

Towards a New Legal Common Sense: Law, Globalization and Emancipation, 2nd edn

Boaventura de Sousa Santos

Butterworths, London, 2002, ISBN 0 4069 4997 2, 564 pp

Someone comes towards you, entreating: 'Join with me, and we shall go together into a high place, from where I shall show you the whole world.' Is this an offer — endorsed by Twining and Wallerstein — that you cannot easily refuse? Particularly when its bearer, Boaventura de Sousa Santos, insists he knows better than you what you took to be your present, your politics, your world. Your way of life and — above all — your law, are over, gone for good (which, he says, is for the better). This offer to move together to the high place from where you will see the present with de-scaled eyes, and then 'unthink' the law, is backed by a threat: you are now in 'crisis'.

This crisis has nothing to do with religious terrorism. Rather, you are caught in a 'paradigmatic transition'. Your habitual 'demo-liberal legality' is devalued — an old legality now as worthless as the Saddam dinar. However, provided you ascend to the higher plane of world vision, you too will have a chance to embrace 'subaltern global legality', as it will embrace you. In this way, you will be brought up to speed in a new world order where the drivers are not sovereign states but 'globalised localisms' and 'localised globalisms' (p 179). This conceptual pair seems exhaustive but is not. It is designed to exclude from a leading role in future politics yesterday's powers: state sovereignty and state sanctioned law. You have heard this many times before, in both economic and moral registers. Transnational flows of capital, critical ideas and self-determining peoples have weakened the governmental powers of the sovereign state, while simultaneously opening its moral borders, whether to a cosmopolitan humanity seeking unity above and beyond it, or to local communities seeking self-determination below and within it. So, at this point of 'paradigmatic transition', the question is: will 600 pages of the second edition of Santos's *Towards a New Legal Common Sense* make you come across to the new faith, raising you up to a new 'postmodern' epistemology, a new 'borderless' politics and a new 'subaltern' legality?

That is a question for the reader, not the reviewer, to answer. But Santos is a socio-evangelical, out to win you for his project. Hence, along with the assertion of a crisis, a helping hand: 'The way out of this crisis is the most progressive task of our time.' (p 61) Remember, 'modernity is collapsing as an epistemological and cultural project and such a collapse opens up a range of possible futures for society, a non-capitalist, eco-socialist future being one of them' (p 63). So grasp the hand because 'the overriding commitment of this book [is] to unveil emancipatory possibilities upon which transformative audiences and transnational coalitions of oppressed groups struggles can be built' (p 193). Only believe.

Santos terms his alternative project 'oppositional postmodernism', a key component of which will be 'a legal science of turbulence' (p 83). 'The task of

oppositional postmodern critical theory in general and of the legal theory that results from it in particular is to promote, through dialogical rhetoric ... the emergence of emancipatory *topoi* and arguments or counter-hegemonic common senses which will expand along with the argumentative audiences created around them, eventually to become hegemonic knowledges-as-emancipation.' (p 398) The project has as its core promise 'emancipation', as pursued by 'progressive' social movements. Join, and you will be 'suited to uncover social relations of power beyond the limits drawn by conventional liberal theory and, accordingly, to uncover unsuspected sources of oppression or of emancipation through law, thereby enlarging the field and radicalising the content of the democratisation process' (p 98).

Jurisprudentially speaking, the new 'subaltern legality' is anticipated in the 'vast number of legal systems existing in the world' (p 191). This new legal 'pluralism' is meant to leave the René Davids of yesterday standing at the starting line, counting on their fingers. For Santos, it is no longer a matter of defining five or 10 major legal families, but of enthusiastically opening up the category of 'law' to include 'informal dispute-processing mechanisms implemented by neighbourhood associations, commercial practices, codes enforced by non-state armed groups, and so on' (p 91). In fact, 'and so on' is quite selective. It does not mention the mafia's 'secret societies', Saddam's infamous 'law is whatever is written above my signature', the SLORC in the Union of Myanmar or the Church of Rome. Nonetheless, Santos challenges the modernist restriction of law to state law: 'why should the case of law be different from the case of religion?' (p 91). There is a good historical answer to this question but — for the emancipatory social scientist — 'modern historical knowledge is ahistorical' (p 234).

A multiplication of laws is not implausible, for instance, with respect to the local, national and global domains that Santos signals in unveiling his version of legal plurality. But is description overwhelmed by 'innovative theorising' (p 96)? This worry concerns what might be called 'socio-scholasticism', the taxonomic urge of the social scientist to build high structures of ideal-typical forms from where to view present and future. Historical phenomena are fitted into theoretical boxes. Thus the 'multilayered comparative strategy' involves 'three positions in the world system ... combined with four trajectories into modernity and with eight world cultures' (p 193). Or again, the would-be transparency of the 36 categories of the 'structure-agency map of capitalist societies in the world system' (p 371), like a 'treasure island' chart to mark the place of the most desired X. Socio-scholasticism also has its language: 'While hegemonic globalization is conducted according to sub-paradigmatic readings of our present time, in counter-hegemonic globalization coexist both paradigmatic and sub-paradigmatic readings' (p 182). This sentence doesn't get better in context. Still, the questing reader must press on, through 'diatopical hermeneutics' (p 273) and the world as a 'system of partial totalities' (p 355) towards a heightened state where even the boundary between typographical error and typographically correct becomes unclear: 'What is at stake here is ... the

reproduction of the regime of the autonomy of autonomy of politics *vis-à-vis* everything else' (p 369).

It is a real pity that sociological inflation and its language overwhelm the empirical aspects of the book: the account of Pasargarda legality and the *favela* settlement of local property disputes, the achievements of USAID in Colombia, the 'judicialization of politics', the popular courts in the Cape Verde Islands, the legal dilemmas in post-revolutionary Portugal. Here the reader learns. Here too, Santos himself expresses important cautions:

I cannot stress enough that my argument is not to be read as a romantic view of community life in capitalist societies in general, much less Pasargarda life. This is a conclusion I explicitly want to avoid. Such romanticism has been a recurrent element of communitarian ideology ... Pasargada is not an idyllic community. (p 158)

The final chapter also offers a surprising answer to the question that book-ends this large volume: 'Can law be emancipatory?' The final section carries the subheading: 'The state as the newest social movement'. It seems like sleeping with the enemy, but Santos explains: 'The heading of this section may be somewhat surprising and calls for justification.' In the event: 'what is occurring is a transformation of sovereignty and the emergence of a new mode of regulation' (p 489).

But cautions and surprises are the exception. For the most part, crucial legal issues of today — the regulation of transnational capital flows, the treatment of stateless persons, the protection of indigenous cultural work and knowledge — are swallowed by a massively normative sociological architecture. Although it is almost silent on religion and religious challenges to secular law and politics, this is an imperiously evangelical work. The most common verb is 'must', as in: 'Restorative justice, which is the demo-liberal conception of justice *par excellence*, must therefore be replaced by transformative justice' (p 469).

Contrary to the liberal regime of separations, law must be rejoined to politics. Santos would take law beyond the liberal horizon towards a 'new legal common sense'. But could this also mean towards a new illiberalism? So what grounds his insistent imperatives? Nothing less than the call to rejoin 'the conversation of humankind' (p 282). This did not come from the Brazilian *favela* or the Mexican *maquiladora*. The call of 'conviviality' and 'future-oriented reconciliation' (p 474) comes instead from the 'lifeworld' promised by High European phenomenology and here brought to you by critical social theory. Will this make Santos's mission alluring to not a few, who want to climb to that high perch?

— DAVID SAUNDERS
GRIFFITH UNIVERSITY