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The State of Globalization

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Shalini Randeria

There is no outside. Only outsiders. (Advertisement for the *International Herald Tribune*, September 1999)

WE LIVE in paradoxical times. The successful global diffusion of formal democracy has gone hand in hand with the hollowing out of its substance. Ever more realms of domestic public policy are removed from the purview of national legislative deliberation and insulated from popular scrutiny. Rhetoric of accountability has accompanied the increasing unaccountability of international financial and trade organizations, transnational corporations as well as of states and non-governmental organizations (NGOs). The new architecture of global governance characterized by legal plurality and overlapping sovereignties has facilitated a game of 'passing the blame' among these four actors. International institutions disclaim responsibility for the actions of elected governments by claiming to be powerless servants of sovereign member states to whom they merely provide expert advice.[1] States in turn disown responsibility for unpopular policies and lay it at the door of external actors – the dictates of global capital, prescriptions from the International Monetary Fund (IMF) and World Bank or the legal framework of the World Trade Organization (WTO).

There is a curious ambivalence in current debates on globalization about the role of the state, which is conceived of as both central and marginal. Globalization is seen to be marked by the decline of both the external and the internal sovereignty of the state. Those calling for a downsizing of the state seem to agree with those protesting against the WTO, the

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IMF and the World Bank that the nation-state can no longer deliver the goods. Contrary to such a view, it will be argued here that the state is both an agent and an object of globalization. The capacity of subordinate states in the international system to make and enforce rules, as well as to set and achieve policy agendas, is being limited from without and contested from within. Although inadequate, the state remains indispensable, as its laws and policies play a key role in transposing neoliberal agendas to the national and local levels. If in the age of globalization and of economic Empire, political violence has been replaced by legal violence, as Mattei (2003) contends, resistance to it is also articulated in the language of law. This article focuses on the dynamic of legal politics against impoverishment and dispossession caused by the new global designs of intellectual property protection, biodiversity conservation and privatization of the commons in India. Impoverishment is an active process of public decision-making in which it is considered inevitable and right that some people are made poor (Baxi, 1988). Political protest and demands for legal redress against dispossession are thus primarily addressed to the state too.

Using law as an index to contemporary changes, Hardt and Negri (2000) have posited that sovereignty is being rescaled from the level of the nation-state to that of a decentred and deterritorialized Empire under conditions of globalization. This narrative of the transformation of sovereignty from a modern to a postmodern form rests on the assumption that the territorial nation-state has been rendered obsolete. In my view, it is debatable whether sovereign territoriality is, or ever was, a good guide to the nature of power in the (post)colonial world. But such a conception of the place of law and sovereignty in the current world order also eclipses the continued centrality of the state and its power, as illustrated by the empirical material from India analysed here. The ubiquity of new laws and policies suggests that we are in a world of re-regulation rather than deregulation. Moreover, law today transcends state boundaries in complex and significant ways due to a proliferation of actors, arenas, methods and forms of rule-making and dispute resolution located at different sites around the world. It is no longer coterminous with the state and its sovereignty over a well-defined territory and a population to be governed. If legal plurality has broadened the legal imagination by presenting civil society actors with alternative norms and fora for contesting neoliberal designs, the heterogeneity of normative orders has led to legal uncertainty and unpredictability of rule enforcement as well. The potential and limitations of some of these new transnational spaces, which are examined here, indicate that the diffusion of power in the new architecture of governance has also led to loss of transparency in decision-making as well as to a dilution and divestment of responsibility. Paradoxically, a juridification of more and more areas of life thus parallels an erosion of entitlements and of the rights of citizens marginalized by processes of economic restructuring.

The case studies in this article point to the emergence of intertwined structures of rule, overlapping sovereignties and complex processes of legal

transnationalization that have reconfigured the relations between law, state, and territoriality. The first section introduces the idea of the cunning state[2] in an attempt to transcend the Western-centrism of the binary division of states into strong and weak. It shifts the focus of study from a consideration of state (in)capacity measured against a Western ideal to a delineation of state strategies. While recognizing the severe constraints on the autonomy of states, especially IMF/World Bank borrower states, to design and implement their own policies, I argue that it would be a mistake to accept the self-representation of these states as to their own weakness. If welfare states were concerned with the redistribution of risk and resources, cunning states seek to redistribute responsibility. Instead of viewing the latter as mere victims of globalization or of hegemonic international institutions, this article seeks to understand the constrained agency of subordinate states, their policy choices and space for manoeuvre. It is argued that whereas weak states lack the capacity to protect the interests of vulnerable citizens, cunning states show strength or weakness depending on the domestic interests at stake. 'Cunning' is a weapon of weak states, or, more precisely, of the stronger among subordinate states in the international system. It does not describe a characteristic of state structure or capacities but the changing nature of the relationship of national elites (very often in concert with international institutions) to citizens. The notion of a cunning state is thus a useful way to delineate a range of tactics deployed at various sites of negotiation where a shift in responsibilities and sovereignties occurs. By tracing in concrete cases how the state both appears and disappears, is constructed and dismantled through various kinds of practices of government, it seeks to understand how globalization – as a transnational apparatus, discourse and as a social reality – is (re)produced.

Four pathways of transnational legal plurality are discussed in this article: (1) the simultaneous operation of multiple international or supranational norms, competing with one another, without their incorporation into domestic law; (2) plurality within state law as a result of changes introduced into national rules, regulations and policies either under external pressure of aid conditionalities or in order to bring domestic law into consonance with international regimes (section two on the intellectual property rights regime of the WTO); (3) alternative people's policies with a national or supranational character crafted by social movements and NGOs using a hybrid mixture of traditional community-based rights, national laws and international norms (section three on civil society challenges to forced displacement and commoditization of the commons); (4) project law consisting of rules, obligations, procedures laid down by international organizations and donor agencies operating directly within the nation-state (section four on complaints from India before the Inspection Panel of the World Bank). Each section explores, on the one hand, the strategies of the cunning state, which as middleman short-changes both donors and citizens, and examines, on the other hand, the pragmatic politics of civil society actors engaged in struggles against the redrawing of the boundary between the public and private.

I suggest that the specificity of the current dynamics and trajectories of the transnationalization of law with dissimilar effects in various countries in different regions must be analysed against the background of the colonial import, imposition and reconstitution of law in the non-Western world. Sensitivity to the history of colonialism would be an important corrective to the presentism and Western-centrism of analyses of (legal) globalization. With a propensity to overstate the singularity of the present, these often posit a radical discontinuity between contemporary social life and that in the recent past. In a European perspective, an erosion of the sovereignty of the nation-state, the growing importance of legal pluralism (both supra-national and sub-national), a hybridity of laws in the wake of their transnational export and transplantation, the salience of private actors in legal diffusion, or the emergence of overlapping sovereignties and fluid political spaces are often represented as processes of 're-feudalization'. But, as Anderson (1996) has pointed out, in contrast to nested hierarchies in medieval Europe, we are witnessing non-nested multiple sovereignties today. These overlapping sovereignties allow direct access to international bodies and networks through civil society channels bypassing the nation-state and without its intermediation. Contrary to Marx's prediction, it may be an irony of history that the former colonies mirror the future of Europe today. Viewed from the (semi)-periphery, post-sovereign states of the industrialized world today resemble their former colonies. Many accounts of globalization, which miss this convergence, perceive legal pluralities and overlapping sovereignties as a return to pre-modern forms in Europe. This may be due to the parochialism of a Eurocentric perspective that tends to see the West as both unique and universal.

Transnational Legal Plurality and the Cunning State

The idea of legal pluralism interrogates the centrality of state-made law with its exclusive claim to the normative ordering of social life. Legal landscapes in postcolonial societies have always been heterogeneous and multi-layered, shaped more or less by diverse external influences through processes of imposition, diffusion and borrowing. But the growing prominence of international law, supra-national legal regimes, the transnationalization of state law and the direct intervention of multilateral institutions, international donors and transnational NGOs into many areas of the lives of citizens in World Bank–IMF borrower states have all lent a new dimension to legal plurality. The local life-worlds of millions in these countries are shaped by policy prescriptions and programmes advocated and financed by these institutions, and the legal regime of the WTO, while they have no voice in the working of these institutions. Although formally legitimate, the decisions of the WTO, IMF and World Bank, the powerful supra-national bodies involved in legal globalization, thus have little social legitimacy among citizens in these countries.

The shift from earlier conditionalities imposed in structural adjustment programmes to the new discipline of 'good governance' in the 1980s,

including global designs of economic and social policy, has meant unprecedented levels of surveillance and control, along with intrusive interventions into the sovereignty of subordinate states. There is hardly any policy domain in which the Bretton Woods institutions do not exercise influence on borrower governments: rule of law and democracy, judicial and legal reform, education and health, resettlement and environment, land reform and labour law. With trade liberalization as a key conditionality of loans over the last decade, the WTO, IMF and World Bank have become the new all-powerful institutions of the transnationalization of law. Trade regimes are given the authority to interfere with substantive regulatory choices made by domestic institutions and actors with much greater democratic legitimacy. This leads not only to shrinkage of the space for development and for self-determination, but also to a democracy deficit (Howse, 2002; Wade, 2003). The result is a widespread de-politicization in a 'democracy without choices', in which citizens can vote parties and leaders into or out of office but cannot influence changes in public policies (Krastev, 2002).

Compliance with the demands of Bretton Woods institutions, however, is framed in the vocabulary of 'local ownership', 'partnership' and of putting the recipient in the 'driving seat' (Anders, 2005). Interventions by donors are thus represented and justified as the consent of dependent states and the command of aid conditionalities is couched in the language of a contract (Moore, 2002). Mattei has suggested that the 'construct of presumed consent' (2003: 385), which shifts the responsibility for policies formulated by international institutions to subordinate states, is part of the rhetoric of democracy and the rule of law that seeks to legitimize a highly asymmetrical architecture of global governance. He argues that, in this context, the distinction between imperialistic and non-imperialistic legal transplants is a matter of degree rather than of kind. Contemporary legal hegemony thus evinces a mixture of voluntary reception of foreign legal concepts and procedures by the periphery, and of their imposition by international institutions, as will be evident below.

However, the direct involvement of a variety of non-state actors at the national and local scales also affects the very nature of law's regulatory functions, transforms the conditions for political legitimacy and reconfigures sovereignty. The very nature and concept of law as a coherent and unitary body of knowledge, as well as a principled practice of decision-making, undergoes change in the process. As a host of supra-state and infra-state governance regimes with public and private actors emerge within and beyond the state, decentralized law coexists, more or less uneasily, with state law. The domain of law has expanded to include soft law (i.e. rules without binding legal force that nevertheless have practical effects) like conventions, treaties, bilateral and multilateral agreements, project laws, conditionalities as well as protocols, which cannot be understood as laws in the strict sense of having a legislative basis. Law-creation increasingly becomes an open-ended process, both administrative and legislative in origin, with rules, regulations and prescriptions being produced from a diversity of

sources by various actors and adjudicated in several sites with shifting boundaries, which do not necessarily constitute a system (Snyder, 2002). The dividing line between private and public law, as well as between law and policy, is being redrawn due to production of new norms by international organizations, donor agencies, corporate law firms, private arbitrators as well as by civil society actors (Günther and Randeria, 2001).

It will be argued here that the widely prevalent diagnosis of the consequent irrelevance of the state and an erosion of its sovereignty overlooks the continued importance of the state, albeit as a contested terrain in an increasingly plural legal landscape. But the state too has been transformed in the process of its partial transnationalization and partial privatization. It has been decentred and restructured through the operation of and competition among various infra-state and supra-state legal orders (Santos, 1995). Overlapping sovereignties, transnational legal plurality and the consequent fragmentation of state action are not restricted to the World Bank–IMF borrower states, though the ambiguous effects and contradictory character of these developments are felt most strongly in subaltern states in the international system. These states came into existence after the rules and institutional structures of global governance today had already been established, and they are at an enormous disadvantage in affecting changes in them. This is not to suggest that their sovereignty is not being externally constrained and internally contested. It is my argument that, within these limits, there is considerably more space for setting national agendas than is conceded by cunning states, which lack the political will, rather than the space, for autonomous policy-making (Randeria, 2001).

It may be useful in this context to distinguish between weak and aid-dependent states like Benin or Bangladesh, and cunning states like India, Mexico or Russia. Weak states are unable to discharge their obligations of justice because they lack the capabilities to successfully discipline and regulate non-state actors. Cunning states, on the contrary, are in a position to negotiate the terms on which they share sovereignty in certain fields of policy-making while retaining control over others. They deny power only to deploy it in order to evade responsibility. They play on their perceived weakness to justify specific policy choices to citizens and to international donors, short-changing both in the process. Faced with popular discontent at their policies, they point to external pressure for reforms, or simply to the demands of 'globalization' (i.e. the real or imagined fear of capital flight or of an inability to attract foreign direct investment). But they also use their weakness vis-a-vis certain domestic constituencies to justify to international institutions a partial and selective implementation of policies, projects and programmes. If such unwillingness is interpreted as inability, i.e. lack of state capacity, it is seen as a sign of the weakness of the state.

In my view, such a reading fails to recognize partial compliance and inadequate implementation of policies imposed by supra-national institutions as strategies of resistance by subaltern states. How far and in which policy areas international donors and financial institutions tolerate such

duplicity varies according to country and policy context. In their daily practices, bureaucrats subvert aid conditionalities and policy prescriptions imposed by IMF–World Bank, even in a weak state like Malawi (Anders, 2005), but at the level of policy-making it lacks both bargaining power and technical expertise. Cunning states like India lack neither but prefer to make sub-optimal use of the limited space currently available for autonomous policy formulation and implementation within the WTO framework, as will be evident from the analysis of patent law reforms in the next section. Debtor states are unable to influence the normative frameworks produced by the IMF and the World Bank, which are diffused globally through their lending practices, just as they are relatively powerless within the WTO. But cunning states flout conditionalities, partially implement policy prescriptions, restrict surveillance to selected domains of policy and successfully prevent infringement of sovereignty in areas deemed to be important.

A curious ambivalence marks judgements about state weakness in IMF–World Bank borrower countries. International institutions claim that weak state capacity would impede the capacity of these states to implement industrial polices conducive to economic growth, including trade protection, but consider them to be strong enough to be able to enforce (intellectual) property rights (Wade, 2003). Cunning states in turn deploy the rhetoric of sovereignty strategically to prevent international intervention in certain realms (human rights, rights of indigenous peoples), but are willing to implement policies prescribed by international institutions in others (economic policy, fiscal discipline, trade rules). Civil society actors who appeal for external intervention on human rights issues are, on the contrary, highly critical of external involvement in national economic and social policies (Teivainen, 2002).

The capacities of postcolonial states, and the diagnosis of their weakness, was analysed in the framework of modernization theory in the 1960s and 1970s either in terms of endogenous structural and cultural factors, or as an interplay of external with internal factors as in dependence theory. Characterized by a relatively short history of state formation, postcolonial states have not completely colonized the imaginaries of their populations. Liberal political theory read this as an indicator of weak and immature state formation. Alternatively, states were conceived as weak if they lacked the capacity to penetrate society and to implement the vision of their leaders (Migdal, 1988). I introduce the idea of the cunning state to explore the domain of infra-political state strategy within the new architecture of global governance and to understand how states render themselves unaccountable to international institutions and citizens alike. The self-representation of cunning states as weak seems to be a strategy of the political elite directed at diminishing public expectations. It seeks to avoid responsibility for policy formulation and its selective implementation while aiming to retain room for manoeuvre and partial enforcement of international agreements and donor conditionalities.

The curious fate of the National Biodiversity Strategy and Action Plan in India, exemplifies the strategies of the cunning state, caught between donors and civil society. The Ministry of Environment entrusted an environmental action NGO with the technical coordination of the report in a bid to involve civil society. The latter organized a highly participatory process of broad-based consultations that secured the report social legitimacy but resulted in recommendations that collide with the neoliberal thrust of other recent legislation on the subject. The report highlighted the significance of biological diversity for the sustenance of the livelihoods of a vast majority of the country's population rather than as raw material for industrial production and profit. It pointed to the adverse impact of the global trade regime on biodiversity conservation, especially of an intellectual property rights regime that privileges private ownership of biogenetic resources and corporate knowledge. Since 2003, the report had been neither officially accepted nor rejected. When the NGO made it public in a bid to force the government into action, the ministry reacted by turning down the report as 'scientifically invalid' (Bavadam, 2006). Ironically, it submitted the rejected report to the United Nations Development Programme (UNDP), which had funded the document, presumably in order to meet its obligations under the Convention on Biological Diversity. The Convention enjoined all signatory states to formulate national biodiversity strategies and action plans by 2006, a deadline that had been suggested by the government of India.

Lloyd Randolph and Susanne Hoeber Rudolph (1987) have argued that beside capital and labour, the Indian state is a 'third actor', which, though constrained by extensive and conflicting demands from various social groups, has sufficient political authority and control of economic resources to allow it to determine its own agendas. Hence they view the Indian state as both weak and strong. I suggest, instead, that the Indian state is selectively strong in advancing the interests of the privileged, but strategically weak in fulfilling even its constitutional duties towards the poor. The ambivalence of the state towards issues of intellectual property and its failure to protect farmers' rights (discussed below) provides another instructive example of the strategies of the cunning state. My argument will be that the Indian state has opted not to fully utilize the space – which has been carved out at the global level by the sustained campaigns of the critics of TRIPS (Trade Related Intellectual Property Rights) – for an autonomous national architecture of intellectual property rules. Unlike weak states, India does not lack the technical expertise but the political will that would allow it to design different rules for various product areas or locations of production that would be permitted by the new Doha-related agreements.

Patenting Indian Medicinal Plant Heritage in Munich

The story of the legal and political struggle around patents on the Indian Neem tree, which crisscrossed local, national and global spaces, bears retelling as it provides an illustration both of the ambivalent role of the

cunning state in the contemporary dynamics of neoliberal globalization and of the contestation of the state–market nexus by civil society actors using law. First the facts of the case.

The legitimacy of patents on products of the Neem tree, a versatile evergreen found all over India, hung in balance in Room 3468 of the European Patent Office in Munich in May 2000. The American transnational corporation W.R. Grace and the US Department of Agriculture jointly owned six of the 14 patents, one of which had been challenged by a transnational advocacy network. The petitioners, Vandana Shiva, Director of the Research Foundation for Science, Technology and Ecology (New Delhi), Linda Bullard, President of the International Federation of Organic Agricultural Movements (USA) and Magda Alvoet, then the Belgian Health and Environment Minister, demanded that the patent (for a method of manufacturing an oil from the seeds of the Neem tree to be used as a natural pesticide) should be revoked. They were represented by a Swiss jurist, Professor Dolders, who began by questioning the moral legitimacy of a patent that disregarded centuries of traditional local knowledge of the Neem tree in south Asia. Not inclined to consider such fundamental issues, the judges declared that patents do not follow the logic of everyday life. The representatives of the US chemical concern, represented by a law firm in Hamburg, remained surprisingly silent throughout the two days of the hearing. It was the silence of the powerful, of those who knew that, besides the protection of the US government, time, money and legal expertise were also on their side. The Indian state was conspicuous by its absence.

In her submission, Vandana Shiva advocated the recognition of the sovereign rights of a country of origin over biological diversity in its territory. These rights, she contended, should be treated as conjoint with those of local communities whose care, knowledge and innovations have conserved this heritage that is linked to their own subsistence needs. The European Patent Office was not persuaded by her eloquent plea against the 'biopiracy' and 'intellectual colonialism' of transnational corporations in the West.[3] Nor was it moved by the Sri Lankan farmer, Ranjith de Silva's, detailed account of Sanskrit texts containing traditional knowledge on the healing effects of the Neem tree's bark, leaves, roots, seeds and fruit, which have been used in South Asia for generations. Demonstrating the absurdity and illegitimacy of a patent based on the ignorance of traditional bio-pesticides, he argued that, for example, just the wind whispering through the Neem tree was considered to have a healing effect in Sri Lanka. What ultimately weighed with the Patent Office were measurements of centrifugation, filtration and evaporation presented by Abhay Phadke, an Indian factory owner. He could prove that, since 1985, his firm had used a process very similar to the one patented later by the American corporation to manufacture the same product.

At the end of a five-year legal battle, the European Patent Office therefore revoked the patent on the grounds that the process patented by the US based transnational corporation lacked novelty. The transnational coalition

in defence of the local knowledge and rights of agricultural communities in the South won a victory, but one that gained legal recognition for the claims of an Indian industrialist over those of his American rivals.

Hegemonic vs Counter-hegemonic Globalization

The European Patent Office was the scene of a conflict between two competing visions of globalization. The battle lines were drawn here, as in Seattle, between proponents of a neoliberal globalization for profit and its globally networked civil-society opponents. Farmers' movements and environmental NGOs in India have been among the most ardent opponents of a new international legal regime of TRIPS that enables transnational corporations in the North to claim ownership over natural resources of the South. Protest against the TRIPS has focused on the jeopardizing of biodiversity due to common heritage being turned into commodities for industrial production and commercial profit. It has also pointed to the threat to food sovereignty in developing countries as poor primary producers and consumers of seeds are forced into dependency on multinational companies (Shiva, 1999). Activists in the North and South raise the question of who sets the new rules and according to which norms. They point out that Europe, US and Japan industrialized without the constraints of a patent regime, which they now impose on the developing world. Thus the new regime of intellectual property enshrines rules that allow the North to kick away ladder it climbed to economic prosperity. Moreover, TRIPS produces skewed distributional and welfare consequences, as they increase the price of patentable knowledge to consumers and so raise the flow of rents from South to North. Asymmetries built into the very structure of the TRIPS agreement tip the balance even further against developing countries. For example, the obligations of developing countries are enforceable, whereas the few obligations accepted by developed countries are not (Wade, 2003).

The new neoliberal framework of intellectual property rules involves the reconfiguration of the boundary between public and private spheres as well as a redefinition of property. Critics in North and South have raised the issue of the conversion of public information into private property besides focusing on the limits to commercialization of the commons for private gain. They have pointed out that the TRIPS framework endangers the right to livelihood and traditional knowledge of local communities, as well as food security and access to medicines in developing countries. But they have also protested against the opaque processes of trade negotiations and dispute resolution at the WTO, where a body of unaccountable experts limits the power of democratically elected national governments to frame domestic policies. They question the 'one-size-fits-all approach', which aims at homogenization of trade rules all over the world, arguing instead for the need to allow differences in national policy-making on health or environment, which would allow developing countries to maintain their food and health sovereignty. Activists have also stressed the need to reconnect law to issues of justice and morality, a link which has been severed by viewing law as

part of the technical infrastructure of good governance, which should merely facilitate the efficient functioning of markets.

Cunning States and the Shrinking Space for Autonomous Policy-making

US corporations, with the full political support of their government in all international fora, have been following a strategy of patenting a plethora of rights over any genetic resources of food crops which they modify, irrespective of how trivial or superficial these modifications may be. For example, in 1997 the US Patent and Trademark Office granted to RiceTec, a Texas-based corporation, far-reaching claims over traits found in the Indian Basmati rice, which it claimed to have 'invented'. When the government of India failed to challenge these claims, Vandana Shiva filed a public interest litigation case in the Indian Supreme Court to goad the state into action. This met with a characteristic response by the cunning state. It chose to contest in the US forum only three of the claims that were of relevance for Indian exporters of Basmati rice, but did not even attempt to protect the rights of Indian farmers and breeders, whose interests were equally at stake. In January 2001 the government of India informed the apex court that it would not to pursue the case in the US as the interests of Basmati exporters from India had been successfully protected through the withdrawal of four claims by RiceTec. Left in the lurch by the state, Shiva's NGO in India led a highly successful national and international media campaign against the appropriation of the rights and knowledge of Indian farmers. A transnational advocacy coalition influenced public opinion worldwide, and especially in the US, which led to a flood of letters of protest to the US Patent and Trademark Office. In August 2001, just a year after the Neem patent was revoked, the US authority struck down 15 of the 20 claims by RiceTec, thus going far beyond what the government of India had demanded.[4] As this case shows, governments do not necessarily represent all domestic interests in a given trade issue at the supra-national level. The potential for deliberative democracy at the transnational level could be furthered by the inclusion of advocacy NGOs and transnational networks in consultations at the WTO (Howse, 2002).

The process and content of recent amendments to the patent law (the Patents [Amendment] Acts 1999, 2002, 2005) stand in sharp contrast to the revisions undertaken soon after independence to amend the colonial legislation that the country had inherited. A joint committee of parliament, which reviewed the bill then, considered testimonies from within the country and abroad, including one from the German Federation of Pharmaceutical Industry which commented positively on the 'exemplary fairness' of the amendment process (quoted in Rangnekar, 2006: 410). Thus transnational input into the process of policy-making is not new but the terms on which it occurs today have changed considerably. And so have the goals of policy formation. The 1970 Patent Act, based on a broad consultative and transparent process of consultations with experts, used national autonomy to

establish intellectual property norms in the service of indigenous technological development and national goals of self-sufficiency (Sell, 1998). The recent amendments, which introduced product patents as well as laws on plant varieties and breeder's rights to permit the patenting of agricultural and pharmaceutical, were made in haste in order to bring Indian laws into consonance with the TRIPS agreement, without consultations with national experts or a public debate. All recent legislation on patents, biodiversity, geographical indicators,[5] and plant varieties and farmer's rights was rushed through the Indian parliament on the grounds that the government had to meet its international obligations. Yet at the WTO, India had joined the Organization of African Unity then in asking for a review of Article 27.3 of the TRIPS agreement. Thus there was no external compulsion to implement TRIPS in such haste while the review on its reform was pending. After the Uruguay Round, India accepted its obligations in General Agreement on Tariffs and Trade (GATT)/TRIPS through an executive decision that is yet to be ratified by parliament. Even if these treaties had been debated and accepted through parliamentary ratification, such a process would allow little public scrutiny in the absence of transparency about the negotiations at the WTO or the possibility to amend the provisions of the agreement. Thus these treaties have a higher degree of irreversibility than even constitutional amendments, making a recalibration of the rules in the light of experience in different countries unlikely and extremely difficult (Howse, 2002).

There is growing concern that, under these conditions, the policy options of developing countries have been curtailed in a way that is bound to adversely affect their prospects for economic development. Wade (2003) contends that, instead of limiting themselves to negotiating for better market access within the WTO framework, it is imperative that they negotiate their options for autonomous national policy-making. The policy space for subordinate states has certainly shrunk considerably over the last few decades. But my argument is that the political will of cunning states to explore the options still open to them has dwindled too. This explains why the new Indian patent laws fail to utilize even the limited freedom and flexibilities provided by the Doha Declaration. Rangnekar (2006) makes a convincing case for regarding the provisions of the new Indian patent law to be a result of domestic pressures rather than of external constraints. India could have enacted somewhat different laws within the WTO framework, making use of the TRIPS flexibilities in order to better protect the interests of small farmers as well as drug consumers. It chose, however, to give priority to the interests of powerful sections of its pharmaceutical industry. According to him, a possible explanation for the ambivalence of the Indian state towards issues of intellectual property could lie in the changing interests of powerful Indian pharmaceutical companies that are keen to benefit from patent protection. These envisage their own future partly in the manufacture of generica for exports but they are also keen to share the results of outsourced clinical research and the opportunities for global marketing of

cheap drug production in India with Western counterparts. The design of the TRIPS agreement reflects the interests of US agro-business, and the pharmaceutical and software industries, which were championed by the US government in the GATT negotiations (Wade, 2003). Yet it is in New Delhi that a cunning politics of intellectual property protection for India is devised, which selectively protects some domestic constituencies at the expense of others by pointing the finger at Geneva.

A Plurality of Conflicting Supra-national Legal Regimes

Confronted with a multiplicity of transnationalization of legal regimes, subordinate states have pursued three strategies: delay implementation, exploit the contradictions in the plurality of international laws and treaties or try forum shopping. For example, India, together with African and five Central and Latin American countries, had called for a review and an amendment of the TRIPS along with a five-year moratorium on its implementation. In addition, the Indian government had also pointed out that its obligations under the TRIPS run counter to some of its obligations under the Convention on Biological Diversity or to the International Undertaking on Plant Genetic Resources of the Food and Agriculture Organization (FAO), which not only excludes patents on life forms but also explicitly recognizes farmers' rights to seeds and protects innovations by local farming communities. International institutions, like the UNDP, have also recently joined civil society critics of the TRIPS in questioning the benefits of this framework for developing countries, and to call for its substitution by a framework better suited to the needs of the South (UNDP, 2003). The TRIPS regime of the WTO is difficult to dislodge but there has been a proliferation of alternative intergovernmental agencies and fora dealing with intellectual property. With the World Health Organization (WHO), the FAO and the UN Commission on Human Rights (UNCHR) deliberating on the issue, forum shifting and forum shopping becomes another viable strategy for developing countries seeking to escape the straitjacket of the WTO framework (Rangnekar, 2006). Forum shifting not only contests established legal norms but also creates new rules and principles for the protection of intellectual property. The shift in Doha towards balancing the needs of the protection of intellectual property with concerns about public health was a step in this direction, which may signal the beginning of moves to revise standards set by the WTO and create new norms (Helfer, 2004).

NGOs as Mediators and Creators of Laws

Besides involvement in monitoring and enforcement, civil society actors have made vital contributions to legal glocalization due to their ability to bridge the activist–professional, state–community, local–global divide. Many of the suggestions for experiments with new legal instruments and institutions to protect and compensate indigenous knowledge, and safeguard plant genetic resources, have come from NGOs. NGOs have functioned

proactively as initiators of alternative policies, which challenge dominant legal thinking. An entirely state-centred approach misses these emerging legal possibilities and their promise. For example, the Indian NGO, Gene Campaign, was among those who campaigned in the 1990s for an effective national patent legislation that would make use of the limited autonomy provided under the GATT/WTO. It pointed out that member states are not enjoined to follow the UPOV[6] model that caters to the needs of industrialized agriculture in Europe and is designed to protect the interests of agribusiness as the major producer of seeds. The European model is thus at odds with Indian realities, where most research on seeds is done in public institutions, and where farmers are breeders who individually and collectively conserve genetic resources and produce seeds.

The National Working Group on Patent Laws, a civil society network that includes former judges of the Supreme Court of India, has established four People's Commissions so far to discuss the parameters of appropriate intellectual property protection for the country, as well as constitutional issues relating to TRIPS, which hollows out safeguards provided in the Indian constitution. Though the use of an effective *sui generis* system is an option that would have been consistent with its WTO obligations, the Indian state only chose to exercise it under intense pressure from civil society organizations to recognize and protect the collective and cumulative innovations embodied in the traditional knowledge of its farmers as societal common property. Yet civil society actors remain ambivalent towards the state, which they view as both an ally and an opponent, or at least as the lesser evil compared to multinational corporations. But a mistrust of the state has led NGOs, for example, to simultaneously initiate biodiversity registers at the local level in order to safeguard the rights of farming communities. Moreover, there have been interesting alliances between NGOs and international institutions. The UNDP, for example, commended the 'Convention of Farmers and Breeders' (CoFaB) drafted by Gene Campaign as a 'strong and coordinated international proposal', which 'offers developing countries an alternative to following European legislation . . . to protect farmers' rights to save and reuse seeds and to fulfil the food and nutritional security goals of their peoples' (UNDP, 1999: 74).

Fragmentation of State Law and a Fracturing of Sovereignty

Indian patent laws have to be brought into conformity with several supranational legal regimes, which may contravene one another, as we have seen. But the plurality of transnational biodiversity regimes is also duplicated at the national level. Different ministries, often acting at cross-purposes, produce biodiversity legislation with conflicting aims and divergent norms (Shiva, 1999). The Biodiversity Act 2002, for example, seems to undo the protection against the patenting of life forms in the Plant Variety Protection and Farmers' Rights Act passed one year earlier. The Biodiversity Act refers to the international Convention on Biodiversity but fails to utilize its provisions to recognize the claims of indigenous peoples, or to allow benefit

claimers to assert their traditional rights. The coexistence of these regulations, each with its own logic, results in a new kind of legal pluralism within state law, which is linked to the transnationalization of law.

The case of the biodiversity policy also underscores the fragmentation of state action in the domain of environmental policy, leading to incoherence in state laws and policies with regard to community rights to natural resources (Menon, 2006). There is a discernible trend in recent legislation, such as the draft National Environmental Policy (2004) and the Scheduled Tribes (Recognition of Forest Rights Bill) (2005) towards neoliberal economic policies of privatization and commercialization of natural resources, with an emphasis on good governance and efficient management of these for profit. The former explicitly states that environmental legislation should not be injurious to investments, whereas the National Biodiversity Act (2002) does not contain provisions for the recognition of the rights and entitlements of local communities. Rights receive consideration only within a framework of efficient natural resource management but not as part of the right to security of livelihood guaranteed under the Indian constitution (Srinivas, 2000). The new law on biodiversity vests regulatory authority solely in the National Biodiversity Authority. Given the record of the Indian state, a centralization of all regulatory power in a bureaucratic body, with little civil society participation, may or may not be effective against biopiracy by multinational corporations. But it is likely to deny communities the right to defend their traditional rights and to make claims independently of the state body.

Postcolonial Continuities

The privatization of public knowledge in the form of patents, which turn the products of a tree in south Asia by the stroke of a European pen into the shared intellectual property of a US corporation and the US government, is certainly new. But conflicts over the architecture of law and sovereignty, legal pluralism, transnationalization of law and jurisdictional jockeying among competing authorities have a long history in postcolonial societies (Benton, 2002). Reconfigurations of plural normative orders entailed, then as now, an uneasy relationship between indigenous and imposed law as well as tensions between state and non-state legal actors and authorities. The English East India Company, a private trading company, which employed its own armed forces and controlled territory, initiated the introduction of British law into India prior to its becoming a Crown colony. It may be recalled that, in Europe, the relationship between the state and semi-autonomous trading companies had been fraught with tensions in 19th century. Powerful and partly autonomous private trading companies then, like their transnational counterparts today, relied on their respective governments to further their interests abroad, but sought to escape state control, the grip of metropolitan law and the payment of taxes at home.

Redrawing the Boundary between Public and Private: Civic Alliances Challenge State Sovereignty

The previous section has focused on the politics of contention around the redefinition of biogenetic resources and localized knowledge in the public domain into the private property of corporations. The legal politics, by which the boundary between the public and private with regard to land and common property resources is being redrawn, is the subject of this section. It traces, on the one hand, the colonial origin of the laws and legal principles that continue to be used by the Indian state to acquire land and control over natural resources in order to make them over to national and multinational private corporations. On the other hand, it analyses the political and legal struggles waged by civic alliances at the local and national scales against displacement and resource dispossession. Along with their proactive role in crafting alternatives to state law, the use of domestic law and legal fora by civil society organizations to render the cunning state accountable to its most vulnerable citizens is highlighted here. These so-called people's laws and policies weave together norms from a variety of sources in an attempt to broaden the legal imagination and to challenge the monopoly of the state as the site of norm production. They question the definition of public interest advanced by the state and contest its sovereignty over natural resources within its territory. Although activists occasionally choose to circumvent the state in order to engage in legal and political action at the transnational level, as in the Neem tree case, it is in the national arena that most citizens and civil society organizations articulate their protest, seek judicial remedies and attempt to influence political decision-making. Domestic law thus continues to remain salient for public decision-making, but I argue that the former has become an increasingly hybrid mixture of norms of various vintages and varieties imported by both state and civil society actors.

The process of economic liberalization in India, which began in 1991 in response to an acute fiscal crisis and crisis of external debt, evinces an interesting mixture of economic policy decisions without prior legislative deliberation and a highly polarized, vociferous but *post facto* public debate. The economic reforms, which were not submitted to the electorate, constitute an 'extreme example of surreptitious attempts to bring about structural change in a democracy' (Mitra and Singh, 1999: 203). These have been carried out mainly through administrative fiat and ordinances for which parliamentary approval was sought afterwards. Under the new policies of economic liberalization, there has been a rapid increase in land alienation by the state in order to make it over to national and transnational private industry and mining companies. A combination of legislative and executive measures has been used to displace vulnerable communities on a large scale and to curtail the control of local communities over common property resources in order to provide legal security for domestic and foreign investors. Loss of the commons in countries of the South is not only an environmental issue, it is also one that affects the livelihood of the rural

poor who are dependent on these resources for their food, fuel and fodder needs, and for vital supplementary income.[7] Policy changes in these areas have met with an increase in both spontaneous and sporadic local resistance as well as more organized protest through networks of NGOs and social movements throughout the country. Civic alliances seek to anchor the customary collective rights of communities to land, water, forests in the right to life and livelihood guaranteed by the Indian constitution. They have, in the process, expanded the vocabulary of rights by demanding the restoration of customary community rights to the commons, control of natural resources by local people, the right to a humane environment, the right to the non-privatization and non-commercialization of local public goods essential to survival, along with the right to a diversity of culturally distinctive lifestyles (Chandhoke, 1995).

Prominent among these networks is the Campaign for People's Control Over Natural Resources, which has pointed to an increasing erosion of the collective rights of local communities to land, water and forests, as these are turned into sources for private profit under a neoliberal regime of privatization implemented by the state under the directives of the IMF and World Bank. The network has successfully mobilized protest at the grassroots against the proposed amendments to the Forest Act (1927) and the Land Acquisition Act of 1894 (revised in 1984 to bring displacement into its purview) that will exacerbate the situation further. While the former denies local communities the right to property in forest land and limits their rights over forest produce, the latter, which enables the state to acquire land for a public purpose, has been used by the postcolonial state to forcibly displace some 500,000 people every year.[8] In the absence of a national law or policy on resettlement and rehabilitation, compensation for this development-induced internal displacement, whose scale exceeds by far that of cross-border refugees, has been inadequate and arbitrary. Meanwhile, civil society actors have presented alternative people's policies on land acquisition and resettlement in order to pressurize the state to enshrine more equitable norms. Formulated after extensive consultations at the grassroots, these policies have initiated a broad public discussion on the injustice of a model of development and privatization of commons that forces the poor to pay the price for advancing public good.

There is little answerability in the (post)colonial Land Acquisition Act, which enables the state to acquire land for a public purpose based on the principle of 'eminent domain'. The postcolonial state has yet to lay down any criteria by which 'public purpose', left undefined in colonial law, may be determined. Courts had been wary of defining the term too, but the Supreme Court in a landmark judgement recently declared the setting up of private industry to constitute 'public purpose'. This is in consonance with changes in the 1990s and marks a departure from the earlier interpretation of public purpose as constituted by developmental projects like dams, canals, roads or military installations. Complying with demands from the World Bank, the government of India also amended its mining policy and

law in 1993–4 to facilitate domestic private investment, and especially foreign direct investment, in this sector. Community-based NGOs engaged in a protracted political and legal struggle against these changes that culminated in a landmark legal victory in the Samatha case in the Supreme Court (Randeria, 2003b). But another bench of the same court subsequently not only limited the scope of application of that judgment in the BALCO disinvestment case but also sought to curtail the very possibility of legal redress against policies of economic restructuring. It laid down that the government's economic policy should not, as a rule, be amenable to judicial review since parliament was the appropriate forum to debate issues of policy. But, as shown in the previous section, legislative scrutiny of trade and economic policies has been undermined by various other means that lead to a concentration of policy-making powers in the hands of an executive without effective oversight.

Although India's innovative public interest litigation provisions enable easy access to courts for civil society actors, the search for domestic legal redress can be protracted and risky. The experience of the movement against the World Bank-funded Narmada dam also illustrates the limitations of deploying the law in struggles against forced displacement (Randeria, 2003b). The movement, supported by a powerful transnational advocacy coalition, achieved the termination of the involvement of the Bank in the highly controversial Sardar Sarover dam project, which violates national environmental standards and international human rights norms. But when the movement turned to the Supreme Court thereafter to stop further construction on the dam, the judiciary upheld the sovereignty of the state over its resources. Moreover, it concluded that that the courts should not have a role in such decisions on infrastructure development projects as the question of the utility of large dams was a policy issue best left to the administration and legislature (Upadhyay, 2000).

It is in this context that activists of the National Working Group on Displacement initiated a public debate on the efforts by the judiciary and the administration to redraw the boundary between public purpose and private interest. In an attempt to recalibrate the relationship between law and justice, it has demanded that the long overdue revision of the land acquisition law incorporate an inclusive rather than an exclusive definition of the term 'public' in order to establish the right to adequate compensation for all those displaced and dispossessed in the name of national economic development and the 'common good'. On the one hand, activists emphasize the need to subject the power to determine public purpose, which lies in the hands of the executive, to judicial review. On the other, they are aware that if the law continues to merely focus on compensation for affected individuals, it will be inherently inadequate and iniquitous, as it would overlook the experience of communities affected collectively by displacement. Liberalization, according to these critics, has merely led to a shrinking of the responsibilities of the state but not of its regulatory powers. It has not led to less state intervention but rather to intervention in favour of the

privileged. As with patent reforms, it is difficult to disentangle internal interests and external pressures here. National autonomy in policy-making, though necessary, is therefore unlikely to be sufficient to protect the interests of vulnerable groups that are marginalized from the political process despite formal democracy. Civil society actors who attempt to deepen democracy insist that parliamentary democracy must be complemented by participatory democracy if an equitable and environmentally sustainable model of economic development with dignity is to be realized.

In the absence of substantive democracy, civic coalitions contest the idea of the state as the only site of norm production. In using the language of rights to make claims on the state, marginalized groups, and those representing them, have sought to enlarge the sphere of civil society and the space for political action within it. Chandhoke (1995) has argued that they have expanded in the process the rather limited liberal agenda of civil rights by disputing a positivist conception of rights as emanating from law and dependent upon state recognition. Instead, by grounding rights in civil society, they have sought to emancipate rights from the confines of the law and state. When states invoke the people and the national interest to legitimize exclusion, the idea of the people can be invoked by civil society actors to critique and destabilize state sovereignty as well, as Chatterjee (2004) suggests.

Moreover, civic alliances have contested the overriding of community rights in the name of 'public interest' by invoking international human rights, customary rights, World Bank standards and, most recently, the US doctrine of 'public trust'. They have questioned the postcolonial state's claim to unfettered ownership of land, forests, minerals and water based on the legal construction of the 'eminent domain', which vests the state with ultimate control over land within its territory. The concept, which sets aside the idea of the commons, was exported throughout the British Empire with the imposition of common law. It forms the basis of the Land Acquisition Act and also of the Forest Act, of colonial provenance, that are still in force in India. These laws confer on the state the power to appropriate property without the consent of the owner and to convert it into public use by virtue of the superior dominion of its sovereignty over all lands within its jurisdiction. In a trenchant critique of the devastating impact of these colonial laws and legal principles in eroding the rights of local communities in India, Chatrapati Singh (1986: 24) has pointed to several subsequent legal innovations in Commonwealth countries like Canada, Australia and New Zealand, which set aside the principle in order to establish the rights of indigenous groups over common land. Despite sustained pressure from civil society, the Indian state has failed to emulate these examples.

Civil society coalitions in India have recently advocated the replacement of the principle of 'eminent domain' by the doctrine of 'public trust', which focuses on the rights that the public always had to access the property in question. This principle imposes obligations and constraints on the use and sale of land and natural resources by the state, which is viewed as

holding these in trust. Although controversial in the US, the doctrine has been increasingly recognized by the Indian judiciary, which has an unpredictable record of drawing on international law or foreign norms in different contexts. For example, in the case against the Coca-Cola bottling plant in 2003, the Kerala High Court interpreted the principle to oblige the state to enable the use and enjoyment of air, water, forests, etc. by the general public, thus precluding their private ownership for commercial purposes. Indian courts have chosen to borrow from the elaboration of the doctrine in recent US court decisions on environment in order to challenge the absolute nature of state ownership of resources within its territory. This particular instance of the vernacularization of Western law illustrates the complex paths by which foreign norms cross borders and are lent a distinct accent as a result of the interplay of borrowing by the courts and their deployment by activists within the context of specific political struggles. The legal vision and ideas of these community-based cosmopolitans are forged in a context and articulated in a vocabulary that is inflected by the vernacular but is by no means local. In Ulrich Beck's words, these activists have a 'polygamous relationship to place' (Boyne, 2001: 50), albeit one which, in contradistinction to his vision of cosmopolitanism, reflects multiple moorings *within* a world of states (Randeria, 2003c).

Some of the paradoxes of the simultaneous operation of several, and even contradictory, normative orders within the territory of the state are evident in the controversy between the Worldwide Fund for Nature (WWF-India) and human rights activists, who are at odds with one another over the protection of the rights of lions versus those of pastoralists in the Gir forest in Gujarat, western India (Randeria, 2006). The environmentalist NGO advocates global standards of biodiversity conservation within a framework of 'protected areas' that entails the displacement of forest-dwellers who are considered to pose a danger to the local ecological system. To counter such a narrow environmentalist agenda, which pits people's rights to the commons against conservationist goals, human rights groups have mobilized support for forest-dwelling communities by stressing their right to life and livelihood, and to a culturally distinct way of life, together with their positive contribution to the conservation of biodiversity. The rival claims of the two sides are thus framed in terms of national laws, but also in terms of global norms of biodiversity conservation and human rights.

Lending conditionalities and project laws of multilateral banks take precedence over domestic law, which is kept in abeyance for the duration of a donor-funded project. The Gir project was part of a large biodiversity conservation project funded by the World Bank, covering six national parks in the country (World Bank, 1996). So, besides invoking the customary rights of local communities to make their case, human rights activists also sought to avert the displacement of pastoralists from the Gir forest by recourse to the operational policies of the World Bank. These policies, which disallow involuntary displacement and protect the rights of indigenous people, are binding both on the Bank and the borrower. Ironically, the Indian

chapter of the WWF, which is a partner organization of the World Bank for its environmental programmes, advocated the application of domestic law (Wildlife Protection Act) that would displace local communities and thus violate Bank standards. Grassroots NGOs, which are usually highly critical of the Bank, entered into a pragmatic alliance with the federal government to deploy Bank standards in order to protect the rights of pastoralists in the Gir forest. The government of India was put in an awkward position as it could either implement the national Wildlife Protection Act that prohibits settlements in national parks but violate World Bank standards, which prohibit involuntary displacement within Bank-assisted projects, or fulfil its obligations to the Bank at the cost of flouting domestic laws. In response to a petition filed by WWF-India in the Supreme Court, which sought the implementation of the law of the land, the cunning state, therefore, played on its own presumed weakness to divest itself of responsibility for the implementation of domestic law. It claimed in court that it lacked the finances, personnel and the equipment to enforce its environmental laws in national parks all over the country.

A Dance of Donors and Dependent States: From Non-compliance to the Dilution of Standards at the World Bank

If legal plurality fractures state sovereignty, it also increases the spectrum of alternative norms, which can be deployed by civil society actors to contest state action and policy. When 'local' actors 'jump scales' (Ferguson and Gupta, 2002: 996 quoting John Ruggie), they use norms and institutional arenas at various levels simultaneously, as we have seen in the Gir forest case or in the contestations around the Basmati rice and Neem patents.[9] In the process, the boundary between the national and international that is pivotal to the self-constitution of law and politics becomes increasingly blurred. My material on the Indian complaints before the Inspection Panel of the World Bank, which are the subject of this section, also illustrates some of the ambiguities of such 'scale jumping'. The independent panel represents an innovation in international law, whereby individual citizens are for the first time formally allowed access to an international financial organization. It thus responds to a long-standing demand by civil society actors that the World Bank be accountable not only to its member states but equally to citizens in debtor countries, who, though affected by its lending policies, have no voice in its functioning. Established in 1993, the Panel is by no means a full-fledged body for adjudication but provides a forum for a complaint by any party adversely affected by a World Bank funded project. The genesis of the Panel reflects a complex mix of considerations: internal demand for improved efficiency of lending; sustained external pressure from civil organizations society for greater transparency; as well as the demand for reforms by the US government, which as the largest contributor to the Bank exercises a strong influence on the organization (Udall, 1998). The primary purpose of the Panel, a three-member body with investigatory and

advisory powers, is to examine the compliance by Bank staff with the safeguard policies and procedures laid down by the Bank that are also binding on the borrower. It is neither mandated to assess violations of international law nor has the Bank chosen to incorporate the latter into its own norms. Its establishment does not render the Bank legally liable, nor does it provide for compensation even to those whose complaints are found to be justified (Randeria, 2001).

Although the (in)action of borrower governments is beyond the purview of the Panel, it has been increasingly used by civil society actors to publicize the violation of international environmental and human rights norms by borrower governments and to pressurize them into compliance. In using it as a forum to seek remedy, citizens and civil society organizations also challenge the nation-state's exclusive claim to speak for its citizens and represent their interests at the international level. Barring a couple of exceptions, complaints before the Panel have had only limited success so far. Bank staff have usually teamed up with bureaucrats of the borrowing country in question to deny any violations of Bank guidelines and procedures. The World Bank management conceded in 1997, for the only time in its history, its partial failure to implement some of its own policies in response to a complaint about the NTPC power-generation project in Singrauli, India. Despite the fact that management was held by the Panel to have contravened its own operational policies on dozens of counts, Bank staff successfully pre-empted a full investigation by the Panel. In a move that has become standard practice since, Bank and borrower together submitted a detailed action plan of corrective measures. Such remedial action plans forestall a full-fledged investigation by the Panel by proposing to mitigate negative effects of the project design, or shortfalls in its implementation, which have been highlighted by a complaint. However, in the absence of a mechanism to monitor these action plans, inaction by the indebted government is the rule, as the experience with regard to several Indian complaints admitted by the Panel shows (Randeria, 2001, 2003b). Interestingly, the Bank chose to rely on the assurances given by the public sector project authority in the NTPC, despite its poor record of implementing its own policy for resettlement and rehabilitation. For example, in the High Court case challenging its failure to do so, the cunning state authority had claimed that since policy by definition lacked statutory force, it could not be made the ground for action (Ramanathan, 1996). The Panel found that the possibility of serious violations by the Bank of policies and procedures on involuntary resettlement and environmental assessment needed examination. Nevertheless, directors from the borrowing countries on the executive board of the Bank supported the government of India's refusal to allow the Panel permission for a field investigation, which it regarded as an infringement of its national sovereignty.

Among the 34 requests entertained by the Panel so far,[10] three relate to projects in India. The latest series of complaints, submitted in 2004 and 2005, concern the Mumbai Urban Transport Project that is one of the Bank's

largest projects in the country. In order to forestall controversies about forced displacement and inadequate rehabilitation, which have dogged infrastructure projects funded by the Bank in India, civil society organizations were entrusted with the implementation of this part of the project. The responsibility for the relocation of some 100,000 people, shops and small industrial establishments, which should have rested with the Bank and the state, was thus shifted to the NGOs. The complaints to the Panel allege violations of the Bank's environmental and resettlement norms and the destruction of livelihoods due to displacement. They express concern about inadequate restoration of income and living standards after relocation, as well as the lack of access to essential services such as schools, medical facilities, water and waste removal at the sites of relocation. SPARC, the NGO in charge of resettlement, thus bears the brunt of the criticism that has been deflected away from the Bank and the state. Neighbourhood associations representing the affected citizens accuse the NGO of corruption and mismanagement. Whereas the NGO represents itself as 'one David against three Goliaths' (i.e. the World Bank, the Indian railways and the regional government of Maharashtra) (Patel and Sharma, 1998), for those protesting inadequate resettlement, the battle lines are drawn rather differently.

Unable to resolve the serious problems of resettlement, the Bank temporarily suspended the disbursement of the remaining 20 percent of the IDA credit and the US $150 million loan for the road component of the project in March 2006. The cunning state welcomed the suspension as a blessing in disguise, as it affords an opportunity to sidestep the stringent standards of the World Bank. The head of the project implementing authority, Mumbai Metropolitan Region Development Authority (MMRDA), Mr Chandrasekhar, stated in an interview to the press that it would be cheaper, quicker and less cumbersome to implement the project without Bank standards, which push up the costs of resettlement and rehabilitation to a level that was not feasible for the project authority to meet. According to him, 'the World Bank has a lot of harsh impractical conditions. They want us to use global laws for local conditions' (Deshmukh and Mehta, 2006). He stated that MMRDA would consider turning to Japanese banks to complete the project, which lent funds at lower rates without social and environmental conditions attached to them.

Cunning states can thus exercise their limited sovereignty in the choice of the financial institution to borrow from. The same strategy of changing donors towards the end of a project had been followed with impunity by the government of India in an earlier Bank-assisted biodiversity conservation project. Following a complaint by NGOs in 1998, the Panel had recommended that the executive board of the Bank authorize a full investigation in the Nagarhole national park case (Shihata, 2000; Umaña, 1998). However, the government of India prevailed on the board to avert a field investigation. Instead the board merely asked Bank staff to address the contentious issues together with the regional government and the

affected people. Predictably, neither Bank nor borrower fulfilled the undertaking given by them in the remedial action plan, so the NGOs were forced to file another equally fruitless request for inspection. Meanwhile, the regional government of Karnataka circumvented the World Bank's norms against forcible displacement by using funds from a private Japanese foundation to forcibly evict villagers from within the national park (Schünke, 2006).

In each of these controversial projects, as in the Narmada dam project, the strategy of the state has been to contravene Bank norms and to switch donors after serious violations of World Bank policies become indisputable. But a replacement of donors leaves those adversely affected by the project with no one to hold accountable. Moreover, legal plurality and overlapping sovereignties also lead to a differentiation of citizenship rights. For example, different standards for resettlement and compensation apply to those displaced under a World Bank financed project as compared to those affected by other projects.[11] The involvement of the Bank changes not only the context in which local processes of displacement occur but also the dynamics of collective action on the ground, as I have argued elsewhere in relation to the Narmada dam project (Randeria, 2003b). However, the set of norms that are applied depends not merely on the financial involvement of the World Bank but also on the bargaining strength of the civil society actors involved. Their success varies with the extent of local resistance, the scale of national political mobilization and media attention, the pressure from the Bank on the state, the possibilities of legal redress at various scales and the transnational support that a struggle is able to generate. Thus the growing disjunction between law, state and territory can have very different consequences for the curtailment of the rights of citizens in different contexts even within one country.

If the withdrawal of the Bank from a project leaves citizens in the lurch, it is not easy to enforce accountability across the duration of a project either. This is illustrated by an altercation between the project authorities of the Mumbai Urban Transport project and the representatives of those who filed a request for inspection. These drew attention to the callousness and the high-handedness of the MMRDA, which had failed to address their concerns. In a letter to the World Bank and the Inspection Panel, the NGO representatives record their discussion with Mr Chandrashekhar, the head of the body, as follows:

> Mr. T. Chandrashekhar proudly replied us that this is India and not America. One cannot hold us that much accountable and responsible as Americans are! When we told him that it means you people are not as accountable and responsible as expected by the World Bank, Mr. T. Chandrashekhar replied in yes and further stated that the people of Gazi Nagar should not expect any such accountabilities and transparencies from him nor from the government [sic]. . . . Now we the poor residents of Gazi Nagar are unable to understand where to go for justice in such circumstances. (World Bank Inspection Panel, 2004: 47)

It remains to be seen how the Bank proposes to enforce its environmental and social safeguard policies in the Mumbai project, if the loan is not resumed. The experience of the Narmada project tells a cautionary tale in this regard.[12] A good record of repayment of foreign debts and the competition among donors enables the Indian state to easily switch donors. Moreover, it knows that it can count on the next World Bank infrastructure loan until that project too becomes untenable. The poor institutional memory of the Bank is as striking as its lack of responsibility, even in the absence of legal liability, towards those affected by its projects.

Despite all evidence to the contrary, Bank management continues to exhibit infinite faith in the borrowing government's ability and willingness to implement environmental and human rights conditionalities. And these, in turn, must accept the rules knowing well that they cannot observe them. Sally Falk Moore (2002: 351) has contended that this 'mythology of compliance', with its dance of donors and dependent states, permits nominal or partial fulfilment of obligations in order to keep up appearances. Both sides know that real or full compliance with aid conditionalities is illusory and that financial institutions seldom impose penalties for violation of rules. But once an accountability mechanism in the form of the Panel was set up to monitor compliance, it could not be ignored. Civil society actors and aggrieved citizens in borrower countries found an ally in it at the Bank. Bank management, therefore, began to dilute mandatory operational directives and policies into 'best practices' or non-mandatory recommendations. Standards and policies were thus made 'Panel-proof', i.e. no longer binding on the Bank staff or the borrower, and beyond the jurisdiction of the inspection panel. Paradoxically, the establishment of the Panel has thus failed to contribute to greater compliance with the Bank's own stringent standards so far. It has led instead to their dilution, in order to accommodate the Bank and borrowers' common practice of non-compliance.

In the face of persistent protest by citizens, Bank bureaucrats define the irreconcilable goals the institution advocates (e.g. land acquisition for industry and infrastructure projects without forced displacement and a lowering of living standards) to be problems of inadequate project implementation and, therefore, to be the sole responsibility of the indebted government. As Wade (2005) points out, the G-7 countries (with a majority of the votes on the executive board) set the rules at the Bank, but do not have to comply with them, as they are not borrowers.[13] Thus creditor countries often set standards that are higher than their own domestic standards and that exceed the capacity of debtor states for compliance, even if they were to have the political will to do so. These standards push up the costs of borrowing from the Bank, a cost ultimately borne by citizens in borrowing countries.

Conclusion

This article has focused on some aspects of collective action in India against the WTO, World Bank and the state, in which the search for legal redress

is intertwined with successful political mobilization and media campaigns. The dynamic of legal politics analysed here reveals pragmatic issue-based alliances between civil society and the state. Although social movements and community-based NGOs often view the state as potentially a strong ally against external actors, they also experience it as an obdurate impediment. Although they contest and undermine state sovereignty in a variety of ways, they call for a strong state as a bulwark against the forces of globalization. This struggle over sovereignty, which contests the very structure of rule, challenges the monopoly of the state as the only site of norm production and its exclusive claim to define the common good. Even if these contestations have not always achieved their immediate aims, they have altered the context in which the other actors of governance – states, international organizations and transnational corporations – make and legitimize decisions.

Obituaries of the state are premature, even if it is imperative to relativize the state as the prime locus of authority and sovereignty. My material suggests that the current transnationalization of the state and of law, which has reconfigured legal and political space, evinces a complex mixture of old and new forms of sovereignty. It was never easy to disentangle the 'internal' and 'external' in (post)colonial states, whose sovereignty was always compromised by other actors within and beyond the state. But the boundary between domestic and foreign, which has had a complex genealogy in post-colonial states from their very inception, has become even more fluid today. In the new architecture of global governance, power is diffuse and elusive, just as sovereignties are scattered according to the specific issue or policy, territorial area or the section of the population under study. My case studies thus demonstrate an unbundling rather than an unravelling of sovereignty, to use Anderson's (1996: 148) distinction. They caution against de-contextualized generalizations about the nature, distribution or location of power, for what applies to one aspect of state power does not necessarily apply to another. They point to the need to ground the study of globalization in a fine-grained ethnography, which traverses multiple scales, linking the small to the large and to explore the specificity of various trajectories of legal plurality and its transnationalization in particular contexts and cases.

Hardt and Negri (2000) provide us with a powerful narrative of the emergence of Empire as a new global juridical-economic formation that has replaced the sovereign nation-state. They are right to insist that international institutions form part of the new imperial constellation with supra-national law penetrating and reconfiguring domestic law. But, as Buchanan and Pahuja (2004) contend, and my material bears out, the state and its juridical practices are pivotal to the functioning of international law and international institutions, so that the national and the international are mutually constitutive rather than opposed to one another. Moreover, Hardt and Negri's focus on the multitude as the biopolitical force for revolution, and as a political force for an absolute democracy and justice outside of law, overlooks the significance of resistance that primarily addresses the state

and takes place in the national arena using domestic law and courts. My data on the politics of new social movements in India also troubles their pronouncements on the decline of civil society. These movements, which coalesce around displacement, dispossession and commoditization of the commons, address issues of ecology and cultural identities of communities that are intertwined with one another in the Indian context. These struggles, which combine political mobilization and legal redress, move in and out of the national arena as they take place at several scales at once, weaving the local and regional with the national and global. Contrary to Hardt and Negri's sceptical view of the law and the state as sites for the pursuit of justice in Empire, my material indicates that the national political arena and judicial fora have not been rendered marginal, and that, contrary to their assertion, civil society has not declined either.

Scholarly and media attention to spectacular actions such as the protests against the millennium round of the WTO in Seattle have contributed to the relative neglect of the mundane world of the legal arena, in which civic alliances continually challenge state (in)action and the policies of international institutions. My case studies illustrate the emancipatory potential of law, while pointing to the complexities of the strategic opportunities and limitations of using law in struggles against impoverishment and dispossession. The interweaving of the national and the international levels in public interest litigation in domestic courts in India and in transnational fora (such as the European Patent Office or the World Bank's Inspection Panel) shows that we are a long way from Hardt and Negri's account of the international as a deterritorialized Empire. The legal and political contention explored here alerts us to some of the ambivalences of an emerging global civil society in a 'post-Westphalian world order', to use Richard Falk's term (1998). It widens the spectrum of the possibilities for democratic participation in that citizens can circumvent their governments to directly interact with institutions of supranational governance. But, in the process, social movements and NGOs may paradoxically lend greater authority and legitimacy to undemocratic international bodies, while contributing indirectly to a further weakening of the sovereignty of the states, which they seek to render accountable.

The state is highly unlikely in the future to be a unitary source of normative order. In fact, in (post)-colonial societies it never was one. The existence of multiple and overlapping transnational legal orders points to options other than the unrealistic hope of restoring national legal autonomy and the equally utopian dream of an all-encompassing global regulation beyond and without the state. Moving beyond a stark binary choice between national or global regulation, or between state law and community law, this article has mapped the contours of an emerging landscape of eclectic legal pluralism that includes new hybrid regulatory webs woven together by state and non-state actors such as transnationally networked movements and advocacy NGOs. This is a mosaic of dominant supra-national regulation, (post)colonial national legislation, indicative alternative people's laws,

ambiguous project laws of bilateral and multilateral donors, a plethora of new international norms and standards, as well as the reassertion of community norms and customary rights. Recognition of the legitimacy of other sources of law besides state law does not necessarily threaten the rule of law except for its state-centredness, which is both historically new and contingent, as Benton (2002) has suggested.

Local communities and traditions are anything but bounded and static. Rather than a Russian doll model of neatly demarcated local, national and global spaces, each encapsulated within the next as one moves up the scale, my empirical material reveals the local and the national as fragmented spaces with divergent translocal links. It also illustrates some of the ambiguous consequences of the transnationalization of these spaces, just as it exemplifies the dilemmas of activists who are forced into short-lived shifting alliances with and against the state. The Indian state is cast in this script, as in Hindi films, in the double role of hero and villain – of ally and adversary. Cunning states are states that manage to have conveniently few duties towards their citizens. Given the political will, they could exploit the limited degrees of freedom still available under conditions of globalization to protect the interests of vulnerable citizens. Civil society actors in search of a responsive government face the dilemma of simultaneously working to limit the power of the state while broadening its social obligations.

The result is a fuzzy politics, which defies easy classification in terms of ideologies or with reference to a binary framework of national/international. Community-based NGOs and social movements, once harsh critics of the state, have rediscovered the merits of state sovereignty in some contexts. Their principled anti-statism has given way to recognition of the need for pragmatic partnerships with the state, even as they continue to challenge its legitimacy to represent the public interest and the common good. Faced by cunning states and non-accountable international institutions, civil society actors have neither permanent friends nor enemies but only permanent interests.[14] For those in search of principled politics based on ideological affinities, these ambiguous alliances represent dangerous liaisons. But international institutions, states and transnational civic alliances share the same dilemmas in this context. Each must simultaneously address several publics in diverse locations, satisfy divergent constituencies, attune local priorities to a variety of global agendas and (re)frame issues in a globally legible language while being able to speak in different tongues to different audiences. This raises intractable issues with regard to the accountability of these three sets of actors with highly unequal power in the new architecture of global governance.

Notes

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1. See, for example, the self-representation of the WTO, which states:

> The WTO is a 'member driven' organization which does not dictate to governments to adopt or drop certain policies. . . . In fact: it's the governments who dictate to the WTO. As for the WTO Secretariat, it simply provides administrative and technical support for the WTO and its members. (http://www.wto.org)

2. I am grateful to Ivan Krastev for suggesting the term.

3. Shiva (1997) has argued that the contemporary denial of ownership to local communities of their biogenetic resources, and of the knowledge linked to these, continues to be based on the ideas of Locke and de Vattel, which provided legal justification of colonial appropriation of lands on the grounds that the natives lacked not only law but also the capacity to fully develop these resources.

4. I would like to thank Vandana Shiva for interviews as well as access to material on the campaigns against the Neem and Basmati patents.

5. The Geographical Indicators Bill was hastily pushed through parliament with the argument that it would afford protection for Indian agricultural products in the global market, though India had not succeeded at the WTO in getting either Darjeeling tea or Basmati rice, which would have fallen under its purview, included under Geographical Indicators.

6. The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization, which aims to protect new varieties of plants by an intellectual property right.

7. Activities related to common property resources provide the poor in many parts of India with more employment than work on their own smallholdings or public works programmes by the state (Jodha, 1994).

8. Estimates of the number of people displaced vary widely and are a highly contested issue between the state and social movements. Irrespective of these competing claims, the Indian state has a dismal record of development-induced displacement and the failure to resettle those forcibly evicted. Large dams alone have displaced 16–38 million Indians since 1947, a large majority of whom are still to be adequately rehabilitated (World Commission on Large Dams, 2000: 104, 108).

9. The paradoxical results of such a strategy are equally evident in the case of the anti-Narmada dam movement, which circumvented the state by using US Congressional Hearings to put pressure on the World Bank but did not raise the matter in the Indian parliament. The failure of the movement, and its transnational allies, either to stop the construction of the dam or to secure adequate compensation for those forcibly displaced, stands in sharp contrast to its success in contributing to important reforms at the World Bank (Randeria, 2003).

10. In all, 39 requests have been submitted to the Panel so far of which five were not registered due to ineligibility. For a detailed analysis of the history of the Panel, its procedures and of the cases dealt with by it till 1999 see Randeria (2001). The requests concerning the NTPC thermal power plant in Singrauli and the Nagarhole national park are dealt with in detail in Randeria (2003b).

11. According to the World Bank Environment Department, the number of persons displaced by dams, urban development and infrastructure projects funded by the Bank in India in 1993 accounted for 49.6 percent of the displacement caused worldwide by Bank-assisted projects (Kuksal, 2006: 10).

12. It should be recalled that, under pressure to adhere to Bank standards on environment and rehabilitation, the government of India chose to terminate the Bank's involvement in the Narmada dam by not drawing on the final tranche of the credit and turned instead to the Indian diaspora for funds.

13. Voting rights in the World Bank and the IMF, with a highly skewed representation in favour of the G-7 countries, reflect the post-1945 balance of power and correspond to an outdated structure when member states of these institutions were both borrowers and contributors.

14. See, for example, the *International Annual Report* of Greenpeace (1998) that echoes the incisive aphorism of Disraeli, 'Greenpeace has no permanent allies or enemies', a view also shared by SPARC, the NGO involved in the implementation of the World Bank-funded Mumbai Urban Transport Project.

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