

Book Review

Darian-Smith's gallery of alternative legalities

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I feel privileged to have been invited to comment on Eve Darian-Smith's splendid *Laws and Societies in Global Contexts: Contemporary Approaches (Law in Context)*. First, I'd like to speak about the 'aesthetic' impact the book had on me and then go on to examine two issues more surgically: the first being what stance researchers should take when dealing with law in global contexts and the second what idea of law emerges from the book.

The first thing that struck me was the three 'esses' in the title, *Laws and Societies in Global Contexts*: three plurals where the singular is more common. Darian-Smith was evidently telling us that the global study of laws and societies is by no means simple – that law today is a complex phenomenon in a complex world. The next thing I noticed was the book's unusual architecture, rather like a building with a whole host of windows and galleries. Each window and gallery offers us a different point of view, pointing to new paths for research within the field of legal pluralism. The author acts as a perfect hostess, developing her own theories and putting forward her own points of view on the various themes under discussion, and then inviting her readers to look out of the windows at ideas and hypotheses postulated by a dazzling array of brilliant authors and different disciplines and perspectives. The reader learns a lot, just as I learned a lot from this treasure trove of socio-legal knowledge.

From the first page, the author pursues a critical, counter-hegemonic approach. As I read on, I realised that her critical attitude was not merely a political question; it was also an epistemological choice – a way of developing a different view of law, of looking unflinchingly at what is often ignored, of 'boldly going where no man has gone before', as Captain Kirk from *Star Trek* might say.

In terms of stance, Darian-Smith's pluralism refers to 'alternative legalities of power' that have a dominant presence in the book. Her vision is radical, abandoning Western parochialism and orientalism, and the idea that other legal forms are not law, are lawless or are what 'we' are not (Darian-Smith, 2013, p. 75), all of which reflect the dismissive attitude also frequently adopted towards different kinds of capitalism. For example, Chinese capitalism is postulated as 'another' kind of capitalism – one that disregards workers' welfare, the environment, human rights – while the extent to which Western capitalism is involved in these supposedly Chinese ills is conveniently ignored.

In today's global world, a plethora of 'arenas of legal activity' requires researchers to consider 'decentered interactive legal processes through various levels, scales, territories, and spaces' (Darian-Smith, 2013, p. 10). This involves issues of the sociology of knowledge and Darian-Smith devotes Chapter 3 to the issue of production of legal knowledge – a subject that in the West, and especially in Europe, is still linked to the idea of 'legal science'. Here, Darian-Smith adopts Sousa Santos's idea of a Western 'epistemological privilege' – one not extended to other legal systems. This failure to accord a legal status to other systems creates considerable difficulties in the comprehension of laws 'in global contexts'.

For Eve Darian-Smith, overcoming these epistemological obstacles is not enough. The author sees the 'decolonizing (of) legal knowledge' as one of today's most important challenges: law should be

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seen from below, from the perspective of people and communities, rather than from the apex of the state pyramid. This bottom-up approach to legal knowledge means 'focusing on subjective and cultural interpretations of law, and, at the same time, moving away from a state-centrist paradigm, by challenging the prevalent assumption that legal engagement is framed by and through national jurisdictions' (Darian-Smith, 2013, p. 107). For the author, law 'from below' is not only an epistemological choice and the rightful path to legal knowledge, but also a political choice resulting from a critical evaluation of the role played by states in legal terms. Thus, decentring the law is seen as a solution and the author shows a clear preference for inclusive global governance mechanisms, through many subjects and organisations able to recognise 'the complexity of legal plurality' (Darian-Smith, 2013, p. 55).

This negative evaluation of the role played by states harks back to colonialism and its immediate aftermath. However, nowadays states are called on to act within governance networks and to collaborate with each other, warding off war and the risk of loss of oppressive sovereignty is used as a means of oppression. However, can we say that the outcome of states is always negative, even in their 'welfare' version? And is law 'from below' always preferable and intrinsically good? To be fair, Darian-Smith does mention cases where violence and oppression came from non-state forces imposing their own version of 'law' – an important lesson for today when, in the current neoliberalist climate, law 'from below' is stealthily eroding previous social protections. Or can we say that, in today's scenario (often echoing with political vacuity), however imperfect Western states may be, we might still miss their ability to shield the weak and mediate among different interests and stakes?

So, what idea of law *does* emerge from the book? Darian-Smith supplies some very direct answers to this question and leaves plenty of avenues open for further exploration. She sees law as culture, better, as a '(multi)cultural artifact', underlining its complexity as a consequence and challenging the positivist view. Law as culture invites different interpretations, meanings and 'negotiations', but above all it implies change. It is a plastic discipline, however much we are tempted to carve it in stone.

As a sociologist of law, I completely agree with the idea of challenging positivist attitudes in legal research. Many of our colleagues, especially in Europe, still cling to it; yet legal positivism has been refuted to such an extent by an onslaught of 'social', 'economic', 'local', 'specific' and 'ad hoc' law, clashing irreconcilably with its assumptions, that any fight against it would appear almost an exercise in futility.

Turning to the relationship between law and culture, Darian-Smith feels that many aspects should no longer be taken for granted, including the linear sequence between law/culture/nation. Has capitalism reinvented the traditional relationship between law and culture? On the one hand, the exigencies of business have reinforced this link, one example being the debate in the US on 'social norms' as an efficient (no-cost) form of law for the market. On the other, the invention of new forms of law, such as the *lex mercatoria*, may seem at first glance to reiterate culture-based law, but in reality represent the negation of culture as an expression of place or social group. Its cultural neutralisation seems rather the creation of 'non-place' laws, to use the expression coined by the French anthropologist, Marc Augé (1995).

Perhaps one of the most important results Darian-Smith achieves in this book is to make the law appear under different lights – a multi-faceted prism full of reflections and obscurities, demonstrating that it is not solely the product of culture, but a complex entity and, just as we grasp one of its aspects, we inevitably miss another.

This aspect emerges in many parts of the book, in particular in the chapter dedicated to the re-racialisation of the world.

The imprint of race through law can be seen, as suggested by the author, in fields as far apart as religious conflicts, global environmental degradation and global change. Today's political economy

in particular, inspired by neoliberalist ideas, is proving an efficient means of re-racialisation. 'Contemporary problems invariably involve radicalized differences in terms of people's access to resources and opportunities' (Darian-Smith, 2013, p. 314). This means that today 'race is a process, more than an outcome', accompanying global and transnational transformations through legal, economic, cultural and political means.

This is by no means solely confined to poor countries or impoverished areas of the world. One example is the North–South dualism that has increasingly dominated the dialogue between European partners, becoming almost an ingrained 'ethnic' difference (Caracciolo), a set piece with stock characters – what Mutua calls the 'saviours' on the one hand, rigorous and imbued with protestant ethics and values, and the 'savages' on the other, resistant to discipline and rules (see pages taken from M.W. Mutua, pp. 84ff.). Greece's vicissitudes within the EU represent one instalment of the show.

When we have completed reading this book and exit its magnificent architecture, we may not leave with any clear-cut image of law. But this was exactly the author's intent: to address the idea that we live in a situation of endemic 'interlegality', with different versions, ways and expressions of law. Readers are spurred on to consider two important aspects in particular. Law today comprises many assemblages of different legal systems (see especially the pages on hybridity taken from P.S. Berman, pp. 111ff.). Law today lives through very different ideas and interpretations, even within single nations, hinged on different attitudes, traditions, values and religious creeds. Remarkable is the author's final confession: 'I urge the adoption of a global socio-legal perspective because I want to believe in the enduring relevance of law' (Darian-Smith, 2013, p. 378).

Darian-Smith's vision of law is not a static one; it is rather an image constantly shaped and reshaped through changing ideas, not only on a worldwide scale, but also within single nations. We live in a situation of endemic 'interlegality' as defined by Santos. The challenge is to deal with different 'expressions' of law, because a linear sequence no longer exists in the new world. And Darian-Smith's book is a formidable guide to this new world and how to make it work better.

References

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- DARIAN-SMITH, EVE (2013) *Laws and Societies in Global Contexts: Contemporary Approaches (Law in Context)*. Cambridge: Cambridge University Press.