

Microfinances and Legal Pluralism: A Case Study of the Community Development Banks in Brazil

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1. Introduction

Brazilian National Financial System comprises several rules and institutions, which formally organize financial activity, and establish several requirements regarding currency and banking operations so as to guarantee state control over the production and circulation of goods and services within the national territory. In this highly state-controlled economic environment, the spontaneous emergence of Community Development Banks (CDBs) in areas of extreme poverty and social exclusion throughout the country is noteworthy. They are small, non-for-profit organizations that seek to promote local social and economic development by encouraging local production and consumption of goods and services, as well as practices of solidarity economy.¹ In order to do so, they have created their own local currencies, which are only accepted within the neighborhoods where they operate, what stimulates residents to buy locally. They also give out loans to local entrepreneurs, therefore boosting local economy and giving rise to a virtuous economic circle.

Palmas Bank, the first Brazilian CDB, was founded in 1998 in a poor neighborhood in the outskirts of the city of Fortaleza as a result of the initiative of

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** This article is a shorter and improved version of the thesis I wrote for the masters program in Law and Development at FGV's São Paulo Law School. I would like to thank FGV and Fundação Carlos Chagas for the financial help during my 2 years of research. I would also like to thank Mario G. Schapiro, Dimitri Dimoulis and Maira Rocha Machado for their intellectual guidance, and all the people who generously accepted to be interviewed by me, thus making this research possible.

¹ The term 'solidarity economy' was formulated in Brazil during the World Social Forum of 2001 (in Portuguese, 'economia solidária'). It refers to a set of economic practices—production, distribution, trade, consumption, saving and credit—that, in response to increasing levels of unemployment and economic informality, seek alternative forms of work and income distribution capable of promoting social inclusion. A solidarity economy is based on the ideals of solidarity, cooperation, self-management and collective ownership of capital and it aims at addressing the exploitation under capitalist economy (Singer, 2002).

a local residents' association (Melo Neto & Magalhães 2008, A16-H16). The bank is an informal organization entirely managed by its members through democratic mechanisms of participation (Melo Neto & Magalhães 2006, 8) that is always testing new financial strategies to strengthen the local economic network and the development of the neighborhood. In spite of its name, Palmas Bank differs radically from traditional financial institutions in its practices, goals and impacts. It does not keep its clients' money in accounts but it provides several other financial services for low-income families and the unemployed—a portion of the population that traditionally lacks access to credit in the official financial institutions. Unlike traditional banks, which seek to make profit for their shareholders, Palmas Bank is a non-for-profit organization that seeks to advance local development by stimulating local production and consumption of goods and services and fair trade. It also establishes close, informal relationships with its clients and its operations are mostly built on trust—in contrast to the impersonal and bureaucratic treatment typical of traditional banks.

Palmas Bank reports lending approximately R\$1,330 million (equivalent to approximately US\$475,000) to over one thousand families between January and April of 2013.² Although the numbers might not seem very significant at first, it is important to consider that the bank serves the extremely poor and the financially excluded—people for whom even very small loans may have great impact on their ability to plan ahead, to buy food and clothing, to develop the appropriate skills to deal with money and, ultimately, on their self-esteem (Rego & Pinzani 2014, 45-84). The qualitative impact of CDBs is hard to measure, but studies suggest that they are considerable in mitigating the negative effects of financial exclusion (NESOL 2013, 144-162). Indeed, the high levels of financial exclusion in Brazil³ have led people in several poor communities to become interested in Palmas Bank's activities. As from 2003, Palmas Bank began to spread its ideas and practices elsewhere, something that demanded a higher degree of organization, thus compelling the bank to create an institute: Palmas Institute. The Institute is formally recognized as a legal entity under Brazilian state law and its activities have led to the proliferation of CDBs across the country.

Today, there are more than 100 CDBs in Brazil, each with their own social currency. They are part of an informal national network⁴ and share a relatively flexible working methodology, which guides their actions in territories of high

2 See Palmas Bank activity report, available at: <http://www.inovacaoparainclusao.com/-boletim-de-atividades-janeiro---abril-2013.html> [last accessed in 05.19.2015].

3 Approximately 50% of the populations of the North and Northeast regions do not have bank accounts. Most of the excluded from the financial system are women. The exclusion is also higher among those with lower educational levels and lower income (IPEA 2011, 6). For the concept of financial exclusion, see Gloukoviezoff 2006 and Leysohn et al. 1995.

4 The network is currently comprised of 103 CDBs, scattered throughout the country. Palmas Institute carries out the coordination of such network and provides CDBs with technical, organizational and financial support, together with other four organizations—two NGOs and two university research groups. Since 2013, eight representatives from CDBs have also been elected to the coordination of the network.

social vulnerability and social exclusion. They (i) are created, owned and managed by community members; (ii) make use of microcredit and a social currency as instruments to develop a local network of consumers and producers; and (iii) operate in territories with high levels of social exclusion (Melo Neto & Magalhães 2006, 7). These initiatives have been working thus far without any submission to, or interference of, the state banking and financial regulations, potentially raising concerns among state authorities charged with the task of controlling the country's economic system. This, however, does not mean that they operate in a normative vacuum. On the contrary, their organization is based on a large number of rules, some of which originate in Brazilian state law. For example, they are subject to the norms that regulate NGOs since they operate within civil associations. But the success of their daily activities is also heavily dependent upon their own particular norms, which were gradually designed over time as these banks were developing.

This article presents a case study aimed at describing the phenomenon of the emergence and expansion of CDBs in Brazil, with special focus on their complex normative reality. Making use of the literature on legal pluralism, it argues that Brazilian CDBs can be seen as a case of legal pluralism in a contemporary constitutional democracy and clarifies how these banks developed their own normative order to regulate their activities. Furthermore, it tries to elucidate what kind of relationship these new normative orders have established with Brazilian state law.

The study focuses on the Brazilian network of CDBs and draws attention to three main units of analysis—the network itself; the CDBs belonging to it; and their relationship with state law and state authorities. It is mainly supported by interviews⁵ with key players—people working at Palmas Institute and at other supportive entities, as well as members of the eight CDBs that participate on coordination of the national network. A couple of members of the Central Bank and an official from the Ministry of Labor were also interviewed. In order to overcome potential limitations of the interview method—such as selective bias, memory gaps, and self-serving rhetoric—the data obtained was compared with other studies on Brazilian CDBs and supplemented by information available in official websites and documents.

This article is divided in three further sections. The first one explains the analytical framework of the study, presenting a brief overview of the literature on legal pluralism. The second section presents the case study of the CDBs in Brazil. Finally, the last section concludes the article, pointing out that after a few years of dialectical interaction, the acceptance of the CDBs by the Brazilian state is hardly reversible, even though the degree of state tolerance regarding these initiatives may vary.

⁵ Interviews were conducted in in-depth and semi-directive format. All of the participants were fully informed about the research objectives, and their express consent to take part in the research was requested. Consent was obtained in writing or in recorded verbal statements, depending on the situation in which the interview took place. All interviews were carried by the author, recorded and are currently transcribed and available for eventual consultation. They are numbered and listed in the appendix and will henceforth be referred to by their number on that list.

2. Analytical framework: legal pluralism

The normative reality found in the CDBs in Brazil is a complex one. It is a tangled set of norms, procedures and sanctions, formal and informal. The idea of legal pluralism provides a prism for understanding this messy normative reality and for explaining the development of these banks, their own normative order and their relationship with Brazilian state law. Literature on legal pluralism and their existing models are thus employed as the analytical framework for this case study.

Research on legal pluralism experienced a surge between the 1960s and 1970s,⁶ as a tentative explanation of legal phenomena observed in colonial and postcolonial settings ‘in which an imperialist nation, equipped with a centralized and codified legal system, imposed this system on societies with far different legal systems, often unwritten and lacking formal structures for judging and punishing’ (Merry 1988, 874). In the 1980s, however, the concept of legal pluralism was expanded to describe legal relations in advanced industrial countries, where the dominance of a central legal system is undisputed. This shift from classic to new legal pluralism is described by Sally Merry as a concern

to document other forms of social regulation that draw on the symbols of the law, to a greater or lesser extent, but that operate in its shadows, its parking lots, and even down the street in mediation offices. Thus, in contexts in which the dominance of a central legal system is unambiguous, this thread of argument worries about missing what else is going on; on the extent to which other forms of regulation outside law constitute law. (Merry 1988, 874.)

Authors such as John Griffiths, Marc Galanter and Boaventura de Sousa Santos began to document other forms of social regulation and rejected what they called the ‘ideology of legal centralism’—the idea that ‘law is and should be the law of the state’ (Griffiths 1986, 3)—arguing that the term ‘law’ could refer equally to several non-state normative orders. According to Santos (1995, 95-96), the state has never actually obtained the monopoly of the law, as legal norms originated in a supra-state level superimposed on the national law of states across the world system and infra-state law continued to exist, develop and emerge as local legal orders, governing specific clusters of social relations and interacting with the state law in different ways, even if denied the quality of ‘law’ by state law. This new version of legal pluralism implies that all modern societies present a patterned normative mosaic where plural normative orders are found operating simultaneously, and establishing complex relationships with one another (Griffiths 1986, 38; Merry 1988, 873).

If on the one hand there is certain consensus about existence of ‘state law’ and ‘nonstate law’, on the other hand, the choice of a term to refer to ‘nonstate law’ creates considerable terminological difficulties for researchers. Authors use several

⁶ An earlier phase includes the work of British pluralists such as H. Laski, G. D. H. Cole and N. Figgis, who in the beginning of the 20th century defended the idea of a pluralist state and focused on local voluntary communities such as labor unions and on the British cooperative movement.

different terms and there has been disagreement on how to establish boundaries between normative orders that can and those that cannot be called law (Merry 1988, 879). The lack of agreement on what 'law' is and the difficulties involved in drawing the line that separates law from social life are the main sources of criticism of the literature on legal pluralism. Scholars like Tamanaha (2000, 297-299), approaching the topic from a more theoretical point of view, have questioned both the analytical and the operational utility of calling several different normative orders 'law'. Surely legal pluralism has become the subject of loaded debates, frequently underpinned by different ideological stances.⁷

There is no point in trying to address these criticisms here. In the case of the CDBs, legal pluralism is seen as the most useful existing framework for making sense of their complex normative reality—where state law is only one among a number of factors that affect the decisions people make and the relationships they have. Thus, questioning the theoretical possibility of legal pluralism itself becomes less relevant than trying to understand the dynamic relationship between the official legal system and these new parallel normative orders (Merry 1988, 879). Hence, leaving this otherwise relevant theoretical debate aside, this study will adopt the terms 'state law' to refer to Brazilian norms and institutions, and 'normative order' to refer to the norms and institutions developed by the CDBs to govern their own operation.⁸ For these purposes, Moore's idea of semi-autonomous social-fields is quite helpful: Moore suggests that the main characteristic of complex societies is the interdependent articulation of many different social fields (1972, 720-722). These social fields can internally create and enforce rules, customs and symbols, while, at the same time, being affected by rules, decisions and other forces originated in larger world by which they are surrounded:

The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance. (Moore 1972, 720.)

According to Moore's model, several semi-autonomous social fields articulate with others, forming complex chains (1972, 722), much like we see happening with the CDBs in Brazil. Indeed, they establish complex interactions and articulations between themselves, as well as with local authorities in the cities and states where they operate and with the Federal Government. Moore's semi-autonomous social fields can be considered arenas where new normative orders are generated. The

⁷ Criticising Tamanaha, Beckman points out that 'one can even observe the emergence of a bogeyman called "the legal pluralists"[...] accused of engaging in some ill-conceived enterprise of irresponsibly broadening the concept of law and equalising normative orders that are fundamentally different' (2002, 37-38).

⁸ The acceptance and use of the concept of legal pluralism does not, however, entail taking a romanticized approach to it, as if non-state law was always more egalitarian and less coercive than state law. As Galanter puts it, 'the coerciveness of unorganized community action tends to be indiscriminate and difficult to calibrate. Not all communities are harmonious and egalitarian, and in many settings indigenous law flourishes in association with repulsive disparities of power' (1981, 21-22).

birth of a new normative order is well explained in the terms of Cover's concept of 'jurisgenesis' (1983, 11-19). According to him, 'jurisgenesis' is a social, collective process of creation of legal meaning by which a group of people constitute their own normative world, comprising legal institutions as well as a language and a mythos that allow them to provide meaning for their collective behavior that differs from the state. In this sense, a normative order is 'a bridge, linking a concept of reality to an imagined alternative' (Cover 1983, 9).

The rise of a new normative order depends on the emergence of a common body of rules and norms; a system of education into these norms and a sense of direction of development that is progressively created and adjusted as the individual and his community work out the implications of their norms (Cover 1983, 12-13). All of this can be found in Brazilian CDBs. As a matter of fact, based on a common ideology, each one of them has developed their own rules, customs and symbols, many of which are shared with all banks that comprise the Brazilian network of CDBs. They could, therefore, be seen as semi-autonomous social fields articulated with each other, creating a normative order parallel to that of the state.

3. Brazilian Community Development Banks

This section is divided in four parts, each one of them focusing on a different stage of the development of Brazilian CDBs and their normative orders. First, there is the initial stage of institutional imagination that gave birth to Palmas Bank, the first CDB. This initial stage is then followed by a clash between this new institution, with its own rules and practices, and Brazilian state authorities, concerned with financial regulation and with the state's control over economy. The results of such clash led to a third stage, in which CDBs have spread all over the country and established a new collaborative relationship with the state. This relationship, however, is constrained by state law, what has led CDBs to claim for reforms in the existing state legal system, in what could be considered a fourth stage.

3.1. Financial exclusion and institutional imagination: the emergence of the Community Development Banks in Brazil and a new normative order

Palmas Bank, the first CDB, was created in the outskirts of the city of Fortaleza, in a neighborhood known as *Conjunto Palmeira* (Instituto Palmas 2010, 9). The occupation of *Conjunto Palmeira* resulted from a governmental policy of relocation of impoverished populations living in areas subject to the risk of floods and landslides, as well as areas with great economic potential due to the urban expansion (Toscano 2008, 9). Between the 1960s and 1970s, approximately 1.500 families were moved to an inhabited land lot, distant from the city center and devoid of the most basic urban infrastructure and public services, giving rise to a big slum (Ibid.,10). The neighborhood grew fast and the daily difficulties met by the residents of *Conjunto Palmeira* led them to organize. They created the local residents' association (ASMOCONP), which became an important player in the popular mobilizations

that demanded running water and electricity before local authorities (Ibid.,11). A strategic plan designed by community leaders ultimately resulted in the urbanization of the neighborhood.

In 1997, *Conjunto Palmeira* had running water, sewage, electricity, and regularized property rights. The process of urbanization, however, meant that people had to pay more fees, what forced the poorest to sell their homes and move to other slums (Instituto Palmas 2010, 7). Some of the people who for years had fought to urbanize the neighborhood could no longer afford to live there. In order to try to reverse this situation, community leaders decided to work on a project that would create jobs and income in the neighborhood (Instituto Palmas 2010, 7; Toscano 2008, 14). The problem, then, was to find a way of generating income in an extremely poor community, where most people had difficulties starting a productive enterprise since they did not have access to credit in the official financial institutions (Melo Neto & Magalhães 2008, C16).

Besides the difficulties getting loans, local producers also had trouble selling their products. Indeed, a survey on the consumption pattern in the neighborhood revealed that although people spent considerably high amounts of money every month, most families did their shopping outside the neighborhood, where they were able to find better prices and terms of payment (Melo Neto & Magalhães 2008, C16). Thus, in addition to the efforts to strengthen local producers, the generation of income in *Conjunto Palmeira* also depended on the organization of its inhabitants to buy locally (Ibid., D16). During one meeting of the residents' association, the idea came up to create a new local institution that could lend money to local producers and, at the same time, create a local credit card, which would help people to buy from local businesses. The plan was to create a virtuous circle of local production and local consumption, creating work opportunities and income for those living in the neighborhood.⁹

The local credit card is called PalmaCard. It is issued by the bank with a low credit limit (less than US\$50) and allows people to buy products from local shops. Commercial transactions are documented at the back of the card, therefore ensuring that the cardholder only spends the amount approved by the bank. Traders keep sales records, which allows them to retrieve the value of all sales directly from Palmas Bank on the 15th day of each month. Cardholders, in turn, pay the bank in a negotiated date with no interest. For safety purposes, the Bank withholds 30% of its credit grants in a bank account, in order to guarantee that local traders are paid even in case of default by the cardholder (Melo Neto & Magalhães 2008, 44-45). Palma Card is a credit mechanism that allows people facing high levels of economic

9 Although it may be similar to other microcredit initiatives found around the world, such as the Grameen Bank, founded in Bangladesh by Muhammad Yunus, Palmas Bank claims to have not been inspired by them. There were 96 meetings with local producers, tradesmen and residents of the neighborhood to decide how to create a project to generate work and income in *Conjunto Palmeira*. (Instituto Palmas 2010, 7). Interviewees (1, 7, 8) also said that Palmas Banks is different from other popular microcredit initiatives, because it is inspired and governed by solidarity economy.

insecurity to buy basic goods in case of emergency without having to resort to the official banking system, where they would probably not even be granted any credit. Since only registered local traders accept it, PalmaCard also keeps money in the neighborhood, helping local businesses grow and boosting local economy.

In addition to stimulating local trade, ASMOCOPNP also intended to provide credit for the local tradesmen willing to invest and expand their businesses. Since most potential borrowers of Palmas Bank had their names listed in organs of credit protection as defaulters, it was necessary for the bank to create its own rules and criteria for credit analysis. They then decided to build a risk assessment mechanism based on trust: they would talk to the borrowers' neighbors about their character, professional experience, reliability and relationship with their family and friends (Melo Neto & Magalhães 2008, F16). Such process of credit approval is employed both before giving out a loan for a local entrepreneur and before issuing a PalmaCard.

In 1998, having obtained a loan from a local NGO, ASMOCOPNP inaugurated the Palmas Bank. At the time, the bank released 20 PalmaCards and gave out loans to five local producers and tradesmen (Instituto Palmas 2010, 9; Melo Neto & Magalhães 2008, G16). By the end of the first year of its existence, the Bank had already retrieved all of the money it had lent. Within a few months, it received financial help from other international NGOs, therefore expanding its activities (Melo Neto & Magalhães 2008, J16). Microcredit and the PalmaCard were only the first of many products that Palmas Bank developed. Indeed, the bank is constantly creating, experiencing and trying to improve its strategies.

One of the most successful and relevant of tools created by Palmas Bank was the development of a local social currency, the *Palmas* (P\$), which runs parallel to the state's official currency in the neighborhood of *Conjunto Palmeira*. The origins of the social currency are found in the *Projeto Fomento* (Stimulus Project), developed with the help of an international NGO (Melo Neto & Magalhães 2008, 104-110): after receiving a donation for building a school, the bank 'cloned' the value in the official currency (R\$), issuing an equal amount of the local social currency (P\$), therefore doubling the amount of resources in the neighborhood (Melo Neto & Magalhães 2008, 104-110). The money in *Reais*, instead of being used to actually build the school was converted into microcredit for local entrepreneurs and tradesman, who bought machinery, products and raw materials for their businesses. The cloned money, in turn, was used to pay the salaries of the workers who built the school. With their salaries in *Palmas*, they could purchase products in the businesses that had received microcredit, since, in order to receive the loans, they had committed themselves to accepting the *Palmas* and, furthermore, to repaying their loans to the bank in *Palmas* (Melo Neto & Magalhães 2008, 104-110).¹⁰ In the end, the amount of resources in the neighborhood doubled, increasing the offer of microcredit and stimulating local consumption of goods and services.

Palmas Bank has developed into a complex institution, with a series of rules

¹⁰ Workers agreed to receive their salaries in social currency and local tradesmen committed themselves to accept the social currency in their businesses and to use it to repay their loans to Palmas Bank.

regarding its operation. They define the bank's hours and days of operation, the circulation of the social currency, the lines of credit available, the interest rates, the procedure of credit analysis and the methods for charging a client that has defaulted. There are also internal rules that determine who is able to change the existing rules and the procedures for it. These rules create a series of different arenas for decision-making. Since it consists of an institution able to internally create and enforce rules, customs and symbols, Palmas Bank might be seen as a semi-autonomous social field in Moore's terms. It has been created in *Conjunto Palmeira*—where a situation of prevalent poverty and financial exclusion created the conditions for the development of a strong popular organization willing to invest in a long process of institutional imagination (Ostrom 2008)¹¹—and it managed to mobilize an entire community to actively participate in the banks' activities, raising concern about buying locally and helping local producers.

This process of institutional imagination can be seen as a process of jurisgenesis, as set forth by Cover. In this sense, the bank's operational rules and financial strategies constitute a normative order held together by a set of fundamental values, related to fostering sustainable production, fair trade and ethical consumption (Silva Junior 2002, 93; Melo Neto & Magalhães 2008, J16-K16). In fact, the main impetus behind the creation and constitution of the bank is solidarity economy—a worldview that has helped built the identity and self-understanding of the bank. Its main goal is to seek alternative forms of work and income distribution in order to promote social inclusion. The bank, therefore, tries to oppose capitalist, neo-liberal banking system and presents itself as an alternative, based on the ideals of solidarity, cooperation, self-management and collective ownership. Equality and democracy are also part of the values of this normative order (França Filho 2013, 87; Instituto Palmas 2010, 20; Melo Neto & Magalhães 2006, 8).

The experience of Palmas Bank may be considered, therefore, a unique experience in the fields of microfinances and of solidarity economics, giving rise to a new, local normative order. The bank operated autonomously and uneventfully from 1998 to 2003, without any interference from the state's authorities. In 2003, however, the Central Bank of Brazil has pressed charges against the director of Palmas Bank, who was criminally investigated for 'counterfeiting money'.

3.2. State law and community practices: from confrontation and conflict to a carved out relative normative autonomy

According to the Brazilian Constitution, the state has exclusive power to issue money within the national territory. In 2003, a civil association (*Associação*

¹¹ The idea of institutional imagination is here taken from Ostrom (2008, 21-45), whose theory aims at explaining how a group of people involved in collective action problem (i.e., a situation in which multiple individuals would all benefit from a certain action that is, however, associated with a cost, thus making it implausible that any individual can or will undertake and solve it alone) often design new institutions that alter the structure of incentives they face. They create rules to coordinate individual activity, commit themselves to follow such rules and monitor conformance to their own agreements and rules.

Filatélica e Numismática de Brasília—AFNB) formally notified the Central Bank that Palmas Bank was issuing their own currency and lending money. The Central Bank forwarded the case to *Ministério Público*, the public office in charge of criminal investigation and prosecution in the country (Freire 2011, 69-70). This led to a criminal investigation and the director of the bank was accused of incurring on criminal offense under the article 292 of the Criminal Code: issuing, without legal permission, documents with promises to pay money to their bearer.¹² After investigating the case, the public prosecutor requested that the case be dismissed. He concluded that the use of the social currency did not fall within the criminal offense laid down in Article 292 of the Criminal Code, because *Palmas'* bills did not contain a general and unrestricted promise of payment of money to bearer. On the contrary, the bills carried an inscription that explicitly restricted their use to the trade of goods for services in the local businesses. Moreover, the prosecutor argued that the bills did not resemble the official bills or coins, making it impossible for anyone, however naive or inexperienced, to confuse it for the official currency.

In his reasons, the public prosecutor went further in criticizing the Central Bank's decision to press charges:

[...] the community of *Conjunto Palmeira*, extremely impoverished, socially and economically excluded, only sought an alternative to boost local economy, encouraging solidarity economy as a way to alleviate the situation of the population before the complete failure of successive governments that have only aggravated poverty and unemployment in Brazil, and particularly in Fortaleza. If the Federal government has no solution to improve the situation of disadvantaged communities, it should at least leave them alone. [...] This having been said [...] the *Ministério Público* claims for the dismissal of this case, due to inexistence of criminal responsibility to be pursued in court.¹³

The judge fully endorsed the reasons presented by the prosecutor and dismissed the case. As Freire (2011, 175-195) points out, there is no rule in Brazilian legal system that prohibits the use of alternative means of exchange, provided they are not counterfeit money. Social currencies can legally be devised within the sphere of freedom reserved to the private initiative, as long as they do not create excessive money supply or involve fraudulent practices that may threaten the stability and value of the official currency. Also, communities using parallel currencies are not allowed to impose their currency over the official legal currency, which must always be an option of payment to any citizen inside the national territory. The Central Bank has never claimed that the social currency had affected the circulation of the *Real*. However, the episode can be read as one in which two different normative orders, living together with one another in relative insulation, at a certain point start to mutually affect each other.

12 Criminal process n. 1.482/2003 (term of criminal occurrence n. 336/2003), processed before the 20th small claims criminal court of Fortaleza. Available on Freire 2011, 81-84.

13 Translated from the Portuguese by the author.

As a matter of fact, after prosecution, in order to avoid breaking state law, Palmas Bank has conformed the circulation of its social currency to the following rules: (i) social currency is fully backed by a money reserve in the official currency, which is kept in a bank account (thus avoiding problems related to increasing the money supply); (ii) the exchange rate between the currencies is fixed—one *Palma* is equivalent to one *Real*; (iii) *Palmas'* bills have serial numbers and receive safety marks and stamps in order to avoid falsifications; (iv) local tradesmen and producers affiliated with the bank may trade their social currency for official currency; (v) acceptance of the social currency is voluntary and no one can be forced to accept it as a means of payment; and (vi) social currency has limited circulation and is only accepted within the neighborhood where the bank operates (interview 7; Melo Neto & Magalhães 2006, 41). By adopting the above rules, Palmas Bank has managed to remain within the Brazilian legal framework, therefore considerably relieving the tension of its relationship with Brazilian financial authorities. In fact, the change in the relationship of Palmas Bank with the Central Bank during the year of 2003 is noteworthy. Coming from a stage they both ignored each other, they then went through a confrontation period—when the Central Bank decided to forward a criminal accusation to *Ministério Público* against the director of Palmas Bank. These events can be regarded as a clash between two semi-autonomous social fields—the Central Bank and Palmas Bank—supporting the idea set forth by Moore that ‘one of the tendencies that may be quite general in semi-autonomous social fields is the tendency to fight any encroachment on autonomy previously enjoyed’ (Moore 1972, 744).

It is likely that conflicts between normative orders are somewhat inevitable. But when it comes to the state and its claim of sovereignty, the difficulties accepting the existence of alternative, self-contained normative orders might result in either tolerance or oppression and resistance (Cover 1983, 30). In Palmas Bank’s case, the state’s willingness either to tolerate or destroy it would determine Palmas’ fate. During the interviews, this story was told as one of oppression by the Central Bank, followed by resistance of the Bank’s participants and, finally, by accommodation, when the prosecutor and the judge decided for respecting the autonomy of the normative group. As a result, Palmas Bank acquired relative normative autonomy, carved out from the general legal space of the capitalist state.

However, even before the criminal procedure had been closed, in December of 2003, the Central Bank had already formally invited the director of Palmas Bank to give a speech about his experience with the local social currency (Freire 2011, 84). This might be explained by the fact that the federal executive branch experienced a shift in political orientation when a President from the left-wing Workers’ Party won the national elections of 2002. This led to the creation, in May of 2003, of the National Secretary of Solidarity Economy—*SENAES*, within the Ministry of Labor and Employment,¹⁴ with the objective of facilitating and coordinating activities

14 *SENAES* was created by Federal Law n° 10.683/2003 and presidential decree n° 4.764/2003, as a result of the mobilization of the Brazilian social movement of solidarity economy. This is a growing social movement

supportive of projects of solidarity economy throughout the national territory. From the beginning, *SENAES* has worked together with Palmas Bank in order to develop public policies of support to solidarity economy initiatives so as to expand the social technology developed in *Conjunto Palmeira* to other impoverished communities in the country (Freire 2011, 66; Melo Neto & Magalhães 2006, 30-33).

Following the new orientation of the government, the Central Bank signed an agreement with *SENAES* to study social currencies and devise a mechanism to continuously monitor them and evaluate their evolution (Freire 2011, 78). These developments suggest that the shift in the political orientation of the Federal government, the creation of *SENAES* and the dismissal of the criminal case against the director of Palmas Bank by the *Ministério Público* and the judiciary all combined to create a different relationship between Palmas Bank and state authorities. The confrontation between the Central Bank and Palmas Bank was, thus, influenced by external events and cannot be evaluated as a win/lose situation. Both the state and Palmas Bank have changed and conformed to a new situation. In 2003, Palmas Bank created the Palmas Institute, formally organized under Brazilian law as a civil association of public interest allowed to operate microcredit, within the state regulatory framework of the NGOs (Instituto Palmas 2010, 16). The Institute's aim was to manage the Palmas Bank as well as to spread its methodology to other regions and communities interested in creating their own CDB (Instituto Palmas 2010, 16; interview 7).

3.3. The Brazilian network of CDBs and the growth of a new normative order within the state

The reality of poverty and social and economic exclusion experienced in *Conjunto Palmeira* is not that uncommon in Brazil and has led people in other poor communities to become interested in the experience of microfinances and solidarity economy created by Palmas Bank. During 2004, the members of the Palmas Institute visited several different cities and neighborhoods, explaining how the bank worked and how those communities could start similar initiatives (interview 7). Between 2004 and 2005, three new CDBs were created in the state of Ceará (Melo Neto & Magalhães 2006, 5). In other communities, the need for credit and financial solutions had actually led people to develop microcredit practices similar to those employed by Palmas Bank. This is the case of the *Associação Ateliê de Ideias*, an NGO operating in Vitória/ES (interview 9) and of the *Associação Mulheres em Movimento*, an NGO operating in Dourados/MS (interview 13). Once they learned about the financial experience that was happening in *Conjunto Palmeira*, they got in touch with Palmas Bank, what resulted in the creation of another two CDBs.

The multiplication of CDBs across the national territory has created the need for them to organize, leading to the creation of the Brazilian Network of CDBs on

in Brazil, which has started organizing during the first World Social Forum. For more information, see <<http://portal.mte.gov.br/ecosolidaria/historico.htm>> [visited 17 December 2013].

January 2006. With Palmas Institute naturally assuming the leadership, this network was devised as a way to promote the communication between CDBs, so that they could exchange experiences and share solutions to similar problems that they faced (interviews 3, 5, 10). The Brazilian Network of CDBs was also important for smaller banks, lacking formal legal organization, to access resources that the larger, more experienced and formally organized Palmas Institute was able to access—when necessary, smaller banks would informally ‘borrow’ the formal legal registers of larger ones (interviews 7, 10, 11, 15).

As they helped create new CDBs, members of the Palmas Bank and Palmas Institute engaged in the effort of trying to define their identity. This inaugurated a new stage in the life of Brazilian CDBs, as they developed into a fully-fledged normative order. An important step in this direction was taken during the Second Meeting of the Brazilian Network of CDBs, in 2007, when their foundational document, called ‘term of reference’, was approved in a general assembly (interview 7). The ‘term of reference’ is a written document divided in 8 parts, which address: (i) the concept of CDB; (ii) its main characteristics; (iii) its goals; (iv) its management structure; (v) its financial resources; (vi) the types of products it offers; (vii) its targeted public; and (viii) the coverage of its operating area. Basically, the ‘term of reference’ outlines a set of requirements for an organization to be considered a CDB and part of the national network. According to the term of reference, CDBs are associative, non-for-profit enterprises, based on the principles of solidarity economy. Scattered through the document one can find a series of rules that the members of the national network are expected to follow. For example, CDBs must be created in, by, and for the community, and their management must be based on democratic mechanisms of participation. They should aim at generating labor and income in territories characterized by high levels of exclusion and social inequality by providing financial services. Finally, their main economic strategies should consist of offering loans (microcredit) and circulating a local social currency in the community within which they operate (Melo Neto & Magalhães 2006, 7-8; interviews 3, 10, 12, 13, 14, 15).

The term of reference may be regarded as a sort of constitution of this new normative order. Members of CDBs frequently mention it as an internal regulatory framework that sets forth semi-flexible parameters and guides their behavior (interview 3, 5, 7, 8, 10, 12, 15). Such regulatory framework is internally referred to as ‘the methodology of the CDBs’ and noncompliance to its more fundamental rules may be met with severe collective disapproval, and expulsion of the network.¹⁵ The language used in the document, however, is not a typical normative language as rules are not always clearly enunciated or attached to a sanction in case of disobedience. On the contrary, since the network is structured in a non-hierarchical way, there is no clear sanctioning authority and the rules are often not clearly stated. The lack of formal hierarchy within the network is certainly deliberate, and it results directly from some of the fundamental values of this particular normative order—the values

¹⁵ One CDB has violated the terms of reference and was disconnected from the network (Instituto Palmas 2010, 29).

of equality and democratic management. The need for a central sanctioning authority is denied in face of a management structure in which decision-making is collective and based on direct or representative mechanisms of deliberation. This points towards a different concept of law from that of the state, indicating a normative order that sees itself as an alternative to the state paradigm.

Indeed, many of CDBs' operational rules have *sui generis* quality and are quite different from the laws of the state and the rules from the traditional banking system. For example, they do not pledge assets as collateral for their loans (interviews 10, 12, 13, 14, 15). The procedure for credit approval in CDBs is based on the work of credit agents, who visit the house or workplace of the potential borrower (who must be a local resident) in order to check if the person is actually going to invest the money in the activity they claim they will invest (interviews 3, 10, 14, 15). They also ask the person's neighbors about their reputation for honoring their word, for paying their bills, and for being honest.

Since CDBs deal with limited amounts of funding, the demand for credit is frequently higher than the bank's offer (interviews 3, 15). For this reason, when deciding about loans, the applicants' needs are also taken into consideration and those who are considered to have more urgent or important needs are preferred over others whose needs are considered less pressing (interviews 3, 10). Also, the amount of money lent is subject to the availability of money in the bank and some banks refuse to lend large sums of money in the first transaction—they will first lend a small amount, gradually approving larger loans as the person pays the previous one (interviews 2, 3, 10). Even though there are no material guarantees attached to the loans, these banks do not report having high degree of default rates. The concept of default is highly contested within the CDBs. Their workers prefer to distinguish cases in which the client had justified financial difficulties from those in which they intentionally defaulted (interviews 12, 14, 15). Still, none of the interviewed banks reported currently having more than 5 clients with problems of delayed payments (interviews 3, 10, 12, 13 and 15) and such cases were considered rare.

Many factors might contribute to this relatively high degree of compliance. One of them is the fact that defaulting or delaying payment without proper justification may imply restrictions for future loans, as well as the charge of a fine plus interest rates (interviews 10, 12). Nonetheless, few CDBs report employing this kind of strategy and they do not count with a sanctioning authority or police force that could impose their decisions and guarantee obedience to their rules, which suggests that other factors may also contribute to compliance.

In order to get loans, CDBs' clients have to sign a contract before other members of their neighborhood (interviews 3, 12, 14, 15). These contracts, however theoretically enforceable in Brazilian courts, in practice were never brought before state authorities and the idea of resorting to the courts in order to charge defaulting clients was strongly rejected by the interviewees (interviews 3, 10, 15), indicating once again the disconnection between these two relatively autonomous normative orders.

The accepted method for charging a client is negotiation. The bank sends the person a letter reminding them that they should have paid a certain amount of money on a given date. If they do not get any response from the client, the credit agents will visit the person, talk to them and ask them if they are going through hard times. The credit agents try to negotiate the debt and the terms of payment. Other residents may support the agents, pressuring the borrowers to pay (interviews 3, 10, 12, 13, 14, 15). In most extreme cases, they may threaten to take the contract to the state's authorities, but they never actually do it and threats usually end in forgiving the debt and not lending money to that person again (interview 16).

CDBs keep their default rates low by using a few social mechanisms that ensure voluntary compliance. They build, for example, a personal relationship with the clients before lending them money (interview 14). Other mechanisms of social control, such as gossip and peer pressure also ensure compliance (Melo Neto & Magalhães 2006, 13; interviews 9, 10, 13, 15). Indeed, CDBs are established within close-knit communities, where people know each other well and will have to live around each other for a long time, what leads people to try to avoid the community's rejection or disapproval (see Macaulay 1963, 85). CDBs also make use of a solidarity appeal, reminding borrowers that others also need money (interviews 13, 15). Finally, it is likely that there is a moral element that contributes to the low default rates: the widespread understanding that fulfilling promises and honoring obligations is a moral duty (Tyler 2006; Macaulay 1963).

In pursuit of its objectives, CDBs also employ the financial strategy of circulating a local social currency, only accepted by local tradesmen, what stimulates residents to buy locally. Social currencies are usually named after some important person or some geographic or cultural aspect of the neighborhood, and they often become an important part of the development of these banks' identity.¹⁶ Interviews suggest that CDBs generally follow the rules of social currency circulation that were approved after the conflict with the Central Bank, thus keeping these initiatives within the legal framework of the Brazilian state.

Besides microcredit and social currencies, many CDBs partnered with official financial institutions to provide financial services in their behalf, as bank correspondents. This kind of contract is authorized by the Central Bank and allows private entities to work on behalf of the contracting financial institution, opening bank accounts, making deposits, paying bills and transferring money between accounts. The correspondent is paid a small percentage over each operation it performs. The aim is to bring financial services to small or distant villages where

¹⁶ Even though all CDBs have theoretically devised their own social currency, in practice, its circulation is more complicated (interviews 3, 14). Banks Bem, Cocais, Pirê and Tupinambá report a broad acceptance of the social currency (interviews 10, 12, 13, 15), but the strength of the social currency in each particular neighborhood may vary considerably and CDBs develop different strategies to enhance the circulation of the social currency in their territories. Financial difficulties may also prevent this strategy from being fully implemented: Banks Juazeiro and Liberdade, for example, are not currently circulating their social currencies because they lack money to back the social currency (interviews 2, 16).

there are no bank agencies and try to advance financial inclusion. CDBs operating as bank correspondents in these localities attract a broader public, also comprised of small businessmen and public officials that use the bank's service to pay bills and other simple bank transactions (interviews 2, 3, 10, 13, 15, 16).

CDBs lack a formal legal organization and their institutional organization is not rigid—there are plenty of particularities and differences between them. Typically, however, they are managed within a civil association that is formally registered as a legal entity. The association usually carries out several other projects, mainly with educational purposes. CDBs also usually have a managing council that makes the decisions about the bank's strategies and daily operations; a committee of credit approval (CAC) which makes decisions regarding microcredit; and a local forum, broader than the bank and the civil association, where the whole community is informed of the bank's activities and where the managing council can be held accountable for its decisions.

The main characteristic of CDBs is the model of self-management. They are democratically managed and decisions are made at collective meetings (interviews 1, 2, 4, 7, 10, 12, 13). They operate in a fairly localized manner in territories whose limits are given both socially and geographically, as members of a group recognize themselves as members of a particular community (interviews 1, 2, 3, 8, 10, 12, 13, 14, 16). Invariably, however, CDBs operate in neighborhoods inhabited by low-income families lacking access to public services, often in regions where the occupation of the land is irregular and the process of urbanization is just getting started (interviews 2, 3).

As a rule, CDBs do not have a sophisticated physical infrastructure. They operate in small rooms that are rented, lent, or purchased (interviews 2, 3, 10, 15, 16). Their resources come from multiple sources, private and public—donations from people, companies and other NGOs, money collected in events held by the bank, funding from the government or other NGOs for the development of social projects and the payment they get for operating as bank correspondents (interviews 3, 4, 5, 10, 12, 13, 14, 15, 16). In general, however, obtaining resources is a struggle that depends on the effort, creativity and political connections of the members of the CDB as well as on the good will of others. For this reason, CDBs usually do not count on a continuous or regular flow of resources and generally operate with small amounts of money. One exception to this rule is the Bank of Cocais, which has the support of the local authorities and has managed to get a municipal law approved reserving part of the municipal tax income to a public fund aimed at financing economic solidarity practices, thus allowing the bank to constantly receive money from the city (interview 12).

Actually, financial difficulties are one of the main reasons why CDBs have started to get closer to the state and to seek more intense interaction with it. In 2005, Palmas Institute qualified to take part in a public policy of microcredit newly devised by the Federal Government. Thus, resources from the traditional official banking system started flowing to Palmas Institute, who then lent it to entrepreneurs

through the activities of Palmas Bank or one of the other CDBs that belonged in the Brazilian network of CDBs. As CDBs started to gain visibility, *Petrobras*, a large public oil company, decided to give them some financial support (Melo Neto & Magalhães 2006, 6). They were also supported by *BNDES*, the national bank of social and economic development. *SENAES* also played an important role funding and organizing CDBs all over the country, since it provided them with public resources and combined it with the expertise of NGOs and universities. With the end of *SENAES* project in 2013, however, many banks found themselves facing complicated financial circumstances (Melo Neto & Magalhães 2006, 5; interview 13).

It is clear, therefore, how the relationship between CDBs and the state has developed into one of a collaborative kind. This process, however, has led to internal debates about whether or not CDBs should fight for continuous public funding. This, in turn, has led to discussion about their legal status and to a diffuse comprehension that current Brazilian state law constrain their activities. As they start to voice a non-specific claim for a new state rules, they inaugurate a new stage on their development as semi-autonomous social fields.

3.4. The quest for state legal recognition

CDBs developed in Brazil creating their own normative order. Considering, however, that they operate within the Brazilian state, they have developed a complex relationship with state law. In fact, they have thus far managed to avoid financial regulation because they are non-for-profit initiatives and even though they have potential to interfere with monetary policy, they seem to have not been doing so. CDBs are created by civil associations and, in spite of being broader than them; they still have been legally treated by the Brazilian state authorities under the legal regime of the NGOs.

This legal situation limits their funding options. On the one hand, they cannot open bank accounts and keep their clients' money, because doing so would imply the need for regulation by the Central Bank, with all its bureaucracy, making it impossible for them to operate. On the other hand, they face difficulties getting private investment and continuous public investment. In fact, they have not yet been fully recognized as an autonomous figure by any federal law or by the Central Bank. As the coordinator of Palmas Bank puts it:

today the Central Bank is our partner, but there is still a juridical void. [...] There is not a specific regulatory framework. And here and there [...] when the news report a new social currency being created, there is always someone to go to the *Ministério Público*, send them an e-mail saying that it is illegal, saying 'they can't do that' and such. And prosecutors file criminal lawsuits. (interview 7.)

The inconvenience and the lack of safety and predictability of operating under the threat of a criminal law suit needs not be stressed. The fear of investing in an illegal activity also makes it harder for private companies and investors to donate or lend

money to the CDBs. And even when CDBs manage to get donations or loans, they cannot rely on them for their regular operation, since there is no certainty that they will get them or when.

Public resources have been the main source of maintenance of the CDBs so far, in the form of public funded projects. They are strictly controlled, however, and as soon as a project ends, it is usually the case that CDBs find themselves in a delicate financial situation, even unable to pay their workers. Moreover, their relationship with the state varies according to local authorities and is always fragile, changing with elections and government's political orientation. CDBs now face a dilemma between trying to be financially independent from the state and trying to become permanently funded as part of a public policy that promotes practices of solidarity economy. They seem to gear towards public funding, as they voice a non-specific claim for legislative reform.

It has not been possible to identify their political and legal strategy, if there is one. However, state regulation seems to be generally regarded as a source of legitimation for CDBs and legal change is thus being sought as the appropriate way to crystalize social change. Recently, a new bill has been proposed in the federal legislature aiming at regulating these initiatives by means of creating a sort of alternative financial system. Ultimately, this would mean that this parallel normative order would be absorbed and integrated to that of the state. In brief, the interaction between the CDBs' normative order and state law has led CDBs to adapt their practices, in order to remain within the boundaries of legality set by Brazilian law, but they now start to demand to be regulated by state law so as to guarantee their continuous development.

4. Conclusion

CDBs have developed in Brazil as semi-autonomous social fields, with their own normative order regulating their activities. This normative order is animated by the goals, values and practices of solidarity economy. Thus, they aim at promoting social justice and income distribution through economic practices that include fair trade, ethical consumption and sustainable production, based on the values of solidarity, equality, cooperation, democratic self-management and collective ownership of capital. This normative common-ground is set by their constitutional text, the 'term of reference' and, in practice, is reflected in their operational rules, which differ substantially from those of the state and of the traditional capitalist banking system. In fact, CDBs intentionally withdraw from the state's police forces and judicial system.

They operate, however, within the Brazilian state, which claims sovereignty and, thus normative dominance over the whole national territory. For this reason, these two different normative orders, which coexisted in relative insulation for a period, eventually started to mutually affect each other. The episode of the conflict with the Central Bank reveals that Brazilian state chose to tolerate this new normative order, thus granting CDBs a relative normative autonomy, as long as they did not exceed

certain important limits outlined by financial regulation.

CDBs have, therefore, developed a complex relationship with the Brazilian state and its laws. This relationship has been described in four different stages. First, an initial stage of isolation and autonomy, during which CDBs exercised their institutional imagination, in response to prevalent poverty and financial exclusion in certain neighborhoods. This first stage was followed by a confrontation with state's authorities, given the risks CDBs could pose for the state's economy. A shift in the political orientation of the Federal government, the creation of *SENAES* and the dismissal of the criminal case against the director of Palmas Bank by the *Ministério Público* and the judiciary all combined to support the emergence of a new collaborative relationship between Palmas Bank and the state, who has provided important financial and technical support to these initiatives. As a result, CDBs have spread all over the country and their normative order gained momentum. However, CDBs still face difficulties obtaining a regular influx of money and long-term financial autonomy and stability—in great part due to the constraints imposed by state law. For this reason, CDBs now claim for reforms in the existing state legal system in an attempt at gaining recognition and changing state law, in what could be considered a fourth stage that, arguably, would eventually lead to the absorption and integration of this parallel normative order to that of the state.

These developments might be interpreted as a process of interaction between multiple semi-autonomous social fields and their normative orders. This process does not seem to be linear, but rather dialectical in the sense that they mutually influence each other, giving and taking something and never returning to their starting point.

With respect to Brazilian CDBs, in practical terms, their official acceptance by the state is hardly reversible. Even though they are still highly dependent on the state, and a long-term opposition from the government could considerably hinder their continuation and success, the state will hardly be able to simply eliminate them. Indeed, if the state withdraws its financial support, many CDBs are already consolidated and have gathered conditions to keep on operating. Moreover, it is quite unlikely that the state could go back on some of the legal changes that have enabled the operation of CDBs—such as the laws that regulate the operation of NGOs and other public interest organizations in the country. The question is how far Brazilian CDBs will be able to press for the legislative change and whether or not the philosophy and values espoused by them will be fully recognized and incorporated to Brazilian state law.

Appendix – Interviews

1. Antônio Haroldo Pinheiro Mendonça, general coordinator of fair trade and credit at SENAES/MTE. Fortaleza. March, 2013. 1 mp3 file (78 min.).
2. Aldenor Soares Maciel, coordinator of Liberdade Bank. Telephone interview. July, 2013. 1 mp3 file (54 min.).
3. Deuzani Cândido Noleto, member of the Movimento de Educação e Cultura do Estrutural (MECE) and member of the Steering Committee of the Estrutural Bank. Telephone interview. July, 2013. 1 mp3 file (74 min.).
4. Genauto Carvalh França Filho, Professor at the Federal University of Bahia. Fortaleza. March, 2013. 1 mp3 file (38 min.).
5. Gilvan Cleber Sales do Nascimento, member of the NGO Capital Social da Amazônia. Fortaleza. March, 2013. 1 mp3 file (42 min.).
6. Idalvo Toscano, socio-economist. Sao Paulo, ago. 2013. 1 mp3 file (111 min.).
7. João Joaquim de Melo Neto Segundo, coordinator of the Palmas Institute. Fortaleza. October, 2012. 1 mp3 file (88 min.).
8. Juliana Braz, researcher at the University of Sao Paulo. Sao Paulo. July, 2013. 1 mp3 file (93 min.).
9. Leonora Michelin Laboissière Mol, president of the Association Ateliê de Ideias. Fortaleza. March, 2013. 1 mp3 file (25 min.).
10. Marivaldo do Vale Silva, coordinator of Tupinambá Bank. Telephone interview. July, 2013. 1 mp3 file (92 min.).
11. Marusa Vasconcelos Freire, assistant attorney general of the Central Bank. Fortaleza. March, 2013. 1 mp3 file (30 min.).
12. Mauro Rodrigues da Silva, coordinator of Cocais Bank. Telephone interview. July, 2013. 1 mp3 file (103 min.).
13. Neusa Grippa, treasurer of Associação Mulheres em Movimento, in charge of Pirê Bank. Telephone Interview. July, 2013. 1 mp3 file (62 min.).
14. Rafael Mesquita, member of the Association 'União Popular de Mulheres', in charge of União Sampaio Bank. Sao Paulo. July, 2013. 1 mp3 file (72 min.).
15. Raquel de Andrade, administrative assistant of Bem Bank. Telephone interview. July, 2013. 1 mp3 file (62 min.).
16. Raquel Doroteu Rodrigues, worker at Juazeiro Bank. Telephone interview. July, 2013. 1 mp3 file (63 min.).

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