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## REVIEW ESSAYS

# Epistemologies of the South and Decolonisation of Human Rights

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**ABSTRACT:** Being characterised by a variety of normative systems and systems of knowledge, contemporary societies are said to be pluralistic. Yet, some expressions of epistemic and legal pluralism are still ignored and rejected, due to the cognitive hegemony and legal centralism of Western modernity. The issue has been explored from different perspectives in the field of human and social sciences, having been investigated within the framework of Latin American neo-Marxist dependency theory, English post-colonial studies, world-systems theory, the theories of the Modernity/Coloniality group, and the Epistemologies of the South. Such approaches seem to be particularly effective when carrying out a comprehensive analysis of human rights, as global social justice cannot be achieved without global cognitive justice (de Sousa Santos 2007). Other languages can be used to talk about human dignity, with epistemic and legal pluralism making the various grammar rules of fundamental rights intelligible. Such an approach has been adopted by decolonial theory, which is experimenting with a new legal common sense. In this paper, reference will be made to the Epistemologies of the South, theorised by Portuguese sociologist of law Boaventura de Sousa Santos.

**KEYWORDS:** Human Rights; Legal Pluralism; Subaltern Cosmopolitanism

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## 1. Epistemic and Legal Pluralism as a Premise of the Decolonisation of Human Rights

Being characterised by a variety of normative systems and systems of knowledge, contemporary societies are said to be pluralistic. Yet, some expressions of epistemic and legal pluralism are still ignored and rejected, due to the cognitive hegemony and legal centralism of Western modernity.

Over time, the rationalisation and modernisation of science and the law have legitimised a series of “epistemicides” and “juricides” – the “murder” of concepts and practices that, being associated with ancestral

knowledge and traditional legal systems, could undermine the canon of modernity (Grosfoguel 2017). Far from just relating to the construction of knowledge and the law, such an issue first and foremost concerns power. Those who decide what is to be considered theoretically significant and legally valid select recipes, identify policies, and build ideologies that originate in metropolitan societies and impact peripheral areas.

The issue has been explored from different perspectives in the field of human and social sciences, having been investigated within the framework of Latin American neo-Marxist dependency theory, English post-colonial studies, world-systems theory, the theories of the Modernity/Coloniality group, and the Epistemologies of the South. Such approaches seem to be particularly effective when carrying out a comprehensive analysis of human rights, as global social justice cannot be achieved without global cognitive justice (de Sousa Santos 2007).

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## 2. Decolonial Theory and Human Rights

Part of de Sousa Santos' reflection focuses on emancipation and cosmopolitan legality, which are at the basis of both legal pluralism and a new epistemology of human rights. In subaltern areas of the world, unofficial and allegedly illegal practices are being adopted in collective actions against capitalism, colonialism, and patriarchy. Although knowledge and politics often fail to interpret them as being interconnected, such socioeconomic phenomena are usually interdependent, as the success of capitalism also benefits colonialism and patriarchal systems. "In order to be consistent and efficacious, decolonizing thought and action must be likewise anticapitalist and antipatriarchal. According to the epistemologies of the South, decolonizing thought and action won't be an efficacious cultural intervention if they are not an intervention in political economy as well" (de Sousa Santos 2018, 117).

Analysing capitalism as an isolated economic system does no longer seem to be appropriate, as its relationship with Western colonial and heterarchical logics should rather be explored. The universal nature of a capitalist and patriarchal, Western- and Christian-centric, modern and colonial world-system should be deconstructed and delegitimised (Grosfoguel 2017), since it has used violence and the concept of necessity to ignore and reject entire epistemes.

Anti-systemic social movements are currently involved in a fight for a redistribution of resources and common goods, the improvement of working conditions, higher levels of job security, environmental justice, the rights of non-citizens, the eradication of cultural racism and social, gender, ethnic and religious inequalities<sup>1</sup>. Such struggles show a new legal constellation that differs from that of modern law, a new kind of developing legality that is highlighting the tension between regulation and social emancipation. In the 21st century, social emancipation has been swallowed up by regulation, which has absorbed all those claims for civil justice that were no expression of national and international law. The collision between national law and the *jus gentium*, between the social contract and the effective protection of fundamental rights and freedoms, emphasises the need for both a broader idea of legality and improved strategies of resistance aimed at ensuring

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<sup>1</sup> Such struggles are often caused by the use of a language and symbolic universe that make reference to what has been cancelled or taken away by colonial and post-colonial violence. Examples of said battles for justice and equality include the action of Zapatistas in Chiapas, the protests organised by the Femen activist group in Kyiv, the Quijos-Quichua's fight against multinational oil corporations in Ecuador, the fight of the HIJOS organisations in Argentina and Guatemala, and that of the Mothers and Grandmothers of the Plaza de Mayo, who are trying to reclaim memory and obtain justice for 30,000 *desaparecidos*, and the action of the Occupy Wall Street movement, which is fighting against excesses of financial capitalism. Despite having different objectives and adopting different strategies, all of these anti-systemic movements recognise each other's action. However, such action needs to go through a further process of cross-cultural translation in order for its global legitimacy and legality to be validated.

it (de Sousa Santos 2009). This means being able to rely on the legal system as a tool for the emancipation and protection of vulnerable subjects, with it acquiring a more protective, less repressive dimension. The legal landscape that is developing is too wide not to imagine a concept of legality that could even decolonise human rights, which are still anchored to an abstract universalism that is preventing their effective recognition and protection.

There seems to be a theoretical and political need for a new architecture of fundamental rights that may go back to the Universal Declaration of Human Rights of 1948. A Foucauldian genealogical approach should be adopted to recover both the inclusions and exclusions, by taking into account all the cracks and openings through which the dominant discourse on human rights developed throughout modernity. The concept of human rights is based on a set of Western and liberal presuppositions (Bobbio 1990; Cassese 2005). Examples of that include the idea of a universal human nature that is different from, and superior to, the rest of reality and may be explored through rational processes; the concept of the absolute and irreducible dignity of the human being, which should be defended against society and the state; and the notion of the autonomy of the individual, requiring that society be organised in a non-hierarchical way, as a sum of free individuals (Panikkar 1984).

A critical analysis of the history of human rights shows how they developed unevenly. Although they have been acknowledged by metropolitan societies, in colonial and post-colonial systems people are still the victims of racism, xenophobia, and patriarchy. According to de Sousa Santos, the hegemony currently enjoyed by the dominant discourse on human rights hides some specific illusions – teleology, triumphalism, decontextualization, monolithism, and anti-statism (de Sousa Santos 2015).

The teleological illusion prevents human beings from understanding how the present and the past are contingent, which implies that even human rights are a contingent historical result that can be explained *a posteriori*, but could not have been deterministically foreseen. Achieving justice is often a violent process involving actions of oppression or domination that are reinterpreted as actions of emancipation and liberation only at a later time. The second illusion is triumphalism. The idea that the triumph of human rights is to be considered an unconditional common good implies that all the other languages of dignity and social emancipation are regarded as both ethically and politically inferior, and hence useless. However, for a number of individuals and communities, the triumph of human rights has failed to lead to development, progress, and wealth, being rather a defeat that has worsened their condition. Connected with triumphalism, decontextualization is the third illusion, since what may be considered a great achievement in terms of dignity, protection, and safety at a given time in a given context, has meant violence, abandonment, and depredations elsewhere. An example of the illusory universality and success of human rights is provided by the “humanitarian war” approach adopted by Western politics over the past few decades. The fourth illusion is monolithism, which consists in denying or minimising the tensions, contradictions, and paradoxes of the Western theory of human rights. Since the adoption of the French Declaration of the Rights of Man and of the Citizen in 1789, ambiguity has arisen from the distinction between the concepts of “man” and “citizen”. Such an unresolved issue still characterises the acknowledgement of fundamental rights in contemporary societies, especially when migrants are involved, with them being considered “subhumans”, as de Sousa Santos has pointed out. The fifth illusion is anti-statism. In the Western world, the state has played a hegemonic role in the acknowledgement and protection of social and economic rights since their introduction. However, following the changes brought about by neoliberalism, the central role previously held by the state has been awarded to the market. It is the economic power that has the monopoly on the public discourse on human rights, while the state is just a tool to safeguard the interests of global capitalism (de Sousa Santos 2014).

The illusions characterising the liberal and hegemonic origin of Western modernity may be considered together with some further tensions that highlight the current intense debate about human rights. Such tensions include the conflict between rights and development within the framework of environmental degradation; the contrast between collective aspirations and the individualism characterising the original canon of human rights; and the use of a language of rights that makes it difficult to recognise “non-human” subjects. In this sense, the struggle for the recognition of fundamental rights requires the development of innovative political and legal concepts that may lead to the introduction of new rights, and hence new legal subjects. The right to land and

water, the rights of nature, the right to food sovereignty, and the rights of future generations should be acknowledged.

### 3. Politics of Emancipation and Cross-Cultural Translation

As Western policies and regulatory systems have failed to protect human rights, it seems plausible to imagine a politics of emancipation that might transform human rights from a globalised local phenomenon into insurgent cosmopolitanism. In order for this to happen, awareness should be raised of the fact that every culture is relative and incomplete. As each culture gives a different meaning to the concept of human dignity, it is only through cross-cultural dialogue that a “hybrid” definition of human rights may be reached. By excluding any form of false universalism, such a “hybrid” definition would be the result of a network of regulatory references that can give power to a constellation of local and mutually intelligible meanings. Following de Sousa Santos’ decolonial theory, in order for cross-cultural dialogue to take place, an exchange is necessary not only between different forms of knowledge, but also between various cultural models and universes of meaning (de Sousa Santos 2009). The latter make use of a set of *topoi*, the overarching rhetorical commonplaces of a given culture that never become the subject of conflicting dialectic.

“To understand a given culture from another culture’s *topoi* may thus prove to be very difficult, if not at all impossible. I shall therefore propose a *diatopical hermeneutics*. [...] Diatopical hermeneutics is based on the idea that the *topoi* of an individual culture, no matter how strong they may be, are as incomplete as the culture itself. [...] The objective of diatopical hermeneutics is, therefore, not to achieve completeness – that being an unachievable goal – but, on the contrary, to raise the consciousness of reciprocal incompleteness to its possible maximum by engaging in the dialogue, as it were, with one foot in one culture and the other in another. Herein lies its dia-topical character” (de Sousa Santos 2009, 97-121).

De Sousa Santos’ diatopical hermeneutics translates into the idea that the claims for human rights emancipation should be based on an understanding of *the other*. For instance, diatopical hermeneutics may connect the *topos* of human rights in Western culture with the *topos* of *dharma* in Hindu culture, or the *topos* of *umma* in Islamic culture (cf. *ibid.*). An analysis of Western human rights from the perspective of Hindu culture may show their incompleteness, as they fail to establish a relationship between a part (the individual) and the whole (reality), due to their not focusing on the individual having to find their place in society and the cosmos. Explored from the point of view of both *dharma* and *umma*, the Western idea of human rights is characterised by a simplistic and mechanistic symmetry between rights and duties. Rights are granted only to those on whom obligations may be imposed. This also explains why, following the Western theory of human rights, no rights are recognised to nature: no obligations can be imposed on it. For the same reason, no rights can be granted to future generations – they have no rights because they have no duties.

On the other hand, when analysed from a Western perspective, also *dharma* seems to be incomplete, due to its non-dialectical bias in favour of social harmony, which leads to denying injustice and underestimating the value of conflict. Furthermore, *dharma* fails to take into account the principles of democratic order, freedom and autonomy, thus not realising that when individuals have no rights, they are too fragile to defend themselves from oppression. In this sense, *dharma* ignores the irreducible individual dimension of human suffering: societies do not suffer, individuals do. Similarly, diatopical hermeneutics can be used to consider the *topos* of Western human rights and the *topos* of *umma* in Islamic culture. The latter sees individual human rights as incomplete, as they often fail to describe the community as a space of solidarity and as a horizontal political obligation. By contrast, this explains why it is difficult for the liberal culture of human rights to fully welcome the collective rights of social groups and peoples, be they ethnic minorities, women, or indigenous populations. “Conversely, from the *topos* of the individual human rights, *umma* overemphasizes duties to the detriment of rights and, for that reason, is bound to condone otherwise abhorrent inequalities, such as the inequality between men and women and between Muslims and non-Muslims” (*ibid.*, 111).

#### 4. Decolonial Experiences and the Demise of the Nature-Society Dualism

Through decolonial connections and translations, some Latin American subaltern social movements have succeeded in improving some legal systems on the basis of justice claims associated with the demise of the nature-society dualism. This has pragmatically happened in Ecuador and Bolivia when the Constitutions of such countries have acknowledged indigenous cosmovisions and philosophies, thus providing an example of cross-cultural dialogue between ancient oral knowledge and Eurocentric written knowledge. Guaranteeing human rights to a river or recognising the rights of nature means giving value to peoples whose fights and knowledge may have a powerful impact on the Western modern values that are at the basis of conventional human rights (Zaffaroni 2012). It may be objected that, despite having an important symbolic nature, the provisions of such new Constitutions will not lead to any practical legal effects. However, this does not seem to be the case. The effectiveness of the provisions of the Andean Constitution is shown by the fact that anyone can act to protect nature, without having to demonstrate that a human being has been the direct victim of a violation. When nature is recognised as a subject of rights, as the holder of legally protected interests, third parties are legally allowed to defend it. Despite being no fisherman, one would be allowed to prevent the construction of a dam if that may protect a fish species from extinction. Anyone might act to protect a lake or a forest whose survival is threatened by an excessive use of pesticides. This will result in new jurisprudence that will meet different criteria from those that have been used thus far and whose practical consequences are still unpredictable. The recognition of nature as a legal subject will start a new chapter in the history of constitutional law, both in South America and the rest of the world (Zaffaroni 2011).

The rationality of modern legal systems has enabled (American, African, and Australian) indigenous people to ask for the recognition of the rights associated with their tradition, which will lead to a broader concept of legality along the path to cosmopolitanism.

Within the framework of Western positive law, land is described as immovable property that can be either privately or publicly owned. On the other hand, non-Western societies not only consider the land to be sacred, but also to be endowed with human and social characteristics. Generally speaking, goods are included into a specific legal category only in modern societies, while elsewhere they are associated with the legal status of the groups that produce, exchange, or use them, thus being regulated by different rules. The presence of relationships that connect the land with both the invisible world and the visible world of human beings and social groups prevents the development of the Western concept of real right, which arises from the distinction between *jus in re* and *jus in personam*: a right cannot be directly recognised to a thing, and the land cannot even be reduced to a thing. In the Western tradition, labelling the land as immovable property means favouring the individual over the group, while in traditional societies even just describing the land as immovable is incongruous (Rouland 1992). In other cosmovisions, a strong relationship is established between Pachamama (the Earth Mother) and her children, as participating in the life of the planet without owning it is a fundamental principle in the worldview of indigenous peoples. Depriving such populations of their land would mean condemning them to death. Far from interpreting private property as a production factor, they have always considered it in relation to values of solidarity and reciprocity in horizontal social structures (Schiva 2018).

A thorough analysis of the nature-society dualism also shows that such separation has legitimised both a kind of supremacy, which has caused environmental destruction in the name of prosperity, and an ancient form of appropriation of everything that can be described as “nature”. “In other words, nature, broadly considered, came to encompass beings that, by reason of their being so close to the natural world, could not be viewed as fully human” (de Sousa Santos 2018). Reference is here made to “savages”, women, and all those who have been excluded from the social contract in Western social contract theories. From a philosophical and conceptual perspective, such theories symbolise the beginning of modernity and the modern State. Despite recognising legal subjectivity to an abstract and a-temporal human being, they mark the development of a subject that has some specific characteristics, being a rational, Protestant, landowning, adult white man (Melossi 2002). Human rights can only be recognised to, and enjoyed by, a human being who has said characteristics. By deeming women, slaves, “savages”, and indigenous people incapable of thinking rationally and by depriving them of any ownership rights, such an approach resulted in some subjects being considered unable to enter into the

social contract, from which they were hence excluded since the early days of the modern state. Consequently, an anthropological type developed that corresponded to the Western, Protestant, landowning male coloniser. Therefore, modernity and the State have always been characterised by patriarchal, colonial, and capitalist ideas.

Not only does this reveal the neo-colonial hegemony of fundamental rights concealed in conventional language, but it also encourages to maintain a decolonial trajectory and acquire the new knowledge that is developing in the context of contemporary struggles. These struggles and knowledge represent claims and concepts that, mixed together, tested, borrowed from different places and cultures, may have beneficial theoretical and political implications for the anti-hegemonic movements that are fighting against capitalist, colonial, and patriarchal domination at a global level. Within this framework, ancestral, popular oral knowledge should be considered. It has never been recognised by the academic and scientific community, which has systematically resulted in cognitive exclusion, later translated into ontological and social exclusion. Ancestral notions have been “formulated in noncolonial languages and, in spite of that or just because of that, they have gained a specific political weight. Such concepts include *ubuntu*, *sumak kawsay*, *pachamama*, *chachawarmi*, *swaraj*, and *ahimsa*. [...] In some cases they invoke practices and ideas that are foreign to Western-centric politics and knowledge and are accordingly expressed in the languages in which they originated; in other cases, they constitute hybrid, non-Eurocentric renditions of Eurocentric concepts, such as law, state, or democracy, and are accordingly expressed in a colonial language usually qualified by an adjective (e.g., communitarian democracy, plurinational state)” (de Sousa Santos 2018, 8-9).

Some of the concepts that have been developed in southern Italy might also be included in such traditional knowledge. Examples of that may be Franco Cassano’s idea of southern slowness (Cassano 1996), and sociologist Vito Teti’s notion of *restanza* (Teti 2022), a term he coined to describe the concept of remaining in one’s own home town in spite of everything. One may wonder whether the concepts of *buen vivir* and *ubuntu* could be applied to the context of southern Italy, or whether the idea of southern slowness could describe South American communities, and even whether the notion of coloniality might be used to analyse the past of Mediterranean countries. This would mean adopting an approach to rights that mixes and globalises the concepts of *buen vivir*, autonomy, slowness, ecologies of knowledge, multiple identity, boundary, subalternity, coloniality, and epistemological simultaneity. By engaging in a cross-cultural dialogue, a new architecture of human rights may be built in order to overcome Western modernity, capitalism, colonialism, and global patriarchy.

## 5. Nonextractivist Methodologies and Postabyssal Thinking for a Subaltern Cosmopolitanism

Another central issue in the development of a cross-cultural, decolonial approach to human rights is that of methodology, which, at least in human and social sciences, usually focuses on the idea of knowledge *about* (something), rather than knowledge (shared) *with* (somebody). “[M]odern social sciences rely on methodologies that extract information from research objects in very much the same way as mining industries extract minerals and oil from nature” (de Sousa Santos 2018, 14). Conversely, the epistemologies of the South suggest decolonising methodologies that “consist of every process capable of producing trustworthy, reliable knowledge in a nonextractivist way, that is, through cooperation among knowing subjects rather than through subject/object unilateral cognitive interactions” (ibid., 130).

Ramon Grosfoguel, a sociologist and member of the Latin American Modernity/Coloniality group,<sup>2</sup> has broadened the analysis by making use of the concept of epistemic extractivism, a form of both intellectual and

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<sup>2</sup> Since the late 1990s, the members of the Latin American Modernity/Coloniality group, and especially Santiago Castro-Gomez, Walter Dignolo, and Anibal Quijano, have analysed colonial knowledge in the context of neoliberal globalisation, using the concepts of decoloniality and coloniality to describe a less direct but equally pervasive form of domination that has continued to develop even after the collapse of colonialism. “The end of historical colonialism (territorial occupation by a foreign country) did not involve the historical end of colonialism. It continues today under new forms – racism,

material exploitation against which a number of populations are still struggling. In line with the theoretical framework of the epistemologies of the South, the Puerto Rican scholar insists on the need to make long-rejected popular knowledge visible. However, this should not become a sort of fundamentalist redemption. Epistemological alterity should not be interpreted as absolute extraterritoriality, but rather seen as being between the traditional and the modern. These other forms of knowledge represent an implicit criticism of modernity starting from geopolitical experiences and memories of coloniality (Castro Gomez and Grosfoguel 2005, 21).

Following the collapse of colonialism as a political system, a global coloniality has emerged. Despite transforming the traditional forms of domination characterising modernity, it has left the structure of global centre-periphery relationships unchanged (Quijano 2000). According to Grosfoguel and Castro Gomez, the international division of labour between the centre and the periphery, together with the ethnic-racial hierarchical labelling of populations that developed over centuries of European colonial expansion, did not significantly change with the collapse of colonialism and the formation of nation-states in peripheral areas of the world. Contemporary global capitalism has given new meaning to the exclusion caused by the epistemic, spiritual, ethnic/racial and gender hierarchies that developed in the modern period (Castro Gomez and Grosfoguel 2005).

Even though it may be described as the dark side of modernity, coloniality may contribute to an understanding of the hegemonic processes within the world-system. Four dimensions may be identified within the category of coloniality: coloniality of power, coloniality of knowledge, coloniality of being, and coloniality of nature. The coloniality of power is the “intersectionality of multiple and heterogeneous global hierarchies (“heterarchies”) of sexual, political, epistemic, economic, spiritual, linguistic and racial forms of domination” (Grosfoguel 2007). The coloniality of knowledge adopts Eurocentrism as the only approach to knowledge. The coloniality of being becomes concrete when some subjects, deemed subaltern, are controlled and persecuted. The coloniality of nature rejects the idea at the basis of any indigenous cosmovision by denying the existence of any kind of relationship between human beings, plants, and animals.

From this perspective, an analysis of the processes of the world-system makes subaltern knowledge visible through a decolonisation of social sciences that reveals new places and institutional actors. De Sousa Santos talks about a sociology of *emergencies* that may make long-hidden knowledge, subjectivities, and methodologies *emerge*, thus leading to a broadening of well-established cognitive categories. This might result in the understanding of new forms of knowledge that would otherwise be ignored, due to their being developed in places and by subjects that are deemed invisible by social sciences, global politics, and economy. The modern Western “abyssal thought” is defined by what de Sousa Santos has described as the “abyssal line”, which “separates the world of the humans, the world of ‘us,’ from the world of the subhumans, the world of ‘them.’ This latter world is the world of racialized and sexualized bodies and social groups” (de Sousa Santos 2020, 572). Such a deep line separates metropolitan from peripheral societies, with the latter being no longer territorial but rather social, epistemic colonies. “Those on the other side of the line are considered not truly or fully human and therefore must not be treated as if they were human” (de Sousa Santos 2018, 297).

Metropolitan societies decide what has to be considered legal or illegal, according to national or international law, while the other side of the abyssal line is ruled by non-law, ancestral practices, idolatry, magic, and illegality. The two worlds are separated by a line within which capitalism, colonialism, and patriarchy have marked the division between two types of social exclusion. On one side of the line is the metropolitan world, which is characterised by the recognition of some rights and is dominated by the tension between regulation and emancipation. On the other side of the line is the neo-colonial world, characterised by abyssal exclusion and dominated by appropriation and violence, rather than regulation and emancipation – an unreal world of silence and absence. Such a form of confinement does not only work through the presence of geopolitical boundaries, but also through interstitial spaces that deviously separate close realities, sometimes even within

xenophobia, slave labor, internment and deportation of immigrants and refugees, land grabbing, and the massive expulsion of peasant, indigenous, and African communities in the name of development and megaprojects” (de Sousa Santos 2020, 572).

different neighbourhoods of the same city (de Sousa Santos and Sena Martins 2019). This double legal and epistemological cartography translates into a form of radical denial, absence, and subhumanity when crossing the abyssal line.

In order for the language and practices of human rights to become counter-hegemonic, the abyssal exclusion that metropolitan societies have developed and imposed on colonial societies should be overcome. This might happen only through a process of cross-cultural translation that may establish a relationship between, and ensure equal dignity to, the struggles, knowledge, and justice claims of those living on the abyssal side of the line. By becoming aware of their different struggles, those who are trying to eliminate or reduce unequal relations of power will be able to achieve a sort of subaltern cosmopolitanism. In a historical moment in which social, cultural, environmental and political challenges need a new grammar of human rights, the energy of anti-colonial, anti-patriarchal, anti-capitalist fights should emerge. “As long as the abyssal line is not confronted, no true liberation is possible. We should learn about democracy from the perspective of slaves and slave-like workers; we should learn about citizenship from the perspective of noncitizens, refugees, undocumented migrant workers and colonial subjects; we should study the concept of civil society from the perspective of those abyssally excluded, living under conditions of social fascism; we should evaluate human rights from the perspective of large populations considered subhuman or of nature” (de Sousa Santos 2018, 297).

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