

## BOOK REVIEW

**Sujith Xavier, Beverley Jacobs, Valarie Waboose, Jeffery G. Hewitt, Amar Bhatia, *Decolonizing Law: Indigenous, Third World and Settler Perspectives* (1st edition, Routledge, 2021) 320 pp. ISBN 9780367751883 (Paperback)**

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Book reviews typically carry a presumption of neutrality. The reader is advised to approach the book and their review from an impartial place.<sup>1</sup> This advice, though, understates the bodily and personal experiences the act of reading instills in the readers.<sup>2</sup> Admittedly it is rare for books to break the 'fourth wall' in this way. *Decolonizing Law: Indigenous, Third World, and Settler Perspectives* is one of the rare occasions (hereinafter *Decolonizing Law*). A rich repository of reflections about indigenous and Third World epistemologies and "lifeworlds", the book fills its reader with an overwhelming sense of community and belonging.

*Decolonizing Law* moves you, at least it had that effect on me. It is humbling to receive stories from Elders – whether it is Valerie Waboose's recounting of the Seven Fire prophecies and her epiphanous discoveries of the research methodologies flowing out of the traditional waterdrum (chapter 13), or Aimee Craft's personal anecdote about her Mishomis guiding her towards a rock on the Winnipeg river (chapter 1). I found the book moving also for personal reasons. Through lived experience in the Global South, I am acutely

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\*\* The Author thanks Dr. Julie Fraser for her feedback on previous drafts of this review.

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<sup>1</sup> Fleur Johns, 'Why, When and How? 10 Tips for Academic Book Reviewers' (LSE blog, 19 May 2021), <<https://blogs.lse.ac.uk/impactofsocialsciences/2021/05/19/why-when-and-how-10-tips-for-academic-book-reviewers/>> accessed 27 October 2021.

<sup>2</sup> Hedwig Schwall, "'The act of reading is a bodily experience": an Interview with Mia Gallagher' (2021) 16 *Estudios Irlandeses: Journal of Irish Studies* [Online], 183-195.

aware of the ethical tensions between one's origins and the choice of engaging with violent institutions like the law. As a scholar from the Global South, I recognize the Eurocentrism in international legal scholarship and pedagogy,<sup>3</sup> but my Western training (paradoxically including the training I obtained in India) constrains me from dismantling or reclaiming international law.<sup>4</sup> Faced with these struggles, I found *Decolonizing Law* cathartic and instructive in equal measure. The book begins with the admission that "law, in its many iterations, has played an active role in the disenfranchisement of colonized peoples" (preface). But the book is markedly more future-looking and hopeful. In the immediate next sentence, it defends the potential of the law to decolonize.

### *Learning to listen*

The book opens with an honest account of its positionalities. Sujith Xavier and Jeffrey Hewitt speak of the 2018 conference in Windsor in Canada (home to the Three Fires Confederacy of the First Nations) that brought together scholars from the Global South and Global North, cutting across thematic specializations, to engage in a dialogue about decolonizing knowledge/knowledge production. The book spells out each editor's positionality and their commitment to decolonization both personally and professionally. It breaks the façade of its own neutrality by openly admitting that it is a joint output of people who carry unique sets of cultural, social, and historical biases. This act of cognition reveals much about the genuineness and the inherent contingency of the book.<sup>5</sup> Self-awareness is a thread throughout the book, perhaps most evident in the opening chapter by Aimée Craft,

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<sup>3</sup> Mohsen al Attar, 'Must International Legal Pedagogy Remain Eurocentric?' (2021) 11(1) *Asian Journal of International Law*, 176-206.

<sup>4</sup> Rohini Sen, 'Teaching International Law in Asia: The Predicated Pedagogue' (*AfronomicsLaw*, 24 September 2020), <<https://www.afronomicslaw.org/2020/09/24/teaching-international-law-in-asia-the-predicated-pedagogue/>> accessed 27 October 2021.

<sup>5</sup> Ingo Venzke, 'How Could International Law Have Been Otherwise? A Rejoinder' (*Völkerrechtsblog*, 18 June 2021), <<https://voelkerrechtsblog.org/how-could-international-law-have-been-otherwise-a-rejoinder/>> accessed 27 October 2021.

Deborah McGregor, Rayanna Seymour-Hourie, and Sue Chiblow. It would not be incorrect to call the chapter a guide on how to surrender to indigenous legal orders. The authors – themselves members of indigenous communities – reflect on the anishinaabemowin (language), aki (earth), and nibi (water/reason) as sources which contain the legal traditions and worldviews of the Anishinaabeweg and preserve this collective memory for future generations of Anishinaabeweg (p. 25). The chapter is written using a patchwork of conversations amongst the authors and with Anishinaabe Elders. Each author reflects on the tensions they experience between their Western training and Anishinaabe callings. These tensions are called back in Waboose’s visual and affective closing chapter. Waboose revisits her own dissertation on survivors of the Indian Residential School and documents her search (both its challenges and successes) for a methodology that could draw on her lived experiences as an Anishinaabe kwe.

Importantly, both the starting and concluding chapter place emphasis on the act of listening. Craft et. al. reveal how indigenous knowledge can be received and known by listening to the nibi (p. 28). Similarly, Waboose notes that the “vision of the Little Boy waterdrum came to her” (p. 281). Listening to the sounding of the waterdrum and the voices of her survivors allowed her to see that the waterdrum itself was a source of her “research methodology, teaching, and resilience” (p. 13).

When reading the book though, one is often left wondering whether the book “listens” – both to the voices it collectivizes and the larger epistemic movements it places itself in conversation with. One area of friction appears to be the differing conceptualizations of TWAIL that individual chapters of the book subscribe to. The first section of the book, titled “limitations of settler colonialism”, espouses an understanding of TWAIL and the Fourth World approaches to international law as movements.<sup>6</sup> The second and third sections – devoted to particular sites of inquiry – seem to understand TWAIL and FWAIL as “method[s]”. Waboose’s chapter 13, for instance, offers detailed instructions on how to construct and apply indigenous methodologies.

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<sup>6</sup> See Usha Natarajan, *Decolonization in Third and Fourth Worlds*, in *Decolonizing Law* which is replete with references to TWAIL as a movement.

Notably, movements and methods differ vastly in terms of motivation, premise, and scope. As al Attar eloquently explains, movements are creatures of advocacy (both political and intellectual).<sup>7</sup> Methods and approaches advocate for reconstructions. It appears that the book is unaware of the incongruities between the theoretical leanings of its chapters. If it were, these incongruities might have been confronted.

The structure and internal ordering of the book also raises doubts about the quality of its listening. The collection is purportedly organized around three themes. The first section challenges the limitations of settler colonialism, the second marries perspectives from selected sites in the Global North and Global South, and the third offers lessons on decolonizing. The first section on “dismantling settler colonialism” consists of three chapters. First is the chapter by Craft et. al. followed by Amar Bhatia’s astute review of the application of the Westphalian model of sovereignty to deny the sovereignty of First Nations in Canadian territory. Natarajan’s chapter three then expertly sets out the faults and complicity of the Third World movement in the dispossession of indigenous peoples and tribes. In her words, “Third World States assert their post-coloniality only through ignoring indigenous and tribal sovereignty” (p. 70). Natarajan launches a spirited plea for an attempt to identify the unresolvable tensions between the Third and Fourth World movements and cultivate synergies between the goals of both projects.

Natarajan’s chapter serves as a bridge to part 2 of the book, which examines the engagement between the Global North and the Global South. The second part is further classified into “international” and “sites of engagement”. It is not clear why this separation had to be created. Both components address distinct instances of Eurocentrism.<sup>8</sup> The uneasiness of the structure becomes palpable when what seems like a continuing conversation between Acosta-Alvarado et. al. (on the dominance of Western thought in legal academia in

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<sup>7</sup> Mohsen al Attar, ‘TWAAIL: a Paradox within a Paradox’ (2020) 22(2) *International Community Law Review*, 163-196.

<sup>8</sup> See chapters 6-10 of the book *Decolonizing Law* on mobilization of indigenous peoples at the Belo Monte hydroelectric plant in Brazil, mineral extraction and mining in New Zealand, constitutional adjudication in Chile, and indigenous legal orders in Canada.

Chile) and Inatan and Infantino (on civilizing logics<sup>9</sup> endorsed by the Constitutional Court of Chile) finds itself artificially severed. If one were to listen to the book's own *nibi* (water/reason), then it is unlikely that the discussions on Chile and Canada would have been slotted into separate sections. In some ways, such an ordering that treats the international and national as separate and discrete sites<sup>10</sup> also seems inconsistent with the search for intersectionality between epistemes previously vocalized by Natarajan.

*Roadblocks to dehegemonization*

By its own admission, the book is an attempt to dismantle the “coloniality of being”<sup>11</sup> and create a “multiverse of knowledges” where each knowledge commands equal footing.<sup>12</sup> Admittedly, the book succeeds in displacing (if not replacing) Eurocentric analytical frames in the formulation and resolution of Global South concerns. However, a closer look reveals that the book unwittingly uses the same Eurocentric infrastructure that it so firmly opposes.<sup>13</sup> Borrowing the words of Gegeo and Watson-Gegeo, the book falls short of “dehegemonization”.<sup>14</sup> Here it is important to acknowledge critical scholarship poses material challenges. Receiving financial support from universities and publishing houses may prove difficult. Decolonial scholarship may also trigger

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<sup>9</sup> Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press, 2020).

<sup>10</sup> See here also Gibson's theorization of space as attending to inter-personal relationships in Ross Gibson, 'Skerrick Scenes' in Gus Worby and Lester-Irabinna Rigney (eds), *Sharing Spaces: Indigenous and Non-Indigenous Responses to Story, Country and Rights* (API Network 2006).

<sup>11</sup> Nelson Maldonado-Torres, 'On the Coloniality of Being' (2007) 21:2-3 *Cultural Studies*, 240-270.

<sup>12</sup> Boaventura de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (Routledge, 2014).

<sup>13</sup> Babatunde Fagbayibo, 'Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities' (2019) 21 *International Community Law Review*, 170.

<sup>14</sup> David Welchman Gegeo and Karen Ann Watson-Gegeo, "'How We Know": Kwara'ae Rural Villagers Doing Indigenous Epistemology' (2001) 13(1) *The Contemporary Pacific*, 55-88.

threats to one's own personal safety.<sup>15</sup> This explains why many anticolonial and postcolonial scholars resort to the "sanitized and obscure vocabulary of post-structuralism, just so that their home States would not hunt them down".<sup>16</sup>

Decolonizing Law, too, falls into these trappings. It relies on certain hegemonic mediums that prevent it from successfully "re-centering".<sup>17</sup> Three choices come to mind. First, the choice of language. For many indigenous communities across the world, language and its speaking are key social actions. As chapter one by Craft et. al. explains, vernacular is a key carrier for indigenous ideas and values, both across and between generations. Notably, the chapter does not call for indigenous vernaculars to be frozen in time. Instead, it issues a call to honor indigenous vernaculars, even as they evolve through cross-fertilization from other (perhaps even colonial) languages that they are exposed to. The heuristics of indigenous vernaculars cannot be accurately captured by English semantics. In chapter 2, Craft quotes Elder Sherry Copenace (Ojibways of Onigaming) who warns against translating "Anishinaabe words or concepts into English because they do not translate the intent or spirit that the Anishinaabemowin language expresses".

The choice of writing in English has deeper deontological implications for a book like Decolonizing Law. By choosing English, the book facilitates the capitalistic interests in maintaining linguistic homogeneity.<sup>18</sup> These interests driven by profitability lie at the heart of the erasure of indigenous identities.<sup>19</sup>

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<sup>15</sup> See <https://twitter.com/PriyamvadaGopal/status/1451146333687992322>; Benjamin Turner, 'Death threats sent to Cambridge University professor after 'white lives don't matter' tweet', *CambridgeShire Live* (Cambridge, 25 June 2020), <<https://www.cambridge-news.co.uk/news/cambridge-news/death-threats-sent-cambridge-university-18483984>> accessed 27 October 2021.

<sup>16</sup> 'A conversation with Prabhakar Singh: Speaking from the Geographical South, International Law and the Global South' (International Law and the Global South, 6 June 2021), <<https://internationallawandtheglobalsouth.com/a-conversation-with-prabhakar-singh-speaking-from-the-geographical-south/>> accessed 27 October 2021.

<sup>17</sup> Ngũgĩ Wa Thiong'O, *Moving the Centre: The Struggle for Cultural Freedoms* (Heinemann, 1993).

<sup>18</sup> Hervé Adami, 'La domination de l'anglais est-elle inéluctable?' (2018) XXIII Revue française de linguistique appliquée, 89, 92.

<sup>19</sup> Dieter Stein, 'Weltsprache Englisch: Dominanz und Beherrschung' 11 [www.phil-fak.uni-duesseldorf.de/anglist3/weltsprache\\_englisch.pdf](http://www.phil-fak.uni-duesseldorf.de/anglist3/weltsprache_englisch.pdf), 2 ff.

While I understand that English opens access to a broader audience, more active trans-languaging would have allowed the book to do better justice to indigenous epistemologies. Trans-languaging also facilitates the acceptance and normalization of the limitations of English as a medium of perfect translation. It helps readers resign to the fact that translation is inevitably bound to lead to loss or change in original meaning. Languages are far more than mediums of communication. They carry a unique set of intellectual possibilities and representations. Translation is then less “hermeneutic and more an act of creation by itself”.<sup>20</sup> This necessarily heralds new possibilities and subjectivities, different from the original text.<sup>21</sup> That is not a bad thing at all. But the value of the vernacular must be acknowledged. Of course, the irony of writing this book review in English and pleading for trans-languaging is not lost on me. But I hope for this feedback to encourage more people like me to self-reflect and benefit from the sharing of (literal) vernacularization strategies. In fact, my first tryst with international law written in vernaculars (especially Asian vernaculars) was the TWAIL Law Review, which is curated by some of the editors and authors of *Decolonizing Law*.<sup>22</sup> It is knowledge of the past successes of these editors and authors that emboldens me to expect it again.

The second striking choice is the medium. Despite its otherwise blunt rejection of Eurocentric doctrine, *Decolonizing Law* resorts to the medium of a purely written academic publication (supported by a Global North publishing house),<sup>23</sup> which is, by nature, epistemically confined. These limitations are perpetuated on two levels. On one hand, the book loses an opportunity to challenge the colonial ostracization of images and sounds in legal discourse. This is what Douzinas calls “an economy of permitted images in the public sphere in which visual depictions of law are permitted by the political and legal elite but must conform to certain expectations about the sorts of messages they

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<sup>20</sup> Victoria Baena, ‘Loss in Translation’ (Public Books, 8 January 2016), < <https://www.publicbooks.org/loss-in-translation/> > accessed 28 November 2021.

<sup>21</sup> José Saramago, *The Translator’s Dialogue: Giovanni Pontiero*, edited by Pilar Orero and Juan C. Sager (John Benjamins, 1997), p. 85.

<sup>22</sup> See <https://twailr.com/hindi-twail-review-twailr/> and <https://twailr.com/about/editorial-collective/>.

<sup>23</sup> See <https://www.routledge.com/corporate/about-us>.



want portrayed.”<sup>24</sup> On the other hand, by choosing the academic form, the book fails to call out the hegemonies of academic scholarship<sup>25</sup> and the disadvantages it afflicts on Global South scholars (some of which Acosta-Alavardo et. al. hint at in chapter five). That a book of this quality also needs a prominent Western publisher to guarantee commercial success and circulation is testament to the inequalities of academic scholarship.

Finally, we see exclusions in authorship. Relying on Anishinaabe scholar John Borrow’s theorization of “relationality”,<sup>26</sup> the book builds relationships between its co-authors and their roots; between TWAIL scholars and indigenous peoples; and between the movements and the readers. What is fascinating about the book is the genuine effort to bring different marginalized epistemic communities in conversation with each other. Natarajan launches a writhing critique of the failure of TWAIL to take account of and foreground indigenous peoples’ struggles with settler colonialism.<sup>27</sup> However, by its own admission, some peoples fall through the gaps. The book, for instance, does not feature any contributions from African scholars or descendants of enslaved peoples in the Americas. It also does not feature lived/told experiences of exogenous minorities from Asia (see p. 8). Some of these exclusions, by the editors’ own admission, were unfortunate consequences of institutional barriers. Some seem to have been more deliberate choices. It is these choices that are worth querying. For an effort like ‘Decolonizing Law’, which avowedly hopes to “expand the circle” (p. 7), it is crucial to cover the breadth of the circle as far as possible. Many tribes and adivasi communities in Africa and Asia have distanced (and even insulated themselves) from the global indigenous peoples’

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<sup>24</sup> C. Douzinas, ‘The legality of the image’ (2000) 63 *Modern Law Review*, 813.

<sup>25</sup> Luisa Martín Rojo, ‘Hegemonies and inequalities in academia’ (2021) 267-268 *International Journal of the Sociology of Language*, 169-192.

<sup>26</sup> John Borrow, *Canada’s Indigenous Constitution* (University of Toronto Press, 2010).

<sup>27</sup> Amar Bhatia, ‘The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World’ (2012) 14 *Oregon Review of International Law*; Natarajan et. al., *Third World Approaches to International Law: On Praxis and the Intellectual* (Routledge Press, 2018).



movement because they reject Western ideas of indigeneity.<sup>28</sup> The distance has facilitated neocolonial governments in Africa and Asia to eschew the application of international legal norms by citing the defence of cultural relativism. In the hallowed spaces that remain, marginalization ensues unchecked.<sup>29</sup> However, that is not to say that such communities do not seek or appreciate the lateral solidarity. Given that it is onerous and sometimes impossible for these communities to locate their allies, the onus then falls on allies to find the communities and acknowledge their complicity in dispossession and their commitment towards forging meaningful comradeships.

None of this takes away from the magnanimous contribution this book makes to scholarship on indigenous and Third World epistemologies. The book traverses a multitude of spaces to illustrate how postcolonial voices and epistemologies have been warped and silenced. Importantly, the book does not stop at critique of canon in/and Eurocentrism in law and politics. It reimagines and reconstructs the law. The real legacy of the book, though, is the relations it builds with its readers. The book imparts its self-professed methodology to its readers almost in real time, guiding them on how to receive stories from indigenous elders and how to imbibe them into their own reconstructed international law(s).

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<sup>28</sup> Dolly Kikon, 'What is unique about Naga history?' (2015) 50(35) *Economic & Political Weekly*, 15–18.

<sup>29</sup> A. An-Na'im, 'Problems of Universal Cultural Legitimacy for Human Rights', in An-Na'im and Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives* 343 (Brookings Institution Press, 1990).