



Towards a User-centered Engagement with Law

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Reviewed works

Darian-Smith, Eve. 2013. *Laws and societies: global contexts, contemporary approaches*. Cambridge: Cambridge University Press, 434 pp., ISBN: 9780521130714, \$ 41.99.

283 Goodale, Mark. 2017. *Anthropology and law: a critical introduction*. New York: NYU Press. 320 pp., ISBN: 9781479895519, \$35.00.

Niezen, Ronald. 2010. *Public justice and the anthropology of law*. Cambridge: Cambridge University Press, 270 pp., ISBN: 9780521152204, \$36.99.

Pirie, Fernanda. 2013. *The anthropology of law*. Oxford: Oxford University Press, 268 pp., ISBN: 9780199696857, \$42.95.

Introduction

The state is omnipresent through courts, parliaments, judgments, legislations, police and local administrations. It permeates, influences, dominates and orders several institutions. The state's omnipresence also determines how these institutions, bureaucracies, and documents all create legal knowledge and frameworks that order and determine the everyday lives of ordinary users.

As North has stated, institutions are those 'humanly devised constraints that structure political, economic and social interactions' (North 1991). Despite there being multiple competing and contested legal forums, whether based on religion, custom, community or social sanction, legal centralism around ideas of the state continue to dominate the discourse around the law (Griffiths 1986).



This essay shifts focus and places an emphasis not on workings of institutions but on the experiences of the user, the individual that engages, interacts, resists and is impacted by different legal institutions or other forms of social orderings. The question that this essay asks is: Where is the user located in these forms of ordering, these legal frameworks? What role do such users play in these different legal institutions, bureaucracies and documents and what is their agency? Are their contributions and experiences identifiable or are they subsumed, and how can we find them by moving beyond the lens of state institutions in understanding the functioning of the law? In this sense, can we imagine law and ideas of justice not in terms of how they are arranged but in terms of how they are realised from the perspective of the user? As Sen argues, can we make a distinction between *Niti* (Justice) and *Nyaaya* (Justice) where the former is the organisation of the law but the latter is how it manifests and the consequences it has on the everyday interactions of the users (Sen 2011).

When a judge pronounces a verdict it is often a particular reading of a case but the result of such a pronouncement can be the loss of freedom, property and even the life of someone else, as the interpretation and thereafter implications of the ruling can result in justifications of violence (Cover 1986). This realisation of the law or *Nyaaya* is the focus of this essay as this explores the impact of what the law and other instruments do for those that they adjudicate upon. Doing so allows us to understand the distinctions between the normative worlds of those that imagine and implement institutional frameworks and the material world of those that engage with these frameworks. It offers a perspective that asks what is important for people who use the law, and how they go about it, rather than how they should use the law, based on pre-existing frameworks, received values and structures. The essay thus takes a broader understanding of law.

In doing so, this essay seeks to explore different methodologies for how to think about user-centeredness in the law and examines four books, three of which look at discussions and discourses on the relations between anthropology and law, of global narratives, publics, and legalism, and the fourth which looks at how socio-legal studies can help make sense of the challenges of global legal orders. Each of these books explores numerous complex ideas. This review focuses on a specific intervention in terms of how these books approach the user in law. This emerges in different ways from questions of identity and context to the relevance of language, tradition and power structures. In this sense these contributions underline a characteristic of the law as a travelling and transformational concept (Eckert et al. 2012). Drawing from the arguments presented in these books, a framework for how to think about user-centeredness in law will be advanced. It will focus on capturing the polycentric nature of law by recognising the voices, experiences and imaginations of those that participate in the shaping and making of life-worlds around law (Santos 1987).



This essay engages with the work of four authors. Darian-Smith takes a look in *Laws and societies: global contexts, contemporary approaches* at the porous and dynamic ways in which different legal orders interact from the local to the global and the international and the methodology utilised for global socio-legal scholarship which she proposes. The essay then examines Goodale's *Anthropology and law: a critical introduction* that looks at an intellectual history of law and anthropology and the lessons of a global approach which is organised around three areas of 'law and the production of meaning', 'law and agency, law as regulation' and 'law and identity'. By exploring the 'publics' in social, cultural and political landscapes, the review then examines the ideas articulated by Niezen in *Public justice and the anthropology of law*. It delves into the ways in which 'Publics' impact the engagement with law and rights, and at their varied influences—intangible and tangible. Lastly, the essay examines the conceptualisation of legalism as espoused by Pirie in *The anthropology of law*, which offers an analytical anthropological account of law.

The first section of this essay examines law beyond the state and the need for de-centring state law in order to focus more on including different narratives including those based on religion, custom, tradition, or community experiences. The second section of the essay explores the various influences and sites beyond the state that play a role in the making and shaping of legal knowledge and its use. The third section explores occasions where users engage with law, both as individuals as well as members of publics. The final section proposes how these various ways of seeing, engaging and constructing law offer us different readings of realities and the realisation of law.

Law beyond the state

While the imagination of the state as a body that provides for the adjudication of disputes has its limitations, analysing what happens beyond the law of the state requires different lenses to get a sense of what is valuable in such an exercise and why. Drawing from anthropology allows us to 'raise questions about the nature of law' by drawing on legal thought, form and function (Pirie 2013: 1). This does not mean that law can be defined precisely, but rather that we must problematise law and yet not lose sight of its context. In this regard, law is seen as a complex set of relations, and not as something that can be streamlined or mainstreamed by limiting it to 'western' models. In thinking beyond the state, Pirie argues for the concept of 'legalism', that is, to find common threads amongst more contested categories of law including Indic, Chinese law, those which have their origins beyond the state, without allowing the categories to expand to all kinds of normative orders (Pirie 2013: 14f., 26-30, 190-5).



It is important to de-centre the state as Darian-Smith argues, because doing so allows for an exploration into the inter-connections between people, places, cultures and ideologies (2013: 8). This does not imply marginalising the state but instead allows for alternative avenues to understand the manifestation of law beyond its state-centred hegemony. It opens an investigation into the production of legal knowledge and meanings that are broader than those that are mandated by the state (Darian-Smith 2013: 9). In offering a 'global imaginary' Darian-Smith argues for probing what law is, where it appears and how it works rather than accepting a linear understanding of these questions (*ibid.*: 14). If we are to do this, we will be able to look at the empirics of the law, enabling an understanding that demands descriptions of reality and not only emphasises the idealisation of particular forms. By analysing the plurality of what is out there, without suggesting that there is an ideal type, we may be able to look for overlapping qualities, which emphasise form over function (Pirie 2013: 22). In this regard, Pirie looks more at the organising aspects of law, that is at *Niti*, but where she bridges the gap with *Nyaaya* is in terms of pluralising the different forms covered in the realisation of law.

Thinking beyond state law also requires a transition from 'contract to cosmopolitanism' (Goodale 2017: 26-8). This involves moving beyond the centrality of national institutions, particularly the market, to also examine history, culture and wider political economy questions. These registers of influence help us capture different categories of law and forms of belongings that transcend the nation-state to include ideas of transnational law, indigenous law, sub-national law, and even ecological law, those that Goodale argues are not going to be part of the present legal imaginary but a likely future constellation (Goodale 2017: 203-7, 219-21).

While nation-states wield enormous influence, such influence is often rightly seen as top-down. In thinking about 'publics', which Niezen defines as those 'that exist largely in the imaginations of those who are reaching out to them' (Niezen 1-5, 26-9), the soft power that emerges through the capacity for these entities to bargain and articulate their views in support of communities and persons who reach out to them is explored. Building a persona for these publics, such as by stating that they are 'persuadable', 'curious', 'hypocritical', 'distracted' and 'self interested', he argues that each of these facets has an effect in terms of their influence in publicly mediated law and activism and how they can engage, in their roles as organising or supportive entities, and in this sense challenge the hegemony of the state (*ibid.*: 20-4, 40-50).

By thinking about different forms of law, de-centring state law, engaging in legal cosmopolitanism through the emergence of transnational movements, such as those for human rights, and examining the communicative potential around a



legal process through publics, it is possible to lay the foundation for seeking out different sites in the production of legal knowledge.

Different sites for the production of legal knowledge

More systematically, unpacking the realisation of law in terms of what it does, and how it evolves results in an examination of the processes, practices, values and institutions that make up the legal imaginary. Each of the authors offers different ways in which to capture the heterogeneity of the legal system. These include reflecting upon the knowledge networks, time and space, all of which play a role in producing legal knowledge.

Darian-Smith provides directions in thinking of the production of legal knowledge when she asks questions firstly about whose knowledge is in use, secondly which kinds of cultural biases does the knowledge consist of and thirdly which other reservoirs of knowledge have been silenced, erased by an Euro-American dominance (Darian-Smith 2013: 98). One of the central issues of Darian-Smith's book, is to challenge this hegemony of knowledge generation in law by not just articulating the many instances of legal orientalism, but by going further and de-orientalising law because only then can mutual challenges and vulnerabilities be understood in global south and north contexts (ibid.: 97-101).

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One of the numerous challenges of the production of legal knowledge and the demonstration of orientalism is the role that "experts" play and the powers that they yield. This can be in terms of how they advise, interpret and deliberate on processes, that then become policies and laws often divorced from struggles they seek to capture, and provide technical expertise to order and govern (Kennedy 2016). Niezen speaks of the challenges of translation and diffusion of norms from these expert settings into the everyday and asks whether and how they can become legitimate in marginalised communities (2010: 6). In introducing the often intangible relationships between the public and marginalised groups, one can ascertain how through lobbying and sharing in a collective; cultural rights' claimants are able to articulate their views through different forms of legal sociability (ibid.: 217). Through the case of indigenous people's movements, he argues how legal sociology can invent and create a category from an abstract notion to articulate new identities for a group (ibid.: 113-35). In this analysis Niezen reflects on concepts such as 'legal reconstruction' and 'vernacularisation', where the former includes how the process of legal standard-making can become more dialogical by including voices of indigenous persons who engage with the concepts, while the latter refers to how the universal is converted at the national and local levels (ibid.: 217-9). He does this to illustrate how these processes of 'conceptual diplomacy' are used to advance categories of identities that can then be publicly promoted and supported (ibid.: 15-22).



Embedded within the idea of providing for alternative realities through processes of dialogue and vernacularisation beyond those determined by the state, is an acknowledgment that 'space' and 'time' play a central role in producing realities of law because they help to uncover what is relevant, meaningful and significant. Darian Smith shows how iconic public spaces like the Tiannamen Square, or more temporary spaces like refugee camps, provide a particular imagination of what is permissible and what is transient (Darian Smith 2013: 108). In addition to space and time, Goodale shows how language has the potential to distil wider ideas and concepts, both at the theoretical and the local levels, and in doing so, it offers a window into key struggles and ideas about peoples, groups, events, and activities. It offers the potential to frame different contexts, and in several ways, is a useful lens to represent realities (Goodale 2017: 43-52).

Pirie, while critiquing the hegemony of state law, attempts through the concept of 'legalism', a style of thought, which she argues should distinguish law from other social forms. She draws from many sources of religion and cosmic orders, tribal and village agreements as well as from common law judges and argues that law as a term, can be applied to these different contexts and we should examine what the overlapping features are in terms of ideals or morals (Pirie 2013: 229). She states that in the production of legal knowledge there is often a tension between law's idealism and legalism, which can be regarded as law's generality on the one hand and its particularity on the other, but that law must be taken seriously as a social phenomenon (ibid.: 217).

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The law from below

Drawing from the previous sections of de-centring the state and pluralising the production of legal knowledge, we can come to one specific conclusion and an important structural change. The nature of engagement with law is not linear and one-dimensional and not imposed but rather one where negotiations and contestations determine how law is realised. In this sense, law is shaped by influences, whether sacred or materialised, through mass movements and community practice. This recognition of plural influences signals a transition towards a 'law from below', one which acknowledges space, time, language and context in representing the making and shaping of law.

The idea of 'law from below', as articulated by Rajagopal, is to showcase the role played by actors including local groups, communities and movements which are guided by a desire to represent those whose narratives are otherwise excluded and erased when thinking and conceptualising law (Rajagopal 2003). The books reviewed in this essay attempt to show from different points of departure the challenges of a statist law's hegemony and the oppressive structures that emerge as a result of it.



What ties these books together in a sense is their dedication to representing plurality in their engagement with law. This may be done while still being faithful to the form of law, as Pirie argues in her book, but through an engagement with law's diversity by providing a sweeping analysis of different legal systems and influences. It can also be achieved through Darian-Smith's push towards de-orientalising law from its western lenses and thereby creating spaces for discussions about the plurality of law, therein avoiding the otherisation of a particular party. In this regard, if we were to only look at formal legal systems, we would be unaware of the dynamism of non-state legal systems.

The above discussions provide insights into how a user-engagement with law can be ascertained. The first argument emphasises placing the experiences, imaginations and vulnerabilities of the user at the forefront of our thinking about law. It ensures that what is captured is not just the institutional angle of a supply-oriented approach to law, but rather its combination with how legal claims emerge, thus articulating different narratives on law. In this regard, by acknowledging that institutions and technical expertise do not exist in a vacuum, Niezen's 'publics', and the role they play as influencers, is critical. This relation between the public and the user shows how negotiations can be made and communicated to ensure that categories of law are not created in boardrooms but through reconstructions of everyday life, whether social such as through community groups, identity based such as by indigenous peoples, or religious such as with Sharia courts.

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The second argument of engaging with the user is to move beyond assumptions of "where law is", such as in courts, and "how it works", such as through legislations or texts, and rather to problematise it and recognise that legal systems are not just tools of governance and ordering, but very much part of social lives. In order to be relevant, they need to cater to the needs of the people, whether by ensuring basic security, health or belonging. In this lies the value of legal plurality, and recognising that for the user, the law has a social, political and cultural power (Darian-Smith 2013: 378-83).

The third argument drawn from the intellectual history of anthropology and law, provided by Goodale, is to acknowledge that law provides meaning, it can have an emancipatory potential by providing agency, and it can also give identity through the ways in which it frames the user. In this regard, engaging the user requires a multi-layered approach that uncovers how law interacts with the user at a relational level, whether these settings are defined in terms of understanding questions of violence or in understanding user rights in the vernacular.

The final argument from Pirie is to appreciate that law itself is a social phenomenon, whether in the form of common law or as Dharma, and in this regard,



there is value in the legalism of law, provided that this is located in a particular context, and not at a generalisable level.

Conclusion

This review essay has sought to draw from inter-disciplinary research on the nature of law and institutions. It offers ways to understand how to capture the material and everyday lives of those that use the law. The first section dealt with different ways of de-centring state law and moving beyond statist conceptions. The second section has looked at different sites for the production of legal knowledge by giving cognisance to the constituent categories of time, space, language, epistemologies of knowledge and finally relational natures that govern the use of the law. The third section, based on these rich and complex interventions, has engaged with uncovering what user-centred engagement in the law would entail. In doing so, the review has drawn on what it means to "do" law from below, the conception of Nyaaya and how we can capture the realities that influence the manifestations of law. It has raised the question of whether law can be contained to the individual imaginary or if it is broader and gives consideration to the public, the intangible and tangible influences that speak to it and influence its execution.

290 Moving beyond state institutions does not mean marginalising them. Rather, this implies finding productive ways to ensure that they are not hegemonic entities that prevent the sustenance of any alternative realities and narratives. In this regard, this essay argues for why focusing on the role and the place of the users of law is one way to represent difference, to give voice to different vulnerabilities, experiences, and values, and to offer not an "ideal type" conception of the law, but one that is experienced, challenged, imagined and used by a plurality of voices in a diversity of cases.

In conclusion, the four books by being inter-disciplinary, whether through references to history, comparative studies, anthropology and law and socio-legal studies, convey similar ambitions—that law as a state project is marred in numerous limitations, and it is only when we see law from outside this narrow conception that we can get a semblance of how it is realised. This can be achieved either by retaining the form, as Pirie does, or it can be done by examining the contestations and negotiations between claims of communities, publics and the state, as Niezen demonstrates. Similarly, it can be attained by studying the meanings, agencies and identities that emerge from law as Goodale does, or by producing a counter-hegemonic narrative of the framing of law as Darian-Smith articulates. The promise of these books is that they emphasise the need for plurality in analysing law and engaging with it.

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