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2015

### **Buen Vivir and Subaltern Cosmopolitan Legality in Urban Cultural Governance and Redevelopment Frameworks: The Equitable Right to Diverse Iterations of Culture in the City and a New Urban Legal Anthropological Approach**

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# ***Buen Vivir* and Subaltern Cosmopolitan Legality in Urban Cultural Governance and Redevelopment Frameworks: The Equitable Right to Diverse Iterations of Culture in the City and a New Urban Legal Anthropological Approach**

*Sara Gwendolyn Ross\**

*Alternative proposed approaches and reactions to development, such as buen vivir, subaltern cosmopolitanism, and a counterhegemonic use of hegemonic legal tools, can be used in the urban municipal redevelopment context where dominant urban redevelopment strategies fail to equitably value diverse iterations of culture and subculture. This work uses the city of Toronto, Canada as its central case study, specifically its current focus on “culture” as a redevelopment strategy. It also applies critiques of dominant international development strategies to the local municipal context, and advocates the use of urban legal anthropology and transsystemic approaches in assessing the unequal treatment of different cultural and subcultural groups within municipal legal frameworks.*

## **I. INTRODUCTION**

In the international development sphere, critical theorists question the prevailing development approaches imposed by Western and Eurocentric dominant legal and development frameworks for their failure to respect the diversity of knowledges and cultures of the spaces and countries that are the subject of development discussions. I

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suggest that alternative proposed approaches and reactions to development – namely the notions of *buen vivir* and subaltern cosmopolitanism, as viewed prevalently throughout the work of Boaventura de Sousa Santos – carry potential for application at the urban municipal redevelopment context where dominant urban redevelopment strategies in cities such as Toronto currently rely on particular iterations of “culture” and its commodification in order to attain sought after global creative city status that tends towards gentrification and can function to the detriment, exclusion, and marginalization of the diversity of knowledges and ways of being within the city space.<sup>1</sup>

The human right to culture has received increasing recognition on the international stage through UNESCO-based initiatives that address not only tangible and intangible cultural heritage, but now also recognize this right within city-oriented initiatives that address life and culture in the city.<sup>2</sup> One significant program is UN-Habitat, which is designed to deal with issues arising from increased urban concentration.<sup>3</sup> Where municipal legal and governance structures have a fundamental role in the everyday guarantee of human rights and the right to culture in the daily lives of urban citizens, the right to culture is also quickly becoming enshrined in nascent city-based human rights charters.

However, city-based human rights charters and international frameworks have yet to effect a truly transformative impact on the everyday regulation of life, law, and culture in the city since, at least for now, these documents function mostly as guides for cities

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<sup>1</sup> The term “gentrification”, developed by Ruth Glass in 1964, has become a broad often unhelpfully dismissive term that imports many debates and complexities that will not be explicitly engaged with in this article (Laam Hae, *The Gentrification of Nightlife and the Right to the City: Regulating Spaces of Social Dancing in New York* (New York: Routledge, 2012) at 14). While one might certainly identify some of the marginalizing and displacing effects on diverse iterations of culture that culture-led redevelopment can have as gentrification, I take the term to relate more specifically to changes in real estate and the labour force. For these reasons the term will be mostly avoided. Along the same lines, Mariana Valverde also expresses this view, see *Everyday Law on the Street: City Governance in an Age of Diversity* (Chicago: University of Chicago Press, 2012) at 20 [Valverde, Everyday]. For a taste of some of the “gentrification debates”, see generally Loretta Lees, Tom Slater & Elvin Wyly, *Gentrification* (New York: Routledge, 2008); Rowland Atkinson & Gary Bridge, eds, *Gentrification in a Global Context: The New Urban Colonialism* (London, UK: Routledge, 2005); Neil Smith, *The New Urban Frontier: Gentrification and the Revanchist City* (London, UK: Routledge, 1996). For some Canada and Toronto specific material, see Ute Lehrer & Thorben Wieditz, “Condominium Development And Gentrification: The Relationship Between Policies, Building Activities And Socio-Economic Development In Toronto” 18:1 (2009) *Canadian Journal of Urban Research* 10; Deborah Leslie & Norma M Rantisi, “Creativity and Urban Regeneration: The Role of La Tohu and the Cirque du Soleil in the Saint-Michel Neighborhood in Montreal” in Carl Grodach & Daniel Silver, eds, *The Politics of Urban Cultural Policy: Global perspectives* (London, UK: Routledge, 2013) 83.

<sup>2</sup> UNESCO is the acronym for the United Nations Educational, Scientific and Cultural Organisation. See also the *Constitution of the United Nations Educational, Scientific and Cultural Organization*, 4 UNTS 275 (adopted on 16 November 1945, entered into force 7 April 1948).

<sup>3</sup> See UN Habitat, “About Us”, *UN Habitat*, online: <[unhabitat.org/about-us/un-habitat-at-a-glance](http://unhabitat.org/about-us/un-habitat-at-a-glance)>. See Part II-C, below, for a description of the Habitat III Issue papers and Habitat III. See also n(26) for a description of the UN-Habitat program.

and as potential extra-legal mechanisms. Peeling back these guiding frameworks and mechanisms, I seek the essence of what is underneath them, draw out the notion of *buen vivir*, and argue for greater recognition of this notion at the municipal level. In order to operationalize such an approach, I explore Santos' proposal of a counterhegemonic use of hegemonic legal tools in order to work both within existing 'legal complexes' as well as transcend their current limitations in equitably valuating all iterations and diversities of culture, cultural practices, and cultural preferences in the city.<sup>4</sup> To that end, I discuss how and why alternative approaches to and frameworks for development at the international level might be applied to the local level and consider an urban legal anthropology as a potential approach in this endeavour, in addition to the potential use of transsystemia. I will also turn briefly to the presence of subcultures and countercultures in the city, and the context of subcultural studies, in order to explore a *buen vivir* within the city space for groups and individuals who identify with subaltern, countercultural, transgressive, alternative iterations of culture, its practices, and its spaces. Finally, the example of the dominant international frameworks available for structuring a safeguarding of intangible cultural heritage will be considered for potential counterhegemonic application in the municipal context.

## II. CULTURE IN THE CITY: WHAT IT IS AND WHY IT MATTERS

The cultural fabric of everyday life plays out in the micro context of small social spaces and within the "lawscapes" where the law and the city intersect.<sup>5</sup> In addition to this, as theorist Iris Marion Young puts it, life in the city is characterized by the "being together of strangers, diverse and overlapping neighbours."<sup>6</sup> Ultimately, the burgeoning diversities of cultures, subcultures, and cultural practices and spaces must coexist within the close-quartered setting of the city. Differences are inevitable and even encouraged in the context of city life as "[d]eviant or minority groups find in the city both a cover of anonymity and a critical mass unavailable in the smaller town."<sup>7</sup> However, when superimposed, pushed together, and forced to coexist, often within contested terrain, this can often end in unequal results for clashing parties, especially where – as the UN's Habitat III issue papers note – urban law "often has a dual character with an apparently neutral technical

<sup>4</sup> 'Legal complexes' include "the assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms, and forms of judgement" (Nikolas Rose & Mariana Valverde, "Governed by Law?" (1998) 7:4 *Social and Legal Studies* 541 at 542; see also Hae n(1) at 7).

<sup>5</sup> Andreas Philippopoulos-Mihalopoulos, ed, *Law and the City* (Abingdon, Oxon: Routledge-Cavendish, 2007). For a description of a "small social space" see e.g. Sally Engle Merry, "Anthropology of International Law" (2006) 35 *Annual Review of Anthropology* 99 at 106.

<sup>6</sup> Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) at 237, 240; Hae, n(1) at 34.

<sup>7</sup> Young, n(6) at 238.

nature accompanied by a complex social aspect including the potential for differential impact on different groups within the urban environment.”<sup>8</sup>

In this context, in the interests of better establishing social justice within cities, there must be what Young terms a “realization of a politics of difference” where the city space must be designed with a view to affirming, representing, sustaining, and celebrating the distinct practices and activities of diverse groups and individuals and “their distinctive characteristics and cultures.”<sup>9</sup> As opposed to social assimilation, ignorance of difference, or the formation of a city’s singular identity, this recognition and sustenance of diversity is in line with Santos’ argument that “the ideal of equality is the ideal of equal difference.”<sup>10</sup> It also speaks to a “re-humanizing” of the city, such as that which is called for by the Habitat III issue papers, which assert that

[e]nhancing local culture and recognizing cultural diversity can be a powerful way to mitigate urban conflicts, foster tolerance, preserve the social fabric and promote pluralism. Social inclusion of disadvantaged groups, particularly in the redevelopment of urban areas and cultural spaces, can be facilitated through wider recognition of their cultural identity.<sup>11</sup>

### **A. The Right to Culture as Enshrined in International Legal Frameworks and Nascent City-Based Human Rights Charters**

In the process of teasing out the unequal treatment of differences, it first bears clarifying what is meant by “culture” here. The UNESCO *Universal Declaration on Cultural Diversity* defines culture as: “[T]he set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that ... encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.”<sup>12</sup> While this provides a guiding definition, and one that will be drawn on within this paper, it is very difficult to put one’s thumb on precisely what culture is and what may be included under the umbrella of culture. As regards identifying “culture” and cultural spaces in the city context, UN-Habitat (with reference to the 2004/2005 “State of the World Cities Report”) muses that:

[c]ulture, it seems, has many meanings. As a practical human activity, it is an inherent part of both individual and collective development, from the

<sup>8</sup> UN-Habitat, Habitat III Issue Paper #6, “Urban Rules and Legislation” (31 May 2015) at 2 [Habitat III Issue Paper #6, “Urban Rules”]. See Part II-C, below, for a description of the Habitat III Issue papers and Habitat III. See also n(26) for a description of the UN-Habitat program.

<sup>9</sup> Young, n(6) at 227, 240. See also Hae, n(1) at 34.

<sup>10</sup> Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Boulder: Paradigm Publishers, 2014) at 219 [Santos, *Epistemologies*].

<sup>11</sup> UN-Habitat, Habitat III Issue Paper #4, “Urban Culture and Heritage” (31 May 2015) at 4.

<sup>12</sup> GA Res 25, UNESCOR, 31st Sess, Annex 1, UN Doc 31C (2001) Doc 31CGA Res 25, Annex I, 41 ILM 57 (adopted on 2 November 2001) [UNESCO *Declaration on Cultural Diversity*].

education of a single child to the finest artistic expression of entire peoples and nations. Both historically and in terms of the future, culture suggests the capacity to survive as well as adapt to change. Especially in cities, culture takes form in the environment of palaces, temples, opera houses, art museums, places of entertainment, parks, memorials, marketplaces, shops and restaurants. These, in turn, become visual symbols of local identity. But while busily imprinting their individual stamps on the window advertisements of tourist agencies globally, many ‘cultural accountants’ forget to plan for the future of those who helped give these cities their flavour in the first place.<sup>13</sup>

Within concerns about any inequality experienced in the city: arts, culture, leisure activities and their associated spaces may sometimes be dismissed as being of secondary importance, or as nothing more than the mundane elements of everyday life. But they are much more than the dismissible mundane of everyday life.<sup>14</sup> They not only provide a means for “social differentiation and identity construction in the post-modern, post-industrial society” and “are aspects of the quality of life that contribute to comprehensive personal development and to cultural and social integration,” but they can also provide an escape from everyday life’s unsavoury bits, a sense of belonging and social cohesion – they can breathe meaning into one’s life in the city.<sup>15</sup> As Heather McLean and Barbara Rahder explain with regard to urban cultural enclaves and Toronto’s Kensington Market in particular:

Grassroots arts and culture events may seem small and insignificant within the grander scheme of making cities safe and attractive for global corporate investment. Yet, these events have a way of shaping the social imaginaries celebrated and performed in urban spaces. They valorize, exclude, and change communities and the relationships within, around, and beyond them in ways both anticipated and unanticipated.<sup>16</sup>

Rather than simply seeing dwelling within spatial proximity to work and life’s necessities as the overarching concern in city life, individuals increasingly seek more: a focus on quality of life that is inherently related to cultural and leisure spaces of intangible cultural experiences. Culture-based city redesign projects seek not only to respond and

<sup>13</sup> UN-Habitat, “Trading on Culture: Planning the 21st Century City”, 2004, UN Doc SOWC/04/F/04 (2004) at 3, online: *UN-Habitat* <mirror.unhabitat.org/documents/media\_centre/sowc/Featuretrade.pdf>. See also UN-Habitat, “*State of the World Cities 2004/2005: Globalization and Report*” (New York: Routledge, 2005).

<sup>14</sup> See also Hae, n(1) at 6–7.

<sup>15</sup> *Ibid* at 139; City of Montreal, *Montréal Charter of Rights and Responsibilities* (1 January 2006), online <ville.montreal.qc.ca>, art 11 [*Montreal City Charter*]; Ernst & Young, “Creating Growth: Measuring Cultural and Creative Markets in the EU” (December 2014) at 7, online: <[http://www.ey.com/Publication/vwLUAssets/Measuring\\_cultural\\_and\\_creative\\_markets\\_in\\_the\\_EU/\\$FILE/Creating-Growth.pdf](http://www.ey.com/Publication/vwLUAssets/Measuring_cultural_and_creative_markets_in_the_EU/$FILE/Creating-Growth.pdf)> [EY, “Creating Growth”].

<sup>16</sup> “The Exclusionary Politics of Creative Communities: The Case of Kensington Market Pedestrian Sundays” (2013) 22:1 *Can J Urban Research* 90 at 106.

capitalize on this development, but also to harness the tourism possibilities of cultural city spaces and experiences that can draw global tourism interest, reputation as a global city destination, and the corresponding tourism dollars that can result.

Internationally, UNESCO provides a good starting point when turning to the international legal frameworks designed to promote and preserve culture.<sup>17</sup> Various legal instruments have been developed under the UNESCO umbrella to address, among other concerns, preserving tangible and intangible culture, the diversity of cultural expressions, and so on.<sup>18</sup> Building off the groundwork of urban theorists Henri Lefebvre and, more recently, David Harvey,<sup>19</sup> the “right to the city” framework has provided a platform from which the importance of and right to spaces and practice of culture in the city can be structured.<sup>20</sup> This framework views collective urban city spaces as belonging to its urban citizens, where the use-value of these spaces is protected from encroaching dominance by market interests and unjustified infringement by the state, and within which urban citizens have available to them the elements (cultural, social, political, economic, and environmental) necessary for a decent life.<sup>21</sup>

Notably, the popularization of the “right to the city” framework has led to its enshrinement within numerous city-based human rights charters, such as the *World Charter on the Right to the City*, drafted during the 2001 gathering of the World Social Forum, the *Mexico City Charter for the Right to the City*, the *Gwangju Human Rights Charter*, the *Montreal Charter of Rights and Responsibilities*, the *Global Charter-Agenda for Human Rights in the City*, and in the *European Charter for the Safeguarding of Human Rights in the City* (“*European City Charter*”).<sup>22</sup> The latter is significant as over 400 cities in Europe have become signatories to this document that recognizes culture and cultural rights in the city. Not only does the *European City Charter*, at Article XV, delineate a right for urban citizens to culture “in all its expressions, forms and manifestations” and highlight the importance of spaces for cultural activities, but Article XXI goes on to formulate a right to leisure,

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<sup>17</sup> See n(2) for a description of UNESCO.

<sup>18</sup> See e.g. *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975); *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 20 October 2005, 2440 UNTS 311 (entered into force 18 March 2007); *Convention on the Safeguarding of the Intangible Cultural Heritage*, 17 October 2003, 2368 UNTS 3 (entered into force 20 April 2006) [UNESCO *Intangible Cultural Heritage Convention*]; *Declaration on the Principles of Tolerance* (adopted 16 November 1995 by UNESCO, 28th Mtg (1995); UNESCO *Declaration on Cultural Diversity*, n(12).

<sup>19</sup> See e.g. Henri Lefebvre, *Le Droit à la Ville* (Paris: Anthropos, 1968); David Harvey, *Social Justice and the City*, revised ed (Athens: University of Georgia Press, 2009).

<sup>20</sup> Hae, n(1) at 6–7.

<sup>21</sup> See e.g. *ibid* at 6.

<sup>22</sup> *European Charter for the Safeguarding of Human Rights in the City*, 2002, online: UCLG Committee on Social, Inclusion, Participatory Democracy and Human Rights <[www.uclg-cisd.org/en/right-to-the-city/european-charter](http://www.uclg-cisd.org/en/right-to-the-city/european-charter)> [*European City Charter*]

both in terms of time for leisure activities as well as space for leisure activities.<sup>23</sup> Setting the stage for these provisions, the *Preamble to the European City Charter* additionally notes that “[c]ity life today also demands that certain rights be more clearly defined” and that, in this context, new issues must be acknowledged, including “the opportunity for social exchange and leisure.”<sup>24</sup> Drawing on this *European City Charter* structure, the *Montreal City Charter of Rights and Responsibilities* (“*Montreal City Charter*”), the first of its kind in North America, also incorporates a similar right to the city approach.<sup>25</sup>

## **B. The Widening Equality Gap in the City and Urban Development / Redevelopment Trends**

A meaningful equality of differences is sorely needed in the context of today’s unprecedented global trend towards urbanization.<sup>26</sup> As cities increasingly define the lives of more and more individuals, these urban lives must also negotiate the inequalities and exclusions produced within the city.<sup>27</sup> The widening social gaps within cities and resulting inequalities play out on many fronts beyond the economic realm and wage gaps.<sup>28</sup> By turning to epistemologies, Santos effectively opens up a dialogue of the nuanced ways that marginalization and exclusion manifest within the ways in which individuals know and live in the world.

Santos proposes an epistemology upon which to build a world more focused on equitably acknowledging and valorizing the diverse ways of knowing that exist, notably those of marginalized and subaltern groups and individuals.<sup>29</sup> Turning to the movement of movements, as exhibited within, for example, meetings of the World Social Forum, Santos argues for a displacement of current dominant epistemologies that structure approaches

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, preamble.

<sup>25</sup> *Montreal City Charter*, n(15)

<sup>26</sup> A trend even recognized in 1978 by the United Nations in their creation of the UN-Habitat program, which addresses urbanization and settlement affairs and “is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities” (UNGAOR, 56<sup>th</sup> Sess, UN Doc A/Res/56/206 (202); UNGAOR, 29<sup>th</sup> Sess, UN Doc A/Res/29/3327 (1974); see also n(3). For the other official documents outlining the UN-Habitat’s mandate see the *Vancouver Declaration on Human Settlements* (Habitat I), 1976, UN Doc A/Conf.70/15; the *Istanbul Declaration on Human Settlements* (Habitat II and the Habitat Agenda), 1996, UN Doc A/Conf.165/14; the *Declaration on Cities and Other Human Settlements in the New Millennium*, UNGAOR 25th Sess, 2001, Supp No 3, UN Doc A/S-25/7/Rev.1.

<sup>27</sup> There is a significant dialogue related to this subject See e.g. Harvey, n(19); Sharon Zukin, “Cultural Strategies of Economic Development and the Hegemony of Vision” in Andy Merrifield & Erik Swyngedouw, eds, *The Urbanization of Injustice* (New York: New York University Press, 1997) 223; Madhavi Sunder, “Cultural Dissent” (2001) 54:3 *Stan L Rev* 495; Saskia Sassen, “The Global City: Strategic Site/New Frontier” in Engin F Isin, ed, *Democracy, Citizenship and the Global City* (London: Routledge, 2000) 48; Saskia Sassen, *Cities in a World Economy*, 4<sup>th</sup> ed, (Los Angeles: Sage, 2012) [Sassen, *Cities*].

<sup>28</sup> See especially *ibid* at ch 6ff.

<sup>29</sup> See e.g. Santos, *Epistemologies*, n(10) at 175

to development. That which Eurocentric, Western, and dominant governance structures perceive as knowledge must be displaced in order to allow for, and welcome, other ways of knowing and living – those from the other side of the “abyssal line” – to be free to rise to shape a new present and a vision for a better future.<sup>30</sup> This approach, described by Santos and visible within new social movements, subversively centers what to the “dominant world-view has appeared to be marginal” and resonates with Derrida-esque deconstructive philosophy.<sup>31</sup>

While Santos emphasizes a macro-context of global binaries, his call for a decentering of dominant Eurocentric and Western epistemologies is also relevant at the city-level. This is especially the case where Santos’ proposals speak beyond statistics of inequality to focus on the daily lived realities and struggles of people and how non-dominant epistemologies play out in the fabric of their lives, which are increasingly woven within the city space. In this way, Santos’ proposals for a decentering of Western, Eurocentric, and dominant epistemologies inescapably resonates in the city context and to the subaltern, marginalized, and alternative groups and individuals that inhabit its confines.

Moving into the post-2015 Millennium Development Goals era, the UN’s specialization agencies such as UNESCO assert that culture must be seen as a valuable “force for sustainability in development” in “rethinking strategies for development and seeking to identify new sources of dynamism.”<sup>32</sup> Culture can, beyond its market potential, promote cohesion and engagement and “provide innovative and cross-cutting solutions to complex issues.”<sup>33</sup> But within this context, and the increasingly diverse and interconnected nature of our reality, is a post-2015 focus on the value of the difference and a plurality of cultures that have much to gain in mutually beneficial exchanges.<sup>34</sup> But the possibility of mutually beneficial exchanges first requires a respect for the equality of differences – as Santos would suggest. Establishing an equality of differences in this context is as important locally, at the municipal city-level, as it is in the global and international development framework.

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<sup>30</sup> *Ibid* at ch 4ff. Santos describes the abyssal line as an invisible distinction and radical line that separates: “social reality into two realms, the realm of ‘this side of the line’ and the realm of ‘the other side of the line.’ The division is such that ‘the other side of the line’ vanishes as reality, becomes nonexistent, and is indeed produced as nonexistent. Nonexistent means not existing in any relevant or comprehensible way of being. Whatever is produced as nonexistent is radically excluded because it lies beyond the realm of what the accepted conception of inclusion considers to be its other” (*ibid* at 118).

<sup>31</sup> Margaret Davies, *Asking the Law Question: The Dissolution of Legal Theory*, 2<sup>nd</sup> ed (Sydney: Lawbook Co, 2002) at 337. See also Joel F Handler, “Postmodernism, Protest, and the New Social Movements” (1992) 26 *Law & Society Rev* 697.

<sup>32</sup> See UNESCO’s Contribution to Post-2015, “*The Power of Culture for Development*”, online: <en.unesco.org/post2015/power-culture-development>.

<sup>33</sup> *Ibid*.

<sup>34</sup> *Ibid*.

### C. Other Legal Frameworks and Programs for Cultural Sustenance and Edification in the City

Mandated by the United Nation's General Assembly in 1978, UN-Habitat is a program developed by the United Nations to deal with issues arising from the significant global increase in urban growth.<sup>35</sup> Of immediate relevance, in the upcoming year, pursuant to UN Resolution 66/207, the Habitat III conference (the United Nations Conference on Housing and Sustainable Urban Development) will take place in Quito, Ecuador in October 2016.<sup>36</sup> The series of twenty-two Habitat III issue papers that have been released are particularly interesting when considering culture and redevelopment in the city. In terms of culture in the city, within these papers one can find many of the underlying values that also appear in the city-based human rights charters canvassed above – inclusivity, equality, protection and promotion of tangible and intangible cultural heritage in its diverse iterations.

These nascent city human rights charters, such as *European City Charter* and the *Montreal City Charter*, certainly speak to the realities of the intersect between human rights and local governance structures and provide a mechanism and the groundwork for better addressing culture in the city at the actual municipal level. These city-based charters also modernize and build on the principles of the *Universal Declaration of Human Rights* to meet the context of increased globalization, urbanization, pluriculturalism, and diversity.<sup>37</sup> But, while it is important to recognize that city human rights charters are a new development that certainly carry future potential for further development, they have yet to be widely adopted in North America and, even where they are (such as in Montreal, for example) the legal frameworks of the governing city in question must more comprehensively incorporate the underlying values of these city charters in order to afford them more teeth in effecting change.

As the *Montreal City Charter* reminds us with its stipulation that it is “not intended to serve as the basis for legal action nor to be used in a judicial or quasi-judicial forum,” city-based human rights charters drawing on the right to the city framework are currently mostly in place as useful guides to how life and culture in the city should be treated and managed – they are but one extra-legal tool amongst other extra-legal and legal tools (some with stronger teeth than others to effect change) within legal frameworks governing

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<sup>35</sup> n(26).

<sup>36</sup> *Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and strengthening of the United Nations Human Settlements Programme* (UN-Habitat), UNGAOR, 66<sup>th</sup> Sess, UN Doc A/66/207 (2012).

<sup>37</sup> *Universal Declaration of Human Rights*, GA Res 217A (111), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71; *International Covenant on Economic, Social, and Cultural Rights*, GA Res 2200A (XXI), 21 UNGAOR, Supp No 16, UN Doc A/6313 (1966) 49, 993 UNTS 3 (entered into force 3 January 1976). See also Patrick Champagne, « Les droits de la personne dans la ville et la charte montréalaise des droits et responsabilités : Synthèse », online: *Affaires municipales et Occupation du territoire, Québec* <[www.mamrot.gouv.qc.ca/pub/observatoire\\_municipal/veille/charte\\_montréalaise\\_droits\\_responsabilite.pdf](http://www.mamrot.gouv.qc.ca/pub/observatoire_municipal/veille/charte_montréalaise_droits_responsabilite.pdf)>

cities.<sup>38</sup> A weightier approach is needed to recognize the importance of these values of inclusivity, equality, and protection and promotion of tangible and intangible cultural heritage in its diverse iterations in the city.

As noted here, while UNESCO, UN-Habitat, and city human rights charters provide a guide for how culture, cultural practices, and cultural spaces might be better governed, key hurdles remain to their effective operationalization at the city-level. International conventions such as the UNESCO *Convention on the Safeguarding of the Intangible Cultural Heritage* (“UNESCO *Intangible Cultural Heritage Convention*”) remain unratified in Canada and remain unrecognized by the balance of Canadian national, provincial, and municipal legislation;<sup>39</sup> while the right to the city frameworks have also not yet been fully harnessed or deployed in the transformative manner that the pioneers of the right to the city movement, such as Lefebvre, intended.<sup>40</sup>

To be able to effect the changes needed at the municipal level and to be able to apply redevelopment strategies in an inclusive, equal manner that is respectful of the equality of differences and diversities, a different mentality – a different epistemology – and a very different way of approaching life and cultures in the city is needed. Municipal legal frameworks and the city’s legal complexes must undergo “a deep process of revision.”<sup>41</sup> I suggest that the framework provided by *buen vivir* within international development discussions, also provides a guide for what this different mentality and approach might look like at the city-level.

### III. BUEN VIVIR

#### A. What is *Buen Vivir*?

The spread of the concept of *buen vivir*, is traceable to the “movement of movements” witnessed during meetings of the World Social Forum and the struggles of subaltern and

<sup>38</sup> *Montreal City Charter*, n(15) art 32.

<sup>39</sup> UNESCO *Intangible Cultural Heritage Convention*, n(18). The exception to this being Quebec’s Cultural Heritage Act (CQLR, c P-9.002) and the Newfoundland and Labrador’s “Creative Newfoundland and Labrador: The Blueprint for Investment and Development in Culture” (2006) at 34. Other provinces, such as Ontario, have sometimes read “intangible” into their provisions for protecting tangible cultural heritage. See i.e. the case of the Silver Dollar Room in Toronto (City of Toronto. By-law No 57-2015, *To designate the property at 484 Spadina Avenue (Silver Dollar Room) as being of cultural heritage value or interest* (11 December 2014) [By-law 57-2015, re: Silver Dollar Room], the Ontario Heritage Act, RSO 1990, c O.18, and the linked Ontario Regulation 9/06, O Reg 9/06. See also Sara Ross, “Preserving Canadian Music Culture: The Intangible Cultural Heritage Management of Urban Spaces of Culture and the Case of the Iconic Toronto Music Venue the Silver Dollar Room” (2016) 9:5 *Architecture MPS* [forthcoming]

<sup>40</sup> Hae, n(1) at 37; Lefebvre, n(19).

<sup>41</sup> Boaventura de Sousa Santos, “Beyond Neoliberal Governance: The World Social Forum on Subaltern Cosmopolitan Politics and Legality” in Boaventura de Sousa Santos & Cesar A Rodriguez-Garavito, eds, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005) 29 at 60 [Santos, “Beyond Neoliberal Governance”].

marginalized groups and individuals (notably from the global South) for global cognitive justice and against the destruction and devaluation of different knowledges and ways of knowing – or, as termed by Santos, against “epistemicide”.<sup>42</sup> Difficult to render into English, the notion of *buen vivir* can be loosely translated as a “good life”, a “decent life”, and an “integral and collective well-being,” one that encompasses the notion of an acceptable quality of life and decenters the value primacy of the individual in order to account more significantly for the social context, space, and distinct environment (the extended community) within which an individual is located.<sup>43</sup> More broadly it references an outcry for basic human dignity and for an interculturality that respects the diversity of knowledges, ways of knowing, and lifeworlds in the face of widening inequalities and the unequal valuation of non-dominant and non-Western or non-Eurocentric epistemologies, lives, and cultures that remain forced to negotiate the Western and Eurocentric dominant legal and organizing frameworks that continue to constitute the scaffolding of our increasingly globalized society and cities.<sup>44</sup>

As leading *buen vivir* scholar Eduardo Gudynas suggests, *buen vivir* is “best understood as an umbrella for a set of different positions” that can be considered “as a platform where critical views of development are shared.”<sup>45</sup> The essence and applicability of *buen vivir* is intimately linked to the local and to a context-specific situated growth within a region, culture, and so on. The term *buen vivir* benefits from an underlying recognition of plurality and inclusiveness that welcomes situated and contextualized knowledges and is “relative to every historical, social and environmental context.”<sup>46</sup> This plurality is also evidenced in the origins of *buen vivir*, which are attributable to “the confluence of knowledge of different origins,” and the existence of analogous and complimentary concepts within other knowledges/epistemologies.<sup>47</sup>

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<sup>42</sup> See generally Santos, *Epistemologies*, n(10), see especially *ibid* at 92.

<sup>43</sup> Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 2012) at viii. Eduardo Gudynas, “Buen Vivir: Today’s Tomorrow” (2011) 54:4 *Development* 441 at 441 [Gudynas, “Today’s Tomorrow”]; Eduardo Gudynas, “Buen Vivir” in Giacomo D’Alisa, Federica Demaria & Giorgos Kallis, eds, *Degrowth: A Vocabulary for a New Era* (Abingdon, Oxon: Routledge, 2015) 201 at 202 [Gudynas, “Buen Vivir”].

<sup>44</sup> Santos, *Epistemologies*, n(10) at 2–16, Gudynas, “Buen Vivir”, n(43) at 202. Please note, however, that this article does not mean to suggest that *buen vivir* is an overarching panacea without existing problems and resistance in its present application in contexts such as Ecuador and Bolivia where, as with most concepts and philosophies, it has not been and is not immune to distortion or (mis)appropriation (see e.g. Catherine Walsh “Development as *Buen Vivir*: Institutional Arrangements and (De)colonial Entanglements” (2010) 53:1 *Development* 15 at 18-21). While this is important to acknowledge, an in depth discussion of this matter is beyond the scope of the article. Nonetheless, in future applications of *buen vivir* to city redevelopment, an assessment of how cases where *buen vivir* has been distorted in its application will certainly be necessary.

<sup>45</sup> Gudynas, “Today’s Tomorrow”, n(43) at 444–45, 447.

<sup>46</sup> Santos, *Epistemologies*, n(10) at 53–54, 67; Gudynas, “Buen Vivir”, n(43) at 202; Gudynas, “Today’s Tomorrow”, n(43) at 441, 444.

<sup>47</sup> *Ibid* at 444, 446–47; Gudynas, “Buen Vivir”, n(43) at 202. For analogous treatment of these concepts within the urban/city context see e.g. *European City Charter*, n(22) and the “Right to the City” framework (Lefebvre, n(19); Harvey, n(19)).

In the context of development – or for the present purposes, also redevelopment – *buen vivir* is critical of consumerism and instead places its focus on social and environmental fulfillment.<sup>48</sup> That is not to say that economic growth is not a desirable outcome, but that growth is seen as secondary to, or potentially incidental to, the social and environmental context and intercultural considerations.<sup>49</sup> The critical common perspective of *buen vivir*, and its different iterations, reacts to the “conventional domination of utilitarian values, particularly expressed in the reductionism of life to economic values and the subsequent commoditization of almost everything,” which can be seen within many city redevelopment projects that seek culture as an economic panacea.<sup>50</sup> Contrary to a market or exchange-value centered approach, *buen vivir* highlights the different kinds of value that exist, including “esthetic, cultural, historical, environmental, spiritual and so on.”<sup>51</sup> As Gudynas outlines, discussions related to the social philosophy of *buen vivir/vivir bien* – or a “good life” – arise generically in the context of general criticisms against conventional notions of development and international development, more specifically in relation to forms of development derived from contemporary capitalism, and substantively in relation to the epistemological foundations of dominant notions of development, in order to instead turn to alternative knowledges and critical approaches to development that displace the centrality of classical Western development theory.<sup>52</sup>

Rather than simply “development alternatives”, Santos, in outlining the epistemologies of the South, illustrates how *buen vivir* calls for a recalibration and decolonization of current approaches to development and human rights – an “alternative thinking of alternatives” relying on interculturality.<sup>53</sup> Where Eurocentric, Western, and often neoliberal approaches to development currently occupy the center stage, interculturality and an alternative thinking of alternatives would deconstruct and displace their centrality (rather than rejecting them) in order to equitably consider diverse alternatives and perspectives generated from non-Eurocentric, non-Western, or post-neoliberal thought, in addition to diverse non-dominant and subaltern alternatives generated from within the West (such as feminist perspectives and other critical Western approaches).<sup>54</sup>

As Gudynas summarizes, *buen vivir* would thus displace dominant knowledges such that they would become only one alternative within a field of options.<sup>55</sup> This reconfiguration,

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<sup>48</sup> Gudynas, “Buen Vivir”, n(43) at 204.

<sup>49</sup> *Ibid* at 204. See also Gudynas, “Today’s Tomorrow”, n(43) at 444, 446.

<sup>50</sup> *Ibid* at 445. See e.g. generally Lehrer & Wieditz, n(1); Ute Lehrer & Andrea Winkler, “Public or Private? The Pope Squat and Housing Struggles in Toronto” (2006) 33:3 Social Justice 142; Ute Lehrer & Jennifer Laidley, “Old Mega-Projects Newly Packaged? Waterfront Redevelopment in Toronto” (2008) 32:4 Intl J Urban & Regional Research 786.

<sup>51</sup> Gudynas, “Today’s Tomorrow”, n(43) at 445.

<sup>52</sup> *Ibid* at 441; Gudynas, “Buen Vivir”, n(43) at 201–202.

<sup>53</sup> Santos, *Epistemologies*, n(10) at 21, 42. See also Gudynas, “Buen Vivir”, n(43) at 202.

<sup>54</sup> Santos, *Epistemologies*, n(10) at 42–43; Gudynas, “Today’s Tomorrow”, n(43) at 445.

<sup>55</sup> Gudynas, “Buen Vivir”, n(43) at 202.

that deconstructs and displaces currently favoured epistemologies, seeks to better account for voices and perspectives traditionally associated with voicelessness, marginalization, lack of engagement, and so on, and do so within a framework of inclusiveness disconnected from hierarchical valuation premised on norms and knowledges currently taken as assumed and settled knowledge. Santos suggests that this would, in turn, better establish an equality of differences, respect for a diversity of knowledges, and an emphasis on commonalities even where ideological differences nonetheless exist<sup>56</sup> – which are all elements needed for the equitable flourishing of all urban citizens and their cultural allegiances, preferences, and practices and a flattening of unequal treatment and injustice within the city space.

### **B. Towards a *Buen Vivir* in the City**

Santos' description of the knowledges and movements threatened by the epistemicide against which *buen vivir* is situated is expansive and welcoming to diversity since the planes of the struggles he describes can take many shapes and arise in many places. As globalization embeds itself in the realities of city life and the migratory, mobile, and diverse demographics of urban-dwellers grows, many pockets, layers, and permutations of knowledges, cultures, and cultural practices are transported and transplanted. The reality of the terrain where struggles play out, where social movements arise, and where cultures and knowledges are negotiated on a daily basis is within the spaces of cities.<sup>57</sup> Where many of the city redevelopment and gentrifying processes underway within the urban cores of our cities are seen as a form of recolonization of the city,<sup>58</sup> then the emergence of *buen vivir* approaches “as expressions of decolonial efforts” also resonates in the city context,” especially where *buen vivir* “is not a static concept, but an idea that is continually being created.”<sup>59</sup>

In order for city governance structures to more meaningfully engage with and equally treat different iterations of culture in the city, and to truly embrace the diversities of culture and cultural practices and spaces, *buen vivir* provides an approach through which

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<sup>56</sup> Santos, *Epistemologies*, n(10) at 42–43

<sup>57</sup> Helga Leitner, Jamie Peck & Eric S Sheppard, “Preface” in Helga Leitner, Jamie Peck & Eric S Sheppard, eds, *Contesting Neoliberalism: Urban Frontiers* (New York: The Guilford Press, 2007) vi at ix.

<sup>58</sup> Steven Miles & Malcolm Miles, *Consuming Cities* (New York: Palgrave Macmillan, 2004) at 62, 64; Robert J Foster, Karen Kain & Jim Prentice, *Creative Capital Gains: An Action Plan for Toronto* (2011), online <[www.torontoartscouncil.org](http://www.torontoartscouncil.org)>; Ute Lehrer, Roger Keil & Stefan Kipfer, “Reurbanization in Toronto: Condominium Boom and Social Housing Revitalization” (2010) 46:180 *disP: Planning Rev* 81 at 82; Laura Levin, “Performing Toronto: Enacting Creative Labour in the Neoliberal City” in Nicholas Whybrow, ed, *Performing Cities* (Hampshire, UK: Palgrave Macmillan, 2014) 159 at 172–73 (in terms of the colonization of night spaces, in particular); Deborah Talbot, *Regulating the Night: Race, Culture and Exclusion in the Making of the Night-time Economy* (Hampshire: Ashgate, 2007) at 132–33; Nicholas Blomley, *Unsettling the City: Urban Land and the Politics of Property* (New York: Routledge, 2004) at 92. See also generally, Rowland Atkinson & Gary Bridge, eds, *Gentrification in a Global Context: The New Urban Colonialism* (London, UK: Routledge, 2005).

<sup>59</sup> Gudynas, “Today’s Tomorrow”, n(43) at 443.

law can undergo the “deep process of revision” that it requires.<sup>60</sup> Similar to globalization and international development, the struggle to become a global city and the responding strategies deployed, can ultimately marginalize or silence certain groups and individuals. But if cities can carefully construct and monitor the effects of their growth strategy towards global status, the city can also be a site of resistance and struggle and “places in which progressive alternative visions are being forged both beyond and outside the restricted modalities of neoliberalism.”<sup>61</sup>

On the ground, struggles against epistemicide are observed within the streets and spaces of cities.<sup>62</sup> This is exemplified within legal geography projects underway in many global cities and specifically, for the present purpose, in Canadian cities such as Vancouver and Toronto.<sup>63</sup> In addition, these struggles are also exemplified within legal geography projects that critically document the geographies of cultural spaces – such as spaces used during unconventional times like spaces of nighttime culture – where a “geography of injustice and oppression” is quickly revealed within the city space.<sup>64</sup> In these geographies, a hierarchy of valuation places the plurality of interests and values of marginalized or subaltern knowledges or ways of knowing on a lower rung than other interests and values traditionally associated with dominant society.<sup>65</sup>

### *1. Buen Vivir as Already Incorporating the Underlying Rationale Behind City Human Rights Charters and Their Treatment of Culture*

Looking underneath the various city human rights charters, as well as the overarching *Global Charter-Agenda for Human Rights in the City*, reveals a focus on diversity, but not necessarily the kind of diversity that cities such as Toronto advertise as a defining characteristic, or the kind of diversity espoused by Toronto-based urban theorist Richard

<sup>60</sup> Santos, “Beyond Neoliberal Governance”, n(41) at 60.

<sup>61</sup> Leitner, Peck & Sheppard, n(57) at ix.

<sup>62</sup> *Ibid.*

<sup>63</sup> See e.g. Blomley, n(58) at 76; Mariana Valverde, “Taking Land Use Seriously: Toward an Ontology of Municipal Law” (2005) 9:1 *Law, Text, Culture* 34 [Valverde, “Taking Land Use Seriously”]; Valverde, *Everyday*, n(1). Valverde’s focus on space and use within rights discourse, rather than the individual, also resonates with the principles of *buen vivir* where the notion of an acceptable quality of life displaces the centrality of the individual in order to more significantly account for social context, space, and the extended community within which individuals are located and operate (cf. Gudynas, “Today’s Tomorrow”, n(43) at 441, Gudynas, “Buen Vivir”, n(43) at 202).

<sup>64</sup> Santos, *Epistemologies*, n(10) at 4; Hae, n(1) at 5; Talbot, n(58) at 85, 132–33; Paul Chatterton & Robert Hollands, *Urban Nightscapes: Youth Cultures, Pleasure Spaces and Corporate Power* (London, UK: Routledge, 2003) at 235.

<sup>65</sup> Santos, *Epistemologies*, n(10) at ix. Gudynas, “Today’s Tomorrow”, n(43) at 445. See also Boaventura de Sousa Santos, “Public Sphere and Epistemologies of the South” (2012) 37:1 *Africa Development* 43, where Santos explains that cognitive injustice is the basis of social injustice (*ibid* at 57).

Florida within his recipes for “creative city” redevelopment models.<sup>66</sup> As Neil Smith asserts, “The pursuit of difference, diversity and distinction forms the basis of the new urban ideology but it is not without contradiction. It embodies a search for diversity as long as it is highly ordered, and a glorification of the past as long as it is safely brought into the present.”<sup>67</sup>

Rather, underneath the balance of these nascent city human rights charters one finds an onus placed on the city to support and stimulate creativity and the “development and diversity of expressions and cultural practices . . . together with venues for the dissemination of culture and the arts,” as well as to respect, protect, and promote “the cultural diversity of its inhabitants . . . [and] the expressiveness, creativity and cultural practices” of its urban citizens.<sup>68</sup> Urban citizens are themselves also called upon to respect the cultural diversity of a city.<sup>69</sup> This vision for culture in the city resonates with the notion of *buen vivir* within development contexts and the operationalizing of an equality of differences in terms of cultural diversities and differences in the city.

#### **IV. ESTABLISHING A *BUEN VIVIR* IN THE CITY: THE MECHANICS OF APPLICATION**

##### **A. Shifting the Scale of Application of *Buen Vivir* from the International Context to the City**

I argue that transferring the discussion of *buen vivir* and subaltern cosmopolitan reasoning from the scale of international development to applying it within the city context of urban development and redevelopment is needed in order to decenter current exchange-value centric approaches and to better reflect the broader ways of knowing and interacting with redevelopment within the city space.<sup>70</sup> The questioning of current dominant growth and development frameworks that is imported by a *buen vivir* approach, along with the suggestion that alternatives to current development practices are possible, is already visible in critiques generated in the West pertaining to city redevelopment. For example,

<sup>66</sup> *Global Charter-Agenda for Human Rights in the City* (drafted by social movements gathered in the World Social Forum in Porto Alegre, Brazil (2001), online: *UCLG Committee on Social, Inclusion, Participatory Democracy and Human Rights* <[www.uclg-cisdp.org/en/right-to-the-city/world-charter-agenda](http://www.uclg-cisdp.org/en/right-to-the-city/world-charter-agenda)>) [*Global Charter-Agenda*]. See also Valverde, *Everyday*, n(1) at 20, 77. For Richard Florida’s popular “creative city” thesis, see e.g. *The Rise of the Creative Class: And How It’s Transforming Work, Leisure, Community and Everyday Life* (New York: Basic Books, 2002); Richard Florida, *Cities and the Creative Class* (New York: Routledge, 2005).

<sup>67</sup> Smith, n(1) at 111.

<sup>68</sup> *Global Charter-Agenda*, n(66), art IX.2.

<sup>69</sup> *Ibid*, art IX.3.

<sup>70</sup> While all the three procedures that are at the base of subaltern cosmopolitan reason (“the sociology of absences, the sociology of emergences, and the work of intercultural translation” (Santos, *Epistemologies*, n(10) at 164)) are applicable at the city-level, the third procedure – intercultural translation – carries notable potential for the city context.

urban sociologists John Logan and Harvey Molotch question whether “the status quo should always be treated as possibly better than the growth alternative. (‘Don’t just do something, stand there,’ is a slogan we have heard). It shifts the burden of proof onto the growth machine operators to show why a project should be allowed.”<sup>71</sup>

The fruitfulness of this exercise of shifting the scale of application of a *buen vivir* approach can also be observed in other transformative initiatives – such as the strategy adopted by the aforementioned Logan and Molotch in their application of the Marxist lexicon of use-value and exchange-value to the city/urban/municipal context.<sup>72</sup> While *buen vivir* is conventionally associated with movements originating in the global South and as a reaction to dominant development theory, globalization, and cognitive injustice, its manifestation and application is certainly not limited to international and national-based dialogues. Clarifying the dynamic potential of the notion of and approaches to *buen vivir*, Gudynas writes, “It is not a static concept, but an idea that is continually being created.”<sup>73</sup> However, Gudynas is clear that neither is an essentialist or prescriptive “application” of *buen vivir* possible since it is an intangible concept that manifests in a context-specific manner.<sup>74</sup> Other cultures, regions, and localities must explore it on their own in order to shape their own local and situated iteration of *buen vivir*.<sup>75</sup>

The macro abyssal lines that Santos identifies that divide the global North from the global South, Eurocentric and Western thought from non-Eurocentric and non-Western thought, and to which *buen vivir* responds, can also be observed as replicated and represented at the micro-level of the city setting. A social philosophy that respects the diversity of knowledges, cultures, and lifeworlds in the realm of international development remains applicable in the city and urban development/redevelopment context where a similar respect for diversity is also needed. Subalternity, marginalization, non-dominant, and alternative ways of knowing, living, and cultural practices also manifest on the streets of cities, in venues and cultural spaces, and in the small social spaces where urban culture and cultural heritage are woven – and these are then additionally subject to spatial condensation and superimposition within the city and its dense urban core.<sup>76</sup> It is difficult to think of a space where a respect for the equality of differences and valuation of diversities could be more sorely needed.

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<sup>71</sup> John R Logan & Harvey L Molotch, *Urban Fortunes: The Political Economy of Place* (Berkeley: University of California Press, 1987) at xxii.

<sup>72</sup> See e.g. *ibid* at viii–ix.

<sup>73</sup> Gudynas, “Today’s Tomorrow”, n(43) at 443.

<sup>74</sup> *Ibid* at 444.

<sup>75</sup> *Ibid*.

<sup>76</sup> For a discussion of how examining the “small social spaces” that exist in the context of international law can reveal the mechanics of how international law actually works, see Merry, n(5) at 106. I argue that the same is true of small social spaces in the city, which can reveal the mechanics of the legal frameworks that govern the city.

Even where the marginalized within many city contexts may not necessarily find themselves on the same side of the abyssal line as the Southern genesis of *buen vivir* that Santos and Gudynas describe, the application (or contextualized/location specific germination) of this social philosophy and the alliances that can be built through this struggle for cognitive justice across the abyssal line are invaluable for structuring the grounds upon which the ideal of equal differences, diversity, and cognitive justice can be built and sustained.<sup>77</sup> Here, opportunities exist for intercultural translation to occur through a simultaneously more inclusive yet also narrowed micro city-focused application (or acknowledgement) of *buen vivir* that can provide a means by which to answer Santos' call to move *beyond* abyssal thinking, but at the municipal-level within the urban cores of cities.<sup>78</sup>

### **B. The Ecology of Knowledges, Intercultural Translation, and Subaltern Cosmopolitan Contact Zones**

Santos identifies two central features of postabyssal thinking: an ecology of knowledges and intercultural translation.<sup>79</sup> First comes the ecology of knowledges, which, as described by Santos, “confronts the logic of the monoculture of scientific knowledge and rigor by identifying other knowledges and criteria of rigor and validity that operate credibly in social practices pronounced nonexistent by metonymic reason.”<sup>80</sup> It “assumes that all relational practices involving human beings and nature entail more than one kind of knowledge, thus more than one kind of ignorance as well,”<sup>81</sup> by focusing on “the concrete relations among knowledges and on the hierarchies and powers generated among them ... [t]he ecology of knowledges challenges universal and abstract hierarchies and the powers that, through them, have been naturalized by history.”<sup>82</sup>

Secondly we have intercultural translation, which, Santos describes as consisting of:

searching for isomorphic concerns and underlying assumptions among cultures, identifying differences and similarities and developing, whenever appropriate, new hybrid forms of cultural understandings and intercommunication that may be useful in favoring interactions and strengthening alliances among social movements fighting, in different

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<sup>77</sup> As Santos expresses in the “minifesto” that appears alongside his manifesto, “Many of those outraged at indignity are not, like us, on the other side of the line, but we hope to be able to build alliances with them” (*Epistemologies*, n(10) at 4). See also *ibid* at 219.

<sup>78</sup> For intercultural translation, see *ibid* at 212–14. For the call to move beyond abyssal thinking and towards postabyssal thinking, see generally *ibid* at ch 4ff, but see especially *ibid* at 118–24, 133–35.

<sup>79</sup> *Ibid* at 41, 188, 227.

<sup>80</sup> *Ibid* at 188.

<sup>81</sup> *Ibid*.

<sup>82</sup> *Ibid* at 190.

cultural contexts, against capitalism, colonialism, and patriarchy and for social justice, human dignity, or human decency.<sup>83</sup>

In order for an ecology of knowledges and intercultural translation to thrive, these require subaltern cosmopolitan (and decolonial) contact zones that are generated in the context of counterhegemonic struggles.<sup>84</sup> I suggest that these contact zones can be found and created in the city space – which makes transforming the way in which cultural spaces and practices coexist in the city a good insertion point for how to better incorporate *buen vivir* at the micro-municipal and grassroots level and into the greater legal complexes of the city. Here, a different and recalibrated envisioning of the current hegemonic municipal legal and governance frameworks could be developed and deployed counterhegemonically.<sup>85</sup>

Within an established subaltern cosmopolitan contact zone, intercultural translation can begin to mitigate differences by questioning “the reified dichotomies among alternative knowledges,” the unequal valuation, and abstract status assignment received by different knowledges in order to “enable us to cope with diversity and conflict in the absence of a general theory and a commando politics.”<sup>86</sup> As such, in assessing current municipal legal frameworks that govern culture in the city space and alternate or supplemental mechanism that might be beneficial (such as a greater emphasis on the intangible cultures generated in spaces of high-use value),<sup>87</sup> a transsystemic emphasis (explored in greater detail below) on legal and extra-legal commonalities is optimal within these contact zones ripe for intercultural translation.<sup>88</sup>

Although Santos notes that “intercultural translation is at the roots of ... the *ecology of knowledge*,” which could logically lead one to prioritize intercultural translation, it is clear that acknowledging alternate ways of knowing must occur before intercultural translation can take place.<sup>89</sup> Similarly, the hierarchy and power differential in valuating different knowledges and cultures must also first be addressed and acknowledged through the ecology of knowledges. As Santos notes, translation across power differentials leads

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<sup>83</sup> *Ibid* at 212.

<sup>84</sup> *Ibid* at 227. See also Boaventura de Sousa Santos, *Toward a New Legal Common Sense*, 2<sup>nd</sup> ed (London, UK: Butterworths LexisNexis, 2002).at 472 [Santos, *Toward*]. Contact zones, for Santos, are “social fields in which different normative [and cultural] life worlds meet [negotiate] and clash” (*ibid*; Santos, *Epistemologies*, n(10) at 218), and where “rival normative ideas, knowledges, power forms, symbolic universes and agencies meet in unequal conditions and resist, reject, assimilate, imitate, and subvert each other, giving rise to hybrid legal and political [and cultural] constellations in which the inequality of exchanges are traceable [and may be either reinforced or reduced]” (Santos, *Toward*, n(84) at 472; Santos, *Epistemologies*, n(10) at 218).

<sup>85</sup> Note Santos’ discussion of the interpenetration of the different scales of the local, the national, and the global politics of legality (“Beyond Neoliberal Governance”, n(41) at 30). Here I will focus on the local component of the interpenetrating trio. For the dynamics and potential of intercultural translation within the contact zone, see Santos, *Epistemologies*, n(10) at 213–35.

<sup>86</sup> *Ibid* at 212–13.

<sup>87</sup> I explore this elsewhere, see e.g. generally Ross, n(39)

<sup>88</sup> On transsystemia, see n(111).

<sup>89</sup> Santos, *Epistemologies*, n(10) at 42, 227, [emphasis in original].

to ethnocentric translation where “[t]his is another way of rendering the other culture invisible, or static, in sum, robbed of its agency.”<sup>90</sup> Here, the act of translating within a contact zone of unequal valuation (as opposed to a subaltern cosmopolitan contact zone) becomes a conquest that resynthesizes or incorporates relationally non-dominant cultural perspectives and practices into the dominant culture through the imposition of the dominant culture’s conventions and deemed equivalencies on the understanding and translation of the non-dominant perspectives or practices.<sup>91</sup>

### *1. Subcultures and Countercultures: Transgressive and Unruly Spaces as an Example of Subaltern Cosmopolitan Contact Zones*

Subcultures and countercultures and their related spaces are a relevant cultural layer of pluriculturalism within which subaltern cosmopolitan contact zones may flourish in the city, especially where cosmopolitan legality, which will be described in greater detail below, “is a subaltern legality targeting the uncivil and the strange civil society,”<sup>92</sup> As sociologists Paul Chatterton and Robert Hollands explain,

While alternative places are often ‘melting pots’ for a range of marginal groups, they are also characterised by a desire, however fleeting, for affectual solidarity and togetherness. Many groups on the margins have come together through disillusionment and frustration with mainstream culture, and represent attempts to recreate a sense of belonging, sociation ... and ‘authenticity’.<sup>93</sup>

Subcultures provide a sample of the diverse groups within the city space that display and generate an iteration of culture in the city and inhabit spaces of subcultural practices that can often exist at the margins of society – and often within derelict or neglected spaces of the city<sup>94</sup> – where municipal legal frameworks can have a differential, negative effect on the subcultural groups using these spaces.<sup>95</sup> Within these spaces of subcultural practice, individuals or members may be seen as having deviated from their other cultural or class backgrounds in a manner that can transcend or reject past cultural or class affiliations and run contrary to, diverge from, or run on a parallel trajectory to dominant culture.<sup>96</sup>

In terms of property and use of space, these spaces of subcultural practice are often impermanent in nature as “subcultures are usually located at one remove from property

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<sup>90</sup> *Ibid* at 230, ch 8, fn 28.

<sup>91</sup> *Ibid*.

<sup>92</sup> Santos, *Toward*, n(84) at 469; Young, n(6) at 238.

<sup>93</sup> Chatterton & Hollands, n(64) at 207 [references omitted].

<sup>94</sup> Hae, n(1) at 40.

<sup>95</sup> Chatterton & Hollands, n(6) at 204; Habitat III Issue Paper #6, “Urban Rules” n(8) at 2.

<sup>96</sup> Ken Gelder, *Subcultures: Cultural Histories and Social Practice* (London, UK: Routledge, 2007) at 3.

ownership [and] territorialise their places rather than own them.”<sup>97</sup> In considering subcultures and spaces of subcultural practice, Ken Gelder has pioneered the notion of subcultural geographies where a subcultural group “creates its own geography, a set of places or sites ... through which it gains cohesion and identity.”<sup>98</sup> Where Gelder reminds us that “societies at various times and for various reasons have legislated against [subcultures] and attempted to regulate and/or reform them,”<sup>99</sup> this draws in the legal geography-oriented scholarship of theorists such as Nicholas Blomley and Mariana Valverde in highlighting the regulation and removal of those deemed “undesirable” within the city space, as well as theorists who study spaces of nighttime cultural practices, such as Laam Hae, Deborah Talbot, Paul Chatterton, Robert Hollands, and so on.<sup>100</sup> Looking, for example, at the nighttime space and linked subcultures and subcultural practices,<sup>101</sup> youth represent one group that is particularly engaged in generating and sustaining these types of subcultural sites both through leisure-based consumption and production as well as through the entrepreneurial and employment component of nighttime cultural production and consumption practices.<sup>102</sup> This subsection of society becomes disproportionately affected when nighttime cultural production and consumption practices are regulated by urban law in a manner more stymying than what similar production and practice would receive during traditionally identified daytime use hours.<sup>103</sup>

Whether individuals are involved in the entrepreneurial end as subcultural event promoters, employees, or purely involved on the consumption end through the input of significant time and leisure interests into a particular subcultural scene, a particular space, and the facilitation of these often music-centered events, regard for their practices and the safeguarding of their associated spaces is not something that is on the radar of most urban redevelopment processes and policies, such as noise by-law enforcement, zoning by-law amendment proposals, height and density plan hearings and approval, and so on. As Miranda Campbell explains, the “surge in youth cultural production represents a significant employment trend that has yet to be grappled with at the policy level.”<sup>104</sup> In addition, youth are not traditionally targeted in city redesign projects that affect their

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<sup>97</sup> *Ibid* at 3; Hae, n(1) at 6.

<sup>98</sup> Gelder, n(96) at 2.

<sup>99</sup> *Ibid*.

<sup>100</sup> See e.g. Blomley, n(58) at 76; Valverde, “Taking Land Use Seriously”, n(63); Valverde, *Everyday*, n(1). See also Hae, n(1) at 5; Talbot, n(58) at 85, 132-33; Chatterton & Hollands, n(64) at 235.

<sup>101</sup> Examples of subcultures could include many possibilities: the afterhours electronic dance music (“EDM”) subcultural community, Do-It-Yourself (“DIY”) music communities like the Queercore community in Toronto, the B-boy/B-girl dance subculture, skateboard or parkour communities, graffiti and street art subcultural communities, steampunk subcultural communities, drum-n-bass (“DnB”) and junglist music communities, and so on.

<sup>102</sup> See e.g. Miranda Campbell, *Out of the Basement: Youth Cultural Production in Practice and Policy* (Montreal: McGill-Queen’s University Press, 2013) at 3; Chatterton & Hollands, n(64) at 5, 71, 88–89, 209–10; Hae, n(1) at 40; EY, “Creating Growth”, n(15) at 5–6.

<sup>103</sup> Habitat III, Issue Paper #6, “Urban Rules”, n(8) at 2.

<sup>104</sup> Campbell, n(102) at 3.

unowned spaces of cultural production and consumption that they occupy, use, and/or inhabit.<sup>105</sup> It must be remembered that where spaces are occupied during unconventional and irregular times, it is more difficult to access the individuals who use these spaces.

These spaces, however, are fundamentally important for several reasons. They are important for the cultural flourishing of subcultural groups in the city, where disregard of these groups forms part of a larger disrespect of equitable access to city space for alternative ways of knowing, living, and cultural practices. These spaces are also vital as contact zones where transgressive intercultural translation occurs through a common interest in the space and cultural practices within the space, which transcends other cultural adherences.<sup>106</sup> Disregard of these spaces at the very least injures a city's claims to cultural wealth and diversity.<sup>107</sup>

### **C. A Transsystemic Approach, Subaltern Cosmopolitanism and the Counter Hegemonic Use of Hegemonic Legal Tools**

The equal valuation of different ways of knowing espoused by the notion of *buen vivir*, as a social philosophy, is intimately linked to legal pluralism and the coexistence of legal forms within the same social field.<sup>108</sup> Regardless of a, or any, dominant concept of law, many other alternative conceptions of law exist<sup>109</sup> – many of which coexist within the same time and/or space. Where certain elements of these divergent conceptions of law are able to be interconceptually, or interculturally translated, a transsystemic approach can provide a means of interconceptual and intercultural translation. Where legal pluralism is a fact – the recognition of which enables the start of acknowledging and valuing different ways of knowing – transsystemia can provide a method for translating within the contact zones of the city space. By reaching “underneath” the law and legal frameworks towards “law which is more deeply rooted or profound than the law of legal systems, that which pervades all of them,” and in search of potential commonalities or meeting points of agreement and/or disagreement, a transsystemic approach to law and legal decisions in the city effectively accounts for a *buen vivir* oriented approach to the intersect between law, culture, and the city.<sup>110</sup> In line with *buen vivir*, a transsystemic approach deconstructs and

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<sup>105</sup> See also Sharon Zukin, *Naked City: The Death and Life of Authentic Urban Places* (Oxford: Oxford University Press, 2010) at 6; Miles & Miles, n(58) at 58.

<sup>106</sup> Hae, n(1) at 6.

<sup>107</sup> *Ibid.* See also generally Young, n(6).

<sup>108</sup> For definitions of legal pluralism, see Sally Falk Moore, “Law and Social Change” (1973) 7 *Law & Society Rev* 719 at 720, Sally Engle Merry, “Legal Pluralism” 22:5 (1988) *Law & Society Rev* 869 at 870, 878; Santos, *Toward*, n(84) at 92, 95; Brian Z. Tamanaha, “The Rule of Law and Legal Pluralism in Development” in Brian Z. Tamanaha, Caroline Sage & Michael Woolcock, eds, *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge, Mass: Cambridge University Press, 2012) 34 at 34.

<sup>109</sup> See e.g. Davies, n(31) at 350.

<sup>110</sup> H Patrick Glenn, “Doin’ the Transsystemic: Legal Systems and Legal Traditions” (2005) 50 *McGill LJ* 863 at 867.

displaces the primacy of particular iterations of law and legality to work in the realm of commonalities, or an equality of difference and acceptance of diversity, in order to ideally enable a space for intercultural legal translation.<sup>111</sup>

While legal pluralism is amenable to an equality of differences and certainly sets the stage for intercultural translation, transsystemia not only more readily speaks to *buen vivir* movements and an approach that “privileges commonalities to the detriment of differences and fosters common action in the presence of deep ideological differences,” but it also accounts for the potentiality of interculturally translating within subaltern cosmopolitan contact zones by seeking out and utilizing these commonalities that exist within a space of legal pluralism to build intercultural understanding.<sup>112</sup> That is not to say that differences are not acknowledged, but simply that commonalities are the priority in moving towards a better future where differences are equally valued.<sup>113</sup> Additionally, where intercultural translation is desired, translating across differences and comparisons is counterintuitive as opposed to a focus on commonalities (while respecting and equally valuing difference and diversity).<sup>114</sup>

#### **D. Subaltern Cosmopolitanism: The Genesis of Subaltern Cosmopolitanism Legality**

Santos and Rodriguez-Garavito note the counterhegemonic and subversory nature of cosmopolitan projects that have nonetheless simultaneously and counterproductively reproduced the hegemonic and exclusionary frameworks they seek to resist – often due to their monopolizing roots within Western, Northern, and/or Eurocentric thought and perceptions of property, rights, and so on.<sup>115</sup> In this context, Santos and Rodriguez-Garavito propose subaltern cosmopolitanism as an oppositional alternative to “discarding cosmopolitanism as just one more variety of global hegemony.” Instead, the addition of “subaltern” as a modifier enables cosmopolitanism to be revised “by shifting the focus of attention to those who currently need it” and are “excluded from top-down cosmopolitan projects,” and who Santos and Rodriguez-Garavito define to include “victim[s] of local intolerance and discrimination,” “those who [live] in a world of wealth,” or those who are a “non- or second-class citizen of a country or the world.”<sup>116</sup>

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<sup>111</sup> For a general discussion of transsystemia, see Peter L. Strauss, “Transsystemia – Are We Approaching a New Langdellian Moment? – Is McGill Leading the Way?” (2006) 24:4 Penn St Int’l L Rev 763; Glenn, n(110) at 867; Richard Janda, “Toward Cosmopolitan Law” (2005) 50 McGill LJ 967 at 981.

<sup>112</sup> Santos, *Epistemologies*, n(10) at 43, 212.

<sup>113</sup> See e.g. *ibid* at 65.

<sup>114</sup> See also *ibid* at 230.

<sup>115</sup> Boaventura de Sousa Santos & Cesar A Rodriguez-Garavito, “Law, Politics, and the Subaltern in Counter-Hegemonic Globalization” in Boaventura de Sousa Santos & Cesar A Rodriguez-Garavito, eds, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005) 1 at 6, 13.

<sup>116</sup> *Ibid* at 14.

While they identify this shift as one from the North to the South, the South is not used in the sense of:

a geographical location but [rather] all forms of subordination (economic exploitation; gender, racial, and ethnic oppression, and so on) associated with neoliberal globalization. The South, in short, denotes the forms of suffering caused by global capitalism. In this sense, the South is unevenly spread throughout the world, including the North and the West.<sup>117</sup>

Subaltern cosmopolitanism, as an oppositional cosmopolitanism, stresses the importance of social inclusion within the lived experiences of discrimination at the local level and provides a bottom-up approach and a cross-border cosmopolitan support and solidarity in dealing with these experiences.<sup>118</sup> It is this regard for the local level, where lived experiences and contextual and situated knowledge are generated, that is also useful in addressing inequality within the city.

### **E. Cosmopolitan Legality in the City: A Counterhegemonic Use of Hegemonic Legal Tools in Moving Towards an Equality of Differences and a *Buen Vivir* in the City Space**

Santos identifies law, along with politics, as a site where “unequal exchanges and power relations are crystallized” but where struggles for alternative legal principles – or, what Santos terms subaltern cosmopolitan legality – reveal counterhegemonic processes at play.<sup>119</sup> Within the context of subaltern cosmopolitan struggles, Santos notes that a “subaltern cosmopolitan legality is never formulated as a legal strategy but rather as a political strategy that comprises legal components.”<sup>120</sup> Santos and Rodriguez-Garavito propose subaltern cosmopolitan legality as a bottom-up method of approaching law and globalization that engages with counter-hegemonic globalization theory and action.<sup>121</sup> Where subaltern, oppositional cosmopolitanism is “the cultural and political form of counterhegemonic globalization,”<sup>122</sup>

Santos describes the legal components or strategy for moving forward: a strategy that emphasizes the potential of a counterhegemonic use of legal tools that works within currently available legal structures in order to transcend the current system that continues to favour dominant development perspectives globally but, for the present purposes, also at the local level. Rather than a complete alteration of the existing frameworks through

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<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid* at 14–15.

<sup>119</sup> Santos, “Beyond Neoliberal Governance”, n(41) at 29–30.

<sup>120</sup> *Ibid* at 61.

<sup>121</sup> Santos & Rodriguez-Garavito, n(115 ) at 5, 9, 18. They clarify that subaltern cosmopolitan legality is a perspective or approach instead of a theory due to its bottom-up nature and innate plurality, which are not amenable to an overarching theory or rigid framework (*ibid* at 13).

<sup>122</sup> Santos, *Epistemologies*, n(10) at ch 4, fn 44.

which knowledges, cultures, and cultural practices must be negotiated, a recalibration of these frameworks is sought in order to better embody a tolerance that respects the plurality of legal knowledges and diversity and can also lead to the flattening of inequitable treatment and injustice.

Santos identifies eight broad theses that comprise a cosmopolitan legality/subaltern cosmopolitanism.<sup>123</sup> The second of these theses is “[a] non-hegemonic use of hegemonic legal tools.”<sup>124</sup> Here, Santos proposes that “one way of showing defiance for law and rights is to struggle for increasingly inclusive laws and rights,” and that one way of doing this is through this non-hegemonic use of hegemonic legal tools.<sup>125</sup> As Santos explains, it is important to “[b]e aware of the danger of throwing out the baby with the bath water, counter-hegemonic globalization struggles cannot afford not to use any non-violent means available to them against capitalist modernity, including those invented by capitalist modernity to betray its promises of freedom, equality, and non-discrimination.”<sup>126</sup> Nonetheless, “[i]n order to be successfully mobilized in a counter-hegemonic context, law must undergo a deep process of revision” and an inquiry into the potentiality of its counterhegemonic use despite its hegemonic nature.<sup>127</sup>

Echoing the spirit of Santos’ insistence on the utility of using hegemonic legal tools in a counterhegemonic manner, Rosemary Coombe stresses that:

[i]f law is central to hegemonic processes, it is also a key resource in counterhegemonic struggles. When it shapes the realities we recognize, it is not surprising that its spaces should be seized by those who would have other versions of social relations ratified and other cultural meanings mandated. ... Historically structured and locally interpreted, law provides means and forums both for legitimating and contesting dominant meanings and social hierarchies they support.<sup>128</sup>

For law to be mobilized in a counter-hegemonic manner within the city redevelopment context, there are also potential legal tools that can be harnessed for this purpose. An example here might be the progressive implementation of greater protection of intangible cultural heritage for cultural practices generated by various cultures and subcultures in the city, or the application of existing municipal legislation in a more equitable fashion through better engagement with the diverse subsections and subcultures affected by development proposals and decisions.

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<sup>123</sup> Santos, *Toward*, n(84) at 465.

<sup>124</sup> *Ibid* at 467.

<sup>125</sup> *Ibid*.

<sup>126</sup> Santos, “Beyond Neoliberal Governance”, n(41) at 62.

<sup>127</sup> *Ibid* at 60.

<sup>128</sup> “Contingent Articulations: A Critical Cultural Studies of Law” in A Sarat & T Kearns, eds, *Law in the Domains of Culture* (Ann Arbor: University of Michigan Press, 1998) 21 at 35.

### *1. An Example of Subaltern Cosmopolitan Legality and a Counterhegemonic Use of Existing Legal Infrastructures: Applying International Intangible Cultural Heritage Protection Mechanisms to the Context of Local Spaces of Subcultural Practice*

International frameworks that deal with, regulate, promote, and protect tangible and intangible culture and cultural heritage carry great potential at the local level for a counterhegemonic application. First of all, the preservation of both tangible and intangible cultural heritage speaks to a *buen vivir* approach in the city and the flourishing and valuation of diverse lifeworlds and histories in the city space. Second of all, heritage preservation is also taken up within many of the city-based human rights charters discussed above. As asserted by Walter Benjamin, and taken up by Santos, “We have become poor. Piece by piece we have relinquished the heritage of human kind, often deposited in a pawnshop for a hundredth of its value, only to get back the small change of the ‘current balance’.”<sup>129</sup> This passage speaks to the importance and use-value carried by certain objects and spaces that tend to be woefully disregarded or mismanaged when simply valued based on their market potential and exchange-value within redevelopment strategies.

As noted previously, one of the basic processes of counterhegemonic globalization or action that Santos identifies are the local or national struggles challenging hegemonic legal structures through alternative principles of law. Santos suggests that “[i]n order to be successfully mobilized in a counter-hegemonic context, law must undergo a deep process of revision” and an inquiry into the potentiality of its counterhegemonic use despite its hegemonic nature.<sup>130</sup> Drawing on Santos’s notion of a non-hegemonic use of hegemonic legal tools, I propose that these alternative principles also involve the application of accepted legal notions – such as the legal protection of intangible cultural heritage – in arguably less conventional ways.<sup>131</sup> These kinds of notions must then be revised and assessed for their counterhegemonic application and potential. This can involve not only a shift in the scale of application (international and national to municipal), but also in the object of application. For example, intangible cultural heritage protection benefits from a well-established framework at international law, but this is less observable within the local and municipal governance of cities and urban spaces where the intangible fabric of urban cultural heritage is generated.

While recent scholarship has begun to reveal the evolution of cultural policy from a largely national-level concern to one that has taken on an increasingly urban shape in numerous areas including the arts, cultural diversity, cultural heritage, and so on, this becomes progressively more important as cities latch on to these areas in the race for

<sup>129</sup> Walter Benjamin, “Erfahrung und Armut” in *Gesammelte Schriften* (II.I), Rolf Tiedemann & Hermann Schweppenhäuser, eds (Frankfurt: Suhrkamp, 1972) 213 at 214, cited in Santos, *Epistemologies*, n(10) at 170, 9fn [translated by Santos].

<sup>130</sup> Santos, “Beyond Neoliberal Governance”, n(41) at 60.

<sup>131</sup> *Ibid* at 30; Santos, *Toward*, n(84) at 467ff.

creative city and global city status.<sup>132</sup> However, Canada lags behind in the protection of intangible cultural heritage without having ratified or implemented the UNESCO *Intangible Cultural Heritage Convention*. Nonetheless, while culture is a federally regulated matter, provinces also have also taken a role in monitoring cultural heritage and, through this, intangible cultural heritage.<sup>133</sup> In addition, certain notable (if yet very limited) cases exist within city-based initiatives to safeguard spaces that have important formative use-value to particular subcultural groups within the city and have resulted in the sustenance of important spaces of subcultural practice – such as the case of the Silver Dollar Room in Toronto and the decision to harness provincial cultural heritage legislation to protect the intangible music culture generated over the years within its walls.<sup>134</sup>

## V. BUEN VIVIR AND AN URBAN LEGAL ANTHROPOLOGY

In asserting the subaltern cosmopolitan nature of specific struggles, Santos and Rodriguez-Garavito explain that this is best accomplished through a sociology of emergence that “interprets these embryonic experiences in a prospective manner.” This involves an expansive interpretation of these experiences and initiatives as well as an amplification, or “symbolic blow-up”, of the elements of these struggles in order to illuminate “the potential that lies implicit or remains embryonic in the experiences under examination.”<sup>135</sup>

As with the global resistance to hegemony that Santos and Rodriguez-Garavito propose, resistance to hegemonic processes within the city is also best approached through a bottom-up view of the law, legal frameworks, and legal innovation.<sup>136</sup> Where “the perspective of subaltern cosmopolitan studies of globalization aims to empirically document experiences of resistance, assess their potential to subvert hegemonic institutions and ideologies, and learn from their capacity to offer alternatives to the latter,”<sup>137</sup> the same study is useful at the local municipal realm of legal knowledge and practice in order to carry out the same assessment of the potential in subverting hegemonic legal processes and practices that occur at the local municipal level. While the goal of this exercise is to develop a new common sense for an expanded (and more equitable) present and a better future,<sup>138</sup>

<sup>132</sup> See e.g. Carl Grodach & Daniel Silver, “Introduction: Urbanizing Cultural Policy” in Carl Grodach & Daniel Silver, eds, *The Politics of Urban Cultural Policy: Global Perspectives* (London, UK: Routledge, 2013) 1 at 1. For a discussion of manifestations of these creative city initiatives in Toronto, see Lehrer & Winkler, n(50) at 144; Lehrer & Laidley, n(50) at 794, 796.

<sup>133</sup> See the examples at n(39).

<sup>134</sup> By-law 57-2015, re: Silver Dollar Room, n(39); *Ontario Heritage Act*, n(39); Justin Skinner, “OMB Settlement a Good Deal for Spadina and College Neighbourhood” *InsideToronto.com* (12 May 2015), online <[www.insidetoronto.com](http://www.insidetoronto.com)>; Ross, n(39)

<sup>135</sup> Santos & Rodriguez-Garavito, n(115) at 17.

<sup>136</sup> See also *ibid* at 6.

<sup>137</sup> *Ibid* at 14–15.

<sup>138</sup> *Ibid* at 18. See also generally Santos, *Epistemologies*, n(10).

the mechanics of carrying out this sort of analysis of experiences and initiatives, and an amplification of the elements of struggle, requires a rich ethnographic lens.

In applying subaltern cosmopolitanism to the local urban municipal level, its bottom-up “analytical focus on detailed case studies of counter-hegemonic legal forms and its goal of furthering the potential of the latter” is aptly accomplished through an urban legal anthropology that inclusively considers legal, illegal, non-legal strategies to not only individual rights in the city but also moves beyond these to alternative iterations of rights in the city space, such as rights in or to space, that may better speak to the current structure of municipal legal forms.<sup>139</sup> Additionally, where subaltern cosmopolitan legality focuses on the politicizing element of “law and rights as elements of struggles,”<sup>140</sup> an urban legal anthropology can accomplish an applicable study design by examining the views of and consulting the individuals and groups affected by these laws and rights. This might be deployed, for example, in attempting to determine the subaltern cosmopolitan contact zones and important spaces of subcultural practice that exist in a city in order afford protection to particular spaces if they are unable to, and wish to, resist city redevelopment processes.

### **A. A Methodology of Identifying Spaces through an Urban Legal Anthropology**

In identifying these spaces in the city, an urban legal anthropology can help tease out spaces where protection is sorely needed. The fabric of the struggles experienced within the daily lived realities of urban citizens play out within the small social spaces of cities such as Toronto, and the urban core of the city houses a concentration of these small social spaces where struggles arise based on the everyday interaction that an individual or space has with the legal frameworks that govern the urban context.<sup>141</sup> Along the same lines as the usefulness of ethnography and multi-sited anthropology (or ethnography) as methodological tools within the developing fields of urban legal geography and critical legal geography, as identified by scholars such as Irus Braverman,<sup>142</sup> an urban legal anthropology enables the fabric of selected case studies from within the urban core to

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<sup>139</sup> Santos & Rodriguez-Garavito, n(115) at 15. In terms of municipal-level law and governance structures that regulate space and things in the city through “use” and “activity”, which often results in an indirect and secondary governance of individuals, see Valverde, “Taking Land Use Seriously”, n(63) at 36–37.

<sup>140</sup> Santos and Rodriguez-Garavito, n(115) at 16.

<sup>141</sup> While I have chosen to use the term “urban core” (see i.e. Sharon Zukin, “Gentrification: Culture and Capital in the Urban Core” (1987) 13 *Annual Rev Sociology* 129), it is certainly replaceable with numerous other descriptive terms (downtown, city center, and so on), but my intention is to distinguish this area of the city from the urban fringe and the rural fringe.

<sup>142</sup> Irus Braverman, “Who’s Afraid of Methodology?: Advocating a Methodological turn in Legal Geography” in Braverman, Irus et al, eds, *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford: Stanford Law Books, 2014) 120 at ch 5ff, but see especially *ibid* at 127. See also Santos & Rodriguez-Garavito, n(115) at 4; George Marcus, “Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography” (1995) 24 *Annual Rev Anthropology* 95.

be amplified, examined, and deconstructed in order to then be sifted through a critical theoretical framework in order to distill potential sites or processes of marginalized or undervalued cultural iterations.

Where, for example, zoning bylaw amendments are one of the principle legal mechanisms that enable the fruition of development and redevelopment proposals that intersect with the everyday life and culture of urban citizens in the neighbourhoods that they live in, occupy, or spend time in, case studies tracing the development of these bylaw amendments and the trajectory and sites of these amendment negotiations is invaluable. The “statutory public meetings” advertised on the black and white square signs that introduce change in a neighbourhood, and that pop up whenever a development proposal begins to take hold, are one of these constructed meeting sites between municipal legal decision frameworks and those who are affected. Here, ethnographic research of the process – of the negotiations themselves, the attendance or lack of attendance, and so on – yields fruitful data. Where these signs engage impersonally and statically, urban legal anthropology seeks to engage dynamically within the same neighbourhood space and everyday plane in order observe and assess the interplay between these signs designed within the applicable municipal legal framework and the cultural lives of the affected individuals, groups and communities.<sup>143</sup>

Through a filter of *buen vivir* and a strategy of cosmopolitan legality, as previously discussed, a thick analysis and description of the micro context, specific case studies, and the detailed interaction of the contact zones of municipal legal frameworks and the diversities of lived cultural and subcultural iterations within high use-value spaces in the city is required in order to distill where and how crucial change is needed in city redevelopment processes.<sup>144</sup> As Logan and Molotch assert, “The devil is in the details. To what extent do urban regulators actually hang tough?”<sup>145</sup> The extent to which municipal legal frameworks actually, effectually, and equally consider the cultural interests and values of all urban citizens must be examined.

### **B. The Postmodern Lens of an Urban Legal Anthropology in Establishing a *Buen Vivir* Approach to Redevelopment in the City**

Finally, as part of this urban anthropological legal project that aids by furnishing a mechanism of applying a *buen vivir* approach in the city, in analyzing one’s ethnographic work, I suggest that it is also important to draw on a postmodern sensibility in order to pull from an assortment of theorists and different approaches. This method works to break down the barriers between concepts, disciplines, and knowledge categories in order

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<sup>143</sup> John Flood, “Socio-Legal Ethnography” in Reza Banakar & Max Travers, eds, *Theory and Method in Socio-Legal Research* (Oxford: Hart Publishing, 2005) 33 at 36.

<sup>144</sup> Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983); Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973) at ch 1. See also Naomi Mezey, “Law as Culture” (2001) 13 Yale JL & Human 35 at 44.

<sup>145</sup> Logan and Molotch n(71) at xxi.

to reassemble them into something that better responds to current intersecting issues/problems. The current toolbox available for examining the problems that arise within municipal legal frameworks and the governance of the diverse iterations of culture in today's city is underdeveloped and ineffectively engages inclusively and intersectionally across societal cultural subsections.

Parallel to the unsatisfactory limitations of current dominant international development frameworks that theorists such as Santos and Gudynas identify, the use of a limited toolbox in constructing solutions for the problems of today's cities is insufficient, does not contain the correct tools needed to equitably address these problems, and does not correspond to a *buen vivir* approach to redevelopment. As such, the toolbox must be filled more inclusively with an assortment of approaches that might not appear to fit neatly – but if they do not fit, the toolbox, or method, must be changed to accommodate the tools, rather than excluding potentially useful tools that do not appear to fit. This is also the rationale behind Santos' call for an epistemological break in order to make possible “the adequate recognition of injustice and the possible overcoming of oppression” necessary within development and redevelopment processes that eschew a colonial model.<sup>146</sup>

## VI. CONCLUSION

Deploying a postmodern and *buen vivir* approach to redevelopment must of course recognize that no method will provide a panacea; but that many seemingly incongruent yet valuable tools may be found and placed in an inclusive toolbox for a critical alternative, subaltern, and counterhegemonic use in equally treating the diversities of cultures and cultural practices found in the city space.

Just as an ecology of knowledges must be established before intercultural translation can occur, spaces vulnerable to marginalization, destruction, and colonization in the city space due to redevelopment strategies, must be identified through a method such as urban legal anthropology before equitable treatment can be sought. Where these spaces can house a high use-value and the cultural fabric of countercultures and subcultures at the fringe of dominant society, they are also sites with a high potential as contact zones for intercultural translation in the city. And, in working towards a more equitable treatment and an equality of differences, a counterhegemonic use of hegemonic legal tools – such as through the safeguarding of intangible cultural heritage, knowledges, and practices – might be considered for its potential application as a subaltern cosmopolitan strategy that works towards recognizing a *buen vivir* in the city for all of a city's urban citizenry.

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<sup>146</sup> Santos, *Epistemologies*, n(10) at ix.

