

Two Democracies, Two Legalities: Participatory Budgeting in Porto Alegre, Brazil

Boaventura de Sousa Santos

Today, two forms of globalization confront each other: the hegemonic neoliberal globalization driven by the interests of global capitalism, and the counter-hegemonic globalization or globalization from below, driven by the transnationally networked resistance of subaltern classes and social groups against the exclusions, dispossessions and discriminations caused or aggravated by neoliberal globalization (Santos 2002). I focus on the political and legal nature of the initiatives and struggles constituting counter-hegemonic globalization, which I refer to as subaltern cosmopolitan politics and legality. In this vast social field of confrontational politics and law I distinguish two basic processes of globalization: global collective action through transnational networking through local/national/global linkages, on one side, and local or national struggles whose success prompts reproduction in other locales or networking with parallel struggles elsewhere. In chapter 2 above, I dealt with the first process, illustrating it with the analysis of the World Social Forum. In this chapter I deal with the second process. I illustrate it with the analysis of participatory budgeting (PB) in Porto Alegre, a local initiative of social redistribution through participatory democracy considered by the United Nations one of the most successful experiments of urban management and which has been adopted in 194 cities in Brazil and also in Latin America and Europe.

The chapter is organized as follows. In the first section I provide the analytical framework. In the second and third section I present the main traits of PB conceived of as a form of participatory redistributive democracy. In the fourth section I analyze the confrontational legal plurality involved in PB.

1. The State and Democracy as Contested Terrains

In the last twenty or thirty years the state underwent a profound transformation which can be summarized in the following way: from being the solution to social problems, the state becomes *the* problem, the solution of which is a necessary (if not also sufficient) condition for the solution of all the other social problems. While under both demo-liberalism and demo-socialism¹ a strong democratic state was a necessary (if not sufficient), condition for a strong civil society, under the conditions of neoliberalism a weak democratic state is a necessary (if not sufficient) condition for a strong civil society. While the modern capitalist state gained legitimacy among the popular classes by creating non-mercantile interactions among citizens through an ever expansive conception of public goods, the neoliberal state must withdraw as much as possible from social regulation (not to mention economic regulation), and promote the multiplication of market interactions among citizens through the provision of predictable legal rules. While up until now the state grounded its privileged political role in its sovereignty prerogative and its power of coercion, the neoliberal state must become whenever feasible (virtually in all issues except those of internal or external security) a partner among others in broad contexts of social governance in which state and non-state actors participate in a tendentially equal footing.²

These transformations have been so massive (though much more in discourse than in practice) that much progressive political thinking has declared the state as a relatively obsolete entity, struggling to survive more for the sake of its own interests than for the sake of society's interest. I have claimed that this is the wrong conclusion to draw from the profound transformation that the state has undergone in recent decades (see Santos 2002). Rather than an erosion of the state's sovereignty or of its regulatory capacities, what is occurring is a transformation of sovereignty and the emergence of a new mode of regulation, in which the public goods up until now produced by the state (legitimacy, social and economic welfare, security, and cultural identity) are the object of permanent contention and painstaking negotiation among different social actors under state coordination. Having lost the monopoly of regulation, the state still keeps the monopoly of meta-regulation, that is to

¹ On these concepts see Santos (2002:Chapter 9).

² On the question of governance, see chapter 2 .

say, the monopoly of articulation and coordination among subcontracted private regulators. This means that, today, notwithstanding appearances to the contrary, the state is more than ever involved in the politics of social redistribution—and hence in the determination of the criteria of inclusion and exclusion. In this new political organization the state is a partial institution, but a crucial one since it has become a social field open to competition among agents of political subcontracting and franchising carrying alternative conceptions of the public goods to be delivered. The struggle for the public control of the state and for the democratic reform of the state—and more broadly, of the political society, in Gramsci's terms-- have never been so important for the protection of the social interests and rights of the subaltern classes. PB in Porto Alegre originates from this political understanding and shows that a successful struggle must involve both political and legal resources and that state legality must be resorted to in tandem with non-state legality.

While the state has become a highly contested institution, democracy has known in the same period an unprecedented recognition, reaching out into the whole globe and being transformed into a political conditionality of funding by the international financial institutions. Here also the transformations are massive: from a political privilege of a few countries in the North Atlantic to a political regime available to all countries; from a general name for different types of democracy to just one type, liberal or representative democracy; from a political regime in some tension with capitalism, to the political face of capitalism; from a regime with some potential for social redistribution, to a non-distributive regime; from a regime whose legitimacy is both the cause and the consequence of the social contract, to a regime legitimated by the autonomy of the individual, free to enter individual (not social) contracts.

These transformations have not occurred without contradictions, grounded not so much on new forms of democratic theory (which have not proliferated) but rather on grassroots political practices, particularly in the global South where democracy apparently had no deep roots. Such practices have been, in general, characterized by the following features: refusal of the idea of representative democracy as the only form of democracy and reliance on an alternative form, defined as participatory or deliberative democracy or, more generally, as grassroots democracy; pragmatic conception of the relations between

representative democracy and participatory democracy which may include confrontation as well as complementarity; focus on social redistribution based on a new equation between participation and social benefit, an equation that, contrary to the modern idea of the social contract, reenacts the aspiration and the demand for social justice in repeated, transparent and only minimally mediated acts of political participation (see Santos forthcoming). Porto Alegre's PB is probably one of the most successful practices of participatory democracy. The relationship with representative democracy is mostly of complementarity but, as legal controversies surrounding PB show, may also involve moments of confrontation.

2. Participatory Budgeting in Action³

2.1. Antecedents

Brazil is a society with a long tradition of authoritarian politics. The predominance of an oligarchic, patrimonialist and bureaucratic model of domination has resulted in a state formation, a political system and culture characterized by the following: political and social marginalization of the popular classes, or their integration by means of populism and clientelism; elitism of the democratic game and liberal ideology resulting in a huge discrepancy between the "legal country" and the "real country;" enormous obstacles against the construction of citizenship, the exercise of rights, and popular autonomous participation.

Brazil is also a society characterized by outrageous social inequalities. In 1964, a military *coup d'état* against the democratically elected leftist government led to a military dictatorship that lasted until the early 1980s. With the democratic transition, the political debate centered on the democratization of Brazilian political life and the actual construction of citizenship. The emphasis on rights of citizenship, political decentralization, and strengthening of local power led its way to the 1988 Constitution. This new political context created the conditions for political forces on the left to set up

³ I present here a summary of the results of my empirical research on PB in Porto Alegre conducted between 1995 and 2002. The most intensive fieldwork was carried out between 1995 and 1997, but I followed the evolution of the participatory budget until January 2002. For a more detailed analysis see Santos (1998; forthcoming).

innovative experiments in popular participation in municipal government. This political opportunity was facilitated by the fact that the political forces in question were closely related to the popular movements that in the 1960s and 1970s had struggled for the establishment and recognition of collective subjects among the subaltern classes.

Amongst such political forces the *Partido dos Trabalhadores* (Workers' Party, henceforth, PT) is to be singled out. The PT was founded in the early 1980s out of the labor movement, which was particularly strong in the state of São Paulo and one of the most important forces in the struggle against the military dictatorship. The electoral gains of PT have been dazzling. In the early 1990s the PT was already the major opposition party. In 2003 one of its founders—Lula da Silva—became President of the Republic. In the late 1980s, the PT, in coalition with other leftist political forces, won the local elections in several important cities—such as São Paulo, Porto Alegre, Santos, Belo Horizonte, Campinas, Vitória, Goiania—and introduced in all of them institutional innovations encouraging popular participation in municipal government.⁴ Of all these experiments and innovations, those implemented in Porto Alegre have been by far the most successful, with wide recognition both inside and outside Brazil.⁵

Porto Alegre, with a population of 1.3 million, is the capital of the state of Rio Grande do Sul. When, in January 1989, the PT took over the administration of Porto Alegre, a new modality of municipal government was installed, known as “popular administration.” It was based on an institutional innovation aimed at guaranteeing popular participation in preparing and carrying out the municipal budget, hence, in the distribution of resources and the definition of investment priorities. This new measure, which became known as “participatory budgeting” and celebrated its fifteenth anniversary in 2004, has been the key to the success of the PT municipal government.

Porto Alegre is a city of ample democratic traditions and a highly organized civil society. During the dictatorship, the city's grassroots organizations focused their activity on strengthening the labor unions and on such community movements as neighborhood and street associations, soccer clubs, cooperatives, mother's clubs, cultural groups, etc.

⁴ See Villas-Bôas (1999), Carvalho and Felgueiras (2000), Avritzer (2002), Carvalho et al. (2002).

⁵For a comparison with the application of PB in Barcelona, see Moura (1997). Echevarría (1999) compares PB in Porto Alegre and Córdoba (Argentina). For instances of application of PB principles in the Americas and Europe, see Becker (2000).

These movements and organizations were either of a general nature or concerned with specific demands, such as the struggle for bus lines, the struggle for sewers or street paving, the struggle for housing or health centers, and so on. A powerful, diversified popular movement thus emerged, one that in the early 1980s became deeply involved in local government.

In 1988, the startling political ascent of the PT began. Without precedent in the city, in 1992 and again in 1996 the party in government managed to elect its successor: Tarso Genro, vice-mayor in the first PT mandate, became mayor in the second, and Raul Pont, vice-mayor in the second mandate, became mayor in the third. In 2000 Tarso Genro was re-elected mayor. The mayoralty was taken over by his vice-mayor in 2002 when Tarso Genro became the PT candidate in state elections. He lost the elections and, in early 2003, became a minister in the Lula Government.

2.2. The Institutions and the Process of PB

Municipal power in Brazil lies in two separately elected bodies: the mayor (*Prefeito*), the executive body, and the Chamber of Deputies (*Câmara de Vereadores*), the legislative body. According to the 1988 Constitution, the competence to approve the budget is vested in the *Câmara de Vereadores* (CV). Since 1989, the Workers' Party and the Popular Front control the *Prefeitura* but do not have the majority in the CV.

One hardly needs to stress the importance of PB for the political and administrative relations between the state and the citizens. In Brazil the public budget includes three levels: federal, state, municipal. Municipalities have relative autonomy in determining revenue and expenditure. Revenue is either local (taxes and tariffs of various kinds) or the result of federal or state transferences. Expenditure is classified in three large groups: (1) personnel; (2) public services; and (3) investment in works and equipment. The relative autonomy of municipalities occurs mainly in the third type of expenditure. Since the budget does not have to identify the works and services to be carried out—the establishment of expenditure ceiling sufficing—the executive has ample leeway for budgetary implementation. However, the budget must be approved by the legislative body.

The PB promoted by the *Prefeitura* is a form of public government that tries to break away from the authoritarian and clientelist tradition of public policies, resorting to the direct participation of the population in the different phases of budget preparation and implementation, with special concern for the definition of priorities for the distribution of investment resources. PB and its institutional framework have no formal legal recognition.⁶ In political and legal terms, it is a hybrid entity politically sanctioned by the executive branch of the local government but illegal and politically illegitimate from the point of view of the legislative branch. The legal recognition of PB could only be provided by the CV, albeit within the limits of federal and state legislation. As we will see below, the issue of the legalization of PB is a major topic in an ongoing conflict between the executive and the legislative in Porto Alegre politics.

As things stand now, since the definition and approval of the budget is a legal prerogative of the CV, the *Prefeitura*, in strict legal terms, limits itself to submitting to the CV a budget proposal that the latter is free to approve, change or to defeat. In political terms, however, because the executive's proposal is sanctioned by the institutions of PB and thus by the citizens and community organizations and associations that participate in them, the executive's proposal becomes a *fait accompli* for the legislative body in view of the political risks for the deputies in voting against the "will of the citizens and the communities." The majority of the CV thus claims that by institutionalizing the participatory budget without involving the legislative body, the executive has in real terms emptied out the latter's jurisdiction over budgetary matters. Hence the political conflict that will be dealt with below.

2.2.1. The Institutions

PB is a structure and a process of community participation based on three major principles and on a set of institutions that function as mechanisms or channels of sustained popular participation in the decision-making process of the municipal government. The three principles are: (1) all citizens are entitled to participate, community organizations having no special status or prerogative in this regard; (2)

⁶ The Organic Law of Porto Alegre states that the budget must be discussed with the population. Recently, the Mayoralty successfully fought a case against a plaintiff that had asked the courts to declare the PB unconstitutional (Sérgio Baierle, personal communication).

participation is governed by a combination of direct and representative democracy rules, and takes place through regularly functioning institutions whose internal rules are decided upon by the participants; and (3) investment resources are allocated according to an objective method based on a combination of “general criteria” (substantive criteria established by the participatory institutions to define priorities) and “technical criteria” (criteria of technical or economic viability as determined by the executive in accordance with federal, state or city legal norms).

The basic institutional setup of PB consists of three kinds of organs. First, the administrative units of the Municipal Executive are responsible for managing the budgetary debate with the citizens, mainly the *Gabinete de Planejamento* (Planning Office, GAPLAN) and *Coordenação de Relações com as Comunidades* (Coordination of Relations with the Communities, CRC). Second, the community organizations –which are autonomous vis-à-vis the municipal government and constituted mainly by regionally based organizations— mediate between citizen participation and the choice of priorities for city regions. Since they are autonomous structures and hence depend on the organizing potential of each region, they do not exist in every region concerning PB. They bear different kinds of organization and participation according to the local traditions of the regions. They are the Popular Councils, Township Unions and Region Articulations. Third, mediating institutions of community participation link the first two kinds of institutions. They are the Council of the Government Plan and Budget, also known as Participatory Budget Council (COP), Regional Plenary Assemblies, Regional Budget Forum, Thematic Plenary Assemblies, Thematic Budget Forum.

2.2.2. The Participatory Process

The main goal of PB is to encourage a dynamics and establish a sustained mechanism for joint management of public resources through shared decisions on the allocation of budgetary funds and for government accountability concerning the effective implementation of such decisions. In a brief summary, PB centers around the regional and thematic plenary assemblies, the Forum of Delegates⁷ and the COP.⁸

⁷ The Forum is composed of delegates elected according to a criterion based on the number of participants in each of the Regional and Thematic Assemblies.

The city is divided into sixteen regions and six thematic areas. The latter were established in 1994. Today they are: (1) Transportation and Circulation; (2) Education and Leisure; (3) Culture; (4) Health and Social Welfare; (5) Economic Development and Taxation; and (6) City Organization, Urban and Environmental Development.

Until 2002 there were two rounds (*rodadas*) of plenary assemblies in each of the regions and on each of the thematic areas.⁹ Today there is only one round. The assemblies have a triple goal: to define and rank regional or thematic demands and priorities; to elect the delegates to the Fora of Delegates and the councilors of the COP; to evaluate the executive's performance. The delegates function as intermediaries between the COP and the citizens, individually, or as participants in community or thematic organizations. They also supervise the implementation of the budget. The councilors define the general criteria that preside over the ranking of demands and the allocation of funds and vote on the proposal of the Investment Plan presented by the executive.

The evolution of the criterion to determine the number of delegates to the regional and thematic fora bears witness to the increasing involvement of the citizens in PB. Initially, the criterion was one delegate for every five people attending the assembly. In the early nineties it changed to one delegate for every ten people and later on to one delegate for every twenty people in force until 1996. After several revisions, in 1999 a fixed number was adopted (one delegate per each group of ten participants), which was implemented in 2000-2001. This option reflects the *Prefeitura's* concern with getting more people involved in PB. The delegates elected in the plenary assemblies are usually indicated by the leaders of the associations present at the meetings. Thus, a citizen not integrated in a collective structure does not have much chance of being elected delegate.

Before the *rodada* or plenary assembly, intermediate preparatory meetings take place. They are organized by the community or thematic organizations and associations. At such meetings the demands approved by each association or organization (e.g., Neighborhood Associations, Mothers Clubs, Sports or Cultural Centers, Housing Cooperatives, Unions, Non-Governmental Organizations, etc.) are ranked by the

⁸ The COP is composed of councilors elected in Regional and Thematic Assemblies. It also includes one representative of UAMPA and another of SIMPA (Union of Municipal Workers), as well as two representatives of the Mayoralty who have no right of vote.

⁹ As I shall stress below, in the course of years there have been many changes in the way the PB functions, a fact that highlights the dynamism of the democratic learning process embodied by the PB.

participants according to priorities and general criteria. In the intermediate meetings there is much discussion and voting but the real negotiations leading to proposals to be voted for tend to take place behind the scenes at informal meetings of the community leaders. The levels of conflict depend on the level of community organization and on the level of political polarization among the leaderships.

At these intermediate meetings each region or theme rank-orders sectorial priorities. Until 1997, the regions ranked-ordered four priorities among the following eight sectors or themes: sewage, housing, street paving, education, social assistance, health, transportation and circulation, city organization. In 1997, the COP introduced some changes in this regard. From 1998 onwards, the regions rank-ordered four priorities among twelve themes and, starting in 2001, thirteen themes: sewage, housing, street paving, public transportation and circulation, health, social work, education, leisure, sports, public lighting, economic development, culture and environment. These changes reflect the discussions in the COP in recent years in which the majority of councilors had claimed the expansion of themes covered by PB. Each sector or theme is divided up into sub-themes. For instance, housing includes land legalization (regularization of landed property), land and house registration, urbanization and social housing projects.

The elected priorities are given grades according to their ranking: 1st priority, grade 4; 4th priority, grade 1. Likewise, the specific works proposed by the citizens in every theme or sector are rank-ordered as well (e.g., street paving: 1st priority, street A; 2nd priority, street B, etc.). Sectorial priorities and ranks of works in every sector are forwarded to the executive. On the basis of these priorities and rankings, adding up the grades of the different priorities in all the regions the executive establishes the three first priorities of the budget in preparation. In the course of years, housing, sewage, street paving and land regularization have been the most common themes of the three main priorities, the order of priority oscillating amongst them. For instance, for the 2001 budget the three priorities were: street paving (34 points), housing (32 points), and sewage (27 points). During the past few years, education and health care have emerged as priorities.

In the plenary (regional and thematic) assemblies two effective councilors and two substitutes in every region and theme are elected for the COP. The councilors are

elected for a one-year mandate and can only be reelected once. Their mandate can be revoked by the Regional or Thematic Forum of Delegates in a meeting especially called for that purpose and announced with an advance notice of two weeks. Once the quorum established (50 percent + 1 of the delegates) the mandate can be revoked by a two-third majority vote.

The institutional organs of community participation are then constituted: the Fora of Delegates (sixteen regional and six thematic ones) and the COP. The Fora of Delegates are collegiate organs with consulting, controlling, and mobilizing functions. The Fora meet once a month and the two major tasks of the delegates are to supervise the works and to act as intermediaries between the COP and the regions or thematic areas.

The COP is the main participatory institution. It plans, proposes, supervises, and deliberates on the budget's revenue and expenditure (Budgetary Proposal). There the elected citizens get acquainted with the municipal finances, discuss and establish the general criteria for resource allocation, and defend the priorities of regions and themes. Once inaugurated in July/August, the Council meets once a week on a set day, usually from 6:00pm to 8:00pm.

During the month of August, the detailed preparation of the budget begins. While the executive conciliates the citizens' demands with the so-called "institutional demands" (the proposals of the Municipal Secretariats) and prepares the budgetary proposal on revenue and expenditure, the COP engages in the internal process of training the newly elected councilors to familiarize them with the internal rules and the criteria for resource distribution.

The tasks of the COP are carried out in two phases. In August and September, the COP discusses the budget matrix. On the basis of revenue and expenditure forecasts made by the executive during the *rodada*, the major sets of investment are allocated according to the thematic priorities established in the regional discussions. In this phase, on the basis of the government's proposal, the councilors take a vote, for example, on how many roads will be paved, or how much money will be allocated to health, housing, and so on. Major or structural constructions, whether proposed by the thematic assemblies or by the government itself, are also discussed. Once approved by the COP, this matrix is turned into a draft of the Budget Law to be handed out to the CV by

September 30. From September to December the COP prepares the Investment Plan, which includes a detailed list of the works and activities prioritized by the Council, and thus the specific allocation of resources programmed for every region and thematic area. The debate concerning investments is limited by the estimated general revenue and expenditure with personnel and other expenses estimated by the executive, including fixed expenditures enforced by federal legislation, such as the percentages constitutionally ascribed to education and health.

At the same time, the COP follows the debates on the budget proposal in the CV and puts pressure on the legislators by meeting with individual members of the CV, mobilizing the communities and thematic areas to attend the debates or to organize rallies outside the building.

2.2.3. The Distribution of Investment Resources: Methodology and Criteria of Decision Making

The distribution of investment resources follows a method of participatory planning that begins when priorities are indicated at the regional and thematic plenaries and at the intermediate meetings and reaches its climax when the COP approves the Investment Plan with detailed works and activities discriminated by investment sector, region, and the whole city.

As we saw above, the regions and thematic areas begin by defining the sectorial priorities that are to preside over the drafting of the budget proposal concerning the global distribution of investment resources. The regions also determine and rank-order the specific demands within each priority. Once the priorities of the different regions are established, the distribution of investments is carried out according to the general criteria defined by the COP and the technical criteria defined by the executive. Concerning the regional assemblies, the general criteria are: lack of urban infrastructures and/or services; total population of the region; priority given by the region to specific sector or theme. To each criterion is ascribed a weight in a scale that has varied through the years (from 1 to 4 or from 1 to 5) in proportion to the importance attributed to it by the COP. Each region is given a grade concerning each one of the criteria and the type of investment as related to the second and third criterion. The grades are determined in the following way: (1)

according to the region's total population as provided by the executive's official statistical data; the larger the region's total population, the higher the grade; (2) according to the region's need vis-à-vis the investment item in question; the higher the need, the higher the grade; and (3) according to the priority ascribed to the items of investment chosen by the region; the higher the priority of the sectorial demand presented by the regions, the higher their grade in the investment sector in question.

An example helps to illustrate how the general criteria are translated into a quantified allocation of resources. In 1997 the relative priority given by the 16 regions to street paving determined the inclusion in the Investment Plan of a global expenditure item for street paving corresponding to 20 kms. of streets to be paved. The distribution of this amount by the different regions was the result of the application of the criteria, their weight and the grade of the region in each one of them. The grade received by each region in each criterion is multiplied by the general criterion's weight. The sum of the partial points (grades x weight) amounts to the total grade of the region in that specific sectorial demand. This total grade determines the percentage of the investment resources that will be allocated to the region in that sector. Let us analyze the case of two contrasting regions. *Extremo Sul*, a region with 80.21 percent need of street paving and *Centro* with 0.14 percent. Concerning the need criterion, which at the time carried a general weight of 3, *Extremo Sul* had the highest grade (4)¹⁰ and accordingly got 12 points (3 x 4), while the *Centro*, with the lowest grade (1), got 3 points (3 x 1). Concerning the criterion of total population, which at the time carried the general weight of 2, *Extremo Sul*, with a population of 20,647 inhabitants, had the lowest grade (1) and hence got 2 points (2 x 1), while *Centro*, with a much bigger population (293,193 inhabitants), had the highest grade (4) and hence got 8 points (2 x 4). Finally, concerning the criterion of the priority given by the region, which at the time carried a general weight of 3, *Extremo Sul* gave the highest priority to paving and, accordingly, had the highest grade (4) and thus got 12 points (3 x 4), while *Centro* gave a very low priority to paving and thus had the lowest grade (0) and consequently no points (3 x 0). As a result, the total sum of points for *Extremo Sul* in the item of street paving was 26 points (12 + 2 + 12) while *Centro*'s total sum was 11 points (3 + 8 + 0). Since the global number of points for

¹⁰ In the 1998 budget, the grades in this criterion ranged from 1 to 5.

all regions was 262 points, *Extremo Sul* received 9.9 percent of the investment, that is, 1,985 meters of street paving, while *Centro* received only 4.2 percent of the investment, or 840 meters of paving.

When the first PT executive took office in 1989, the administration's three major objectives were: reversal of priorities, administrative transparency, and popular participation in the city's governance (Genro and Ubiratan 1997). The first objective (reversal of priorities) was reached in the three criteria and their respective weights proposed by the executive and accepted by the regions. For several years, the need criterion (services or infrastructure want) was ascribed the highest weight, whereas the population criterion was ascribed a lesser weight. This discrepancy was justified by the need to transfer resources from the region with the most population, the Center, which was also the richest one, to the poorest and less well equipped regions.

3. Participatory Budgeting: Toward a Redistributive Democracy

In this section I analyze some of the most salient political features of PB. I also identify the major challenges facing PB as well as the problems and even dilemmas lying ahead.

3.1. Participation, Negotiation, and Redistribution

PB is a process of decision-making based upon general rules and criteria of distributive justice discussed and approved by regular, institutional organs of participation in which the popular classes have majority representation. The communities in which they live and organize are recognized as having urban collective rights that legitimate both their claims and demands and their participation in the decisions taken to meet them.

The selection of priorities and works included in the Investment Plan is reached by means of objective criteria, defined through a complex process of negotiation that takes place at the intermediate meetings, regional assemblies, thematic plenaries and COP. It is today generally recognized that PB changed the political culture of community organizations, from a culture of protest and confrontation to a culture of conflict and negotiation. Indeed, conflict and negotiation do not occur amongst the regions alone but

inside each region as well, and it is equally complex and tense at the intraregional as it is at the interregional level.

The objectivity and transparency of the criteria are expressed in the points earned by each region and the percentage of investment resources into which they are converted. The point system was the methodology conceived to rank-order priorities and to turn them into resource and investment quantities determined by general criteria. The point system aims at converting the political decisions reached through complex negotiations in the detailed distribution of resources included in the Investment Plan and make sure that such conversion is as faithful and objective as possible.

The latter concern implied successive refinements of the distributive methodology that endowed PB with great operational and functional complexity. The increase and diversity of participation, together with the increasing intensity and differentiation of demands, has also contributed decisively to making calculating methodologies even more complex and sophisticated. The complexity of the point system resides in the fact that it seeks to articulate measures of participation, on the one hand, with measures of priority and recognized necessity, on the other. The participation measure guarantees the democratic legitimacy of political decisions, while the priority and necessity measure guarantees the fidelity, objectivity, and transparency of the conversion of political decisions into distributed resources.

Because of its major concern with the democratic nature of the distribution, PB may be considered the embryo of a redistributive democracy. As I have indicated, the democratic nature of the distribution is guaranteed by a calculating methodology that has become increasingly sophisticated. It can be said that, when it does entail an increase of bureaucracy, democracy evolves together with an increase of decisional complexity. The following working hypothesis could indeed be formulated: in internally differentiated societies, the stronger the bond between democracy and distributive justice, the more complex the methodology that guarantees such a bond tends to be. The decrease of complexity that bureaucracy allows for cannot but bring about the loosening of the bond between democracy and distributive justice.

The redistributive efficiency of PB has been fully confirmed. Suffice it to mention that in PB the poorest region of the city, *Ilhas* (nowadays a micro-region of

Humaitá/Navegantes/Ilhas), with a population of about 5,000 (almost all of whom are classified as needy people), has the same decisional weight as the wealthiest region, *Centro*, with 271,294 inhabitants of whom less than 3 percent are considered needy (Larangeira 1996:4).

By reversing the priorities that traditionally presided over the resource distribution by the municipal government, PB reached striking material results. As regards basic sanitation (water and sewage), in 1989 only 49 percent of the population was covered. By the end of 1996, 98 percent of the households had water and 85 percent were served by the sewage system. According to *O Estado de São Paulo*, an influential newspaper, while all the previous municipal governments of Porto Alegre had built some 1,100 kms. of sewage, the two PT administrations alone built 900 kms. between 1989 and 1996. Concerning street paving, 215 kms. were built at the rate of 30 kms. per year. Even so, only one-half of the street paving deficit (approximately 500 kilometers) was eliminated.

The granting of legal titles to land holders, which, as we have seen, is a high priority in many regions where the popular classes live, is an issue where the power relations of the city have eloquent expression, since 25 percent of the available urban land is owned by fourteen people or entities. Nonetheless, in the past seven years it was possible to urbanize the slums and build many houses for the marginal populations. Concerning education, between 1989 and 1999 the number of students enrolled in the elementary and

3.2. Autonomy and Co-Government

For its founders and activists, PB is the manifestation of an emergent, non-state public sphere where citizens and community organizations, on the one hand, and the municipal government, on the other, converge with relative autonomy from each other through a political contract. The experience of PB configures, therefore, a model of co-government, i.e., a model for sharing political power by means of a network of democratic institutions geared to reaching decisions by deliberation, consensus, and compromise.

The problems facing a system of power sharing are well expressed in the relationship between the COP and the executive. Such a relationship has been polemical

all along. In the beginning, while the community leaders wanted the COP to have unconditional deliberative power, the executive searched for a formula capable of reconciling the decisions of the COP and the political representativity of the mayor inscribed in the Brazilian Constitution. The formula is as follows: the COP's decisions are made by simple majority. The decisions are forwarded to the executive. In the case of veto by the mayor, they return to the COP for a new evaluation. Rejecting the mayor's veto requires a qualified majority of two-thirds of the vote. If rejection occurs, the matter goes back to the mayor for evaluation and final decision. Since, according to the Constitution, the power to approve the budget is vested in the legislative body, this formula accommodates the constitutional requisite: formally, the budget proposal submitted to the CV is the mayor's proposal.

The mayor's veto must be substantiated and can only be exercised for technical reasons and financial evaluation. To date, however, the veto has not been exercised, since whenever the executive had reservations concerning a work, its position was explained to the community by its technical staff and the community ended up agreeing.

The consensus-building process is complex because the problems under discussion as well as the decisions taken often have, besides the political dimension, a strong technical dimension. Moreover, "technical criteria" constitute one of the limits of participation and are sometimes the object of debate and conflict themselves. The internal rules of PB include the technical criteria established by the various departments of the executive. Some of the technical criteria currently in force are: all community claims and demands found technically nonviable by the city's administration are cancelled; preference is given to works-in-progress; the pluvial network will not be installed in streets without pavement because the network, being open to allow for the collection of rain water, might be blocked by sand and rubbish.

In such a system of co-government, the executive does have a very active role, if only because it controls technical knowledge and also because it either generates the relevant information or has privileged access to it. Its presence in PB is quite strong by reason of its coordinating functions both in the COP through its two representatives, even though they do not have the right to vote, and in the regional assemblies through the CRC delegate in the region. Furthermore, the executive itself forwards autonomous investment

proposals to the COP, the so-called “institutional demands,” which have their origin in executive departments and which usually concern the maintenance or improvement of urban infrastructures of the city.

Besides technical limits, there are financial limits not always duly considered by the assemblies. Suffice it to mention that, for financial reasons, only 30 percent of the demands originally formulated by the community can be taken care of. Sometimes, the way the demands and priorities are formulated does not take into account certain technical conditions that increase the cost beyond what the communities themselves consider reasonable. For example, the fact that street paving must include street lighting increases its cost by a large amount. Nowadays, the percentage of investments included in the budget varies between 15 and 20 percent, which is high by Brazilian standards.

The credibility of the political contract that constitutes PB resides in the effectiveness of the decisions and in the accountability both of the executive and the representatives of the civil society in the COP (see Abers 1998, 2000). The fact that only 30 percent of the demands may be considered is less important than the effective satisfaction of the demands selected for inclusion in the Investment Plan. Several mechanisms guarantee effectiveness and accountability. First, the political will of the executive must be mentioned. The basic principle of the municipal government is to fulfill as rigorously as possible the Investment Plan and justify what is left unfulfilled. Second, there are committees—created within the Fora of Delegates—whose function is to supervise the works. In the case of delays or alterations, the delegates have direct access to the Mayor’s Office to ask for explanations. Third, the very structures of PB strongly encourage accountability themselves. The two institutions of regular functioning—the COP and the Forum of Delegates—are bound to the grassroots institutions: the Regional Assemblies and the Thematic Plenaries. The two latter organs, because they are open to the individual and collective participation of all citizens, exercise a double popular control, upon the performance of the executive and upon community representation itself. In practice, the exercise of control is sometimes problematic, as witness the debates about the quality of representation and about transparency and accountability.

As I have indicated, the close linkage of participation to resource distribution and to the effectiveness of decisions is one of the nuclear features of PB. This alone explains why, for five months, PB councilors meet at least once a week, often twice or thrice a week, with no remuneration, even without fare expenses. This linking of participation to distribution is, no doubt, one of the virtues of PB, but perhaps also its limit. According to Tarso Genro, it is common for a region or micro-region to stop participating in the meetings and assemblies after their demands have been met. Later they usually come back, once they have realized that in the year in which they did not participate there was no investment in their region or micro-region.

The close binding articulation of participation, distribution, and the effectiveness of decisions may eventually provoke some additional tension in the already tense field of co-government that constitutes the political contract between the executive and the organized communities, for two main reasons: the limits to investment and the major works that transcend both the interests of specific regions and of specific thematic areas.

Is the political contract of co-government that sustains PB a contract among equal partners? This question raises the issue of the autonomy of the institutions and processes of the participatory budget. I argued that this political contract is based on the premise that the autonomy of both the elected mayor and the popular movement becomes a mutually relative autonomy. The question is: whose autonomy is more relativized by entering the contract? PB is an initiative of the PT popular administration of Porto Alegre and its basic institutional outline has been designed over the years by the executive. It is part of a political program of redistribution of public resources and democratization of the state. This political program is also the meeting ground for a demand with a similar political orientation advanced by the popular movement and sustained over the years by much struggle. The issue is, then, how this convergence of political will has been carried out, on whose terms and timetables and with what outcomes.

Without any doubt popular participation in PB is very active. Is it also autonomous? What does it mean to be autonomous? Autonomy cannot be conceived as popular spontaneity, as a native capacity to organize poor people in degraded communities without the support or influence of external, organized political forces. Autonomy must rather be conceived as the popular capacity to channel external support

and put it at the service of objectives, demands, and agendas generated in the communities. In the Brazilian context, autonomy is measured by the capacity to develop organizational strength and effectiveness by maneuvering among competing external political influences, using such competition to impose demands that, however important for the community, do not represent a priority for any of the political forces in competition.

Since PB is not a popular movement but an institutional constellation designed to operate as a sustained, regularly functioning meeting place for the popular movement and the municipal government, the question of the autonomy of PB must be formulated as the real capacity of the popular representatives in such institutions to shape agendas, timetables, debates, and decisions. In this sense, autonomy, rather than a stable characteristic of a given political process, is the ever-provisional outcome of an ongoing struggle. Thus conceived, PB's autonomy must be discussed at the level of the operational functioning of PB institutions, including coordination, agendas, and timetables.

The coordination of PB institutions is in the hands of the executive's representatives and the agenda and the timetable is proposed by them. But the executive's role in this regard has been increasingly questioned and challenged by the councilors and delegates. The observation of the COP meetings in particular shows that the councilors have become more assertive and aggressive, and that the procedural rules of the meetings have often been disrupted by heated debates. One of the widely violated rules is the prohibition of direct dialogue among the councilors. Such rule states that the interventions have to be previously registered by the coordination and take place in the order in which they have been registered.

Concerning the agenda, the conflict between some councilors and the executive is often quite open. The councilors have been consistently fighting for the expansion of the municipal activities to be submitted to the PB institutions and they have in general been met with the resistance of the government representatives. The basic argument of the government is that there are topics that engage the city as a whole and which for that reason cannot be submitted to a debate that tends to promote particularistic solutions, be they relative to the regions or to the themes. The councilors counterargue that they

represent the whole city and that the real issue is a different one: the opposition of the executive to the further decentralization of municipal services (culture, health, sports, recreation, etc.). The councilors have been more and more openly critical of the executive coordination and agenda setting. In an interview, one councilor, a woman very active in the popular movement, told me: “Sometimes I feel that I am being manipulated, that I am here to legitimate the popular administration and nothing else. PB is the best thing that could happen in this city but it has to operate our way.”¹¹

Concerning timetables, deadlines and times for debate, the discussions in the COP have also become more conflictual. On one side, the councilors claim that they need more time to process information, to ask for clarification and to consult with their constituencies. On the other side, the executive representatives claim that the deadlines are not an invention or whim of the executive but rather are established in laws promulgated by the CV. They also claim that to debate is fine but that it is very frustrating to verify that after heated, long discussions there is no quorum to vote because in the meantime some less interested or more pressed councilors have left the meeting.

3.3. From Technobureaucracy to Technodemocracy

Conflict and mediation between technical and political issues, between knowledge and power, is one of the main features of PB. If it is true that technical criteria limit the field of participation and deliberation, it is likewise true that the PB process has radically changed the professional culture of the technical staff of the executive. The technical staff has been increasingly submitted to a profound learning process concerning communication and argumentation with lay populations. Their technical recommendations must be conveyed in accessible language to people who do not master technical knowledge; their reasonability must be demonstrated in a persuasive way, rather than imposed in an authoritarian fashion; no alternative hypothesis or solution may be excluded without showing its unviability. Where earlier a technobureaucratic culture prevailed, gradually a technodemocratic culture has emerged.

This transformation has not been easy. According to Tarso Genro, during the period between 1992 and 1996, there was more progress in changing the language and

¹¹ Interview, Porto Alegre, April 10, 1997.

discourse of the engineers when addressing the people in the communities than in changing their dismissive attitudes vis-à-vis what people had to say. In other words, the capacity to make him or herself understood has improved more than the capacity to listen. When Raul Pont initiated his mandate (1996-2000), he became particularly sensitive to the fact that the structure and process of PB were very little known among the municipal workers and staff. In view of this, in 1997 the mayor launched a program targeted at the municipal staff, which he called “Program for Internalization of Participatory Budgeting.” This program was announced as part of a much broader program of an overall internal democratization of the state. In an interview the official in charge of coordinating this program told me that, “in order to be fully consolidated the PB must be part of the everyday work of a municipal worker.”¹² A working group was set up to organize workshops with the workers and staff about the cycle, rules, criteria, and methodology of the PB. The targets of the workshops were to be addressed sequentially: staff that deal directly with PB; staff that mediate between the executive and the community; and finally the supervisors and directors.

In light of the complex details of the operation of PB, it is not surprising to find situations that, no matter how apparently trivial, may be a source of tension between PB participants and municipal staff, even when the latter are supportive of PB. An example of this is the accreditation procedure. This is the process by which the people, the delegates, and the councilors identify themselves as they enter the room where the meeting is to be held. They must show their ID card and fill out a form. The accreditation is entrusted to a group of municipal personnel designated by the mayor. Even if we only take into account the regional and thematic plenaries, the staff must verify the credentials of hundreds of people in 22 meetings per month (16 regional and 6 thematic). Because it resulted from a personal appointment by the mayor, the verification of credentials was understood for a while as a political job to be performed as militant work. As time went by, however, some of the people refused to go on performing the job, invoking the many evenings they could not spend with their families. As a result, the executive considered for paying extra hours to the credentials personnel, and that she was in favor.¹³ As a

¹² Interview, Porto Alegre, April 6, 1997.

¹³ The system that was adopted ended up avoiding the payment of extra hours. The work of PB officers gathers points for future promotions.

consequence, the COP has now an executive secretary paid for by the Municipal Administration through the CRC.

The road from technobureaucracy to technodemocracy is a bumpy one. In the course of time, as the delegates and councilors have become more assertive, disputing more openly the technical criteria and solutions presented by the professional staff, the latter have become more defensive, yet the conflict between competing knowledges has all but faded away. In my field observations I witnessed many lively debates between residents and engineers about street paving, location of sewage pipes, and so on, and was impressed by the argumentative capacity of the community leaders.

4. Competing Legalities and Legitimacies: PB and the *Câmara de Vereadores*

As a political and legal hybrid, PB has an element of “dual power,” indeed of double dual power. On one side, the complementary (if often conflictual) dual power between the *Prefeitura* and the organized citizenship, a political hybrid which I have called co-government. On the other side, the confrontational dual power between this form of co-government and the municipal legislative body. The latter consists in the fact that the co-government of the democratically elected *Prefeitura* and the organized citizenship leaves out another democratically elected institution, the municipal legislative body (the CV), indeed the institution entrusted by the Constitution with the discussion and approval of the budget.

Besides a form of dual power, this situation comprises also a form of confrontational legal plurality at the city level: on one side, the official legality, on the other, the unofficial legality, which, to make things even more complex, has been developed with the active participation of one of the official institutions of local government, the *Prefeitura*. The confrontation is political and is often defined as a confrontation between representative democracy and participatory democracy. To be sure, such confrontation exists, but is more complex than the contrast expressed by this duality. On the one hand, the *Prefeitura*, though politically on the side of the participatory democracy, is an institution elected by the mechanisms of representative democracy. On the other hand PB, though an expression of participatory democracy contains in it mechanisms of representative democracy, the elected councilors and

delegates. In fact, in complex political processes participatory democracy always presupposes the creation of instances of delegation and representation. Thus, the basic structures of PB are involved in a double institutional articulation with the institutions of representative democracy at the urban level (the mayor and his/her executive) and with the representative institutions derived from participatory democracy at the community level. This articulation between participation/representation at the community level calls for careful reflection that cannot be undertaken here.

The political contract that exists between the executive and the communities has thus far not been extended to the legislative. On the contrary, the relation between PB and the legislative has been one of constant conflict (sometimes involving physical confrontation). If, according to the Constitution, it behooves the legislative to approve the municipal budget, PB has utterly preempted this function. To be sure, as we have seen, according to the PB cycle the proposal of the budget law, after having been prepared in the COP, is forwarded to the legislative for debate and approval. Theoretically, the legislative could reject the proposal but the fact that it has already been legitimated by the large participation of citizens mobilized by PB compels the legislative to always approve the budget presented. It ends up, therefore, being a formality.

According to some, however, given the budgeting technique traditionally adopted in Brazil, the legislative has never actually deliberated substantially on the budget. The truth is that, given the fact that the indication in the budget of the concrete works to be carried out is not required, the executive has always had ample leeway in budget execution. But the fact of the matter is that such a system also created the opportunity for the Legislative to influence the execution by the traditional populist and clientelist methods. The legislators had their electoral folds in the different regions and the votes they gathered from them were directly entailed to the works they managed to include in the budget. Now, this was precisely the clientelist system that PB intended to put an end to, and herein for the most part resides the hostility or distance with which the legislators not linked to the PT regard PB. While the duality of power between PB and the executive (notwithstanding the problems and tensions identified here) has been dominated by a logic of complementarity and cooperation, the duality of power between PB and the CV has been dominated by a logic of open or latent conflict. It is both a duality of power and

a duality of legality and legitimacy. As one legislator told me in an interview: “The PT has co-opted and demoralized the popular movement. The participatory budget is a diabolic invention of the PT to stay in power forever. Look, how many people participated in the participatory budget last year? A little more than 10,000. Well, I was elected by a larger number. Why am I less representative than the councilors of the COP?”¹⁴ Another legislator less hostile to PB said in the interview: “I think the participatory budget is an excellent idea but I don’t see—except for political reasons of the PT—why the *Câmara de Vereadores* is not involved. We don’t want to absorb participatory budgeting. We would like to have a part in it. For instance, a percentage of the investment fund should be left to the *Câmara* to allocate.”¹⁵ As yet another legislator put it: “The budget arrives at the *Câmara* in a cast. We’re tied up. It is not fair because after all we are the legislators.”¹⁶

One of the sources of the tension between representative and participatory democracy has been the debate of the last few years on the official legal codification of PB, which illustrates the interplay between politics and law that is central to counter-hegemonic initiatives. As it stands today, PB is based on a political contract with the executive and is ruled only by its unofficial internal rules and the organic law of the *Prefeitura*. The crucial question is whether the future safeguard of PB should not include its juridical consolidation, that is, its conversion into municipal law through an act of the legislative body. This is conceivable, since, given the popularity of PB, most members of the CV would be, in principle, in favor of it—provided, of course, that the CV retained some measure of control over PB.

There are different positions on this, even inside the PT and the executive. While some believe that legal, formal recognition of PB will help to defend its existence if in the future an executive hostile to citizen participation is elected, others argue that such codification would be a submission of participatory democracy to representative democracy, do away with the political autonomy of PB, and subject it in the future to legislative manipulation according to the majorities obtainable in the CV. Said one of the PT legislators in an interview: “I participate in the plenaries of the participatory budget

¹⁴ Interview, Porto Alegre, April 10, 1997.

¹⁵ Interview, Porto Alegre, April 10, 1997.

¹⁶ Interview, Porto Alegre, April 12, 1997.

and even have a vote as a citizen who happens to be also a legislator. The legislators should integrate themselves in the participatory budget and not seek separate and privileged participation and decision-making.”¹⁷ Other PT legislators and leaders think that the tension between PB and the CV is not a “healthy one” and may be risky in the future. According to them it is not in the interest of the PT to demoralize the legislative body and contribute to empty out its prerogatives. Some of them have even presented law proposals concerning the legalization of PB. One of them said in an interview: “I’m in favor of a type of legalization that does not plaster the participatory budget, and that contributes to consolidate it as an official component of our political system, a mark of our specificity.”¹⁸

The issue of legal codification is one among many dimensions of the conflict between the executive and the CV, where the PT does not hold the majority. The COP councilors have a clear understanding of this and the divisions inside the COP on this issue reflect broader cleavages in the city politics and community movement. In spite of the political restrictions on the budgetary prerogatives of the CV, the latter makes many amendments every year. These amendments are discussed in the COP. In the meeting of August 7, 1997, the GAPLAN representative read the most important amendments and commented on the negative impact of these amendments, emphasizing that through them the legislators were trying to limit the autonomy of PB. He exhorted the councilors and delegates to mobilize quickly and strongly in order to try to defeat these amendments in the CV. He concluded: “They want to embarrass the PB. This is war and when you are at war you don’t stop the war to prepare and debate.” Some councilors were displeased by this comment and asked for more time to analyze the amendments, because after all it is in the interest of PB to cut some of the executive expenditures. One of them said: “I don’t agree with [the GAPLAN representative]. This is not a war. We are democratically debating and discussing with the *Câmara de Vereadores* [. . .]. I don’t disagree with the proposal of the coordinators, but the proposal is also a way of appropriating the issue. If we are going to discuss what the autonomy of the COP is, then there is much more to be

¹⁷ Interview, Porto Alegre, April 11, 1997.

¹⁸ Interview, Porto Alegre, April 10, 1997.

discussed.” Implied in this comment is, of course, the fact that the issue of the autonomy of the COP must be raised not only vis-à-vis the CV but also vis-à-vis the executive.

On and off, the issue of official codification of PB has been discussed in the COP. Some councilors have favored some kind of legal institutionalization. Others have opposed it in the name of PB’s autonomy, an autonomy that should be expressed in a form of legal plurality. According to them, it amounts to a kind of legal fetishism, and therefore to political alienation, not to accept as fully legal the bottom up informal and unofficial legality that has emerged from the struggle for participatory democracy. In this debate, the international recognition and praise of PB is often mentioned. One of the councilors commented in the COP meeting of March 3, 1997: “The way the PB has been operating in the last eight years without any official regulation by the government is what makes it possible for us to go ahead and be internationally recognized.”

The issue of codification will probably remain as an unresolved tension in the Porto Alegre’s PB for some time. PB has, indeed, destabilized the old ways of doing politics in the city, and the CV is trying to reconstitute its political space in the new political conditions created by PB. This reconstitution may, nonetheless, reveal some unexpected continuities with the “old ways.”

5. Conclusion

Since PB is a very dynamic social and political process, it is difficult to draw many conclusions or projections from it. Up until now, PB has been a remarkable means of promoting citizen participation in decisions concerning distributive justice, the effectiveness of decisions, and the accountability of the executive and of the delegates elected by the communities to the COP and the Forum of Delegates. The success of PB has been widely recognized, not only in the city of Porto Alegre and in Brazil, but also internationally. Many cities in Brazil, throughout Latin America and also in Europe have been adopting the PB system under various forms.

To my mind, the future of PB depends, to a large extent, on how its principles and practices of democratic participation are strengthened and extended to areas or issues that have not yet been included in PB. It also depends on how its autonomy is improved and consolidated so that the break with the old clientelist politics becomes irreversible.

The assessment of PB shows that these are very demanding conditions and may even involve some dilemmas. For instance, the consolidation of PB makes political sense only if it breaks with the old patrimonialist-clientelist system. But is such consolidation possible without some form of continuity with the old system? As an emergent political reality, PB tends to have a destabilizing effect, not only in political terms, but also in ideological and cultural terms. However, a destabilizing idea that succeeds in becoming a sustainable practice is always in danger of losing its destabilizing potential as its success increases. The routine of mobilization leads to routine mobilization. Participation remains high but common citizens are gradually replaced by specialized participatory citizens. The dilemma here rests in the fact that, although the radicalization of the experiment is the only weapon against routinization, there is an undeterminable threshold beyond which radicalization will irreversibly compromise the success of the experiment. There is no way out of this dilemma. Yet the tension it creates may itself be sustainable (thus contributing to the continuing, if always problematic, success of the experiment) provided that the participants engage in a reflective self-subversion: by this I mean the constant radicalization of political consciousness centered on the limits of the radicalization of political practice.

PB is today part of counter-hegemonic globalization, not just because it is being replicated in other cities around the world, but above all because its emancipatory aspiration for social justice carried out through a political strategy based on innovative conceptions of democracy and legality and on new articulations between political parties and social movements has become one of the most credible guiding ideas mobilizing countless social movements and progressive NGOs around the world in their struggles against exclusion, dispossession and discrimination produced or intensified by neoliberal globalization. PB is today a crucial piece of the new redistributive democracy at the local level. Its political logic is the creation of public, nonstate spheres in which the state is the key agency of articulation and coordination. The creation of these public spheres is, in the present conditions, the only democratic alternative to the proliferation of fascist private spheres sanctioned by the state (see Santos 2002). PB epitomizes the emergence of new political constellations of democratic struggles allowing for more and ampler democratic deliberations on greater and more differentiated aspects of sociability. It points to forms

of high-intensity democracy emerging in different ways in different parts of the world as a progressive and creative response to the transformations undergone by the state in the last two or three decades. This subaltern cosmopolitan politics and legality is not just taking the state seriously, it is rather converting it into what I have called the newest social movement (Santos 2002: Chapter 9).

As PB illustrates, the state as the newest social movement carries with it a major transformation of state law as we know it. Cosmopolitan law is here the legal component of struggles for democratic participation and experimentation in state policies and regulations. It involves both state official law and non-state (or quasi non-state), unofficial (or quasi unofficial) law played out in forms of confrontational or complementary legal pluralities and interlegalities.

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