

Power in Paradise: The Political Implications of Santos's Utopia

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BOAVENTURA DE SOUSA SANTOS, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. New York: Routledge, 1995. Pp. xiv + 614. \$29.95 (paperback).

When we are planning for posterity, we ought to remember that virtue is not hereditary.

—Thomas Paine, *Common Sense*

Common sense creates the folklore of the future, a relatively rigidified phase of popular knowledge in a given time and place.

—Antonio Gramsci, *Selections*

INTRODUCTION: BORDERS AND BORDERLANDS

It is quite an experience to cruise down the southern California highway, from Santa Barbara, the orderly, floral-perfumed heartland of middle-class America, toward Tijuana, the chaotic third-world city lying on the U.S.-Mexican border. This is an extraordinary five-hour drive. Immediately immersed in the heady, zigzag flow of integrated freeways that run the length of the coast, one can only marvel at being part of the car culture phenomenon, what Baudrillard calls a “collective propulsion—a compulsion of lemmings plunging suicidally together” (Baudrillard 1989, 53–54).

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This freeway network carries you magically along, speeding through the outskirts of Los Angeles, the epitome of the postmodern global city (Davis 1990; Sassen 1994). In a sense, Los Angeles acts as both a buffer and catalyst between cultural times, places, and perspectives. Among other things, it is a city of negotiated, permeable frontiers between Santa Barbara's wealthy hillside suburbia to the North, and Tijuana's commercial frenzy to the South. It spatially divides Santa Barbara's evocation of quiet homes, Latino gardeners, well-behaved children, college, beach, lawns, Range Rovers, and sushi from the Mexican borderland's chaos of foreign day shoppers staggering, laden with cheap goods and strong margaritas, back home over the concrete bridge dividing Mexican poverty from American authority.

Driving south toward the Mexican border, through Malibu and Venice Beach, Disneyland and SeaWorld, Irvine and San Diego, places and theme parks merge together in a blur of strip malls, fast-food chains, giant cinema complexes, techno-glass offices, and immensely expensive beach shacks. Soon a new Disneyland will feature California as a themed land composed of Hollywood, beach, and wilderness.¹ Yet despite beckoning distractions, the freeway keeps you on track. Five lanes of cars peel off and merge each way into an endless flow of traffic. The freeway's sense of order and collective purpose is mesmerizing and peculiarly comforting, making it easy to overlook the changes occurring in the scrubby wasteland dividing north-south travel. Almost imperceptibly, a wire fence appears in the center of the highway that grows higher and higher for the 40 miles it takes to reach the official U.S.-Mexico border. Glimpses of patrol cars, signal boxes, railway lines, and if you're lucky, a hovering police helicopter, raise the alert. Suddenly an official road sign explains what you do not want to see. It is a yellow plaque, reminiscent of those outside schools and pedestrian crosswalks, cautioning drivers to proceed carefully. But instead of the usual image of walking children holding hands in black silhouette, this road sign illustrates a man and woman running, pulling behind them a small child with arms outstretched and hair streaming. I, as do others, find this juxtaposition of imagery most disturbing.² In the very ambiguity of the sign's meaning, underscored are the worlds of difference between staid, suburban school-

1. This merging of illusion with reality takes a horrifying twist in the latest plans of Disneyland to open a new \$1.4 billion theme park dubbed Disney's California Adventure, which will "condense the California mystique into three theme lands centered on Hollywood, the beach and the state's wilderness areas" (*LA Times*, 18 July 1996). Interestingly, a historical show devoted to peoples of various nationalities and their role in building California is planned, but the diversity of ethnic groupings that make up today's political tensions, such as Latino, Korean, and black communities, will be neatly avoided.

2. "The graphic indicates people on foot. Desperate to escape the destiny of poverty, they cut or crawl through the border wire and, dodging the speeding automobiles, scamper across the concrete in a dash to flee from the past and in-state themselves in the promise of the North" (Chambers 1994, 1). For a discussion on road signs as constituting official graffiti, see Hermer and Hunt (1996). While I disagree with their claim that modern highways are all alike in that they share standardized road signs and billboard advertizing, the authors make

board respectability and the desperate plight of illegal Mexicans prepared to run against the "propulsion" of the freeway in pursuit of a Hollywood-packaged dream.

Yet while the U.S.-Mexico border explicitly demarcates socioeconomic and cultural differences between the peoples on either side, it also represents a vast array of similarities. In fact, neither the United States nor Mexico can be understood independently, since each defines itself through negation and concurrent assimilation of the other (Fitzpatrick 1995). No signification of nation is ever total or complete, since boundaries and limits operate as "*in-between* spaces through which the cultural and political authority are negotiated" (Bhabha 1990, 4; de Certeau 1984, 127; see also Chatterjee 1993). As has been often noted, "Borders simultaneously divide and unite, repel and attract, separate and divide" (Martinez cited in Buchanan 1995, 392).³ So while the formal border between the "North" and the "South" is materially and territorially fixed, the networks of exchange and transfer and interconnection undermine a national imagination and its maintenance through official state rhetoric (Bosniak 1996).

What happens at the U.S.-Mexican border helps shape how Californians represent themselves to the world, the rest of the United States, and each other. For this reason, the border is better conceptualized as a borderland that directly and indirectly helps shape Los Angeles and its relationship to Santa Barbara, as well as the rest of the Californian state (Buchanan 1995, 391–93). What the U.S.-Mexico situation illustrates is that not all frontiers exist at the border, and that the internal and external frontiers surrounding all national boundaries, even those "naturally" delineated by seas and mountains, are constantly contested despite appearing externally static (Sahlins 1989; Darian-Smith 1995a, b, c). As Ruth Buchanan has argued, the implementation of the North American Free Trade Agreement (NAFTA) epitomizes the competing discourses of autonomous state sovereignty versus global economic integration that together affect local practices in specific places no longer nation-bound (Buchanan 1995).

interesting points about road signs and the insidious significance of their regulatory intervention into the everyday (Hermer and Hunt 1996, 477).

3. This tension is explicit along the U.S.-Mexico border where the *maquiladora* industry—the assembling of U.S.-manufactured goods through cheap Mexican labor—dominates the economic scene (Buchanan 1995, 383–85; Peña 1995). Of those not directly involved in the industry, many cross the border into the United States, where they are employed (legally and illegally) in low-paid service jobs (Herzog 1992; Martinez 1994). In southern California, the Mexican presence is felt everywhere—Spanish instructions in the Laundromat, Mexican food in the supermarket, Latino music in the street. The cultural overlap and mixing are further complicated by the political claims of Chicano peoples who are of Mexican descent but identify themselves as American and rightful heirs to an independent Chicano state (see Gutiérrez-Jones 1995; Gomez-Quinones 1994; Flores 1990).

TOWARD A NEW COMMON SENSE

Boaventura de Sousa Santos's new book, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (1995), seeks to explore the so-called current crises of the state and its framing paradigm of modernity, through which issues of geopolitical borders, nation-state identities, and a differentiation between "North" and "South" have historically emerged and presided. Santos's central thesis is that we are currently experiencing a transitional phase, and that out of the crumbling of modernity will emerge a new postmodern epistemology no longer dominated by the "West." Santos, in short, seeks to address the sorts of issues unveiled by international treaties such as NAFTA and their relationship to state politics, local practices, and regional trading blocks surrounding the U.S.-Mexico borderlands. In fact, this example, which I will return to later, qualifies the North-South dichotomy that throughout the text, and explicitly in the last chapter, Santos uses as a central metaphor and axis on which he pivots paradigmatic change.

Toward a New Common Sense is grand in scale and impressive in execution—courageous, poetic, idealistic, at times didactic, and profoundly provocative throughout. This ambitious project is no light read. The small print over 500 pages through which the detailed ethnographic and theoretical analyses interestingly meander, is demanding on the reader. But the rewards are great. Santos engages with issues of modernity, capitalism, transnationalism, and globalization, explicitly setting out to interrogate prevailing theoretical and methodological assumptions in sociolegal research that presume as given (often despite claims to the contrary) the centrality and stability of state governments and their formal institutions. In situating law within complex historical, economic, and political contexts, the book makes a substantial contribution to ongoing debates about the effect of "global" processes on the conventional, state-bound, privileged reasoning of Western law and its epistemological foundations. Thus Santos's book is extremely relevant for legal scholars and, more significantly, for humanists and social scientists across a wide range of disciplines interested in issues such as postcoloniality, globalization, communitarianism, human rights, multiculturalism, legal politics, and the construction of subjectivity. What Santos highlights is the necessity for us all to take into account both state and nonstate law and how these authoritative discourses intersect people's everyday lives.

Specifically, Santos critiques what he identifies as the three structural features of modern law—rhetoric, bureaucracy and violence—without then banally concluding that the state is on the way out (p.117; see also Barret-Kriegel 1995; Milward 1992). Rather, what Santos seeks to show is that the prevailing "common sense" associated with modernity has to make way for a

plurality of forms of law that far from being infinite and chaotic are “structured and relational” (pp. 403–4). Moreover, this plurality does not necessarily undermine the centrality of the state, but in certain instances, “confirms and relativizes it at the same time by integrating these hegemonic forms in new and broader constellations of laws, powers and knowledges” (p. 404). Hence throughout Santos’s discussion of emerging forces of legal globalization lies the need to “rethink” law. This highlights his enduring need to find value in law and credibility in legal practice—in insisting on the necessity to sustain a discourse of rules and legalities.

According to Santos, the epistemological and societal dimensions of the current paradigmatic transition involve two distinct yet related processes (p. x). The first epistemological transition relates to the current challenge to the dominant paradigm of modern science, and is relatively easy to identify. That is why Santos opens with his discussion of science in chapter 1. The second societal transition is more difficult to locate since it occurs between the dominant paradigm of capitalism and the nation-state system, involving law in new configurations of power, accountability, access, application, and meaning. In chapter 2, Santos turns directly to law and explores its societal implications, arguing, as he eloquently puts it, that law is the alter ego of science (p. 4). Thus, despite the initial meandering through epistemological debates about the primacy of a scientific Western rationality, *Toward a New Common Sense* is primarily about the constitutive elements of law itself, and the conceptual frames through which we seek to understand it.

My aim in reviewing *Toward a New Common Sense* is to reflect upon Santos’s main arguments and present an introduction that may serve both the reader who is familiar with his earlier writings (on which this book expands considerably) and the reader meeting Santos for the first time.⁴ Because of the various linkings of argument within the book itself, I do not organize my discussion along a strict chapter chronology but along themes and perspectives that highlight Santos’s innovative insights and some of his more contentious arguments that I wish to critique. I begin with outlining Santos’s primary objective, which is to present an “intellectual utopia” through which effective, emancipatory politics can develop. This potential is viable, argues Santos, in that we have now entered a “paradigmatic transition.” I analyze what he means by this expression in the second section. I then go on to chart Santos’s discussion of the primacy of science in the modern era, which in turn has promoted certain realms of rational predictive knowledge, such as law. This explains Santos’s analysis of the connections between law/science and law/capitalism, which I discuss in some detail.

4. For two other reviews of *Toward a New Common Sense*, though both very short, see Sciulli (1996) and Perry (1997).

As Santos seeks to show how the paradigmatic transition disrupts modernist legal foundations, I then turn to his discussion of narrative method and multiple legalisms. This introduces the concepts of globalization and transnational legal practices. In the last section, I analyze Santos's orientation of global politics through a North-South dichotomy and return to the images of borders and borderlands with which this essay began. I conclude by suggesting that Santos's utopian goal for a "global commons" and "world tribunal" is, above all, modernist: it conceals relations of power in the march toward emancipation of the oppressed. Such heroic dreaming, I suggest, is an inadequate match for the forces of late capitalism, which Santos himself argues will continue to dominate world politics long after modernity's crisis and collapse.

POLITICAL OBJECTIVES

In identifying himself as a critical postmodern theorist,⁵ Santos confronts more cautious sociolegal scholars and legal practitioners wary of a postmodernist labeling. What concerns these conservative scholars is a rather naïve characterization of postmodernism as a move toward disempowering legal authority, obfuscating rational argument, and ultimately undermining the centrality of the state. However, this is far from Santos's agenda. At no time does Santos debunk the credibility of law or its role in effecting social change. Rather Santos, in responding to today's "critical juncture for sociolegal studies and the related social sciences" (Calavita and Seron 1992, 770), optimistically takes up the call to promote a "progressive political agenda" through law.

Santos's optimism lies in stark contrast to the pessimistic tenor that pervades some scholars who lament the postmodernist questioning of structural and totalizing narratives (Handler 1992, 824; see commentaries on Handler 1992). That his writings contain, at times, a sense of missionary zeal does not lessen the appeal of Santos's high level of commitment and

5. More accurately, Santos claims a position he calls "oppositional postmodernism" in an effort to avoid the modern/postmodern dichotomy. This third position is subtle and not stressed sufficiently or articulated as a distinct alternative in the book. For instance, on page 5, "oppositional postmodernism" is vaguely defined in terms of the continuity of emancipatory possibilities, and so presented as a process of mediation or linkage between the crisis of modernity and the postmodern transition. However this brief explanation does not really explain its oppositional qualities. On page 92, more clues are given. Santos writes that "oppositional postmodernism" refers to the possibility of a future noncapitalist, eco-socialist society. Does this assume that postmodernism, as conceived by most other postmodern theorists, is necessarily capitalist and unable to accommodate new social movements and eco-socialist perspectives? If this is what Santos is suggesting, then he may need to explain that. Moreover, perhaps some statement is required explaining why, despite these reservations, Santos adamantly argues for a move toward a postmodern understanding of law. In short, he makes no clear statement as to why his position is distinctly different from that of a postmodernist theorist, and so what Santos is exactly in opposition to.

enthusiasm. Santos explicitly seeks in his writings is to be “socially effective” in presenting an “intellectual utopia that makes a political utopia possible” (p. 92).

If one wants to be socially effective, critical theory cannot rest content with merely identifying the structural map of capitalist societies, nor with unveiling the mystificatory nature of the common sense that both lubricates and occults (and lubricates by occulting) the complex constellations of power, law and knowledge. It must rather become a new, emancipatory common sense. Its contribution to a new, emancipatory, common sense, or rather, to new, emancipatory, common senses reside, first of all, in identifying and characterizing the constellations of regulation, that is, the multiple sites of oppression in capitalist societies and the interlinkings among them. It resides also in identifying and characterizing the plurality of social agents, social tools and social knowledges susceptible of being mobilized into constellations of emancipatory relations. The inventions of meanings emerging out of these constellations are the seeds of new common senses. (P. 455)

DEFINING COMMON SENSE

It is important to note that Santos is not arguing for the creation of a “separate, isolated form of superior knowledge,” but rather for postmodern knowledge to transform itself into “a new, emancipatory common sense. . . . it may be the source of a new rationality—a rationality comprised of multiple rationalities” (p. 47). According to Santos, this will emerge by virtue of a *double epistemological break*; the first break occurring with the Enlightenment, when modern science was distinguished from common sense on the basis of it being superficial folklore, custom, and myth. The second break will occur when there is “a break with the first epistemological break so as to transform scientific knowledge into a new common sense” (p. 47).⁶ This somewhat circular argument relies upon an acknowledgment that common sense and modern science function in a dialectical, though unsymmetrical, relationship (p. 46). As others have commented, common sense is not static and in fact progresses with science, for “science is self-conscious common sense” (Quine 1960, 3). Although Santos does not mention Gramsci in this context, he presumably would agree with Gramsci’s interpretation that common sense “is not something rigid and stationary, but is in continuous transformation, being enriched with scientific notions and philosophical opinions that have entered into common circulation” (1984, 420–21).

6. On the shifting historical, philosophical, and anthropological uses of common sense, see Hundert (1987), Coates (1996), Geertz (1983).

The question emerges that if science and common sense are “joined-at-the-hip,” so to speak, how will acknowledging the falsity of the distinction between science and common sense create new conditions for emancipation? Santos does not directly address the mechanics of transformation. Rather, he posits a rather uncomfortable analysis that seeks to reinsert small-scale systems of local knowledge into the totalizing objectified discourse of modern science, in turn reifying the modernist distinction between science and common sense that he seeks to dismantle. Moreover, Santos’s assumption that multiple rationalities will provide the answer to liberation is open to question, especially since these multiple codes all derive from within the epistemological and ontological frames of modern science. Perhaps more disconcertingly, Santos readily accepts the global (bad) /local (good) dichotomy and implicitly presents it as justification for why local, multiple, micro-narratives will have—and should have—the power to resist, override, and transform the conservative tendencies embodied within the prevailing common sense. An alternative argument could be made that multiple common senses may in fact create more encompassing frames of complementary rationality and deeply penetrating systems of oppression. As Gramsci was well aware, “common sense” is not equivalent to “good sense,” and “good sense,” which involves a more systematic moral ordering of one’s intuition, is not necessarily preferable (Landy 1994, 81–82; see also Howard 1994).

SITUATING THE TEXT

Though Santos may not feel entirely happy about the placement, *Toward a New Common Sense* sits on my bookshelf alongside another recent epic tome on law, Jürgen Habermas’s *Faktizität und Geltung* (1992) (*Between Facts and Norms* 1996). The two works represent each author’s attempt, albeit from ostensibly different perspectives, to address the failings of democracy and the social inequalities and political and economic oppressions of late capitalism. For Habermas, modernity “is an as yet incomplete project and there is in it the intellectual and political potential to conceive and bring about a non-capitalist future.” In contrast, Santos’s contention is that “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. 92). Presumably alongside modernity’s demise will be dismantled the conflation of state boundaries with economic regions that in the past proved so instrumental in maintaining the divisions between so-called first and third worlds. As illustrated by the U.S.-Mexican example described above, borders are already better described as borderlands, and borderlands are bleeding outward into the heartland of

state, with customs checks and highway signposts appearing now 50 miles inland.

Together, the texts of Habermas and Santos represent the increasingly acknowledged significance of law in the social sciences. Of course, law has always held a special place in modern Western philosophy. From the time of Hobbes's *Leviathan* in 1657, law has been recognized for its particular role in the unfolding of modernity and a key to understanding the processes of statehood, nationalism, government, social order, and collective community. This is why Habermas seeks to resurrect the significance of law in continuing the project of modernity and so meeting the "legitimation crisis" by bridging "the relationship between the functionality of law (as a medium) and its continued need for moral justification (as an institution)" (Deflem 1994, 11; Habermas 1976). Santos, on the contrary, seeks to extol new forms of legal knowledge for the purposes of transcending the myths of progress, rationalism, objectivity, statist authority, and an essentialized individual autonomy that up to now have been the hallmarks of modern Western law and liberal capitalism (see Fitzpatrick 1992).

How law relates to the construction of social and political identities, and how it shapes categories of gender, class, race, and ethnicity, are questions now opening up more conventional legal arenas to cultural studies and cultural critique (e.g., Collier, Maurer, and Suarez Navaz 1995; Danielson and Engle 1995). Santos's text can be placed within this emerging genre of interdisciplinary sociocultural legal analysis. Drawing upon work identified with critical legal studies, critical race theory, cultural studies, subaltern studies, feminist scholarship, legal anthropology, and cultural geography, Santos seeks to identify the terms of the paradigmatic crisis and transition in order to "explore to the full its emancipatory potential" (p. xi). This involves, among other things, his addressing the difficulty of bridging structure and agency. He does this by taking into account the strategies and functionings of power within institutions as against the dispersed, usually modest, localized responses to a system of state legal reasoning that no longer accords to the dictates and desires of its constituency. In this way, Santos's argument across topics, horizons, networks, and conversations contextualizes law in the wider and more immediate arenas of what he calls a "transnationalization of the legal field," which "far from being a monolithic phenomenon," "mirrors the complexity and ambiguity of the much broader, seemingly all encompassing process of transnationalization, of which [law] is only a very partial manifestation" (p. 252).

MODERNITY, CAPITALISM, AND THE PARADIGMATIC TRANSITION

Unlike some theorists writing about law and transnationalism, Santos contextualizes his argument by acknowledging the existence of previous historical periods that experienced global social interaction. In the nineteenth century, the idea of a universal legal culture flourished as a complement to the European consolidation of sovereign state legal systems unfolding under the forces of modernity and capitalism. This provided the justification whereby colonial regimes transferred and imposed their law on colonized peoples. The current era, Santos argues, is not radically different from those in the past, yet “some aspects of it represent a qualitatively new development” (p. 251). These new features generally have to do with the promotion of transnational law through popular grassroots movements, practicing lawyers, bureaucrats, nongovernmental organizations, as well as official state policies, suggesting that such diverse support cannot be discussed as a monolithic phenomenon, or accounted for by any monocausal explanation such as the idea of progress.

In a concern to ground his argument in historical context, Santos makes a critical distinction at the outset between modernity and capitalism as “two different and autonomous historical processes” that in the eighteenth century “converged and interpenetrated each other” yet managed to retain the conditions and dynamics of their development as separate and relatively independent (p. 1). Aligned to capitalism’s dominance as an industrial mode of production well after the appearance of modernity in the sixteenth century, today’s modernity is declining long before the “disorganized” capitalism of the current age will cease to be dominant in world politics (p. 1 n. 1). I am not entirely convinced by this argument. Still the endurance of capitalism functions as a bridge between modernity and postmodernity, marking the decline of modernity not as a “crisis” but a shift. Evoking Thomas Kuhn’s analysis of scientific revolutions and changing perceptual categories (1962), Santos claims that the appropriate imagery is one of “paradigmatic transition” in which the excesses and deficiencies of modernity need to be rethought and reevaluated in the desire to postulate new forms of emancipatory politics through the framing contexts of late capitalism.

Santos argues that the complex and contradictory paradigm of modernity is based on the binding of two central pillars: the pillar of regulation and the pillar of emancipation. Each of these pillars is constituted of three principles or logics. The pillar of regulation is composed of the principle of the state, based on vertical obligations between citizens and institutions (Hobbes); the principle of the market, based on horizontal self-interests among contracting partners (Adam Smith, Locke); and the principle of the

community, based on horizontal solidarities between community members and associations (Rousseau). The other central pillar, that of emancipation, is composed of the three logics of rationality identified by Weber; aesthetic-expressive (the arts), cognitive-instrumental (science and technology), and moral-practical rationalities (ethics and law).

What is important to Santos is that these two pillars produce two main categories of knowledge in the paradigm of modernity. Over the past 200 years, knowledge-as-regulation won primacy over knowledge-as-emancipation, allowing it to recodify emancipatory knowledge in its own terms that had little to do with equality and freedom (p. 26). This set up an uneasy equilibrium that in recent years has become unbalanced.

The paradigm of modernity comprises two main forms of knowledge: knowledge-as-emancipation and knowledge-as-regulation. Knowledge-as-emancipation entails a trajectory between a state of ignorance that I call *colonialism* and a state of knowing that I call *solidarity*. Knowledge-as-regulation entails a trajectory between a state of ignorance that I call *chaos* and a state of knowing that I call *order*. While the former form of knowledge progresses from colonialism toward solidarity, the latter progresses from chaos toward order. In the terms of the paradigm, the mutual binding between the pillar of regulation and the pillar of emancipation implies that these two forms of knowledge balance each other in a dynamic way. What this means is that the knowing power of order feeds the knowing power of solidarity, and vice versa. The fulfillment of this dynamic equilibrium was entrusted to the three forms of rationality mentioned above: the moral-practical rationality, the aesthetic-expressive rationality, and the cognitive-instrumental rationality. In the last two hundred years, I have been arguing, the cognitive-instrumental rationality of science and technology overcame the other two forms of rationality. In this process, knowledge-as-regulation won primacy over knowledge-as-emancipation: order became the hegemonic way of knowing and chaos became the hegemonic form of ignorance. (Pp. 25–26)

According to Santos, in the managing of modernity's excesses and deficits, science, and law as its alter ego, gradually came to colonize the rational principles of the other emancipatory logics. "By the beginning of the nineteenth century, modern science was already converted into a supreme moral instance, itself beyond good and evil" (p. 3). Today, however, the objective quality of science is being seriously questioned. This had led to the current imbalance between modernity's two central pillars which, Santos argues, is due to the practice of maximization each pillar adopts, in turn reducing the "success of any strategy of pragmatic compromises between them" (p. 2). Maximization of the state or market, for instance, creates "excesses and deficits" that undermine modernity's ambitious and revolutionary project, promising, among other things, individual autonomy and personal libera-

tion. Maximization makes the “overfulfillment of some promises and the underfulfillment of some others hardly avoidable” (p. 2).

The dominance of regulation (now driven by the market) over emancipation (now driven by scientific rationality) has not deadened emancipatory possibilities, only dulled their liberating potential (p. 8). In a move that echoes Lacan—despite Santos’s disclaimer of a Lacanian influence—he writes, “In this process, emancipation has ceased to be the other of regulation to become the double of regulation” (p. 122). This process creates a new sense of insecurity arising from the general discrediting of regulation due to its own internal inconsistencies. On the one hand, science and technology, on which regulation relies, have increased our capacity to act, and in conjunction, have extended the time-space dimension of human activities. On the other hand, our capacity to predict actions has not equally advanced. This discrepancy, argues Santos, creates the disturbing result that “the prediction of the consequences of the scientific action [is] necessarily less scientific than the action itself” (p. 9). In turn, “our epistemological confidence” is undermined, opening up new opportunities to reevaluate our common sense knowledge, “which we, as individual or collective subjects, create and use to give meaning to our practices,” but which up to now science has insisted “on considering irrelevant, illusory and false” (pp. 10–11).

Apart from the cumbersome complexity of Santos’s schema, it appears that he cannot think beyond the autonomous liberal subject that in effect locks him into a modernist frame. Individuals and individualism are characteristic of regulatory scientific/legal knowledge that developed in the nineteenth century as part of a Eurocentric universalizing through which the world could be categorized, colonized, and managed. But the current moment of instability is linked to the fact that modernity’s promise of individual autonomous freedom has proven illusory. Individual sovereignty and personal liberation have yet to be achieved, and so for Santos remain, not unreasonably, both desirable and achievable goals. A problem emerges, however, in Santos’s claim to go beyond the modernist epistemological frame in his search for multiple narratives and dialogic relations in which the future rationale for law lies not with the defense and security of the individual, but with that of the “neo-communities” that populate the “global commons.”

Santos readily agrees that in the paradigmatic transition from modernity to postmodernity we are not entering “clean” a new era but carry with us the trappings of our capitalist past and its dreams of a utopian future (p. 121). This disclaimer, however, is in and of itself insufficient to account for why his argument is constantly dragged back into an epistemological and discursive frame that his postmodernist agenda seeks to transgress. In short, Santos appears to accept as given the modernist borders through which an

autonomous individual subject is defined, valorized, categorized, and ultimately essentialized, notwithstanding that such borders may now be maintained through transnational legal practices rather than through the state.

THE PRIMACY OF SCIENCE

In chapter 1, Santos argues that the version of modernity that prevailed in the nineteenth century hailing science and technology as the ultimate source of knowledge was only one of many possible epistemologies. Science evolved as a positivist science, and in the words of Comte, involved a reconciliation of order with progress such that "order is the condition of all progress, and progress is always the object of order" (1975, 343). On this basis, science was differentiated from two other forms of knowledge, one being the immediate experience of common sense and the other categorized as the knowledge of the social sciences and humanities (pp. 11–17). Science assumed a position of superiority over these two other forms because through science, people could make claims to objective, quantifiable, explanatory, and predictive information. In a lively manner, Santos presents the rather standard argument that by the nineteenth century, the claims of modern science had emerged as the dominant and "natural" epistemological paradigm of modernity. Moreover, through the forces of imperialism, science came to represent a global (i.e., Western) model of prescriptive logic that through a generalizing evolutionary model privileged capitalism over socialism, civilized over primitive cultures, and male over female (pp. 30–33).

Santos's concern with the emancipatory potential of a paradigmatic transition depends upon his argument that an epistemological questioning of science is currently the dominant paradigm (pp. 17–22). A sexist, Western, capitalist rationale is no longer acceptable or entirely accepted. This transition has developed, according to Santos, because the more science advanced, the more it showed how vulnerable it was to predicting and understanding the ever-enlarging world of intellectualized understanding. For example, Einstein's theory of the relativity of simultaneity and Heisenberg's Uncertainty Principle demonstrated the level of arbitrariness, discrepancy, and contingency prevalent in the physical sciences. These theorists showed that universal, causal, and deterministic rules simply do not exist because all scientific knowledge is in fact structurally limited by the intervention of the scientific investigator who must first reduce an object to particular categories in order to observe and measure it (p. 18).

One of the most significant rifts posited by these scientists was a questioning of the subject-object distinction that up until the middle decades of the twentieth century had been the foundational platform for modern scientific rationality. Santos presents an insightful discussion of the historical

importance of the subject-object distinction, both in differentiating “hard” natural sciences from “soft” social sciences, and in marking differences between disciplines such as sociology and anthropology (p. 28). Today, however, Santos argues that the subject-object dichotomy no longer holds the same attraction. In poetic language he writes:

The observed facts are beginning to break out of the solitary confinement to which science had subjected them. The frontiers of objects are less and less clear; the objects themselves are like rings interlocked in such complex chains that they end up being less real than the relations between them. (P. 21)

Santos claims that the dichotomies between subject-object and agency-structure are breaking down precisely because the limits of modern science are qualitative and cannot be overcome by more experiments or research. “Indeed, the qualitative precision of knowledge is itself structurally limited” (p. 21). Because no knowledge is devoid of subjective human intervention and the wider contexts of its social conditions, Santos suggests that all science should be conceived as social science (pp. 33–37). This theoretical move enables Santos go to one step further and posit that in the paradigmatic transition, “to the degree that natural sciences are getting closer to the social sciences, the social sciences are getting closer to what has been traditionally called ‘the humanities.’ . . . as a consequence, scientific discourse will get increasingly closer to artistic and literary discourse” (p. 35).

Santos makes a theoretical leap from natural science to literary aesthetics by referring back to his rather complicated knowledge-as-regulation and knowledge-as-emancipation model of modernity. Under this schema, Santos presents the somewhat puzzling distinction between the autonomous subject—which objective science affirms as the “citizen and agent of the market”—and the concept of the creative and artistic author, which he argues in many ways operates as a resistant antithesis to a scientifically rationalized individualism (p. 24).

Santos arrives at this odd point by arguing that “author” and “community” share a special, rather romanticized relationship. He claims that of the three principles under the pillar of regulation (market, state, and community), it is community that “resisted being co-opted by the automatic utopianism of science. For that, it paid the heavy price of being marginalized and neglected. But to the extent that it remained outside, the community also remained indifferent, open to new contexts in which it would make a difference” (p. 23). Exactly what community Santos has in mind is not certain. Nor is it clear why, of the three principles under the pillar of emancipation (moral-practical, cognitive-instrumental, and aesthetic-expressive rationality), it is aesthetic-expressive rationality that has resisted more successfully being colonized by the cognitive-instrumental rationality of modern sci-

ence. According to Santos, "the aesthetic-expressive rationality is, by 'essence,' as open-textured and unfinished as the artwork itself, and so it cannot be captured in the rubber cage of technicscientific automatism" (p. 24). Together "author" and "aesthetic-expressive rationality" combine to resist the forces of scientific domination.

This whole line of argument about "art and community as unfinished project" has a lot of problems. Santos projects a rarefied and romantic image of the attic-bound, marginal artist who operates as "the other" to ordinary life. At the same time, he seems to privilege the artistic field as somehow beyond the reach of capitalist production and consumption and maintaining at its center the artist's "essence" of creative spirit. This allows Santos to pronounce that the "unfinished character" of the aesthetic-expressive rationality resides in the concepts of authorship and discursive artificiality. Authorship is both cause and effect of artistic production (i.e., art always requires an author), just as discursive artificiality highlights the open contexts in which art is conceived and given meaning. Santos states that together these two organizing concepts of the artistic and literary field blur the subject-object distinction (p. 35), and the result

unifies what scientific rationality separates (cause and intention) and establishes quality and relevance (instead of truth) through a form of knowledge that modern science has despised and sought to dump in the dustbin of history: I mean rhetorical knowledge. The principle of the community and the aesthetic-expressive rationality are thus the most unfinished representations of modernity. Priority must, then, be given to the inquiry into their epistemological virtualities, in order to restore the emancipatory energies that modernity has allowed to be transvestized into regulatory hubris. (P. 25)

As stated above, this argument about the unfinished representation of authorship is flawed for a number of reasons. Not the least of these is Santos's rather inappropriate but telling metaphor of transvestism, which always reveals more than it hides, and intrinsically is always about revelations. What has been laid bare is that the principle of community and aesthetic-expressive rationality are no less part of the overall structure of modernity, caught within its epistemological agenda, than Santos himself.

RHETORICAL KNOWLEDGE AND DIALOGIC RHETORIC

Rhetoric, the art of persuasion through argumentation, is "one of the most deeply rooted traditions in Western thought" and law has always been one of the most favored fields of rhetorical discourse (pp. 38–39). According to Santos, a new rhetorical knowledge will flourish in the postmodern

neo-communities and will alter the way we conceive modern law. These neo-communities, which are both translocal (local/global) and trans-temporal (immediate/final), will subvert the conventional speaker-audience dichotomy by creating a dynamic of interchange, reciprocity, and multidirectional argumentation. In recognizing that there is no fixity between center speaker and peripheral audience, Santos argues for a dialogic rhetoric in which the "audience is permanently in the making" (p. 46).

As I discuss below on the interconnections between law and science, Santos claims that law in the neo-communities will be profoundly destabilized from its modern rational base in precedent and prediction. On this basis, interpretation is understood as relational, contextual, multi-vocal, and contingent and so productive of new common senses and multiple rationalities. In a manner that echoes Habermas's understanding of consensus in democratic communities, Santos says that this epistemological plurality will be characterized on the basis of its "solidarity," "co-responsibility," "participation," and "new aesthetics." This plurality seeks not to differentiate the object of the other as distanced from the subject of oneself. Rather, epistemological plurality alters the conceptual perspective embodied in modern knowledge, thus favoring the "near as a way of conceiving and seizing the real, even if the real is the global or the future. Only the embeddedness in the near, even if it is a new, unfamiliar near, can accomplish the re-enchantment of the world" (p. 53).

Santos's critique of the rationality of science as the epistemological foundation of modern knowledge situates him firmly within current debates on the relationship between physical sciences and the humanities. These debates have fueled a growing body of research on the cultural dimensions of the "natural" sciences, and are aligned with concerns over the meaning and impact of multiculturalism, globalization, and postmodernity. As the "environment" or "nature" are shown to be culturally determined, contingent, and vulnerable categories of reality, Western science, through which our meanings of nature are identified and structured, is emphasized as the framing paradigm (Pugh 1988; Cronon 1995). Scholars of the history of science argue that the natural-rational versus the human-interpretative dichotomy is a product of Western modernity and not a pre-given, essentialized opposition. In short, Western science can be conceptualized as an ethnoscience, as can its particular subdisciplines such as anthropology and sociology (Aronowitz 1988; Harding 1993; Grimshaw and Hart 1995; Nader 1996). This critique is not intended to debunk empirical, positivist science, but rather to create better science. As Sarah Franklin has noted, "Were Western science to be reassessed as a cultural practice, in the narrowest and widest senses, it arguably stands to gain, in both resources and on its own terms, as an effective, predictive, useful and interested account of its objects" (Franklin 1995, 179-80).

The problem, however, is that the polarization between so-called objective versus subjective facts continues to frame the "science wars." Some scientists have not received well the science as culture critique, which "may be the consequence of defensiveness within the scientific community, who, in their view, [have] become like laboratory mice subjected to scrutiny from above" (Franklin 1995, 178). Others arguing against "hard" science have denounced the claims of science as having any objective validity at all. Whether this amounts to an outright rejection of rationalism remains unlikely. At the very least, these heated debates about the status of science indicate a heightened sense of imbalance, even blurring, between (objective) scientific technologies and their impact on the (subjective) human world.⁷

Emerging from among these conflicts and insecurities, according to Santos, are the new clusters of social relations that contextualize the audiences and neo-communities of a dialogic rhetoric. In part 3, Santos presents six structural clusters of social relations which relate to six configurations of power or common senses: the household, the workplace, the marketplace, the communityplace, the citizenplace, and the worldplace. Around these clusters of social relations, Santos identifies six configurations of political power, five of which are new in the sense that up to now they have not been deemed "political" by modernity. In the paradigmatic transition, an emancipatory knowledge will recognize these five configurations of power and as part of a dialogic process open up spaces for new audiences and neo-communities not contained by the political and societal boundaries of the nation-state's citizenplace. As a result, Santos suggests that the conventional identification of the state system and its counter "civil society" will be blown away as irrelevant in the new emancipatory politics of no fixed hierarchies, centers, and paternalistic responsibilities. New power relations below and beyond the state will produce a dialogic common sense that aims

7. The bitterness involved in a refusal to acknowledge the cultural dimensions of scientific research was recently revealed in June 1996 with the publishing in *Social Text* (a well-known literary journal) of Alan Sokal's nonsensical essay that sought to parody the cultural study of science as devoid of intellectual substance. Sokal, a physics professor, hoped his hoax publication (1996), which was immediately disclosed in *Lingua Franca*, would undermine the credibility of humanities scholars. However, the enormous amount of publicity about the hoax in national papers and in general discussion on the Internet have not convincingly indicated Sokal should be considered a "winner" in the artificial battle between the disciplines. Regarding the Sokal hoax, Santos would presumably endorse that this sensational prank and subsequent discussion together indicate a general sense of anxiety about the status of science among both an academic and nonacademic West. An extreme yet poignant illustration of this anxiety is evidenced in the 18-year bombing spree of the so-called Unabomber, Theodore Kaczynski. Kaczynski denounced science as a false icon and, on that ground, systematically attacked laboratories and scientists known for their experimental success. That some people (such as Kaczynski) will reject outright a scientific rationality while others (such as Sokal) will risk their professional reputation in maintaining its continuing relevance are both extreme sides of the same debate.

at the “global repoliticalization of the collective life” (p. 350). But, cautions Santos, creating this global collectivity is no easy task.

The idea that politics is restricted to the citizenplace is one of the central *topoi* of modern political discourse. Modern social sciences and their application in public policies and scientific popularization have contributed to consolidate this *topos* as a central premise in modern political common sense. The emancipatory rhetoric must start by questioning this premise, and by challenging the idea of restrictive politics. . . . In my view, this is, of all the tasks of the new rhetoric the most problematic one, because the forces that argue for the renunciation of interpretation have, in this field, a particular argumentative strength sustained by conventional politics, mass media and mass consumption. (P. 52)

LAW AND SCIENCE

Santos’s argument builds upon the basis that a crisis in scientific rationality also points to a crisis in legal rationality because of the reliance of law on science (and science on law) (Latour 1993, 13–32). “To be sure,” says Santos, “given the autonomy of law, the general epistemological conditions of modern science will not account exhaustively for the critical condition of modern law, and the paradigmatic transition will here be much less visible than in the field of science.” That is why Santos begins with scientific rhetoric in order to then tease out the embeddedness of law within the claim of science to predictive, objective, rational, and empirical knowledge. A critical characteristic of modernity is that the “same ideal of creating a social order based on science, that is, a social order in which the commands of law are emanations of scientific findings on social behavior, is paramount in the 18th and 19th centuries” (p. 5). In his stressing the relational dimensions of legal meaning, what appears a curious anomaly is Santos’ clinging to the notion of law as an “autonomous” field of action (p. 87). Nonetheless, the reference to legal autonomy highlights a need for law to embody a particular cause-and-effect authority in its applied governance through precedent, foreseeability, proof, and contract.

Santos is not unique in recognizing modernity’s connections between law and science. From Leibniz and Hobbes through to Vico, Montesquieu, and Rousseau, modern Western philosophers have been preoccupied with the concepts of natural law and social contract in determining the idea of justice. Santos, too, analyzes these themes as he explores the decreasing tension in law between social regulation and social emancipation that characterize the two pillars of Western modernity (pp. 60–71). According to Santos, law, like science, has today become overwhelmed with regulatory

concerns. Law is not viewed today, as it was by Hobbes and Locke, as “the exercise of regulation in the name of emancipation” (p. 71). In a vein that echoes Gunther Teubner’s concept of juridification and the preoccupations of nineteenth-century German legal science, Santos declares that with increasing regulation, today’s law has lost much of its emancipatory energies, which we now need to recover (p. 86; Teubner 1987; see also Rottleuthner 1989).

Modern law was entrusted with the task of guaranteeing the order needed by capitalism, whose development occurred in the midst of a social chaos, in part of its own making. Modern law thus became a second-rate rationalizer of social life, as a kind of surrogate scientificization of society, the closest we could get—at least for the time being—to the full scientificization of society, which could only be brought about by modern science itself. In order to perform this functioning, however, modern law had to surrender to the cognitive-instrumental rationality of modern science and become scientific itself. Moreover, in order to be scientific, modern law has also to become statist, since the triumph of order over chaos was to be guaranteed by the state, at least as long as science could guarantee it. (P. 56)

One wonders what Santos envisages as a “full scientificization of society” given his argument that law is merely a quasi approximation. Moreover, while Santos argues that modern law was colonized by scientific reasoning and so, in effect, is a parasite on modernity, he does situate the tension between regulation and emancipation in the legal field as having existed since the twelfth century, hundreds of years earlier than his previous identification of emancipation and regulation as the two pillars of modernity (p. 57). On this ground, one could argue the opposite causal sequence to the one presented by Santos and claim that law engendered science with the regulation-emancipation dichotomy, rather than assuming that science inculcated law with a modernist rationality.

This is the line of reasoning adopted by the French philosopher Michel Serres (1995, 53). Serres grants the links between “the will to power” (law) and “the will to knowledge” (science) a much longer genealogy than Santos, arguing that only with the creation of geometry and rules of exact measure in ancient Greece and Egypt could property lines be drawn, monetary systems advanced, political and economic hierarchies established, and social order prevail. According to Serres:

From its origins, the question of justice marches in step with that of science. . . . individuals or associations appear before a given court, and fragile truth is thereby reinforced, for the decision handed down casts it into an officially sanctioned time. In the final analysis, there is no general history of science that is not judicially recorded. No science

without trials; no truth without judgements. . . . Science never again leaves the courtroom. (Serres 1995, 56, 62)

Whether science came before law, or law before science, remains largely an unproductive philosophical question. The important point is that legal scientism developed in tandem with legal statism, such that “legal knowledge was made scientific to maximize the operability of law as a nonscientific instrument of social control and social facilitation” (p. 91). Modern law and science cannot be understood independently from each other since they share, in Santos’s words, a “profound isomorphism” in the structuring of modernity (p. 57).

LAW AND CAPITALISM

In chapter 2, Santos traces modernity’s trajectory through a world-systems analysis of three historical periods of capitalism. These three periods relate to the “liberal capitalism” of the nineteenth century, “organized capitalism” between 1900 and the late 1960s, and “disorganized capitalism,” which describes the 1970s to the present (pp. 71–90). I only discuss the last period because it concerns the sweeping legal changes that characterize Santos’s paradigmatic transition. What is significant for Santos is that through processes such as deregulation, privatization, cost-sharing, and marketization, the state is losing its privileged status as the central unit of political, economic, and cultural analyses. The result is a dulling of central state legalism and the decline of state welfare systems. Surprisingly, however, Santos does not regard the decentering of the state as altering the imperialist frame of concentric core, semi-periphery, or periphery:

In a context of growing inequality between North and South, the peripheral and semi-peripheral states are more and more reduced—both as victims and as partners—to the task of fulfilling the requirements of transnational, industrial and financial capital as these, in turn, are formulated by international organizations controlled by the core states. (P. 84)

Santos makes the important point that perceptions about law are shifting, despite some confusion over the economic and political conditions on which such perceptions are based. There is, according to Santos, a crisis within modern law because of its gradual elimination of the “tension between regulation and emancipation that originally constituted it” (p. 89; see discussion above). Thus, just as science is undergoing an epistemological crisis, so is the related field of law, though in different ways (p. 91). On this basis, Santos links the “crisis of law” to a much broader and deeper crisis

facing our modern understandings of "so-called normal change" (p. 108). This demands an "unthinking" or reconceptualization of modern law in order to map the transitions between "multiple temporalities" and "forms of sociability," and to mark an end to the contingent historical conditions in which law was absorbed into "naturalized" modern states (pp. 93–95).

Santos's argument, that we must start by uncoupling law from the state, is an obvious but important step in unveiling legal orthodoxies. First, according to Santos, the state never managed to obtain a monopoly over the law, and second, the state has always incorporated a multitude of legal codes and illegalities. As Santos points out, transnationalism and the global practices of the interstate world system have existed since the nineteenth century. Today, however, one of the major differences in today's paradigmatic transition is that the state can no longer claim to guarantee trust and security. California's Proposition 187, illustrating the general fear among U.S. citizens regarding the presence of illegal immigrants, is a potent example of a rising sense of distrust (Bosniak 1996). Writes Santos:

On the one hand, some of the risks and dangers have been globalized; their control is far beyond the capabilities of individual states. . . . On the other hand, the increased social awareness of risks and dangers has shown the structural limitations of the legal mechanisms used by the state to manage them. (P. 104)

The result is that modern law is facing a crisis of credibility, with its emancipatory potential dismantled and its regulatory regime unsustainable. In history's uncoupling of law from state, the solution, argues Santos, is to recouple law with revolution. This opens up a rather complicated argument in which Santos draws on the work of Harold Berman and his analysis of the relationship between law and revolution as the founding characteristic of modern law (p. 105). According to Santos, the French Revolution represented the last historical moment when law and revolution worked in tandem in the name of freedom and social emancipation. Ever since then, law has been extricated from revolution, and revolution declared lawless. Against this history of modernity's disempowering of legal insurgency, Santos sees the future lying in the recoupling of the dialectical relationship between law and revolution. In typically poetic language, Santos writes about excavating the past in search of "alternative memories of the future" (p. 109). This in effect amounts to a recapturing of the tension—a return to the initial balance—between regulation and emancipation, though in Santos's schema this relationship is rather one-sided, with revolution now being totally subordinated to law (p. 106). What Santos underlines is the need to return to the past in order to "unthink" the future—to resurrect what the modern state denounced regarding the operational and ideological limits of law.

I found Santos's declaration that the past holds the key to the future rather disappointing. On the one hand, he excitingly points to the new configurations of legal power and legal perception emerging with a decentering of nation-state. But on the other hand, in advocating a return to and recovery of the initial dreams of liberty and equality that blossomed in the emergent stages of modernization, he maintains modernist distinctions between core and periphery, North and South, capitalism and socialism, as well as the division between the rational-legal state and the aesthetic expressions of community. As Colin Perrin has persuasively argued with respect to the rights of indigenous peoples (1995, 56), Santos's argument for the insistence of the past in the present is "the persistence of a present, which by rights, ought to have passed."

NARRATIVE METHODS AND MULTIPLE LEGALISMS

Santos's linking of future projections with a reevaluation of the past is very much aligned to his reflexive sensibilities and his repeated disclaimer that the paradigmatic transition from modernity to postmodernity represents a clean break with particular historical memories. In as much as his analysis of legal change is grounded in the cultural imaginings of past and future, Santos recognizes his own limitations in the presentation of his empirical methods. In seeking to link his epistemological critique of modernity (chapter 1) to empirical studies primarily conducted in the *favela*, or squatter settlement, of Pasargada in Rio de Janeiro (chapter 3), Santos writes:

Because in a paradigmatic transition the emergent paradigm necessarily lacks the appropriate methodology, the empirical research, no matter how epistemologically alert, tends to be conducted according to the methods available: those of the dominant paradigm. As a result, the empirical research is always more subparadigmatic than the epistemological critique to which it can be submitted. Moreover, because the research programs are formulated within the dominant paradigm, even when they try to break with it, the transgression bears the mark of what it transgresses, which thereby vindicates its presence in unsuspected forms. The paradigmatic critique cannot, therefore, purport to raise the empirical research beyond the limits of the dominant paradigm that has generated it. But it can show it those limits. (P. 121)

This showing of limits is neatly illustrated in chapter 3, where Santos presents his research conducted in 1970 in Pasargada, and in his "*Chapter Three-in-the-Mirror*," which reflexively presents an intriguing autobiographical account of his own scientific history of why he came to be living there. At first instance, the metaphor of mirroring evokes a Lacanian analysis whereby the very process of doubling creates, in a sense, a liberated image of

a whole. But according to Santos, this is in fact contrary to his objective, which is to show the continuing "precariousness of knowledge," and the extent to which empirical scientific discourse remains dependent on individual perspectives and life histories (p. 122).

Although the autobiographical account drifts, at moments, toward a romanticization of his youthful enthusiasm and naiveté, Santos's doubling strategy places him squarely into the self-reflexive category of postmodern ethnographers. Of course this doubling device in and of itself says very little. As Richard Fardon has noted, "[S]elf-delusion or the downright lie can as well be told in the first person as any other" (1990, 14). What makes Santos's account interesting is his concern that autobiographical method in the social sciences tests "new answers for questions that are common to both science and literature: for example, the relation between truth and design, between memory and invention, and between description and imagination" (p. 129). In other words, Santos's reflexive appearance in the text, as much as his theoretical critique, expressly challenges the truth-making objectification of empirical science that some people remain determined to defend.

In seeking to bridge the perceived limits existing within both the humanities and sciences, Santos underscores the extent to which a cause-and-effect rationality determines the "truth" in scholarly research, and in the process has blinkered our understanding of everyday legal events and discourses. By highlighting his own authorship in the analytical process, Santos seeks to blur the subject-object distinction and in so doing returns the reader to his earlier discussion of an "aesthetic-expressive rationality" as capable of restoring "the emancipatory energies . . . that modern science has despised and sought to dump in the dustbin of history" (p. 25; see above). Whether Santos's self-conscious positionality actually creates emancipatory change is a secondary issue to his aim to expose the similarities between scientific writing and the problems involved in constructing his own personal narrative:

what begins to emerge is that, similarly to the autobiographical text, the scientific text is constituted by a set of references that appear in a specific setting (a *scientific* setting), that is, in terms of the scientific narrative's own "essayistic" disposition rather than in terms of a non-textual truth or falsity. In these precise terms it is conceivable to view all science as fiction, or rather, as reality fiction. (P.135)

While the use of personal narrative is more common in ethnographic than sociolegal texts, Santos's reflexive positioning places him within a growing body of interdisciplinary scholarship that seeks in various ways to understand narrative as an object, method, and product of inquiry (French 1996, 431 n. 9). The objectified, quasi-scientific narratives of law, the multiple narratives of individuals (lawyers, judges, defendants) in specific legal

contexts, and the personal tale of how Santos came to be doing his Ph.D. in the squatter settlement of Rio de Janeiro and how this affects his analysis of law all meld together in chapter 3 and its chapter mirror.

Michael McCann's discussion of ethnographic methods in recent law and society literature (1992) indicates how these micro-studies present new and alternative voices to the understanding of law in contemporary society. More recently, Rebecca French has outlined the role of narrative in situating relations of power within legal discourse. French argues that through narratives, humanist values can be promoted, normativity better understood, and the cultural process of "othering" ultimately subverted (1996, 429). Both McCann and French, however, caution against the tendency in legal ethnography to overlook the structural and institutional contexts that affect small-scale events more immediately related by individual narratives. McCann does not discount the value of narrative but emphasizes that micro-studies have to be countered with an "attempt to distinguish between different social positions of various individuals and groups in the particular institutional sites under study," "systematic, multilevel institutional analysis," and "attention to the extended temporal dynamics of conflicts" (1992, 744; see Handler 1992).

In a similar vein, French stresses that what makes Abu-Lughod's *Writing Women's Worlds: Bedouin Stories* such an exemplary ethnography (and rather different from some written by legal academics) is the author's interest in the tension between "micro-interactions that personalize, relativize, and individualize and the generalizations that make larger points about specific issues," such as the essentialisms that continue to categorize hierarchies of difference between the West and non-West (French 1996, 429–30). Together McCann and French emphasize the need to contextualize narratives, be it narratives of others or the author's own, within relations of power and legal discourse beyond the horizons of individual experience.

In chapter 3, Santos sets out to do just this. His aim is to "unthink" the state and state law as privileged units of analysis by showing that both are reproduced and legitimated through various tangential methods (p. 109). Through participant observation, Santos examines 13 local dispute settlements within the Brazilian squatter settlement. These cases record individual dealings with the local residents' association concerning community and neighborly housing issues. Folded into the narratives are the structural features of law, which Santos identifies as rhetoric, bureaucracy, and violence (p. 112). These structural features shape local legal experiences shared by those living in the squatter settlement, which collectively represent an unofficial and informal legal system used by the poor. In Santos's wonderful analysis of the nuances and particularities of individual responses to legal transition, this chapter provides one of the most engaging, grounded, and as a consequence, accessible, moments in the whole text.

Interestingly, Santos points out that this unofficial legal system does not challenge the criteria of the formal legal system, nor its legal ideologies based on the privileged status of property and class. Rather it exists congruently within an elitist state legalism, never claiming to compete with it beyond the borders of the squatter settlement. In an argument that evokes both Foucault's analysis of legality and illegality (1977, 272–77) and Sally Falk Moore's notion of a "semi-autonomous social field" (1973), Santos argues that both legal systems work together sustaining and affirming the operational validity of each other.

The state strategy of mutual avoidance and adaptation may be illustrated by its relative passivity toward Pasargada. Despite its repressive policy of community control, the state has tolerated a settlement it defines as illegal, and, by that continuing tolerance, it has allowed the settlement to acquire a status we may call *alegal* or *extralegal*. This may be explained by the fact that Pasargada and its law, as they presently exist, are probably functional to the interests of the power structures in Brazilian society. By disposing of secondary conflicts among the oppressed classes, Pasargada law not only relieves the official courts and offices of legal aid of the burden of hearing *favela* cases, but also reinforces the socialization of Pasargadians in a legal ideology that legitimates and consolidates class domination. By providing Pasargadians with peaceful means of dispute prevention and settlement, Pasargada law neutralizes potential violence, enhances the possibility of orderly life, and thus instills a respect for law and order that may carry over when Pasargadians go into town and interact with official society. (P. 236)

While Santos does not dispute the centrality of the state in shaping the marginalized legal experience of the Brazilian poor, or that Pasargada law "is less the result of widely shared power than of widely shared powerlessness," he does claim that the internal structure of Pasargadian dispute settlement in many ways distorts or perverts the state system, and as a result, could be constitutive of an emancipatory legal practice (p. 248). Santos's account of legal pluralism is insightful in stressing Pasargada law as innovative and flexible in responding to the specific conditions of modernization in Brazil. When he talks about a "folk system" emerging in the squatter settlement, this is not a nostalgic yearning for some form of premodern legalism. Rather, it refers to Pasargadians' "*selective borrowing of legal formalism*," which is then manipulated according to the norms of justice in the squatter settlement (p. 238). Santos, in his conscious attempt not to romanticize the Pasargada settlement and adopt a commonly used, but often rather naive rhetoric of poor people's "resistance" and "empowerment," writes:

Though Pasargada law reflects the social stratification of the community and does not transcend, in its ideology, the liberal tradition of capitalism, it seems to me, that, as a *functioning legal apparatus*, it possesses some characteristics that would, under different social conditions, be desirable as an alternative to the professionalized, expensive, inaccessible, slow, esoteric and discriminatory state legal system in capitalist societies. . . . Pasargada is not an idyllic community. Far from it. But this does not prevent its internal legality from hinting at some of the characteristics of an emancipatory legal process. Despite the fact that we could everywhere observe the seeds of perversion, the legal tools in Pasargada remain amenable to use in a radically democratic manner: wide distribution (nonmonopolization) of legal skills as expressed in the absence of specialized professionalism; manageable and autonomous institutions as expressed in accessibility and participation; noncoercive justice as expressed in both the predominance of rhetoric and the orientation toward consensus. (Pp. 240, 248)

The above quote offers a key to a central problem that emerges particularly in the later half of Santos's book. While he makes careful attempts to avoid patronizing Pasargada law by categorizing it as "premodern," nonetheless nostalgia and romanticism play central roles as his discussion moves away from local, small-scale narratives to an analysis of the state in large-scale transnational and globalized contexts in chapters 4 and 5. The dilemma stems from Santos's conflation of the terms "modernization," "state," "capitalism," the "West," and the "North." As I discuss more fully below, this prevents him from conceptualizing alternative or multiple variations of modernity and capitalism that are emerging in Asian, postcolonial, and third world arenas. Overlooking the need to precisely qualify power relationships tends toward locking into place reified ideas of "micro-states," "socialism," "non-West," and "South" that are defined as intrinsically virtuous in contrast to what a seemingly monolithic and homogenous "West" is not. This form of imagination is necessary in order to frame the limits of the "other" legal arenas and regimes emerging under forces of globalization. It also sustains Santos's earlier discussion of the need to subvert science through the alliance of a romanticized "aesthetic-expressive rationality" and the "always-unfinished principle of community" (p. 84).

The polarization that Santos draws between North and South raises specific issues when one considers the value of ethnographic methods in law and society scholarship. Santos makes every effort to take into account large-scale structural issues in his contextualizing of small-scale legal narratives and rhetoric in Pasargada. However, no matter how adequate this contextualization appears in one specific site, as a general hypothesis it is ultimately undermined by Santos's reification of North-South, West-non-West, capitalist-socialist, and first and third world essentialisms. So unlike Abu-Lughod, whose ethnography of Bedouin women explicitly writes

against the constructed conventions of culture and cultural difference (French 1996, 427–30), Santos's analytical perspective and theoretical platform are grounded on the very existence of these polarized distinctions. I realize that these binary generalizations referencing “first” and “third” worlds are used in many forms of political discourse, and so are not devoid of representational meaning or markers of power. But to accept them as somehow “natural” silences the interesting questions of how and why polarities such as “North” and “South” continue as viable and seemingly stable constructions of identity (Doty 1996, 2; Goody 1996). What is at stake in blurring these binary terms of cultural reference between North and South, given the new conditions of subnational and transnational legal fields that are, according to Santos, spatially remapping the “time-spaces” of law?

GLOBALIZATION AND TRANSNATIONAL LEGALITIES

In 1987, Santos wrote an influential essay in the *Journal of Law and Society* entitled “Law: A Map of Misreading. Toward a Postmodern Conception of Law.” This essay fits within a growing body of social theory and sociolegal scholarship on the intersections between legal power, spatial politics, and cultural identities (e.g., Ford 1994; Stanley 1995; Pue 1990). It also foreshadows Santos's general thesis in *Toward a New Common Sense* and is replicated as the book's chapter 7. In it, Santos sets out a complex discussion of the symbolic cartography of law by which he argues that the relationship of maps to spatial reality is similar to the relationship between law and social reality. This link is drawn because, in effect, “laws are maps: written laws are cartographic maps; customary laws are mental maps” (Santos 1987, 282). Discussing how maps distort through the mechanisms of scale, projection, and symbolization, Santos introduces the concept of legal scales and their relationship to “interlegality,” “regulation patterns,” and “regulation thresholds” across a spatial continuum between the local and the global.

The legal developments reveal the existence of three different legal spaces and their correspondent forms of law: local, national and world legality. It is rather unsatisfactory to distinguish these legal orders by their respective objects of regulation because often they regulate or seem to regulate the same kind of social action. Local law is a *large-scale legality*. Nation state law is a *medium-scale legality*. World law is a *small-scale legality*. This concept has broad implications. First, it means that, since scale creates the phenomenon, the different forms of law create different legal objects upon eventually the same social objects. . . . In sum they create different legal realities. . . . The difficulty lies in that socio-legal life is constituted by different legal spaces oper-

ating simultaneously on different scales and form different interpretative standpoints. So much is this so that in phenomenological terms and as a result of interaction and intersections among legal spaces one cannot properly speak of law and legality but rather interlaw and interlegality. (Santos 1987, 287–88)

By large, medium, and small-scale legalities, Santos refers to the actual projection of law in the social realm. Local factory labor laws, for instance, intrude into a person's immediate social and legal experience governing relations of production, family, education, and so on. By contrast, state labor laws are part of a broader context and are only one feature of industrial relations, while on the world scale, labor regulations are a minute detail in a vast array of complicated international economic relations (Santos 1987, 288). By paying attention to these legal scales and their projections and symbolizations, Santos argues for the need to fold back into the symbolic cartography of law common place objects in order to create a *new legal common sense*. This new legal common sense would be comprised of plural legal orders and legalities not bound to a modernist, scientific rationale. However, while the 1987 essay is provocative and important for its pointing to the fragmentary, unstable mixing of legal codes across various legal scales, it nonetheless leaves the reader slightly confused as to how tracing such indeterminacies is possible. For example, the essay sidesteps critical questions centering on the interpretative perspective of the investigator and how s/he determines the legal-time and legal-scale in which one stands at any given moment.

In part 2 of the book, Santos seeks to expand on and empirically explore the general thesis set out in the 1987 essay. Chapter 4 opens up discussion of the local legal practices in Pasargada and their articulation with state law as examined in chapter 3 to what he calls the “transnationalization of the legal field” and its various articulations with state and local “time-spaces.” At the start of this lengthy chapter, Santos sets out that it is not public and private international law that he analyzes, but rather

(a) legal forms (regulations, institutions, cultures) which are transnational in origin or which, though national or even local in origin, reproduce themselves transnationally by mechanisms other than those typical of interstate relations; and (b) national legal fields (state legal orders and local, infrastate legal orders) as they are transformed by transnational legal movements. In this chapter, therefore, the state monopoly of production of law is also questioned, not, however, as in Chapter Three, because the national legal field comprises other non-state or infrastate forms of law, but rather, because the national legal field is increasingly interpenetrated by transnational legal forms which unfold in complex relations with both the state legal order and local legal orders. (P. 250)

Beginning with a discussion of globalization from economic, political, and cultural perspectives, Santos briefly skims across the obvious theorists of globalization such as Wallerstein, Giddens, Robertson, Hannerz, Sklair, Harvey, and Smith (pp. 252–68). Given the current tendency to discuss globalization as if it is a process unique to late capitalism, Santos makes the important point that the idea of a global culture has a long historical pedigree. Citing Stephen Toulmin, he notes that globalization is distinctly linked to the project of modernity. This leads Santos to distinguish between two forms of globalization; *globalized localism* and *localized globalism*. The first, *globalized localism*, refers to the process whereby local phenomena such as fast-food stores, nongovernmental corporations, or the English language are successfully transferred across cultures and globalized. The second form, *localized globalism*, refers to the specific impact of transnational practices on local conditions, such as ethnic migrations affecting discrimination in the workplace or touristic use of historical treasures (p. 263). Without fully questioning how globalization may be blurring and redefining the modernist criteria by which countries qualify as core and periphery, Santos rather sweepingly states that “the international division of globalization assumes the following pattern: the core countries specialize in globalized localisms, while upon the peripheral countries is imposed the choice of localized globalisms” (p. 263).

Alongside *globalized localism* and *localized globalism*, Santos identifies two competing global processes he labels *cosmopolitanism* and the *common heritage of mankind* (pp. 263–65). These processes set up clusters of conflicts, resistances, struggles, and coalitions that supposedly compete with the hegemonic core-periphery discourse of capitalist modernity. Note, however, Santos's use of language and its imperial overtones when he argues that new “postmodern constellations of *civilizational* meaning” are developing at the world's margins and from the “South,” creating transformative practices that challenge modern Western concepts such as universal human rights and legal equality (p. 271; my italics). For Santos, the way to unveiling emancipatory possibilities lies in understanding the South's invitation to a de-Westernized, decentered conception of globalization that tends to invert (rather than subvert) the discursive practices of modernity.

On page 275, Santos sets out in table form seven types of legal transnationalization that involve a variety of legal phenomena such as the supras-tate structure of the European Community, refugees and the migration of peoples, and the fluid concepts of sovereignty and citizenship. These are (1) transnationalized state law, (2) law of regional integration, (3) *lex mercatoria*, (4) law of people on the move, (5) transnationalized infrastate law, (6) cosmopolitan law, and (7) *jus humanitas*. The first four types of legal transnationalism involve what Santos calls processes of *globalized localism* and *localized globalism*, while the last three types involve *cosmopolitanism* and

the *common heritage of mankind*. Santos sees this latter group as having the most emancipatory potential in their capacity to undermine from below and above the authority of the state as the central source of law (p. 314). Santos then identifies and discusses settings in which such emancipation is most likely to emerge, such as in the development of human rights applicable to all people, nongovernmental organizations that transcend state borders, a global civil society, and a "global commons" or *jus humanitas* that takes the globe itself as its object of regulation.

Certainly Santos's discussion is provocative and stimulating. Few authors are brave enough to tackle topics such as the false universality of human rights and its transformation into a new universality of cosmopolitanism, or diatopic hermeneutics creating a world of "cultural tolerance" and non-essentialist multiculturalism. However, the major problem is that issues of power are lost in his explicitly utopian vision (p. 348). As a result, Santos offers no clear program as to who will set up a "world tribunal," or how the "postmodern trial will conceive of the world system as a single collective dispute, leaving nobody out, either as victim or as a victimizer" (p. 360). Santos is not unique in arguing for a utopian legal fantasy, which plays out in "world" documents such as the United Nations "Declaration on the Rights of Indigenous Peoples." But as Perrin has argued (1995), such a document creates much anxiety in that it underscores the failed limits of the state to include a wider community, and in the process, the failed ideologies of democracy and equality upon which rests the idea of modernity itself.⁸

A lot more could be said about these "paradigmatic potentialities." I only discuss the first of these transnational legal fields because it is the most important for Santos's theoretical and ideological frame central to part 3 and the remainder of the book. This transnational field involves ethnic minorities and its smaller subset of indigenous peoples. Santos argues that both ethnic minorities and indigenous peoples can lay claim to collective rights and a politics of critical legal plurality that ultimately disturbs the presumptive centrality of the state. Moreover, this legal plurality is critical if distinct cultural subjectivities are to be reproduced and endure. This is especially true for indigenous peoples, who compared with ethnic and peasant groups, hold a special relationship with law:

8. "As such, the insistence of indigenous peoples and their insistence upon rights is, necessarily, the insistence of a problem for modernity and for the Declaration. In this ambivalence, modernity is revealed as not, in a sense, modern at all. Modernity is considered here in its inclusiveness, in its claims to accommodate the plurality of cultures, differences, and so on. This accommodation is, however, possible only on the basis of the exclusion of the particularity and contingency to which a modern rationality and formality are opposed. In a double sense, therefore, the insistence of indigenous peoples reveals the insufficiency of modernity as it fails both to exclude and to accommodate them" (Perrin 1995, 68).

What is distinctive about indigenous legal plurality is the specific embeddedness of the legal dimension in broader, deep-seated, cultural, religious, linguistic, familial, ethnic identities, to such an extent that the preservation of autonomous law becomes part and parcel of a politics of survival and resistance against "assimilation" and "ethnocide." (P. 319)

While I query Santos's somewhat sentimental distinction between indigenous and peasant communities and the role law plays among each, he makes the important point that all colonial domination has been instigated through the denial of local legal customs and rules. However, in arguing for the preservation and continuation of indigenous people's "autonomous law," no explanation is offered for why this should be considered law at all. Moreover, Santos too readily adopts what sounds like a modernist legal discourse that necessitates a differentiation between pre-modern (= primordial and uncivilized) and modern (= complex and civilized) peoples. This is despite his claiming the contrary, and arguing that the community for which indigenous peoples are struggling, "far from being a premodern relic . . . is indeed a neocommunity, a complex constellation of social and political meaning, in which premodern, modern and postmodern elements are tightly intertwined" (p. 327; see Perrin 1995, 70–74). But Santos's nostalgic sentiment and his characterization of the neo-community are not contradictory, for as Perrin notes, how could such a community be anything else? This failure to see how ideas of premodernity, modernity, and postmodernity are uneasily implicated in each other perhaps explains why Santos interprets law, albeit indigenous law, as somehow autonomous. This autonomy runs counter to his earlier arguments in parts 1 and 2 about the breaking down of scientific and legal objectification and the need to understand these arenas as networks of relations between institutions, texts, contexts, cultures, and individuals.

Santos's mixing of modern and postmodern rhetoric oscillates between and simultaneously conflates a number of themes, raising some important questions. Notes Santos:

Most importantly, the neocommunitarian character of the indigenous quest for community lies in the fact that it links the local with the transnational community, thus providing an illuminating synthesis of the dialectics of reterritorialization-deterritorialization, which. . . underlies the current processes of globalization. Such a dialectics is clearly seen to be at work in the way the territorial dimension of indigenous community is symbolically constructed. To be sure, the territory is historical and physical, but the transnational coalition organized in its defense makes it intelligible both to the coalition itself and to public opinion in general, by transforming it into a symbolic or even mythic territory. (P. 327)

My first query relates to the distinction Santos makes regarding territory in the new paradigmatic transition as uniquely symbolic or mythic. What concept of territory is not in part constructed? Echoing Anderson's "imagined community" thesis (1991), which analyzed the rise of modern nation-states in the nineteenth century, Santos continues in his discussion about the late twentieth century:

Thus transformed, the hyperreal territory is integrated into a symbolic universe, where it easily relates to such mental territories of romantic modernity as the promised land, the lost paradise or the frontier, which are likely to capture the imagination and motivation of highly heterogeneous transnational coalitions and world public opinions. Thereby a common ground is created, an imagined community, in which the territories of history cohere with the territories of the mind. Rather than an absurdity, it is probably mere cunning of historical reason if, as it withers away, modernity gets its last grain of truth or future precisely from those peoples whose truth and future it has savagely suppressed. (P. 327)

My second question relates to Santos's direct dependency on the modernist rhetoric of lost paradise or frontier to promote and shape future transitions. Rather than a withering away of modernity as the central condition for Santos's paradigmatic transition, his argument here suggests that modernity's endurance is critical to the future momentum of change, both in its determining whose "truth or future" should prevail and the conditions in which a future will materialize as an alternative political community to that of the nation-state.

UNTHINKING THE SOUTHERN FRONTIER

The juxtaposition between modernist and postmodernist rhetoric sets up a contradictory tension that, Santos himself notes, is inevitable in a period of transition when change can only be expressed through and within the existing paradigm. However, as briefly discussed above, Santos's metaphorical use of the "South" represents an analytical quandary. This lies in Santos's claim that the South was created through its asymmetrical power relations with the imperial or Western "North" (and so in a sense is as much North as South). At the same time, he relies on the future continuation of a North-South dichotomy that in effect affirms these two categories' mutual exclusiveness.

Surely decentering the West will eventually break up the conception of South as periphery, a point Santos himself acknowledges in his concluding chapter but that comes too fleetingly and too late to be accommodated in any real sense in his argument (p. 511). Rosemary Coombe takes up this

concern in her commentary on Santos's paper entitled "Three Metaphors for a New Conception of Law: The Frontier, the Baroque, and the South" (and reproduced in chapter 8). According to Coombe:

The multiplication of the South to encompass all subordinated peoples is as old as the metaphor itself; the indolence, sexuality, licentiousness, and degeneracy of the colonized peoples of the South has long been extended and equated with the underclass, the criminal, and the insane, those who like colonized peoples do not inhabit history proper but live in anachronistic spaces. The planetary consciousness that created a South inscribes relations of subordination, as Santos himself acknowledges. The question, then, is: Do we ratify these positionings by adopting this as a guiding metaphor for an emergent subjectivity? . . . It is perhaps inappropriate in contemporary conditions to reenact the founding conceit of modernity—to posit the characteristics of the subject first and foremost. Instead of imagining a subject, and then inserting him into the world, a more radically utopian gesture might involve imagining a politics: What are the social *practices* we would seek to foster? (Coombe 1995, 606–7)

In responding to Coombe's question, presumably one of the social practices we would seek to foster would be the eradication of ethnic difference and asymmetrical power relations between individuals, nations, states, and transnational regions. Returning to the desperate image of "aliens" fleeing between the United States and Mexico with which this essay began, Santos's metaphoric usage of "Frontier" and "South" is not adequate for analyzing the complexity of crisscrossing anxieties and events that I have argued is better represented by the image of "borderlands." Frontiers lie within and between, across and through time and space in multiple configurations and implications. One only has to think of the global city of Los Angeles spliced along competing cleavages such as inner-city ethnicity, Chicano claims to sovereign territory, Disneyland propaganda, and international media. Frontiers of "sociability" may be creative arenas in which "the emergent subjectivity enjoys living," but frontiers are not empty spaces—placeless places—any more than they are bereft of structural or institutional limitations (p. 494). Contrary to Santos's claim, individuals living in the frontier are not free to pick and choose, "inventing everything, including the very act of inventing itself" (p. 492). Or, as was pointed out to me, individuals may "choose freely" but not as they might wish if they could freely choose.⁹

Similarly, the idea of "South" lies where? Santos notes that indigenous peoples are, in a sense, the South of the South (p. 325). But Guatemala is south of Mexico, and El Salvador south of Guatemala, and their indigenous populations and state-border relations (Souths within Souths) mutually im-

9. Thanks to Bill Maurer for this point.

pinge upon each other. This relational complexity highlights that U.S.-Mexico relations, encompassing a range of negotiations from the wider international contexts of NAFTA to the more intimate social contexts of cross-cultural marriage, intrinsically involve a vast array of often overlooked or silenced cultural and political affiliations that transcend national borders and in many ways suggest the obsolescence and irrelevance of a North-South dichotomy.

Santos's tendency toward generalizing and essentializing the South and the Frontier points to more significant problems in his discussion of local, national, and global scales that are especially prominent in the second half of the book. While Santos's model of *globalized localism* and *localized globalism* highlights a two-way directionality among political processes, he does not query the cultural contingency of the spatial continuum on which his local-global polarization is mapped. So similar to Santos's usage of North and South, local and global are analyzed as somehow fixed with regard to their oppositional limits, despite his acknowledging their mutual contingency. This is well illustrated by the brief discussion of Chinese business practices as an example of a "globalized localism," whereby business is still subject to *quanxi* and a cultural stress on family, patronage, and social networks (p. 294; also Redding 1990; Tricker 1990; Yang 1994). However, thinking about Chinese law as a "globalized localism" highlights the need to qualify what is being "globalized" and what qualifies as a "localism." Is *quanxi* really being globalized? Is China a local site equivalent to Tunis or a rural town in Australia? Moreover, while there may be strong evidence that capitalism and old Confucian dimensions of Chinese legal culture interpenetrate, I would suggest that this does not necessarily occur in equal proportion or without involving intense power struggles. The more China is involved in the world system, particularly given the return of Hong Kong in mid-1997, the more pressure from a Western-based global capitalism to push forward its embedded universalistic values.

What concerns me with the rather banal use of a global-local dualism is that by positing a "deterritorialized" global arena against the "reterritorialized" contingency of the local, how is it possible to explore the more interesting and insightful moments when the "impossible totality" is exposed and the symmetry shattered—when the global dissolves or translates into the local, and vice versa, so that contingency is applied to the naturalized category of the "world." Despite the local and global sharing the same ordering of scale as extreme opposites along a spatial and relational continuum, at what point does the incommensurability of the one perspective to the other become explicit? Is it possible to differentiate where the global ends and the local begins any more than it is to delineate and disentangle modernity from postmodernity, irrationality from science, or barbarians from civilization? I agree with the anthropologist Marilyn Strathern that "if one focuses on the

local it vanishes in the realization that one person's local forms are another's global ones, and vice versa. This is a cultural practice we might wish to make explicit" (Strathern 1995, 30; Riles 1995, 50; Darian-Smith 1996, 295–96; Carrier 1992, 207).

This issue of scale should not mask an equally important and related issue—that of perspective. As Ruth Buchanan (1996) has provocatively argued, a change in scale is a change in perspective, and perspective necessarily takes into account the relationship between viewer and what is viewed. From a person's particular perspective, processes can be demarcated anything from local to global, and they also may take on different status and significance, or even in some cases, not be identified at all. There are multiple localisms just as there are multiple globalisms. While Santos is adamant about not equating globalization with "homogenization, uniformization or unification," throughout the text there is a pervasive sense that we all in some sense recognize what the global represents (p. 270). Yet as Baudrillard has noted with reference to his own experience of perspective, in coming to America, for instance, you do not, "In reality . . . get any distance on Europe from here. You do not acquire a fresh angle on it. When you turn around, it has quite simply disappeared" (1989, 29).

Perspective, however, is not just about the particular positioning of a viewing subject. It also incorporates the epistemological biases from which that position is produced (Coombe 1995, 600; Buchanan 1996, 11).¹⁰ Santos's polarization between South and North, periphery and center, local and global, and so on, suggest his deeper ideological and moral leanings. Emancipatory politics may proliferate most readily in the small-scale arenas of more intimate neocommunity activities. But this should not blind us to the fact that the "local"—through which is produced the "aesthetic-expressive community"—is not always desirable and, as much as any nation-state system, can be a site of provincialism, xenophobia, oppression, and abuse. There is nothing intrinsically significant or valuable in the small scale. Santos's ready assumption about the benefits of the local not only reifies and romanticizes it, but leads to a wider problem in his conflating localism with a peripheral non-West, whereby the South is imbued with a moral superiority over an imperial and repressive North. Unfortunately, this demarcation of a moral divide leaves Santos's argument wide open to criticism on the basis that non-West societies are not in some way "pure" or exempt from moral censure.

10. "In other words, what is being called for is a methodological shift away from the concern with 'perspective' (or scale) towards a focus on the processes, social, political and institutional practices, through which perspectives (or subjectivities) are constituted" (Buchanan 1996, 11).

CONCLUSION: UTOPIAN DREAMING

Given Santos's objective to extol new forms of legal knowledge, it is somewhat disappointing that his assumptions about the new social relations based on different scales and perspectives promoting the South over the North are aligned to those he denounces in the first half of the book regarding the "automatic utopianism" of science, and its alter ego, law. Writes Santos, "By shifting perspective and scale, utopia subverts the hegemonic combinations of all that exists, detotalizes meanings, deuniversalizes universes, disorients maps" (p. 481). What is not spelled out is that at the same time, a utopic vision must retotalize meanings, reuniversalize universes, and reorient maps because the idea of an imaginary nowhere place necessarily affirms the modernist envisioning of a "real" and "authentic" world and non-placed universal "truths."¹¹ Utopias, new or otherwise, seek to describe an idealized state or community and the political structure of this fictional state, and as such are the conceptual products of a modernist epistemology. Indeed, Thomas More's *Utopia*, written in 1516, marked the transition from Renaissance humanism to modern thinking, inspired by Europe's first exoticized contacts with the New World (Logan 1983, 254–70; Stobbart 1992).¹² *Utopia* established a long genre of literature that has one central preoccupation, "how one group oppresses another, and visions of how that might not be so," and one underlying intention, to imagine the emancipatory potential of non-exploitative relations that were lacking in the real world (Zadek 1993, 153).

I am not advocating that we should "shoot the utopist," as Santos beseeches us against in the title of his final chapter. His noble attempt to envisage a brave new world should be applauded, not condemned. This is especially so given his intentional play on the ambiguities within the concept of utopia itself, the tensions between an experienced present place and the non-exploitative relationships of the nowhere. So rather than advocating a *City of the Sun* or a *New Atlantis*, Santos's idealism does not ostensibly take him on fantastic travels to a new and fictional land. In his seeking to be "socially effective" and make a "political utopia possible," Santos, in fact, ultimately does not call the emergent paradigm a utopia at all. Rather, he

11. "The disqualification of ideologies automatically brings with it the disqualification of utopias, understood as images of an ideal social order that possesses an orienting force for decision making in the present and that prove a unified directionality toward the future. If utopian thought has been considered, from Renaissance humanism to modernism as an exercise of the freedom of the spirit, in postmodernity it seems more like an authoritarian ruse" (Hoppenhayn 1995, 97).

12. Francis Bacon's book the *New Atlantis* ([1622] 1938), even more so than Moore's *Utopia* ([1516] 1908), led to the foundation of the Royal Society in London and other similar institutions of learning abroad. It was also inspirational for the French *philosophes* in the eighteenth century, who "gathered up all the results attained by science up to that date and used them as a battering ram against established abuses in Church and State" (Smith 1938, xxxii).

argues for a heterotopia, a world that combines what is both imagined as absent and experienced as present, what Foucault calls a "space of emplacement," combining simultaneously the mythic and real (Foucault 1986, 22, 24). As Friedland and Bodin argue in their essay on space, time, and modernity (1994, 3), critical thinking emerges once we recognize that the objectified external nowhere can only be understood as an internal process embedded within the subjective now-here. In the same tenor, Santos writes about the emergent transition: "Rather than the invention of a place elsewhere or nowhere, I propose a radical displacement within the same place: ours" (p. 481).

For me, this line of reasoning is where the theoretical excitement really begins, and it is somewhat disappointing that the idea of heterotopia is tagged on at the end of the book and not developed further. In returning to the imagery of borders and borderlands with which this essay began, the U.S.-Mexican borderland, like the cemetery, the prison, the theater, and the garden, can be considered a heterotopia, "capable of juxtaposing in a single real place several spaces, several sites that are themselves incompatible" (Foucault 1986, 25; Darian-Smith 1995b). Driving back North from the southernmost border of the United States, passing 40 miles inland the barbed-wire fences, customs controls, and *Prohibido* signs warning motorists of possible aliens crossing the 10-lane highway, the dry nowhere landscape takes on a now-here immediacy. The "place" of the United States is challenged and displaced by the very instability of the whereabouts of the national periphery. Moving through the border zone, perspectives and scales shift. Disquieting is the incompatibility of an indeterminate borderland with ideas of citizenship, state nationalism, and jurisdictional territory—elements still significant from the perspective of many taxpaying Americans. Disquieting too is the sense of theoretical unfulfillment I feel on arriving at the end of Santos's thesis. In what is an otherwise courageous and rewarding book, he has still not managed to unsettle prevailing logics, to "unthink" the law, and to ask the unaskable, which is why in the current processes of transition do we strive to maintain law as we know it at all?

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