

**Reviews on Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (New York: Routledge, 1995)**

## Book Review

# Contextualising Boaventura de Sousa Santos's post-colonial legal theory

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Boaventura de Sousa Santos is the operator of a number of radical transformations in legal theory and the social sciences, and his thinking can be interpreted in terms of paradigm shifts. Indeed, Santos has been involved in the making of at least three scientific revolutions, namely the post-modern, the post-colonial and the emotional-aesthetic. The current post-colonial period of his thought can be contextualised within this series of revolutions operated in the unfolding of his own work, and in the background of contemporary streams of epistemology and critical theory. Thus, this overview of Santos's work will depart from a consideration of his post-modern *Toward a New Common Sense* and will be centred on his post-colonial phase, before gazing at a third emerging moment.

Santos was one of the first and the few who brought post-modern thinking into jurisprudence by criticising some of the features of the modern conception of law like those of universals, foundationalism, progress, rationalism, the state and individualism. Santos developed in the legal field the spatial turn and the argumentative strategy of mapping (Santos, 1987), as well as a new constellation of concepts that modified the way law could be understood such as difference, scale, margins, plural legal orders, transnational law, multiculturalism (Santos, 2002) and constructivism. His book, *Toward a New Common Sense*, is the culmination of Santos's post-modern phase, although some themes of the current post-colonial moment are already present there (Santos, 1995).

The second paradigm shift made by Santos consists of introducing and developing post-colonial and de-colonial insights in the social sciences and legal theory. The post-colonial period of Santos's theory can be illuminated if it is analysed in the context of the history of epistemology and the critical thinking of our times. This requires, first, that we consider subjectivism, the dominant stream of the theory of knowledge starting in the seventeenth century with the work of Descartes and ending with Husserl in the twentieth century, passing by, among others, Kant and Hegel. Subjectivism is an idealist reflection about how it is possible to access truth in the midst of the relationship between subject and object and within the ambit of consciousness, which is attempted by breaking with the worldly conditions of the process of knowledge and relying on universal or a priori notions.

Subjectivism has been the object of a number of criticisms, including those advanced by historical materialism—which establishes a connection between economic relations, history and knowledge—and post-modern thinking—which rejects universals, introduces contingency and gives priority to solidarity over objectivity. Both critiques have led to the elaboration of materialist, historical and cultural theories of knowledge. Santos's epistemology is clearly detached from subjectivism and his post-colonial 'ecologies of knowledge' are a political epistemology developed on the basis of materialist and post-modern critiques.

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Santos's thinking can also be situated within the experience of the crisis of critical theory and socialism as emancipatory discourses, which came into being because of the use of Marxism to prop up oppressive regimes and the collapse of communism (Santos, 2010, p. 226). Where are the new sites of emancipatory theory to be located? Santos has responded to this question by considering how human rights can be turned into an emancipatory discourse—one that is able to contribute to the transformation of social structures, not only at a national, but also at a global, level (Santos, 2009; 2007a).

The critique of Eurocentrism, which can be identified with the call for decolonising knowledge, is another intellectual background in which Santos's thinking can be situated. This is a stream of thought that has emerged as a new epistemology that entails a reformulation of the hegemonic way of thinking and the introduction of a quest for epistemic justice. The decolonisation of knowledge has been pursued over the past few decades by Subaltern Studies, as in the case of Chakravarty's provincialisation of European knowledge, namely the questioning of its claim to transcendence and universality by relating European thinking to the geographical and historical context from which it emerged (Chakravarty, 2007). It has also been formulated by Decolonial Theory and its 'geopolitics of knowledge' developed by Enrique Dussel, Aníbal Quijano and Walter Mignolo, who maintain that the production of knowledge in modernity runs parallel to the history of the modern world as a whole—that is, to the history of world capitalism and modern imperialism (Mignolo, 2002, pp. 59, 63–74). Insights with a similar orientation have also been developed by schools of thinking like Cultural Studies (Hall, 1980), Black Atlantic (Gilroy, 1993) and Black Radical Theory (Bogues, 2003).

This critique had immediate effects in the social sciences, the humanities and legal theory. A sign of the times, we are witnesses to the rise of a tendency to put into evidence the historical bias and the intellectual limits of Eurocentric knowledge. This is happening among other disciplines in sociology (Gutiérrez *et al.*, 2010), international relations (Gruffydd Jones, 2006) and history (Duve, 2013). In the field of law, the cosmopolitan jurisprudence of William Twining puts into question the parochial character of European legal theory and longs for the elaboration of a truly global theory of law by a global dialogue (Twining, 2009). On his part, Martin Woessner calls for the provincialisation of human rights (Woessner, 2013). This is also one of the key features of the scholarship developed by Third World Approaches to International Law (TWAAIL) as in Anthony Anghie's genealogy of international law, which is traced to imperial conquest (Anghie, 2005), or as in the recontextualisation of human rights in the history of modern colonialism (Barreto, 2013).

Santos's own move involves a critique of Eurocentrism and a conscious switch of his point of view to the South from his previous intellectual standpoint situated in the North (Santos, 2001). Such a shift is accompanied by a stronger interest in colonial history and in the divide existing between the Global North and the Global South, not only in political and economic world history, but also in the production of knowledge.

One of the key features of Santos's critique of Eurocentrism is the proposition according to which abyssal thinking is the idiosyncratic, or the more influential, way of thinking in the West. Thus, abyssal thinking pervades the production of knowledge in modernity by creating a distinction between knowledge elaborated in the North and that created in the South, and establishing a hierarchy between the two: the universal, objective and valid knowledge would be that coming from the North; local knowledge, subjective opinion and false or knowledge unworthy of philosophical consideration would be that coming from the South. For Santos, the way of superseding this state of affairs is not that of reversing the situation by replacing old for new universals, hegemonies and margins. This is not about thrashing the European tradition, but rather about de-legitimising its idiosyncratic claim to universality and its monopoly of truth in order to create the conditions for a proper dialogue with the thinking emerging from outside Europe. Thus, the way forward, the move that can establish epistemic justice, is that from the

Western monologue or the monoculture of knowledge to the ‘ecologies of knowledge’—a constructivist way of thinking or producing knowledge in which perspectives emerging from the South and the North are equally valid and converge in a horizontal and intercultural dialogue (Santos, 2007b).

This not only has epistemological and theoretical consequences; it also has political connotations as it is both a consequence and a response to the process of globalisation from above, and it is entangled with political struggles and social movements that look for global justice and resist contemporary neocolonialism. In this milieu, epistemology turns into politics and politics is epistemological. The idea or the project of emancipation is identified not only with social justice within national scenarios, but also with the concept of global justice in the context of the modern world. But global injustice is also sustained by the epistemic injustice that characterises modernity and colonialist expansion. Hence, the struggle for global justice includes the fight for a new set-up in the production of knowledge that collapses the abyssal order of thinking.

This second or post-colonial Santos needs to be related in a complex way to the previous post-modern Santos of *Towards a New Common Sense*. Although the legal thinking of Santos has evolved from a post-modern understanding of law as in *Toward a New Common Sense* to a post-colonial approach, this radical shift however does not preclude the intermingling of the two periods. Thus, we have a post-colonial Santos with a post-modern background and/or a post-modern Santos with a post-colonial dimension (Santos, 2010). The post-colonial period of Santos’s intellectual production, in particular his characterisation of modern thinking as abyssal thinking and his ‘ecologies of knowledge’ or ‘epistemologies of the South’, have made an important contribution to the critique of the Eurocentric character of contemporary thinking and the momentous decolonisation of knowledge, and to opening new paths for thinking in the fields of epistemology, sociology, legal theory and human rights (Barreto, 2014).

A third paradigmatic shift has started to emerge and has to do with two new features of Santos’s work. The first is his interest in the role played by emotions and suffering in social life and in the history of colonialism. This can be found in the notion of ‘Global South’—one of his key concepts—which is defined in terms of the suffering endured by the majority of the people of the world as a consequence of colonialism (Santos, 2012). The second points towards aesthetics and music. As part of his long-standing activism and pedagogical engagement with social movements, Santos has been singing hip-hop in the streets of Portugal, joining and supporting protests that are taking place in the middle of the current economic crisis. The themes of the emotions and music in Santos’s theory and activism are to be developed and their consequences still to be seen.

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