

REFLEXIVITY AND RUPTURE: EMANCIPATION IN SOCIALIST AND DEMOCRATIC THOUGHT

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ABSTRACT: Based on a critique from both political and theoretical perspectives within the socialist tradition regarding models of social change, placing “revolution” opposite to “reform”, an assessment is made of the meaning and scope of both of these models in contemporary societies, where a growth of informal powers can be observed. Democratic theory holds the idea of the reflexivity of the constitutional system, which, however, has never been able to politicize capitalism. The socialist theory of revolution tends to see disruption as a source of social change, although it defends a state-run model that excludes the possibility of political action arising from civil society. This note contends that the failure of both models, together with the rise of necrophiliac capitalism that combines a neoliberal idea of sovereignty with the use of violence, highlights the limits of the model of popular sovereignty and positions resistance and disobedience at the center of understanding social change.

KEYWORDS: Revolution, Reform, Democracy, Socialism, Disobedience, Obedience, Popular sovereignty.

RESUMEN: A partir de la crítica, tanto de la perspectiva política como teórica al interior de la tradición socialista acerca de los modelos de cambio social, que opuso “revolución” a “reforma”, se desarrolla una reflexión sobre el significado y los alcances de ambos modelos de cambio en las sociedades contemporáneas, donde se observa un crecimiento de los poderes informales. La teoría democrática sostiene la idea de la reflexividad del modelo constitucional de soberanía, la cual no obstante nunca ha logrado la politización del capitalismo; la teoría socialista, vinculada al concepto de revolución, tiende a ver en la ruptura la fuente del cambio social, aunque se sostiene en un modelo estatista que cierra la posibilidad de la política desde el campo de la sociedad civil.

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En esta nota se sostiene que el fracaso de ambos modelos, ligado al ascenso de una forma necrófila de capitalismo, que combina una noción neoliberal de la soberanía con el uso informal de la violencia, ilustra los límites del modelo de soberanía popular como modelo de producción de derecho y coloca a la resistencia y la desobediencia en el centro de la comprensión sobre la forma del cambio social.

PALABRAS CLAVE: *Revolución, Reforma, Democracia, Socialismo, Desobediencia, Obediencia, Soberanía popular.*

TABLE OF CONTENTS

I. INTRODUCTION	170
II. THE MEANING OF POLITICAL EMANCIPATION IN MARXISM.....	171
III. REVOLUTION AS A CONDITION FOR SOCIAL CHANGE.....	173
IV. DEMOCRATIC SOVEREIGNTY AND ECONOMIC REGULATION	176
V. POLITICAL CHANGE AND THE RISE OF NEOLIBERAL SOVEREIGNTY.....	177
VI. RESISTANCE AND DISOBEDIENCE WITHIN THE INTERPRETATION OF SOCIAL CHANGE	179
VII. CONCLUSIONS.....	183

I. INTRODUCTION

According to Marx, social emancipation is a consequence of political action and produces economic and political changes in a society. From his perspective, legal forms depend on economic relations and represent an ideological discourse that leads to the acceptance of domination. However, Marxist tradition describes emancipation by placing it into legal categories, according to the subject's idea as the author of the rules he follows. Both, revolutionary and democratic perspectives in Marxism, seek to create a new model of sovereignty through the "seizure of power" to be able to create new norms and institutions.

Throughout the twentieth century, these models of political action debated the significance of social relations and the sense of political sovereignty. However, at the dawn of a new millennium, rising informal powers and decreasing State regulatory capacity seem to be a result of the depletion of the idea of emancipation.

The emergence of social movements marked by a radicalization of autonomous policy toward the State has led to a search for new theoretical alternatives in order to understand processes of law-making and change, as well as the political phenomena of resistance and disobedience in contemporary societies.

This note seeks to show the failure of socialist thought to articulate an alternative social project, a phenomenon that underscores the historical limits of democratic sovereignty and questions the ability of the democratic model to stand for social change processes in the context of necrophiliac capitalism. We argue that it is necessary to understand social change by interpreting it through the struggles of excluded communities.

It seeks to uphold the concept of strategic law processes, in which explanations are not conceived as a rational basis for political action, but as a unifying force pushing towards political change.

II. THE MEANING OF POLITICAL EMANCIPATION IN MARXISM

In German philosophy, the concept of emancipation comes from a transcendental and idealistic formulation where the State represents the realization of the Phenomenology of the Spirit, and moves towards a materialistic and negative enunciation centered on the idea of rupture as an overwhelming dialectical force.

However, Marx not only foresaw a political revolution, but also a consciousness one conceived as a stage for the fulfillment of a romantic ideal in which human beings build their own freedom. For him, material contradictions separate a human being from his own work and conscience. Thus, emancipation would require an analysis of the concepts that describe social relations.

Although he includes it in the discourse of sovereignty, Marx's program assigns the State and Law different roles than those given by Kant and Hegel, for whom Law is a realm of freedom founding determination, a logical historical a priori which rules established political obligation;¹ Marx affirmed that Law decisively participates in capitalism under conditions of reproducing its existence.

From Aristotle to Hegel, economic systems had been seen as abstract mechanisms and not as concrete communities. Once it was etched into the history of capitalism, Marx was able to politicize economics and associate the concepts that gave meaning to capitalist relations within a historical context, to thus maintain the need for a praxis that seeks to destroy capitalism and establish another path.

Marx postulated the concept of emancipation as a struggle within society that entails the revision of an ideology and incorporates knowledge into the

¹ Hegel's ideas on the place of economy and the State within philosophy can be found in Hegel's "Phenomenology of Spirit". See: Juan García Del Campo, *El derecho, la teoría, el capitalismo y los cuentos*, In CORREAS, OSCAR & CARLOS RIVERA LUGO, *COMUNISMO JURÍDICO* 48-52 (Ediciones Coyoacán, CEIICH-UNAM 2013).

practice of said emancipation. He thought that political freedom forms part of history, a continent where political action is the source of liberation.

According to the approach posed by both Hegel and Marx, revolutions and social movements would provide a concept of reflexive history that simultaneously integrates identity, self-determination and negativity. Social action would reveal power ideological character and build the force destined to destroy it.

The Marxist idea of history is immersed in Hegelian matrix teleology, where the State and the economy are integrated elements. Marx incorporated proletarian revolution into this teleology, as well as the subject of the emancipation of society as a revolutionary actor of change and also an emancipation social subject, a revolutionary transforming actor.²

This paved the way for two points of view on emancipation: two strategic revolutionary and reflective visions of political action in socialist theory, each one characterized by the form of emancipation: reform or revolution. This dilemma originates in the position each one assumes in respect to the State and Law.³

On the one hand, we find those who consider that bourgeois Law serves the propagation of capitalism. Hence, changes should be carried out by extra-institutional means.⁴ Inspired on Jacobin revolution, revolutionaries believe in revolutionary parties need to seize power and build a socialist society from the State.

On the other hand, we find those who believe that Law and State, in the context of republican and liberal institutions, represent the place where economic transformation will take place. The mobilization of the social classes is required to consolidate the institutional reforms needed to regulate an economy that will provide equality and conditions of plurality.

Despite these differences, it is important to observe that the notions both views use to approach the State are the same. Both create a context in which society is conceived as a whole that depends on economic order (as heralded in classical economics), and where change lies in the economic agents' legal relationships transformation consequence.

Both concur that in order to achieve emancipation, it is necessary to appropriate law-making processes and create norms that will serve as triggers for social change. The ensuing conflict would require State intervention in economic relations through the creation of guiding regulations.

However, it cannot be overlooked that both approaches give the name of causes to what Marx identifies as effects. In his famous "Preface to a Contri-

² KARL MARX, *THE COMMUNIST MANIFESTO* (SelfMadeHero 2000).

³ Few contemporary authors have addressed this problem. Among these are Ernesto Laclau and Chantal Mouffe in *HEGEMONY AND SOCIALIST STRATEGY*; and Boaventura de Sousa Santos in *SOCIOLOGÍA JURÍDICA CRÍTICA*

⁴ BOAVENTURA SANTOS, *SOCIOLOGÍA JURÍDICA CRÍTICA* 544 (Trotta, 2009).

bution to the Critique of Political Economy”, Marx would have put economy as the principal purpose of State-building, but Marxism identifies Law as the cause of social change and the State as “the one in charge” of providing the laws that will lead to emancipation from the laws of capitalism.⁵

Twentieth century social democracy was based on these abstract concepts. Both Lenin, one of the most important figures of the revolutionary tradition, and K. Kautsky, a central representative of the reform model, believed in the working class as a subject of political action and the State as a space to transform economic relations. In both approaches, the political-legal-ideological superstructure was the objective of the struggle, and not the economic bases that Marx considered the principal object.

III. REVOLUTION AS A CONDITION FOR SOCIAL CHANGE

Until seventeenth century, as G. Sorel observed, societies feared revolutions that pursued political power as an ungovernable evil. However, after the French Revolution, such uprisings began to be conceived as something desirable, “a people’s struggle against a coalition of horror and oppression”. G. Sorel wonders what the French revolution would mean if the myths surrounding it were suppressed.⁶

The ideal of modern emancipation conceived a revolution under the same terms that Santo Tomas employed to define a “state of necessity”, the result of a causal relation in society,⁷ cause and effect of political community, source and ultimate Law’s foundation.⁸ Romantic ethos linked revolution exigency to its legal effects,⁹ the result of a conscious effort to transform conditions of existence and institution.¹⁰

Revolution as a concept of necessity was also present in Hegel’s criticism of the nihilism of slave revolutions. In Marx, the justification for a revolution refers not only to a historical need, but also to a need to revolutionize thought processes. The fundamental factor of such social change, as Bolívar Echeverría points out, implies a “revolutionary transformation in the semi-otic field”.¹¹

⁵ KARL MARX, A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY (Progress Publishers 1989); Also see: ERIC SELBIN, REVOLUTION, REBELLION, RESISTANCE: THE POWER OF STORY 197 (Zed Books 2010).

⁶ *Ibid.* at 150

⁷ GEORGES SOREL, REFLECTIONS ON VIOLENCE 29 (Forgotten Books 2015).

⁸ *Ibid.* at 61-62

⁹ BOLÍVAR ECHEVERRÍA, EL MATERIALISMO DE MARX, DISCURSO CRÍTICO Y REVOLUCIÓN 85 (Ítaca 2012).

¹⁰ Selbin, *supra* note 6 at 13.

¹¹ BOLÍVAR ECHEVERRÍA, VALOR DE USO Y UTOPIA 43 (Siglo XXI Editores 2012).

In this sense, a revolution is not only expressed as social violence, but also as a set of justifications for action, which requires —as M. Foucault explains— a “counter history”, a discourse that makes it possible to decipher the underlying inequalities in social relationships in order to provide a promise of change and a requirement for deliverance.¹²

This counter history is not part of the discourse on Law, but permeates it. It is not a *de jure* enunciation, but *de facto evidence that cannot be governed or limited but must be reduced by State powers at the moment when it becomes an end in itself and seeks to seize political power*.¹³

According to Agamben, the fact that necessity can prevail over Law refers to a time without the law so essential to State powers that these must ensure a relationship with it. Its imperative nature is reduced to a decision about something that is undecidable, creating a situation in which the rule appears to be the exception. In this case, the theory of necessity is an exception to justify transgression.¹⁴

However, the need for a revolution is outlawed;¹⁵ it pursues social re-politicization but it is inevitably accompanied by violence “as if in order to re-establish the Law a relationship with anomie were required.”¹⁶ In this sense, when considering revolution a necessity, the State forces us to stop thinking about violence as simply a means and to start seeing it as an end in itself.

Revolutionary action obeys an alternative Law; its deployment accuses and defends, identifies and excludes, and even includes undesirable effects. But, once alternative provisions become State *ratio* are assimilated into natural ones, they become authoritarian, demanding absolute obedience, punishing diversity and repudiating dissidence.¹⁷

The antithesis of revolution, as a necessity and a state of exception at the same time, concerns a situation in the context of war where the need for social change, far from being an objective, implies being attributed with a meaning that deems the system worthy of being overcome. Therefore, revolution is not revolutionary by necessity and its justification can never be an absolute parameter for political action.

In this context, the Russian Revolution was the first to be done against the Law,¹⁸ although later, like all revolutions, it imposed a new form of entitlement. The arrival of the Communist party to political power created a Soviet

¹² MICHEL FOUCAULT, *SOCIETY MUST BE DEFENDED* 67-69 (Penguin Books 2004).

¹³ Echeverría, *Supra* note 11 at 66.

¹⁴ GIORGIO AGAMBEN, *STATE OF EXCEPTION. HOMO SACER*, II. (Trans. Kevin Attel) 83 (University of Chicago Press 2005).

¹⁵ *Ibid.* at 68.

¹⁶ *Ibid.* at 100.

¹⁷ Sorel, *supra* note 8 at 140. Sorel says that the idea of revolution demands an immense sacrifice on behalf of the individual, pushing him towards rebellion, even though it serves other purposes that are not revolutionaries.

¹⁸ Selbin, *supra* note 6.

federation in charge of promoting transformations in social relations through new laws, as held by P. Stučka.¹⁹

This revolution would be accomplished in two phases: an insurreccional one in which worker organizations seize political power, and a second moment of social rebirth through legislation that gives order to the new social relationships. Emancipation remains linked to political action and legal concepts whereas revolution is reduced to the State's creating a new economic structure.

The Russian experience gave rise to a kind of power in which the State oversaw social life, where the economy was suppressed in favor of a proletarian identity and the Law prohibited all activity incompatible with the State as a unique economic agent and actor in civil life.²⁰

In the twentieth century, this model was used by several national liberation movements around the world, as an emancipation strategy where the economy and the State occupied a central place. Anti-colonial revolutions created independent nations in Asia, the Americas and Africa, and in some cases, they even developed a national economy to counter imperial powers.

Nevertheless, Bolívar Echeverría thinks that the Marxist concept of revolution Marxist is indebted to that of economic freedom, as it is linked to consumption and technology as a source of progress. The Marxist lack of criticism of technology, progress and the obsession with concentrating power would have identified the purposes of the revolution with those of modern capitalism.

Under that perspective, the revolution would have ceased to be the axis of the political action of a subordinated group as it was until the 1960s. According to Santos, rebellion would have occupied a vast field of social action due to its ability to integrate diverse social sectors.²¹

Armando Bartra believes that this phenomenon coincides with a "Promethean crisis",²² a collapse of romanticism that appears to be a finalist and determinism history models' crisis. Furthermore, there is also the waning idea that the subject fulfills his or her destiny by acting politically.

¹⁹ P. I STUČKA, *LA FUNCIÓN REVOLUCIONARIA DEL DERECHO Y EL ESTADO* (Juan Ramón Capella tr.) (Península 1974).

²⁰ L. Bronstein, *Trotsky*, A Russian Revolution leader and head of the Red Army, Trotsky was the first communist to address democracy from within socialism. Trotsky denounced communist party's usurpation of power, for which he was persecuted. Among his works are: "History of Russian Revolution" (1927) and "Permanent revolution" (1932), published in London by Penguin Books.

²¹ Santos, *supra* note 5, at 132.

²² ARMANDO BARTRA, *TOMARSE LA LIBERTAD. LA DIALÉCTICA EN CUESTIÓN* 132 (Editorial Ítaca 2010).

IV. DEMOCRATIC SOVEREIGNTY AND ECONOMY REGULATION

The Marxists who assumed that the main task was to intensify the democratization of the State sought to strengthen its role as a space for economic regulation and for representing social relationships, which is why the analysis and definitions of social democracy have two aspects.

The first one emerged in the first half of the last past century and focuses on the State's role as an economic regulator, as well as its social and employment policies. The other is centers on the justification for democratic sovereignty and reflexive political change. In both cases, democracy represents a form of self-governance that ensures the protection of human rights and social plurality.

The first point of view was born with the defeat of the revolution in Germany.²³ It created a hybrid power resulting from a compromise between socialist and liberal parties that was based on the idea that Law and State are instruments that allow for the control of economic powers and generate instances for the resolution of inherent contradictions.

The legal connections that appeared with this alliance led to a positive mandate where the State played the role of a social balancer through the implementation of economic policy instruments that formed a kind of democracy known as the "welfare state", in which taxation policies are instruments for social equalization and the management of inequalities.

With the State as a main actor, economical regulation became a privileged space for political action and concepts like supply of services, taxation, public infrastructure, social security, minimum wage, working day, subsidies, and others. Meanwhile, the concepts of Leviathan and the Welfare State remain unclear, ensuring stability to capitalist countries.

However, democratic theory (more socialist than liberal) has argued that freedom should be as broad as necessary to ensure citizen dignity and freedom, which would include the necessary regulation to protect not only civil liberties, but also collective human rights.

Along with economic regulation theories, a reflection about democratic sovereignty as emancipation field emerged. Socialist countries' criticism against democracy generated consensus based not on equality and plurality, but on the condemnation of non-State political action, an expulsion of any form of fighting that could represent a break in social order from the political horizon.

²³ German Social Democratic Labor Party leaders A. Babel, E. Bernstein and K. Kautsky promoted a comprehensive reform policy with the participation of workers parties at democratic elections (called the "Effurt Program"). This played an important role in summoning support for the revolution led by K. Liebknecht and R. Luxembourg who lie in wait for political power in post-war Germany.

Emancipation became an issue of democracy and reforms.²⁴ Different authors addressed this issue, Kelsen did in “Socialism and State” where he stated that democracy implies that law provides a possibility because it is susceptible to become a modified discourse, so that socialism would only be achievable in its State form.²⁵

The democratic nature of Law would give it the presumption of validity and an epistemic superiority that enables it to contend with the reasons for obedience.²⁶ Law would have the objective of ensuring the autonomy and control of power as well as ensuring obedience. Political obligation would derive from a contract that in guaranteeing identity between society and the government would also ensure its effectiveness.

Democracy would be based on the presumption that law can be changed at any time by means of reflective and unbiased legal procedures. Social change is explained as a people’s will to change the result of the law; emancipation would be a legal link that, according to Santos, becomes possible through the liberties granted in a constitutional pact that would resurface as the basis for self-determination and grounds for statutes.²⁷

These ideas had a strong influence on contemporary political thought and were put into play in some struggles that sought to contain the advance of capitalism through democratic means, as happened in Bolivia (1954), Guatemala (1954), and Chile (1973). These ideas later reappeared as justifications for a democratic transition, processes that refer both to the “Pacto de la Moncloa” in Spain in the 1980s and to “New constitutionality” in Latin America, in early years of this century.

V. POLITICAL CHANGE AND THE RISE OF NEOLIBERAL SOVEREIGNTY

In the last decades, the model of democratic sovereignty has been losing legitimacy as a political paradigm; the idea of democracy is gradually being reduced to an economic value or a procedure-to-create law set. The welfare State has lost its capacity as the capitalist relations manager and has become a corporative State.

The decline of the Welfare State and its inability to represent economic relationships is a result of the imposition of an equity model from the State

²⁴ ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY AND SOCIALIST STRATEGY* 191-200 (Verso 2014).

²⁵ OSCAR CORREAS, *EL OTRO KELSEN* 35-36 (Instituto de Investigaciones Jurídicas, UNAM 1989). Kelsen saw democracy as a weapon against totalitarianism. According to him, the best thing that socialism could do was to “dispense with anarchism”.

²⁶ ARIEL H. COLOMBO, *DESOBEDIENCIA CIVIL Y DEMOCRACIA DIRECTA* 29-32 (Trama editorial and Prometeo libros 1998).

²⁷ Santos, *supra* note 4, at 510. Emancipation would be the result of a increasingly complex interactions between society and law.

and the Law. This has prevented the democratization of social relationships because the consequence of State and Law effectiveness is social and economy depoliticization.²⁸

As we know, for some authors contradictions in democratic theory are caused by contradictions between individual and collective human rights. According to Estévez Araujo, this incompatibility arises because of unlimited capital accumulation²⁹ that gives primacy to mercantile exchanges over any other social regulation.

Oscar Correas, on the other hand, argues that the legal system in capitalist societies is shaped by rules that demand a certain behavior to reproduce the system;³⁰ legality subjects the meaning of democratic rules to that of trade exchange, creating the idea, as Žižek also points out, that it “is about a legal relationship and not one of power”.³¹

In this context, the metamorphosis of contemporary sovereignty should be conceived as the result of a process by which powers seek to eliminate all democratic regulation and find refuge in market and violence. Boaventura Santos thinks that this metamorphosis expresses a State’s regulatory capacity for loss in the areas of economics and labor field, which is transferred to the meta-regulation of great economic powers.³²

The collapse of “real socialism” and the crisis of the Welfare State are concurrent phenomena with the effects of a loss of citizen expectations and the rise of an ultra-liberal political version that claims economic freedom has primacy over democratic liberties.

The nature of contemporary sovereignty, whose implementation was supported by social democratic parties, prescribes the liberalization of strategic resources, the easing of labor, and the privatization of social security, thus creating a context where decisions are passed along to the hands of the important financial forces and the State’s role is reduced to passing the measures needed for that purpose.³³

Nonetheless it is not about a “minimum State” because the function of applying the law is maintained as a State’s faculty in order to guarantee the reproduction of the system. On contrary, as a representative of the financial powers, it becomes a strengthened State,³⁴ whose political class, as Santos

²⁸ The *Welfare state* and reformist strategy tend to be presented as a version of depoliticized social change that tends to confuse emancipation with regulation.

²⁹ JOSÉ ANTONIO ESTÉVEZ ARAUJO, *LA CONSTITUCIÓN COMO PROCESO Y LA DESOBEDIENCIA CIVIL* 110 (Trotta 1994).

³⁰ OSCAR CORREAS, *INTRODUCCIÓN A LA CRÍTICA DEL DERECHO MODERNO (ESBOZO)* 245-253 (Fontamara 2006).

³¹ SLAVOJ ŽIŽEK, *EN DEFENSA DE LA INTOLERANCIA* 89 (Ediciones Sequitur 2007).

³² SANTOS, *supra* note 5, at 410.

³³ PIERRE ROSENVALLO, *THE SOCIETY OF EQUALS*. (Trans. A. Goldhammer) 291 (Harvard University Press 2018).

³⁴ Santos, *supra* note 4 at 605.

has observed, provides formal devices to secure the interests of multinational powers.

But formal devices are not enough for the reproduction of the system. Therefore, more and more violence is used to ensure policies of accumulation and privatization. It is a phenomenon called “the recolonization of politics” where State and private agents share the same objectives.³⁵

Ana Esther Ceseña points out that, as in the past, market forces have had militarized support. At present, the current level of appropriation-dispossession requires non-institutional support, a certain degree of informal violence to be able to modify the thresholds of social resistance.³⁶ Economic freedom would find its natural place in genuine powers, which would expand sources of profit and accumulation in Latin America.

These powers would have acted to extend beyond the regulatory field to settle in violence against society, a war that EZLN has defined as the “Fourth World War”,³⁷ whose purpose is to conquer territories and subordinate them to multinational financial capital, a strategy that upholds the pattern of contemporary capitalist accumulation.

VI. RESISTANCE AND DISOBEDIENCE WITHIN THE INTERPRETATION OF SOCIAL CHANGE

At the highest level of reflexivity (the possibility of changing the system), there is no way to transform the system based on its own rules, like the popular model of sovereignty (that gives basis to the democratic model). This is especially true for those who represent a way of life that is incompatible with capitalist dogma. In this sense, legal interpretation is still an system openness with limits beyond what political action is considered irrational.

What kind of emancipation could come from a legal order where sovereignty is displaced by economic forces and exchange has priority over collective rights? What is the meaning of emancipation in the context of savage capitalism? Is the discourse of Law a reflexive instance to be able to change capitalism?

In “Philosophy of Poverty”, P. J. Proudhon analyzed some of the effects of the contradictions between productive forces and production relations. He forewarned of strong dissent against the rise of capital as it would seek to overpower the economy and prevent the law of the market from managing

³⁵ In extreme cases (Mexico, Colombia and Guatemala), this phenomenon goes through the formation of paramilitaries, extractive companies with State corruption.

³⁶ Ana Ester Ceseña, *Ayotzinapa, emblema del ordenamiento social del siglo XXI, REBELIÓN*, (April 6, 2017) <http://www.rebellion.org/noticia.php?id=193060>.

³⁷ Subcomandante Marcos, *The Seven Loose Pieces Of The Global Jigsaw Puzzle, Zapatista Statement*, (April 6, 2010), <http://www.struggle.ws/mexico/ezln/1997/jigsaw.html>.

to impose itself on a group.³⁸ Here, we postulate that this dissidence is upheld today despite having exhausted socialist and democratic models.

We should recognize that the transformation of a community is rooted on politics more than on economics. As Clastres points out, the State represents a divided society instituted on political order, by rules established for the use of the territory and of sharing its benefits.³⁹ From this point of view, emancipation would not depend on the status of the economic subject but on his “capacity as a warrior”.⁴⁰

This position emphasizes the legality of the constitutive nature of capitalism, in contrast with the fight against its political nature. Legal discourse emerges individually as an alienation form, an external determination that takes away the possibility of being the Other and fighting submission that emerges from outside the framework of institutional power relations.

Sorel’s and Benjamin’s distrust regarding the possibility of disciplining capitalism through democratic procedures gains validity. This issue inspired the rise of social ideology in Germany in the 1920s and was taken up in the twentieth century with the fall of democratic theory ideologists, such as E. Laclau or B. Santos, who were searching for alternatives to the rise of neo-liberalism.

Different movements have sought to embody a social opposition force that created points of conflict to modify the rules of the game in an attempt to fight against forms of living conditions imposed by capitalism, and to pursue alternate ways to conceive and validate social identity. Movements have defended subjective spaces that give rise to new social logics that challenge the meaning of social action.

Public and private life has remained politicized with the social mobilization that has prevented the establishment of a framework that gives it a definite identity. In this context, anti-capitalist sectors have turned their eyes to indigenous people and communities, who are seen as a resistance and the successful defenders of the land, the vindication of use-value (human freedom) over exchange-value (merchandise).

However, in the context of savage capitalism, the possibility of defending communities within the framework of legal democratic guidelines does not seem to open up. In this sense, Balakrishnan Rajagopal, a MST scholar in

³⁸ MICHEL ONFRAY, *POLÍTICA DEL REBELDE. TRATADO DE RESISTENCIA E INSUMISIÓN* 121 (Anagrama 2010).

³⁹ C. Lévi Strauss observes that economic exchange is a means for conflict resolution, but it isn’t the only one. PIERRE CLASTRES, *SOCIETY AGAINST STATE. ESSAYS ON POLITICAL ANTHROPOLOGY* 70 and 195-199 (trans. Robert Hurley) (Zone Books 1987). Also see: ARMANDO BARTRA, *EL HOMBRE DE HIERRO. LOS LÍMITES SOCIALES Y NATURALES DEL CAPITAL* 26-29 (Ítaca, UAM 2008).

⁴⁰ *Ibid.*, at 212-215. Primitive societies reject risk, immanent to trade, of being colonized. His State rejection is a political economy rejection to submission it entails.

Brazil, warns that the existence of a variety of regulatory systems does not ensure the success of social movements that have decided to use Law.⁴¹

In the Latin American legal context, many authors, even those with a more political notion of Law, believe that Law is a reflective discourse where emancipation is played. We do not agree: has law ever been changed by obeying it? What would have been achieved in Ireland if people had not broken the rules? Was not that what Zapatistas did in Mexico?⁴²

Boaventura Santos thinks that those who defend “anti-hegemonic globalization” to achieve their goals exclude the use of either “means created by modernity” or violence beforehand.⁴³ As Foucault points out, in the event of a social uprising, an open stance must be maintained. “No one can live such a necessity in someone else’s place”.⁴⁴

In this sense, action that seeks the defense of human rights and the politicization of society only comes about by breaking the rules of sovereignty (in this case democratic ones). This occurs at different levels of discourse and only under certain circumstances, such as those needed for survival. An action that does not represent a group in the choice between different possible different life possibilities but a necessity state.

The aim here is not to prescribe violence, or to assess its reach. Neither revolution nor its specific form can be advised because each one has its own case-by-case motivations and rationale. What is highlighted here is that the growth of the power of necrophiliac capitalism leads to the emergence of certain forms of resistance, a phenomenon that cannot be thought of based on the concepts that pursue its depoliticization.

The loss of a democratic horizon forces opponents and society in general not only to ask themselves if democracy and capitalism are compatible, but

⁴¹ Rajagopal Belakrishnan, *Law Limits In Counter Hegemonic Globalization*, in: LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 168-171 (Cambridge University Press, 2009). Also see: Peter Houtzager, *The Movimiento Sin Tierra and juridical field in Brazil*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 202 (Cambridge University Press, 2009). MST indicates that struggle must be given in the shadow of the law because when conflict becomes legal, it results in no change at all; the success of any movement depends on their ability to make their demands known without arriving at a confrontation.

⁴² Juan Pedro García del Campo, *Democracia y comunismo*, in COMUNISMO JURÍDICO 108 (Osca Correas and Carlos Rivera Lugo, Ediciones Coyoacán, CEIICH-UNAM, 2013).

⁴³ In a global struggle against neoliberalism, few movements resort to anti-institutional action, but privilege institutional efforts. “Social Global Forum. As subaltern cosmopolitan legality and politics”, in Boaventura Santos, Rodríguez Garavito, C. (coord.), LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 53-59 (Cambridge University Press 2009).

⁴⁴ Michel Foucault, *Useless to revolt*, in POWER. THE ESSENTIAL WORKS OF FOUCAULT, 1954-1984, Vol. 3. 449-453 (New Press 1981) Published in “Le Monde” 21st, May 1979. Legal rules will never be strong enough against power nor will universal principles be strict; sometimes it will be necessary to experience “insurmountable laws and unrestricted rights”.

also to rethink the type of society they aspire to, how they intend to achieve it and if that society is compatible with democratic and capitalist law.⁴⁵

In the context of capitalism, emancipation forces resistors to distance themselves from their object. To achieve a structure based on subjectivity, it is necessary to pursue an action that can transform the meaning of society by unveiling a form of ideological domination (capitalism, colonialism, imperialism, patriarchy, statism), a gesture that can transform hierarchies and create new meanings of community.

Resistance and disobedience go on to assume the shape of non-civilian action, which does not usually take part in this setting because it presupposes a rupture with its structure. Unconditioned action against the system that is simplified to include all social order because it does not seek the reaffirmation of its meaning/significance but has in itself its power and potential.⁴⁶

Disobedience is something that cannot be explained; rather it is something that jeopardizes the principles of common sense. So, the production of meaning depends on the ability to shape a collective subject that can take on the risk of confronting normative formulation as an inherent duty.⁴⁷

Hence, legal boundaries would not be placed at the time of reproduction and recognition but at the level of legitimizing social experiences of rupture and resistance against the Law, in those political and sociological categories that ground the negation of the content and form of law.

Nevertheless, to open up new meanings of social relationships, the agent has no other option but to disobey the discourse that establishes his subjectivity, which affirms and denies the agent himself. This rupture entails a moment when emancipation has lost its sense, an act that seeks to transform the meaning of social relationships with one that results in a loss of meaning. It occurs i.e. in the theoretical dispute about the idea of democracy, a formula that still justifies political sovereignty, but is actually besieged by dilemmas “for which there are no modern solutions.”⁴⁸

Emancipation would be linked to non-obedience of the law, a “non-right” that consists in a community’s possible use of non-legal, illicit or unauthorized means. This is, within the model of the legal configuration of violence, only that which is undetermined by the potential of imbuing an internal system with meaning puts an end to violence itself, option that opens possibilities for the politicization of society.

So, a change in the legal system would not depend only on the criteria to validate or justify acts of disobedience but also on the strength of the action that citizens employ against legal provisions.⁴⁹ This force is the only type of

⁴⁵ Santos, *supra* note 5, at 504-505.

⁴⁶ SLAVOJ ŽIŽEK, *ARRIESGAR LO IMPOSIBLE* 120 (Trotta 2012).

⁴⁷ Selbin, *supra* note 5, at 91.

⁴⁸ Santos, *supra* note 4, at 507.

⁴⁹ García del Campo, *supra* note 43, at 103.

compromise in the face of a legal framework favoring the market that politicizes inequalities, defends natural resources, or preserves body and awareness.

The space where political action plays out is not in the State but in society, and it is seen as a complex relationship where the objectives are non-military yet political, where any attempt for autonomy that does not come from a group becomes a simulacrum,⁵⁰ where a given freedom does not represent true emancipation.

The source of Law would be more a fact than a right, a forceful act of those who are against the law, an act that is, like many other exceptions, both inside and outside the Law as expressed in its negative form: a “no law” in which the emancipation of Latin American societies has been simulated since the beginning of this century.

VII. CONCLUSIONS

Socialist thought and democratic theory share a belief in the model of popular sovereignty as a political system of self-determination. In this sense, each pursues, by its own means, a common goal: a way to overcome conflicts by attaining an identity between the State and society in the field of economic relationships.

The gradual deterioration of each position and its subsequent failure is an example of the erosion of democratic sovereignty in the representation of a community and as a political model of self-determination.

Neither a revolution nor democratic reforms have fulfilled expectations they have posed; they could not prevent the depoliticization of the economic field or the exclusion of the way of life of the Other; it did not close the gap between the decision-makers and those who obey it; on contrary, they strengthened corporatism and corruption in the State.

This led to the emergence of new and informal figures of economic power, handled outside State channels and rendering political processes innocuous for the shaping of democratic sovereignty.

With the growth of the concept of neoliberal sovereignty, new social movements have emerged in Latin America, representing different aspects of political action against the model of democratic sovereignty. In this sense, the sovereign's body has been exposed as a fragmented entity, that encourages division as a form of emancipation.

The regulatory capacity of the contemporary State loses strength in rethinking a political and legal theory that allows us to understand contemporary political processes not according to formal principles or material validity, but as an effect of discourse linked to the use of force.

⁵⁰ BOLÍVAR ECHEVERRÍA, *DEFINICIÓN DE CULTURA* 233 (Fondo de Cultura Económica, Ítaca) (2013).