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## THE ROLE OF THE LAW IN THE RULE OF LAW OF THE NEW OLIGARCHIES: A LATIN AMERICAN FEMINIST PERSPECTIVE

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As I think about the role that the law played in the preparation and execution of the military-civilian coup d'état in Honduras in June of 2009, I've become more aware of the importance of the law for oligarchic rule under the new conditions of neoliberal global capitalism. This may have been always the case, but there is a particularity in the use of the law today that deserves our unrelenting attention. We can refer to the configuration of the indefinite detainee and the new modalities of imprisonment in Guatánamo of the Bush era that came about by the suspension and derealization of the law to create precisely the new juridical figure of the indefinite detainee. Judith Butler has been very eloquent in the description of this legal phenomenon in her book *Precarious Life*.<sup>1</sup> Her reflections there helped me understand how the Pentagon and the Honduran oligarchy used the law and the supposed defense of the constitution to violently depose and deport the democratically-elected president of Honduras, institute a "constitutional succession" by naming an unconstitutional successor, and later call elections under a state of siege and the suspension of the law. Documents released by Wikileaks reveal the absolute knowledge of the US Embassy of the distortion of the law to carry out the coup.<sup>2</sup> We, of course, have similar things occurring in Haiti, Afghanistan, and Iraq.

Now interestingly, anti-oligarchic and anti-neoliberal social movements in Latin America also make use of the law to constitute a new social power. This has been the case of Venezuela, Bolivia, and Ecuador where social movements were able to grab control of state power and reissue new constitutions that recouped sovereign power to the people. Needless to say, in the same process of

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<sup>1</sup> Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004).

<sup>2</sup> WikiLeaks revela actos corruptos de Roberto Micheletti en Honduras

<http://mexico.cnn.com/mundo/2011/01/29/wikileaks-revela-actos-corruptos-de-roberto-micheletti-en-honduras> (as accessed on 11/04/2011).

Wikileaks-Honduras, 'Revela participación de los EEUU en el golpe de estado contra Zelaya'. Available online at <http://fidelernestovasquez.wordpress.com/2010/11/30/wikileaks-honduras-revela-participacion-de-los-eeuu-en-el-golpe-de-estado-contra-zelaya/> (as accessed on 11/04/2011).

LaPrensa, 'Honduras: Micheletti, Lobo y Vásquez en nuevos cables de WikiLeaks'. Available online at <http://www.laprensa.hn/Pa%C3%ADs/Ediciones/2011/01/30/Noticias/Honduras-Micheletti-Lobo-y-Vasquez-en-nuevos-cables-de-WikiLeaks> (as accessed on 11/04/2011).

Los Angeles Times, 'WikiLeaks on Latin America: Honduras coup 'illegal''. Available online at <http://latimesblogs.latimes.com/laplaza/2010/11/wikileaks-latin-america-venezuela-honduras-paraguay-argentina.html> (as accessed on 11/04/2011).

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constitutional renewal the power of social movements became entangled with a state power that now disputes their sovereign power. As I have mentioned elsewhere, there is a plasticity, breakability, and perversity in the law as well as an intimacy of the law with oligarchic and state power that makes legal codes and legal practices compatible with military codes and undemocratic rule. But more importantly, because of this peculiarity of the law, constitutional processes that aim to recover the sovereignty of the people can be rendered meaningless, if the process towards the constitution is not accompanied by a politics of intersectionality that puts into question the abstract notion of the people. In other words, constitutional processes to recover the sovereign power of the people must consider the ways power is constituted by gender, race, class, and sexuality, as well as by other divisive practices, before it can become meaningful.

Feminist legal scholars and activists have a lot to contribute in the rethinking of the rule of law and the reformulation of constitutions. In Latin America feminists have had to face the challenge of enabling intersectional politics to have their feminist agenda included in the new constitutions. The success has been rather mixed and we find instances in which feminists must confront male dominated indigenous movements that downplay the role of gender in the new popular power (Bolivia and Ecuador) or have had to question their own entanglements with liberalism and the coloniality of power. In the case of Honduras, where social movements were unable to reverse the coup because of the intervention of the Pentagon and the US Department of State led by Hillary Clinton, feminists are already facing difficulties in finding out what is or should be feminist in a future constitution that resurrects popular sovereignty. Feminists in Honduras are already questioning the validity of constitutions to construct an alternative to oligarchic power.

Yet rewriting constitutions has become the most important strategy for anti-oligarchic, anti-neoliberal and feminist social movements in Latin America that want the refoundation of the nation and the decolonization of society. These movements have a lot to teach the West and the United States in particular, as oligarchic power is becoming more entrenched in state power. Here again we find other examples of the perverse use of the law as in the case of Sweden that uses a law passed as a result of feminist struggle against the impunity of rape to criminalize a dissenter of oligarchic rule like Julian Assange of Wikileaks. Or the attempt by some US politicians to resurrect the Espionage Act to not only apprehend Assange but also to restrict the civil rights of Americans in the name of national security and the rule of law. All these uses of the law must give pause to transnational feminists. We will need to construct a new research agenda and a new feminist legal scholarship that helps us construct the links between the new legalese and legal discourses that occur at both sides of the divide of the global south and the global north.

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