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DISCUSSION

Dense Struggle (II): Oh yes, that, our world

LUIS ESLAVA — 23 September, 2015



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In the preamble of the *Communist Manifesto* (1848), Marx and Engels made the famous dictum:

“A spectre is haunting Europe – the spectre of communism. All the powers of old Europe have entered into a holy alliance to exorcise this spectre: Pope and Tsar, Metternich and Guizot, French Radicals and German police-spies.” History has proven Marx and Engels correct. Communism was not only in the rising. Counter-revolutionary forces were also getting ready to squash it.”

And this still seems to be the case. The dissatisfaction felt throughout Europe at the time at which the Communist Manifesto was being written, and that has grown and spread across the world since then, has been vanquished, time and again, by capitalism's resurgence in varied guises – from yesterday's (neo)colonial ventures to today's (post)neoliberal (re)structurings. The fact that today the wealth of the 85 richest people is equal to that of half's the world population is just one telling fact that confirms this current sad state of affairs. [1]

To affirm that law is behind this situation would not be a surprise. But just to attest the obvious, one need only remember that there is not a single legal avenue available to reverse, or even to ameliorate, in any meaningful sense, the spiraling imbalances that today mark the global distribution of wealth and its accompanying processes of environmental decay, socio-spatial segregation, forceful displacement, and jobless growth, not to mention the urbanization of poverty, the delegitimation of public action on the part of the state, and the rise of private security forces, paramilitarism and vigilantism across the planet. [2]

Law has been, for all these reasons, instrumental in the constitution of our lopsided present. And even when used to counter such trends, law seems able to do little more than create partial individual victories, or liminal islands of collective hope, with limited resources and bureaucratic arbitrariness at all times being the common denominator. [3]

The triumph of capitalist modernity has generated, in this way, a particular kind of world. This is a world which reifies itself before our eyes, and which trickles down from high international and transnational maneuvers, to national

machinations, to local arrangements, to those minute practices and legal relations that form the day-to-day of our current sociality.

For all of these reasons, an enabling blindness, coupled with enduring legal fictions, jurisdictional constructions, and a particular kind of zombie-like economics (as Ben Fine has put it), have come to play a key function in the maintenance of our everyday. [4] These are the outer expressions of that “spirit”, of that ethos or disposition of capitalism so famously described by Max Weber. [5] I will return to that “spirit” shortly. For now, however, it is just important to consider how these phenomena enable us to walk on our streets, feeling secure in the assumption that there is still something that resembles a collective project and a moral and political horizon within our political communities. But just start questioning that blindness, scratch the surface of those legal fictions, or cross-examine the zombie, and a hard reality will be there, waiting for you (photo. 7).



Photo. 7. Placard used during a march organized during the IDP's protest: "The people without housing is asking for its rights", Bogotá (June, 2009). L. Eslava.

In the scenario I have just set up, in which the violence generated by the current order is constantly covered-up, expressions of dissatisfaction and claims for redress coming from those squashed must be properly justified. Yet this is not all. As the group of IDPs that I followed in Bogotá during the year 2009 found out, those who decide today to contest the status quo must also be ready to engage in endless Kafkaesque exercises if they are to be able to locate some of those multiple authorities and elusive forces that govern their lives. For these authorities and forces play continuous tricks of mimesis and vanishment on them. These tricks are backed up by law and consequential to a particular kind of economic rationality – one that has at its heart an economy of sacrifice. [6] As the group of IDPs learnt, they were not simply a collection of expendable lives. They were, instead, a group of important subjects of management and regularization. Theirs was a condition which did not imply the solution of their problems, but rather the administration – really, the didactical curtailing – of their desires and aspirations, while the world continued to race around them (photo. 8).



Photo. 8. Placard used during a march organized during the IDP's protest: "Leaders, Faced the displaced population. Stop hiding away" (June, 2009). L. Eslava.

Facing this systematic management and regularization of the violence that they experience and their aspirations for a better life, people who, like this group of IDPs, today decide to go to the streets to fight must also prove that they are not criminal. And here we should understand not being criminal – not being *facinorosus* – on the basis of the Latin origins of the idea: that of being in a state of wickedness, sinfulness, or, even better, of having departed the realm of proper judgment. The possibility of asking the system to respond for its own collateral effects has become not only difficult, for the 'criminal' in this sense, but also *de facto* illegal and, on many occasions, an act of madness (photo. 9).



Photo. 9. Placard used during a march organized during the IDP's protest: "We are people displaced. We are not criminal" (June, 2009). L. Eslava.

Membership to official political communities – particularly for those in precarious positions in the Global South, as well as in the Global North – requires today, for these reasons,

a readiness to accept that the prevalent order is neither in their favor, nor in the position to exclude them fully. Here lie the roots of a particular model of political membership, very distant from the romantic liberal promise of citizenship through political assertion. Realizing this should make us aware that a larger “pedagogy of disenchantment” runs beneath current practices of managing and regularizing the violence endured, and the aspirations felt, by people at the margins of the global order. [7]

Citizens placed in a precarious position need to learn to conduct themselves in a strategic way: not aspiring too much, always conscious of their place within the grand scheme of things. Violence, frustrations and fears that ignite, frame and underpin their claims must be inhibited and kept under control. In this sense, their struggles and personal experiences of the world are dense, but this density must not be fully articulated. This form of dense struggle is the contemporary version of that “spectre” to which Marx and Engels referred in the Communist Manifesto, although now it is a spectre suppressed (or, rather, highly disarticulated) by tighter biopolitical mechanisms and a more omnipresent form of global political economy.

The management and regularization of violence and suppression of subaltern aspirations that I have described are terribly present in today’s rapidly globalizing cities in the Global South, like Bogotá, Istanbul and Rio de Janeiro. [8] These cities have become ideal spaces for the reproduction of global capital, as well as living spaces for a new global elite. In these cities, the pressure to show developmental results while remaining competitive and financially proficient has produced an explosive cocktail of material and extra-material forces that is resulting in successive waves of

class-clashes and social agitation. Like any other kind of spectre, those suppressed aspirations and violence, as endured primarily by the peripheral subjects of the global legal order, are only waiting to surface, either in the form of new political upheavals, or as something else (see photo. 10).



Photo. 10. IDPs protesting in Bogotá's Plaza de Bolívar (May, 2009). L. Eslava.

History has presented us, thus, with another lesson to learn from Marx and Engel's opening dictum in the Communist Manifesto. The past couple of centuries have revealed that besides the question of capitalist expansion at the material level, a battle has been underway at the level of metaphors, emotional forces, and for that matter, also spirits, spectre, ghosts and phantoms.

Marx and Engles were clear about this. For them, the "spectre of communism" was haunting Europe in the middle of the 19th century. But insofar as there was a spectre of communism around, there was also the "spirit of capitalism". As frames of mind and ideological representations of the world, as weltanschauung, communism and capitalism were both, therefore, subjectively loaded from the start. They were powerful circumscriptions of emotions and desires from their moment of conceptualization – so much so that the same Marx and Engles claimed, immediately after their famous opening dictum, that it was necessary to give a distinctive political party formation to the spectre of communism (to all of those alternative political forces and claims for redress already present across Europe at the time). The abstract spirit, the abstract body of thoughts and dreams for a future of subaltern rule, had in their view to be embodied, incarnated as it were, into formal politics and effective material forms if already-embodied forms of capitalist rule were to be confronted effectively.

Being aware of this immaterial, subjective, even uncanny, all too human side of both capitalism and communism reminds us how the battles of our present still involve forces, as well as vernacular expressions, that exceed economic technicalities and secular politics. These vernaculars become more salient within the realm of popular struggles:

the ground on which the tensions that characterize our unequal planet prove their reach and are constantly challenged (photo. 11).



Photo. 11. March of IDP's on the streets of Bogotá (May, 2009).

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[Part I: "Dense Struggle \(I\): Violence and the otherworldly"](#)

[Part III: "Dense Struggle \(III\): The Modern Uncanny"](#)

[Part IV: "Dense Struggle \(IV\): The Ghostly Real"](#)

This text appeared first on [Critical Legal Thinking](#).

Footnotes

[1] Graeme Wearden, 'Oxfam: 85 richest people as wealthy as poorest half of the world' (The Guardian, 20 January 2014).

[2] See e.g, Rita Abrahamsen and Michael C. Williams, *Security Beyond the State: Private Security in International Politics* (Cambridge University Press, 2010).

[3] See e.g., John Morriss, *International Law as the Law of Collectives* (Ashgate, 2013); Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (2012).

[4] Ben Fine, 'Development as Zombieconomics in the Age of Neoliberalism' (2009) 30(5) TWQ 885 – 904

[5] Max Weber, *The Protestant ethic and the spirit of capitalism*. (Stephen Kalberg trans, first published 1920, Oxford University Press, 4th ed, 2009). See especially on an examination of Weber's analysis of capitalism as a form of spirit, ethos and disposition: Arjun Appadurai, 'The Ghost in the Financial Machine' 23(3) *Public Culture* 517.

[6] Anne Orford, 'Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice' (2005) 18 *Leiden Journal of International Law* 179.

[7] See Luis Eslava, 'El Derecho Urbano en un Mundo Globalizado' in Mauricio Rengifo and Juan Felipe Pinilla (eds), *La Ciudad y el Derecho: Una Introducción al Derecho Urbano Contemporáneo* (Temis & Universidad los Andes, 2012); Luis Eslava, "I feel like a dog with the tail between its legs": The Limits of Protest and Urban Law in a Decentralized World' in Oishik Sircar, Vik Kanwar and Rajshree Chandra (eds), *Human Rights Beyond the Law* (Oxford University Press, forthcoming).

[8] See in the case of Bogotá, in particular how these biopolitical mechanisms and new dynamics of the global economic order affect the political claims of IDPs in the city: Austin Zeiderman, 'Living dangerously: Biopolitics and urban

citizenship in Bogota' 40(1) *American Ethnologist* 71; Austin Zeiderman, 'Securing Bogotá' (Open Democracy, 14 February 2013); Federico Pérez, 'Peopling Space: Contemporary Redevelopment in Bogotá' (Open Democracy, 4 March 2013); Illan rua Wall and Carolina Olarte (2012) 'Displacement and the City: The Occupation of Public Space in Bogota' 21(3) *Social And Legal Studies* 321. See more generally in the case of Rio de Janeiro and Istanbul: Luis Eslava, 'Istanbul Vignettes: Observing the Everyday Operation of International Law' (2014) 2(1) *London Review of International Law* 3; Maria Clara Dias and Luis Eslava, 'Horizons of Inclusion: Life Between Laws and Developments in Rio de Janeiro' (2013) 44(5) *Inter-American Law Review* 177.

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