

Finding and Losing One's Self in the *Topoi*: Placing and Displacing the Postmodern Subject in Law

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The metaphors Santos (1995) affords us for orienting a postmodern subject no doubt emerge from a substantial body of empirical research and theoretical deliberation. Having only been provided with a very brief summary of his remarks upon which to base my own, I risk an insistence upon sociohistorical contextualization that may well be more appropriately attended to in Santos's aggregated agenda. So be it. My point, in any case, is simply to suggest that rather than privilege *any* formulation of the subject, postmodern or otherwise, in a progressive reimagining of the law, we put the subject *at risk* by continuously interrogating its privileges. I might begin by disputing Santos's claim that "we" are in a period of "paradigmatic transition" by virtue of having to acknowledge other knowledges and "rival epistemologies" by asking for *whom* the exhaustion of modernity's certainties is a "deep and irresolvable crisis." Similarly, one could argue that, far from being exhausted, modernity's categories continue to provide many of the conceptual resources for a truly profound expansion of democratic politics—one that is only now realizing its potential by *virtue* of the failure of Enlightenment universalisms and the proliferation of identities, epistemologies, and new social movements (Botwinick 1993; Laclau 1993, 1994; Lefort 1988; McClure 1992; Mouffe 1992a, 1993, 1995).¹ Such politics,

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¹ Ernesto Laclau (1993), in particular, makes the case that the end of globalizing ideologies has not meant a decline in politics, but rather

a proliferation of particularistic political identities, none of which tries to ground its legitimacy and its action in a mission predetermined by universal history—whether that be the mission of a universal class, a privileged race, a religious imperative, or an abstract principle. . . . [A]ny kind of universal grounding is viewed with suspicion. We now see universal claims in terms of the presences of its absences—without the motor of history, we become conscious of the contingent, precarious, limited character of the ways in which the human of human rights (for example) have been defined. And this leads to a new awareness of the complex mechanisms through which all identity—and all social reality—is constructed. If we live in an era of deconstruction, it is because the crisis of essentialist universalism as a self-asserted ground has led our

of course, are very likely to be enacted in struggles to expand the inclusiveness of common law and legislative categories—in courts, legislatures, and administrative tribunals, at local, national, and international levels. I will briefly return to the potential politics of postmodernity in my conclusion, for it is there, perhaps, that we might find more promising resources for a new conception of law.

It is tempting to leap immediately at the metaphors Santos offers, to examine the ideological baggage they carry and the social consequences of the historical trajectories in which they figure. First, however, I would want to welcome and congratulate this new subjectivity—whom I will simply call the “postmodern subject”—for coming into the world. He’s generous, playful, empathetic, energetic, and well-meaning. But I can’t quite make him out; he has no situation in the world, occupies no body, has no history, and is bound by no traditions or ancestral claims. I will assume, although Santos has not said so, that the postmodern subject still occupies a world in which power and resources are unequally distributed, in which histories of colonialism, imperialism, and slavery continue to mark the spaces from which people speak, that antagonism and conflict are still possibilities, and indeed, that these are matters a postmodern subject would seek to redress. I want, in short, to provide the postmodern subject with at least a minimal context and a few commitments. I would suggest that rather than privilege the postmodern subject, we consider, instead, how this subjectivity itself occupies a space of unacknowledged socioeconomic and cultural privilege.

As recent scholarship on the public sphere would suggest (Warner 1993; Robbins 1993; Peters 1995; Berlant 1993; Cheah 1995), the abstract and disembodied subject is neither abstract nor disembodied but occupies a particular social position—a space where one’s own particularities can be occluded in the proposition of a paradigmatic subjectivity. The capacity to occupy such an unmarked body is a privilege and one that is unequally available. For many, the body they occupy socially marks them in particular ways. For them the place of the purportedly universal subject is simply not available, for claiming the privileges of universality would involve rejecting the particularities of their bodies, bodily capacities, and the corporeal meanings they bear. To occupy a public or political space, to make one’s claims sim-

attention to the contingent *grounds* (in the plural) of its emergence and the complex processes of its construction. . . . Theoretical categories [of political theory and practice] which in the past were considered as bearers of univocal sense become deeply ambiguous . . . as the actualization of only *some* of the potentials afforded by their structure. . . . [O]nce the deconstruction of categories reveals the power games that govern their actual structuration, more complex moves may be made within them.

Deconstruction, then, is an integral part of the making of political life.

ply in the name of the human, one must deny these specificities. It is a utopian universality that might permit people to transcend the social realities of their bodies, but for many it is also a source of domination. The rhetorical strategy of speaking as if one speaks for the human, the citizen, the populace, is a privilege that alienates others from their own specific histories.

Individuals have specific rhetorics of disincorporation; they are not simply rendered bodiless. . . . [I]t is only possible to operate a discourse based on the claim to self-abstracting disinterestedness in a culture where such unmarked self-abstractation is a differential resource. The subject who could master this rhetoric in the bourgeois public sphere was implicitly—even explicitly—white, male, literate and propertied. These traits could go unmarked, even grammatically, while other features of bodies could only be acknowledged as the humiliating positivity of the particular. (Warner 1993:239)

Such “asymmetries of embodiment” are not merely residual forms of “discrimination” but fundamental to social categorization. Self-abstractation, the denial of a body’s positivity, is a

difference in the cultural/symbolic definitions of masculinity and femininity, black and white, mestizo and Indian. Self-abstractation from male bodies confirms masculinity. Self-abstractation from female bodies denies femininity. Differences in social realms seem to come coded as the difference between the unmarked and the marked, the universalizable and the particular. (Ibid., p. 240)

The Enlightenment bourgeois public sphere entrenched a “logic of abstraction that provided a privilege for unmarked identities” (ibid.) and dehistoricized political self-understanding. In this logic, difference may be enunciated only as an eradicable material otherness evidenced by the particularities of the body. Those who occupy such bodies cannot speak politically unless they cease to speak for themselves. When I ask the postmodern subject to identify the body he occupies, I am contesting a history and a trajectory in a global politics which privileges those who claim to speak from the space of, or in the name of, the universal, without first interrogating the specificities of their own position in the world and its cultural particularities. When I address this postmodern subject, I want to be sure that I am not speaking to “Man,” that unelected representative who speaks “universally” for “humankind.”

What social location does the postmodern subject occupy? He seems to rove restlessly, seeking ever new horizons, making new maps, looking for new routes. He revels in his occupation of “empty space,” his “invention” of sociability and tradition; he takes for granted that it is up to him to make himself “at home in the frontier.” His creativity makes “very selective and instrumental use of the traditions brought to the frontier.” Moreover, he is

always longing for ever more knowledge and ever more law; insatiable for more cultural sustenance to devour in his feeling that he is “sharing in the creation of a new world” (Santos, p. 574). He is less subjectivity (being subject to so little) than a being who bears a disposition—an incredible lightness of being.

The freedom with which the postmodern subject moves within “the frontier” is disturbing. A frontier is only a frontier from a particular expansionist perspective or direction. I would agree with Mary Louise Pratt when she suggests that the term “contact zone” might be a more appropriate way of invoking

the spatial and temporal co-presence of subjects previously separated by geographic and historical disjunctures whose trajectories intersect. By using the term “contact” I aim to foreground the interactive, improvisational dimensions of . . . encounters [that] emphasize *how subjects are constituted in and by their relations to each other*. It treats the relations among colonizers and colonized, or travelers and “travelees” not in terms of separateness or apartheid, but in terms of co-presence, interaction, interlocking understandings and practices, often within radically asymmetrical relations of power. (Pratt 1992:9; my emphasis)

It is precisely this dimension of being constituted *by* his interaction with others that the postmodern subject, so much at home on the frontier, seems to lack. He is always willfully involved in the act of his own ongoing self-creation.

Moreover, the postmodern subject deploys the myth of occupying “empty space”—in so doing, he entertains a masculinist and colonial fantasy (e.g., McClintock 1995; Pratt 1992)—that betrays a will to power. We are always in spaces occupied by others (human and nonhuman) and the historical specificities of their ways of being in the world. This is especially true on so-called frontiers. The imagination of space as “empty” was borne of a hubris—as one by one the planet’s life forms were alienated from the lifeworlds in which they figured, isolated, and (re)named as specimens collected by the lettered, male European. Ripped away from their place in ecological and symbolic systems, they become available for “frontier knowledge” as if they figured in no significant way in local knowledges with which the (modern) subject might have anything other than a purely instrumental relationship. The languages, ritual systems, ecosystems, and species destroyed by those who “discovered” them testify to the consequences of this attitude. In the naturalist narratives of European exploration, the landscape is written as uninhabited, unhistoricized. The activity of describing geography and identifying flora and fauna as asocial enables the European Adam to walk around and name things in his own image, to meet his own needs, and project his own desires (Pratt 1992:52). His legitimacy and authority to do so are thereby represented as uncontested. As Pratt (p. 61) puts it:

The European improving eye produces subsistence habitats as “empty” landscapes, meaningful only in terms of a capitalist future. . . . From the point of view of their inhabitants, of course, these same spaces are lived as intensely humanized, saturated with local history and meaning, where plants, creatures, and geographical formations have names, uses, symbolic functions, histories, places in indigenous knowledge formations.

This is no less true of cultural landscapes. One person’s frontier is another’s home, one person’s “promiscuity” may be another’s violation. It is easy enough to make oneself at home by ignoring the sensibilities of others and their cultural understandings of the place one occupies. The postmodern subject seems insufficiently distanced from the propensities of his modern forebears.

The cultural understandings of others, for example, are treated as mere resources for the postmodern subject’s syncretic frontier knowledge. How, we might ask, does the postmodern subject come to have access to the lifeworlds of others? Under what conditions do they become so available to him? For what kind of subject is tradition merely a matter of choice or simply knowledge to be approached instrumentally and selectively? For whom does the past sit so lightly that new traditions can simply be “imagined to become what you need”? When do traditions become merely objects of consumption for the convenient appropriation of others? Who is the postmodern subject and who are postmodern objects here? Whose traditions become objects for the relentless self-fashionings of subjects who reify their own subject-positions as paradigmatic of an era? For whom are traditions open to invention, rather than struggled over for survival, or preserved for fear of genocide? How does the postmodern subject claim an “instant heritage”? When does such creative appropriation become exploitative expropriation? How would this subject respond to the claims of those who say their traditions are not available merely for the taking? The romance of taking possession without subjugation may be disingenuous.

The empty space of the frontier, moreover, was historically mapped as female and described in terms of a sexualized female body that offered itself up for ravishment in the baroque period. The evocation of the baroque to describe a postmodern subjectivity is, well, a bit baroque (“extravagant or farfetched arguments in scholastic syllogisms . . . odd, bizarre, grotesque, exaggerated and overdecorated”; *Webster’s Dictionary*). Santos asserts his right to take the term “baroque” out of any historical context of reference—as cultural metaphor—to describe the sensibility of the postmodern subject. The baroque, he suggests, is not a historical period, but he does make reference both to European colonization in South America, to the development of *mestizaje* in the 17th century onward, and to a post-Renaissance aesthetic. Assuming that I am permitted the same latitude, I suggest that

there are other resonances of the baroque a postmodern subject might wish to take into account. The baroque churches of the 17th and 18th centuries, brought to the new world by missionary orders, dominated their environments. In the context of the Counter Reformation, church architecture became a means of propagating faith and the conversion of Indian others an imperative. From an indigenous point of view, the baroque is hardly the space of subversive fun, and the glee of a “blasphemous imagination” is not necessarily playful. Distances from the center, rather than providing spaces of freedom, could be employed as spaces of exploitation. Baroque sensuality might also become a site for licentious excess. The temporary suspension of disciplines imposed by central authorities might spell new forms of servitude and abuse.

The linkage of the baroque with the carnivalesque, with its characteristic inversions, parodies, and discrownings—its militantly anti-authoritarian attitude and its insistence on the material and the corporeal—is compelling. It is still necessary to ask, however, whether the celebration of the carnival is not perhaps “a surrender to romantic *Lebensphilosophie* in one of its cruder guises” (Gossman 1986:345). Carnival is *not* a transhistorical phenomenon and, historically at least, often functioned as a safety valve that reinforced authority by its temporal suspension. One of the essential principles of the grotesque realism that animates carnival forms, moreover, is debasement. Those visited with carnival-like degradations were likely to be husbands who permitted strong wives, women who scolded their husbands, and those who transgressed sexual norms. The ritual degradation of Jews, forced to run races through the city, was part of the festivities. The laughter of carnival accompanied acts of violence and massacre: “Carnival may not be the source of such violence, but its forms certainly accompanied it; laughter may not build stakes, but those sent to the stake sometimes went with laughter ringing in their ears” (Dentith 1995:75). Carnival could be used to express various antagonisms, and authorities made efficient use of its festivities. The carnivalesque may be an attractive *topos* with which to understand the transition to modernity, but do we need such a nostalgic pathos with which to greet the future?

The central aesthetic conception of the carnivalesque, and one that is also a key signifier in the baroque, is the grotesque body—a body socially opposed to the classical body. The grotesque body is

multiple, bulging, over- or under-sized, protuberant and incomplete. The openings and orifices of this carnival body are emphasized, not its closure and finish. It is an image of impure corporeal bulk with its orifices (mouth, flared nostrils, anus) yawning wide and its lower regions (belly, legs, feet, buttocks,

genitals) given priority over its upper regions (head, “spirit,” reason). (Stallybrass & White 1986:9)

Not surprisingly, the grotesque body is imagined as female; it codes a gendered hierarchy and, later, a racial one.

The grotesque body also animated the historical development of the idea of the South—a peculiar metaphor around which to orient a postmodern subject. From whose perspective is the south, South? Santos admits that the South is a product of empire, but I would go further and suggest that the South is a product of a baroque planetary consciousness that corresponds with new forms of bourgeois subjectivity, the inauguration of a new phase of territorial expansion and expropriation, and is a basic element of modern Eurocentrism. The North of course, is northern Europe, which claimed the classical legacy as its own, and looked down on southern Europe with the same disdain with which it regarded Africa and South America. The European peasantry were only somewhat less savage than natives of the Amazonian rainforest. Northern Europe adopted the attributes of the classical body, while ascribing the characteristics of the grotesque body to the southern hemisphere, which became a feminized other to be penetrated and made fruitful. The southern was orientalized and sexualized in an erotics of ravishment. As early as the Renaissance:

Africa and the Americas had become what can be called a porno-tropics for the European imagination—a fantastic magic lantern of the mind onto which Europe projected its forbidden sexual desires and fears. The European porno-tropics had a long tradition. As early as the second century A.D., Ptolemy wrote confidently of Africa that “the constellation of Scorpion, which pertains to the pudenda, dominates that continent. (McClintock 1995:22)

But as the South was feminized, she was also enslaved in a male journey of penetration, exposure, and conversion; her deep secrets laid out as elements for a male science of the surface—the quest for frontier knowledge has historically enacted a metaphysics of gender violence, not an expanded recognition or sensitivity to cultural difference (*ibid.*, p. 23). In the myth of the virgin land, as in the myth of empty lands, a gendered and a racialized dispossession of agency is staged. The space of exploration was a liminal one—the marginal place between the known and the unknown opened itself to license. In liminal spaces anti-social behavior is anticipated; the South figured for many in the North as a space of male sexual mastery (Roberts 1994). It was embodied with grotesque and monstrous generative capacities. At least since the Romantics, the disordered passions of the South have been compared to the morality and order of the North. The South is thus orientalized and the North occidental-

ized in a configuration that corresponds to the grotesque and the classical body (*ibid.*, pp. 27–35).

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 have 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 reify that relationship and do we further entrench and ratify these positionings by adopting this as a guiding metaphor for an emergent subjectivity?

I fear that it is not enough to recognize the South, go south, and learn from the South, if we are already oriented by the frontier and a baroque sensibility. It may already be too late to disrupt the privilege of the North or displace its assumption of perspective as universal. The moment of suffering, the moment of rebellion, and the moment of continuity of oppressor and victim may already be too coded by abjection, degeneracy, and sentimentality. Although Santos asserts that the three *topoi* must be treated as a constellation, I wonder if their conjuncture in an emergent and well-meaning subjectivity is sufficient to disassociate them from the connotations so pervasively configured by their historical genealogies.

Gender, race, and class are articulated categories in European modernity—not separate categories of being but intimately related and mutually imbricated in the subjugation of women, the Irish, the Jews, the working class, and the colonized. None of the metaphors selected to orient a postmodern subject, I fear, will take us far from this modern episteme; they are already a constituent part of a Romantic counterdiscourse to Enlightenment Reason that looked to the past and to others to locate resources for a self-creation that would transcend industrial social realities and grim disenchanting rationalities. Relations of power are not something that a postmodern subject need only attend to, learn from, or acknowledge. They are constitutive of who he is—his ability to adopt a disembodied positioning, to occupy the frontier, to alienate himself from tradition, to disengage himself from any compelling heritage or ancestry, to play rather than suffer within baroque spaces, to orient himself Southward. If we attempt to picture this postmodern subject as female and indigenous (African or South American), the same tropes assume new and ominous valences. She already occupies a position that has been colonized by these metaphors—her body has already been marked by them and the historical trajectories in which they figured to orient relations of domination and subordination.

From the perspectives of others we learn to appreciate the partiality of our tropes and the privileges that enable us to deploy them without knowledge of, or regard for, their historical political significance. Rather than suggest another, more pristine set of metaphors, however, I would suggest a displacement of the paradigmatic subject. 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? Subjects, after all, are not made from whole cloth but are forged in social practices. Identities are emergent from political struggles and the transformations effected by new identifications. I have too little space to delineate the potential contours of a utopian sphere of postmodern politics, but I enigmatically would suggest that a politics of nonidentity, a polity of noncommunity (Carroll 1993), and an ethics of openness to contingency provide points of departure. Such a polity would not posit a privileged subjectivity but enable subjectivities to emerge continuously from encounters with difference, opening up sites for identity's alteration and community's contestation in restless quests for recognition and connection. Such quests would never be finally realized, however, because alterity is always and ever emergent. This politics would require a legality and juridical sensibility that promotes opportunities and resources that might put the subject at *risk*, thus enabling new identifications as well as recognizing new identities. The regulatory regimes of such a polity would protect conditions that create possibilities for the subject's transformation, thereby institutionally acknowledging that only dialogic encounters with alterity will inspire genuinely emancipatory energies. Utopian? Yes.

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