turn aims to confront by linking the question of eurocentrism to the coloniality of power that is sustained through those produced ignorances.

BBKLR: *Following on from your previous answer, what do ‘the decolonial turn’ and ideas regarding ‘epistemologies of ignorance’ offer to questions of jurisprudence?*

EM: I would say that this is a very vibrant and expanding field that should receive more attention. I should begin first by bringing up the theme of the evolution of international law itself in the sixteenth century, with the contributions of the school of Salamanca, and the work of Suarez and Vittoria, but also de las Casas. We have to mention the way in which the organisation of Native American tribes inspired some constitutional and legal ideas for the founding fathers in the US. In general, the evolution of the modern democratic, rule of law, constitutional nation state, took place through the logics of colonialism, decolonisation, imperialism and neo-imperialism. The legal fabric that sustains the modern legal regimes of Europe as well as most modern nation-states is permeated by the juridification of colonialism.

Then, with the rise of slavery and its eventual abolition, we have to explore how the white racial supremacy that came along with European colonialism was juridified in such a way that the codification of slavery at the same time juridified dispossession and legalised racism. What Charles Mills has called the ‘racial contract’ was always a racial contract of the coloniser and the colonised that used the means of the law to make it enduring and unassailable.

MacPherson’s classic of political philosophy, *The Political Theory of Possessive Individualism: Hobbes to Locke*, already, from 1962, announced what today we can more appropriately call ‘The Legal-Political Theory of White Racial Supremacy’, or, ‘The Colonial-Modern Racial Contract’. But, in the US, at the very least since the 1960s with the critical legal studies movement, we have been thinking about the relationship between colonialism, racism, dispossession, legalised discrimination and the endurance of racial supremacy even after centuries of civil rights and anti-colonial movements.

I think that if you google ‘postcolonial theory and law’ you will get hundreds of hits, with links to journals such as Third World Legal Studies or even series dedicated to the study of legal issues through postcolonial theory, such as the Cambridge Studies in International and Comparative Law. I think this work is even more relevant as we

face the imposition of a trans-national legal regime that works in favour of transnationals to the detriment of local, indigenous, racialised and marginalised populations.

*The decolonial turn is thus always about challenging the givenness and naturalisation of disciplinary boundaries.*

BBKLR: *What are the differences you perceive between style and method and how does it relate to the project of decoloniality?*

EM: This is a very interesting question, indeed. At the very least it allows me to expand on some ideas I was discussing at the outset. I think that what Quijano

called the ‘coloniality of power’—to refer to the endurance and non-vanishing presence of the colonial past in the colonial present—circulates, and is telescoped and amplified by disciplinary rigidity that is sometimes praised as disciplinary rigor. Disciplines discipline knowledge by authorising certain questions and by authorising certain credible witnesses, as Donna Haraway calls them.

Evidently, if one has a certain conception that philosophy that is worth that name is only philosophy of mind or philosophy of language and the rest is just journalism or indulgent political activism, then, when you ask about the endurance of colonial dependencies and the juridification of white racial supremacy or the juridification of racial hierarchy through the construction of racialised others as de facto illegal and criminal, these are from the outset disqualified as, let us say, ‘philosophical questions’.

The decolonial turn is thus always about challenging the givenness and naturalisation of disciplinary boundaries. For this reason a methodological issue turns into a matter of style—that is, into an issue about developing new ways to investigate, analyse and present work that hitherto had been deauthorised, or at least not allowed to be considered as important and credible. The question of style required also the development of new genres or styles of philosophical/critical/theoretical writing. Take for instance Edward Said’s *Orientalism*,<sup>3</sup> a text that combined many types of research styles, or Enrique

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<sup>3</sup> Edward W Said, *Orientalism* (Vintage Books 1978).

Dussel's *Ethics of Liberation*,<sup>4</sup> and his monumental *Politics of Liberation* (in three volumes),<sup>5</sup> which is a magisterial global history of political philosophy combined with a systematic treatise that is suffused with ethical outrage, but that also traces a utopian horizon. Or, if I may, I find Oscar Guardiola-Rivera's work as also embodying this decolonial disquiet and healthy anxiety before the acceptance of certain methods and styles. When we think about the project of the decolonial turn, we have to think about the need to speak in tongues, so to say, as we have to say things for which our vernaculars have not prepared us.

BBKLR: *An issue that was raised by the non-academic attendees of our seminar was the question of the use of specialised language seen as essential for authentic scholarship. Do you understand the role of decolonising as to create more inclusive communities and therefore, is there a danger of specialised language creating exclusions?*

EM: This is a very serious concern of mine, and I would imagine that anyone interested in the public role of philosophy has also considered this question. I think that there are many thinkers today who revel in obscurity, but I think that there are others who work hard at translating their philosophical language into more publicly accessible language. Still, I think we have to be careful. I think philosophy is about generating new terms, new ways of thinking and saying what we are just beginning to realise. I sometimes define philosophy as the utopia of thinking, but this is a definition I came up with by riffing off a phrase from Umberto Eco: 'poetry is the utopia of language'. I think philosophy is the utopia of thinking so long as 'philosophy is also the utopia of language.'

When we think about great philosophers we have to think of the way they gave birth to new ways of speaking. Recently I was reading Adorno's two-volume work *Philosophische Terminologie*, which in fact was a series of introduction to philosophy lectures. There Adorno makes the point that philosophy is the history of the

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<sup>4</sup> Enrique Dussel, *Ethics of Liberation: In the Age of Globalization and Exclusion* (Duke University Press 2013).

<sup>5</sup> Enrique Dussel, *Politics of Liberation: A Critical Global History* (SCM Press 2011).

sedimentation of semantic contents in concepts, in the philosophical language. So, take the term 'idea,' which is as old as the term 'philosophy' itself. At one time the term had very mundane connotations and then over time it acquired a technical character and now it is part and parcel of everyday philosophical language.

I think there is a transit between the vernacular of everyday language and the technical language of philosophy. I am reminded of something Wittgenstein says somewhere about philosophy's language, namely that philosophy has no meta-language, by which he meant that there is no sovereign, autonomous, pure, untainted philosophical language, like for instance physics or chemistry have. Physicists could talk in the rarefied language of their equations. But philosophy or theory in general cannot do that. We philosophers borrow our language from the vernacular of the public square and then fashion it into something more or less useful by refracting it, and stringing it along with other de-contextualised terms. We could say that we philosophers are in the business of making everyday language uncanny by making it say things we did not associate with a certain expression or language. Still, while I want us to be perpetually vigilant of what we can call the vice of jargon, and the unnecessary technicisation of philosophical language, we also have to recognise that there is no language that is not precisely the ceaseless task of translation. There is no language without the labour of translation. Even the most obdurate monolingualist has to translate, for there is no communication that is flawless and without equivocations.

BBKLR: *How does the method of decoloniality manage to circumvent disciplinary boundaries while at the same time being intelligible to the academy and not creating new boundaries?*

EM: My friend, the Afro-Caribbean and Africanist philosopher Lewis Gordon, has talked about 'disciplinary decadence' to refer to the myth of disciplinary rigor as the subterfuge for

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de-legitimizing certain types of questions and research agendas. The fact is that most serious and relevant work today is and has to be

interdisciplinary. Let me illustrate. If you are a phenomenologist, there is no way in which you can neglect the work in embodied cognition that has exploded in the last two decades, or the work of someone like Oliver Sacks, who has done so much fascinating work on the neurobiology of the brain and its many different enlightening dysfunctions that disclose to us its unsuspected complexity. Or take contemporary jurisprudence, which now has had to engage in questions of gender and racial exclusion and appropriate the insights of philosophical hermeneutics. Take feminist philosophy, which is now as diverse a field as is philosophy itself.

We ought to be much chastened by the work of the Gulbenkian Commission that gave us the report co-written by Immanuel Wallerstein and his team, which appeared under the title of *Open up the Social Sciences*.<sup>6</sup> In this report, Wallerstein and colleagues make the point that the disciplinary division that we see now institutionalised in the modern university is only just a century old, if not less. Since the 1960s and 1970s, furthermore, with the influx of minorities and women into the university, new disciplines have emerged that challenge the sacralised boundaries erected during the height of European colonialism and hegemony. These include, for example: women and gender studies, Africana studies, cultural studies, Chicano and Latino/a Studies. That is in the humanities and social sciences. But in the natural sciences and schools of engineering we have seen the development of new disciplines, such as bioinformatics and super-computational theory, to mention the ones that I have been most fascinated by. Today, the general call in universities is for the globalisation of the curriculum and for the launching of interdisciplinary research agendas. But, I would underscore that the decolonial turn and what I referred to before as agnotology are trans-disciplinary research agendas that aim to show the negative dimensions of disciplinary decadence; that is, the reification of disciplinary boundaries for the sake of the protection of certain research agendas that exclude others. Thinking that has its finger on the pulse of the times will not hesitate to pursue its agenda by theorising without disciplines, without the docility of authorised modes of producing knowledge.

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<sup>6</sup> Immanuel Wallerstein et al, *Open up the Social Sciences: Report of the Gulbenkian Commission on the Restructuring of the Social Sciences* (Stanford University Press 1996).

*BBKLR: Following on from your discussion of the potential of academic style rather than method, one thinker you drew on extensively in your seminar was Dr Cornel West. In what ways could West be relevant to Europeans in general and for Britain in particular?*

EM: Cornel West is the US version of what in Europe is a well-entrenched tradition: the public intellectual. But he is a very unique type of public intellectual. He is unapologetically Christian, and he is always pointing to his roots in the Black Church. He also draws on the Black Church's preaching tradition, which gives West his unique oratory style. He is a mesmerising speaker that can give a speech off the cuff, without notes, but in the most tightly argued and articulate manner. West has also been an avowed socialist, who draws on a distinct American tradition of democratic socialism. This means that over the last nearly half a century, West has always been on the side of the working class, the underclass, the under-employed, and the unemployed. I think that above all, West has remained a critic of the ways in which the two hundred years of slavery and hundred years of Jim Crow, and yet another half a century of segregation, and more recently mass incarceration—which he thinks in terms of a continuum—can be illustrative and inspirational for Europe in general and for England in particular.

West has been advocating a serious confrontation with the inheritance that slavery has left the US, that the institution of slavery was an institution that presupposed the genocide of Africans. And yet, that it was this very institution that created the background context for the emergence of a power and inspirational culture that includes the spirituals, music such as the blues, jazz, and hip-hop, as well as the slave narrative, and the black novel. More recently, West has been working with Tavis Smiley on what he calls the poor people's campaign, to focus our attention on the failures of the Obama administration to address the growing immiseration of the American working poor.

More recently even, West has been one of the few American public intellectuals to challenge Obama's use of drones to carry out what are, in effect, extra-legal executions and assassinations of alleged terrorists. I think Europe and England have been complicit and willing co-participants in the development of a global vigilante force

that takes us behind the legal gains made after World War II, and the declaration of human rights and the juridification of war and military conflict between nations.

Above all, however, West is someone who should be known better in Europe and England because of his work on behalf of the under-privileged and the racialised in the US, and who has been calling on us to take responsibility for the genocides of the last centuries. West is certainly one of the most autochthonous American thinkers, but also one who speaks with a distinctly African American voice, with its homiletic prosody, melodic cadences, and moral force.

*BBKLR: The lecture that you presented concluded with discussion of the Anthropocene, and you link this to the question of decoloniality. What, for you, is the relationship between decoloniality and the Anthropocene?*

EM: I think that we have to guard against the temptation to see the Anthropocene as merely a moniker for a new geological age. The scientists who coined the term also want us to think that much of what is happening to the earth—global warming, salination of seas, the deforestation of the Amazon, expanding deserts in Africa, severe weather across the planet, and the melting of the polar ice—are all anthropogenic. We have caused these climatic changes. We caused them through the development of certain economic-political-social institutions.

The age of colonialism was also the age of mercantile capitalism, which presupposes what has been called the Columbian Exchange, a massive exchange of biota, life, both animal and plant, from the New World to the Old, and vice versa. The age of European imperialism was also the age of the ascendancy of petroleum, the steam engine, and the massive transoceanic transport ships. The wealth, comfort, but also profligacy and recklessness of the developed north has been bought at the expense of the privation of many people in other parts of the planet. It seems to me that we cannot talk about the present state of the planet's climate without talking about colonialism, imperialism, neo-imperialism, and today, global finance capitalism.

The fact—and this is what is one of my primary concerns—is that the victims, those who will suffer most intensely the effects of the severe weather that we are seeing over the last decade, which will only grow worse, are the people in the already most vulnerable areas of the planet, the so-called developing world. When we link the decolonial turn, as both an epistemic or methodological attitude and a moral orientation, we can begin to ask questions about how to shoulder more equitably the burdens of the devastation that our economic systems have unleashed on the planet. For one, decoloniality challenges the logic of development. Back in the 1960s, Latin American liberation theologians such as Gustavo Gutiérrez, and underdevelopment thinkers like Andre Gunder Frank, or dependency theorists like Enzo Faletto and Fernando Henrique Cardoso, challenged the idea that development meant more of what had putatively elevated Europe to the pinnacle of its achievements. We need to rethink what we mean by development, progress, and growth. These key ideas are mortgaged to the logic of capitalist accumulation. So, decoloniality forces us to think what institutions paved the way to the Anthropocene and forces us to think about the

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future through the lens of a different logic of development and progress that sees from the underside of history, to use Gutiérrez's beautiful but poignant expression.

BBKLR: *You were also talking about animals and the right of animals in the city (especially in mega-cities with mega-slums)—could you elaborate on what you meant by this?*

EM: Yes, this theme is something that I have been thinking a lot about, in particular because my friend Ash Amin, who now is at Cambridge University, invited me recently to a wonderful symposium: 'The Shrinking of the Commons'. My contribution to that symposium was a draft paper on thinking about the city, above all, as a commons, but one that we have to share with animals, and not only our pets. In any event, I have been working on both cities and animals for a while, but separately. I have written a lot on cities, the phenomenology of the urban experience, the right to the city, the rise

of the mega-slums of the twenty-first century; and I have written a book on the so-called ‘Animal Question’. In this book I use the trope of the bestiary to think about the invention of the beast, and the ways in which the animal is fabulated in order for us to philosophise about our humanity. We are the animal that philosophises about its animality by ventriloquising through animals. We are animal ventriloquists, so to say. But recently I have been asking myself, if the planet is being turned into a huge farm for humans, what is going to happen to the few habitats where wild and domestic animals can live? But, as I said, the age of the Anthropocene is the age of mega-urbes—then where are the animals, outside the walls of the city? I have thus been thinking about a new kind of urban archaeology or a new kind of urban history that thinks of the evolution of the city in terms of its animals. The evolution of the city has to be also told in terms of the exclusion and/or inclusion of animals. Here the expression that we would need is that of the urban bestiaries. I have been reading a wonderful book I discovered recently by Hannah Velten, titled *Beastly London: A History of Animals in the City*,<sup>7</sup> which does exactly what we should be doing with other cities. The historian Jan Morris has written a very moving and insightful book that I found extremely inspirational, *A Venetian Bestiary*.<sup>8</sup>

I think if we take seriously that we live in the Anthropocene, with its severe weather, and the fact that we live in the age of the megaslumisation of humanity, at some point we also have to ask about animals. For a while, however, I have been thinking about the mega-slums and the global justice agenda in terms of Lefebvre’s extremely useful concept of the right to the city. I claim that global justice in the twenty-first century requires that we substantiate justice claims in terms of the right to the city, that is, in terms of access to a humane and just urban environment. In fact, I translate the human rights agenda, in terms of the right to have rights, as the right to the city, with all that entails: the right to a basic education, potable water, sewage, and even access to spaces of relaxation and play. So, this is how I come to think about the animal right to the city; but to be honest, I have not worked out what all this means. At the moment it is an intuition and a research agenda. I do think that if we can acknowledge the legitimacy and tenability of animal rights, then

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<sup>7</sup> Hannah Velten, *Beastly London: A History of Animals in the City* (Reaktion Books 2013).

<sup>8</sup> Jan Morris, *A Venetian Bestiary* (Faber & Faber 2007).

we can also envision the animal right to the city, at the very least in the sense that if animals have a right to their habitat, they also have a right to that habitat that may be the only means for their own survival. But, again, I am now thinking on my feet and off the cuff.

BBKLR: *Do you envision thinking on questions of gender interacting with the project of decoloniality?*

*Colonialism, like capitalism, is the imposition of a very specific gender hierarchy.*

EM: Absolutely. Colonialisms, of all kinds, always require the mobilisation of gendering practices. Colonialism, like capitalism, is the imposition of a very specific gender hierarchy. In fact, white, European, racial supremacy is predicated on a masculinist supremacy. To use

Carole Pateman's phrase, the colonial contract, qua racial contract, is also a sexual contract. The modern-colonial system, or the modernity-coloniality world order in which we live, was born from colonial sexual violence and the exploitation of women. Further, when we think about what Marx called 'primitive accumulation', we have to realise that this was not only the rapacious expropriation of indigenous wealth, but literally the expropriation of the wombs of black women and indigenous women. For Americans, across the entire hemisphere, but also Africa and India, the story of colonialism is entwined with rape and the enslavement of women. I want to underscore that the decoloniality project is about putting the focus on the racial-gender dimensions of the coloniality of power.

Maria Lugones, a Latina philosopher, has begun to challenge, and I think justifiably so, the lack of attention to the coloniality of gender. There is no colonial power that does not circulate through the gendering institutions of the modernity-coloniality system. Now, I am particularly interested in the relationship between questions of gender and questions of global justice. As I said, we live in the age of mega-urbes and mega-slums, and in these, women are the ones providing the most fundamental care. So, the agenda of global justice in the mega-urbe of the twenty-first century has to be a gendered justice agenda.

I have been very inspired by the work of Martha Nussbaum and Amartya Sen on their approach to human capabilities and gender justice, but also the work of Brazilian feminist theologian Ivone Gebara, who links ecofeminism with gender justice in the favela. Gebara's work is a must for us today because it is in the favelas and shanty suburban developments of the world where women carry water, clean latrines, feed children, tend to them, while they are also the ones building their dwellings and making do with the little they are able to eke out from their economies of subsistence.

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BBKLR: *In your seminar you also appeared to convey optimism in the potential offered by law. In this perspective what would be your position between the regimes of juridification of financial capital and investment regimes? How would your idea of granting rights not only to humans but to other living species relate to the fact that now corporations are enjoying rights equal to humans and at the same time within regimes such as the International Investment Law regime, corporations are limiting the ability of states to protect the rights of their citizens?*

EM: I am optimistic about law, in particular when it takes the form of citizenship rights, civil rights, international law, and human rights, because those legal formations are the result of what I would call a juridification from below. They are the transformation of moral outrage and moral solidarity into a form of administrative power, power with the force of institutions. Law, as Habermas has so well expressed it, transforms moral intuitions into administrative power. I like also how Ronald Dworkin puts it at the beginning of his *Law's Empire*, 'We live in and by the law. It makes us what we are: citizens and employees and doctors and spouses and people who own things'.<sup>9</sup> Today, because of the juridification of human rights, we are also made by the law into humans whose right to have rights can never be breached. Law has a moral force that we can mobilise when struggling against any form of violation of human dignity. But this

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<sup>9</sup> Ronald Dworkin, *Law's Empire* (Harvard University Press 1986).

moral force of the law, whether national or international law, comes from the fact that law, rights, legal treaties, are the sedimentation of struggles by humans, individuals, groups who have suffered in their flesh some sort of violence, some sort of shame, some sort of dehumanisation.

In the last half a century, for instance, women across the planet have been struggling against sex trafficking and the penalisation of rape as a type of genocide. I take it that when rape is taken as a crime

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against humanity we have indeed made a great step for humankind. So, it is this way of seeing law as the result of juridification from below that makes me optimistic.

At the same time, I am all too aware that there is a powerful juridification from above, a process of weaving a legal

cage that allows multinationals to rule above nations, and in fact, to use the power of the law to undermine the juridification that takes place within nations. Yes, this juridification from above presents us with many challenges, and should make us coldly sceptical of the efficacy of law. But sceptical does not mean cynical. We have to counter the power of law with the power of law.

Still, I think we are living through a very complicated period in which new legal regimes are being established that subordinate law to the imperatives of finance capital. This is not new, one could object. I think that what is radical is the ways in which these new legal regimes are turning life and time itself over to the financial sectors. What I mean is that we now have transnational legal regimes that regulate patents over life, on the one hand, but also over financial tools, like derivatives and hedge funds, that are about capital extraction from future projections on growth and financial investments on the other hand. If for capitalism the body of the worker was the site of capital extraction through the buying of labour time, for finance capitalism it is the body politic of entire peoples that becomes the site of capital extraction through the mortgaging of a nation’s GDP. Again, as Habermas has pointed out, we need something like a world constitution that establishes the

parameters within which this Wild West juridification of the multinationals can be reined in and controlled. The financial instability of the financial sector proves that we need to bring to the transnational level a new type of legal regimentation.

BBKLR: *Finally, during the seminar you talked about the concept biocapitalism, we wonder if you could elaborate more on this concept. Do you find this to be a potent new form of the critique of capitalism?*

EM: I think capitalism has been always biocapitalism. The great Latin American philosopher Enrique Dussel, who wrote a five volume work on the genesis of *Das Kapital*, showed that for Marx a foundational category was that of *Lebendige Arbeit*, living labour. Dussel showed that for Marx the labour theory of value was really an analysis of the expropriation of the worker through the expropriation of living labour, the labour required for the reproduction of the life of the worker. Capital is the coagulation of that then becomes money, which then more commodities money. The market life, the bios of the traded as the fetishism of money. As I noted before, the primitive accumulation that allowed European capitalism to take off was the expropriation of the life of New World indigenous populations and their life-world's biota. But nothing shows more starkly how capitalism has always been biocapitalism than slavery. Slavery was biocapitalism as a biopolitical regime. But biocapitalism also means the expropriation of the agriculture and animal husbandry of the colonised.

*We need something like a world constitution*

Now, I think Michel Foucault gave us a powerful tool when he came up with the concept of biopolitics, with its cognates biopower and biohistory, in order to be able to talk about the development of technologies of regimentation and normalisation of populations. For Foucault biopolitics allows us to see how political and legal power is actually generative and positive, and not simply prohibitive, punitive and homogeneous. In his Collège de France lecture courses from the

late 1970s, Foucault began to link the analysis of biopower to the analysis of neoliberalism. We now know because of the recently released course from 1972-73, titled *The Punitive Society*,<sup>10</sup> that Foucault was interested in the relationship between capitalism and penalty. His book *Discipline and Punish* should be read in the context of a critique of capitalism as biocapitalism.<sup>11</sup>

But I do not want to lose my thread here. I think that notwithstanding the usefulness of the concept of biopolitics, Foucault uncoupled it from colonialism and imperialism. So, let me illustrate: capitalist extraction begins in the new world with the establishment of the *encomienda* and the *repartimientos* that were allegedly used for the evangelisation of Amerindians. But, it is clear that these two quintessential institutions, along with the slave plantation, were biopolitical/biocapitalist institutions that became the primary sites for the exploitation of life.

Today biocapitalism is evident not only in bioprospecting but also in the transfer of fossil fuels from one region of the planet to another. What has been called carbon capitalism and carbon modernity is but the most recent face of biocapitalism. I would say that the acme of biocapitalism is the patenting of seeds and the patenting of genomes and in general the turning of seeds into commodities. I would say, as a way to conclude, that we have to think of the Anthropocene as the planetary face of biocapitalism, if we do not see their interconnection we are naturalising what are really effects of certain historical institutions. Above all, when we confront the brutality of biocapitalism in terms of the expropriation of life through violent expulsions and expropriations, we can begin to decolonise a global justice agenda that is attentive to the way in which ecological and environmental injustice are very conditions of possibility for capital accumulation. Today the critique of capitalism must take the form of

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<sup>10</sup> English translation forthcoming, August 2015: *Michel Foucault, On the Punitive Society: Lectures at the Collège de France, 1972-1973* (Graham Burchell tr, Palgrave Macmillan 2015).

<sup>11</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, Vintage Books 1977).

the critique of biocapitalism with its capillary forms of biopower and its matrixes of biopolitics.