

Book Review

Who decides what is emancipatory? Brief insights on Sousa Santos's *Toward a New Legal Common Sense*

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I. Introduction

At a time when critics of social inequalities abound and proposals on how to erase them languish among social theorists, Boaventura de Sousa Santos poses relevant questions and invites the reader to engage in that propositional language. In his book, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, he captures the attention of a broad audience and, by doing so, encourages scholars to surpass the fragmented understanding of social relations in the search of emancipatory paths. Santos uses provocative and emotional language together with an impressive review of literature to put capitalism and the law at the centre of the scene. In order to build emancipatory alternatives, capitalism has to be radically questioned, law has to be reinvented to fit subaltern claims and knowledge production has to change its inner inequalities.

Santos's ideas of emancipation are grounded in an understanding of power as any social relation ruled by an unequal exchange (Santos, 2002, p. 358). He explicitly mentions material inequalities, but the core of the book seems to be immaterial inequalities, such as: 'unequal learning and unequal representation/communication and expressive skills. Unequal opportunities and capacities to organise interests. Unequal opportunities and capacities to participate with autonomy in meaningful decision and non-decision making' (Santos, 2002, p. 358). Santos emphasises that the task of post-modern critical theory is to promote the emergence of emancipatory arguments and *topoi* through a dialogical rhetoric, which, by expanding along with argumentative audiences, will eventually become knowledge-as-emancipation (Santos, 2002, p. 398). 'Post-modern emancipatory knowledge is rhetorical' (Santos, 1995, p. 358). In this sense, Santos points at the 'West' and confronts it with the task of 'dewesternizing' its epistemological future to enhance emancipatory practices, which he defines as the pursuing of ever more equal social relations (Santos, 2002, p. 360).

In Santos's view, the grammar of rights emerges as a privileged site to engage in dialogical rhetoric bringing about cognitive justice and pursuing an emancipatory epistemology. Law should be reinvented to fit normative claims of subaltern groups and subaltern modernity provides some of the instruments for this reinvention (Santos, 2002, p. 446). 'Reinventing law by searching for subaltern conceptions and practices' (Santos, 2002, p. 446) is a complex task which Santos himself has actively pursued worldwide.

Thus, Santos's book gives us occasion for reflecting on knowledge production, the possibilities for emancipation and the role of the grammar of rights in the emergence of emancipatory practices. In this brief essay, I aim to reflect on two interrelated questions: Who decides what normative claims are 'emancipatory' (as opposed to 'regulatory')? Are current conditions of academic knowledge production affecting the possibilities of knowledge-as-emancipation?

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II. Emancipation and the grammar of rights

Using the grammar of rights has proved to be successful in providing some political and material outcomes. Notwithstanding this, I would like to engage with the question of whether the grammar of rights is a site for emancipation by reflecting upon the inner inequalities in knowledge production. I ask myself whether the grammar of rights is embedded in a hide-by-showing type of logic. This is that the grammar of rights demonstrates the possibilities of social change while rendering invisible the schemas of hierarchies inherent in enumerating, deciding and proposing the political content of those very same rights. The art of persuasion is not set apart, but is rather embedded in the schemas of hierarchies, which determine the conditions upon which the argumentative dialogue is sought to be displayed. Arguments posed are then dis-embedded from those schemas of hierarchies and from their specific conditions of production and presented in the language of rights.

It could be argued that this is the core of the immaterial inequalities that emancipatory epistemology will transform. Santos's distinction between regulatory rhetoric and emancipatory rhetoric, together with his thorough analysis of the regulation vs. emancipation tension in the first part of the book, provides the building blocks to make such judgments. However, this judgment is in itself an argumentative practice that cannot easily scape, as in an endless loop, to the inner schemas of hierarchies in enumerating, deciding and proposing. There is always the question of: *who decides what is emancipatory?*

While, theoretically, it seems clearer to identify the distinction between regulatory vs. emancipatory rhetoric, concrete cases seem harder to fit into either the poles of the binary. I will give an example close to my work as a scholar and as an activist in my engagement on the debates around sex work in the Global South. Is prostitution sexual exploitation or is it work? And now posed in the grammar of rights: is the recognition of sex work as labour a way of protecting women's rights? Or must those exchanges of sex for money be erased from social relations in order to protect women's rights? The art of persuasion has found in this topic a broad range of practices and discourses from scholars, activists and social movements.

In Argentina, the activity is in a legal limbo, meaning that it is neither legal nor illegal. Different social actors have been promoting their own understanding of 'prostitution' to position the exchange of sexual services for money, as well as other connected actions (such as buying, administrating, profiting, etc.), closer to legality or closer to illegality according to their normative preferences. Each actor brings along their own intelligibility matrix, which is a particular way of understanding the activity and the legal implications it should have. Each social actor then searches for the means of persuasion needed to push forwards their own intelligibility matrix. They are in effect rhetoricians. Moreover, they use the grammar of rights to influence policy-making and promote changes in state law. Each actor then claims that their own understanding of prostitution is going to produce ever more equal social relations.

The question that emerges in light of Santo's ideas is: *which of those intelligibility matrices is the emancipatory rhetoric?* It seems to me that the answer cannot easily be decided based on the actor or their location. In the case of sex work, these actors came in the shape of local or transnational non-governmental organisations (NGOs), local or transnational scholars, local or transnational social movements. Moreover, groups are not homogenous and at times different intelligibility matrices can be found within collective social actors. For instance, in Argentina, a trans-woman sex workers' organisation publicly declared to adopt an abolitionist approach, while one of the women sex workers' organisations promotes labour rights and another women sex workers' organisation struggles for decriminalisation.

Maybe, then, we could reshape the question in terms of: *which are the economic, symbolic, social, political capacities at play to be in a position to decide what is emancipatory or regulatory?* To me, this is

an empirical question. In each case, it is possible to identify the schemas of hierarchies and the specific capacities at play, which will finally determine who is a valid spoken person in the public realm – that is, who can become a rhetorician. For instance, in my research on waste-pickers and sex workers, the empirical data revealed that the current schemas of hierarchies have been excluding both sex workers and waste-pickers as valid spoken persons in the public realm for policy-making. This empirical outcome prompted a series of workshops based on popular education with sex workers and with waste-pickers to build grassroots legislation, which make explicit participants' own understandings of ever more equal social relations as well as their disagreements.

Among all the different actors intervening in the debates, experts and social scientists in general had a rather higher position in current schemas of hierarchies to inform law-making processes. This position of power is not exceptional. Thus, in light of Santos's insights, I turn to reflect on the conditions upon which this knowledge is being produced.

III. Academic knowledge-as-emancipation?

It is possible to suggest that legal experts, social scientists and specialists have shown to be given a rather higher position in current schemas of hierarchies to inform law-making processes, and it is not alien to these experts to do so under the premise of promoting ever more equal social relations. Clearly, not every scholar has the same power to influence law-making processes. Not every scholar has the same economic, cultural, social and colonial capacities to operate locally or transnationally to inform specific forms of knowledge production or policies. Among the variety of experiences related to knowledge production, I propose to focus on some of trend we are facing in academic knowledge production in order to reflect on its possibility to promote knowledge-as-emancipation. Those trends point at time constrains, productivity, uneven north–south relations, the location of international scholarship and dissemination options.

Time is a rare luxury in today's academic world. To me, what best condenses this managerial notion of time in the academia is the mandate 'publish or perish'. One has to publish plenty and good, and has to choose carefully the journal and whom to quote. One has to make an effort to be quoted and be aware of quoting the right people. Many advise you not to share your ideas too much before publishing them. Choose your journal carefully and do not be too strict in confronting reviewers. Once you managed to publish, access and dissemination depend on copyrights and institutional affiliations.

In my view, these changes in knowledge production are mirroring the shift from productive capitalism into speculative capitalism. More and more, hegemonic and counter-hegemonic academic work finds constraining transformations in knowledge production. The goal is not to merely to bring knowledge forth, but also to strategically speculate upon where, how and with or against whom it is better to place our ideas.

This is still not the case in some parts of the world. As in each moment of capitalism, these shifts are experienced differently in different settings. However, we cannot disregard the powerful transnational influences that are shaping knowledge production worldwide through, for instance, international rankings and bonuses given to researchers in the south to publish in North-Atlantic journals. Moreover, the idea of international scholarship poses the question of the specific locations from where that knowledge is being produced, in terms not only of the nationality of those producing such knowledge, but also of the institutional affiliations that open the doors of transnational exchanges and funding opportunities. The possibility of knowledge-as-emancipation is embedded in these trends.

The aim of this presentation was to emphasise the need to recognise the role that researchers, scholars and social scientists in general may play in that schema in order to reflect upon the

conditions under which this kind of knowledge is being produced. This claim is stronger once we recognise the schemas of hierarchies that are hidden behind the grammar of rights. Going forwards, we should permit ourselves to reclaim the time to rethink the transnational conditions and specific constraints for academic knowledge production in line with the possibility of knowledge-as-emancipation.

Reference

- SANTOS, Boaventura De Sousa (1995) *Toward a New Legal Common Sense: Law, Science and Politics in the Paradigmatic Transition*, 1st edn. New York: Routledge.
- SANTOS, Boaventura De Sousa (2002) *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*. Cambridge: Cambridge University Press.