Book Review II: Reimagining sustainable development by centring African customary law: A TWAIL analysis

By:

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Reimagining sustainable development by centring African customary law: A TWAIL analysis

Book review of "Sustainable Development, International Law, and a Turn to African Legal Cosmologies" by Godwin Eli Kwadzo Dzah

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This book is about reimagining sustainable development. At a time when many scholars have become disillusioned with the concept and calls for abandoning sustainable development in favour of new concepts abound, Dzah makes an impassioned call for us to retain the idea, whose ancient roots predate its co-

optation by Western (legal) hegemony, while think about it in a radically different way. The way in which he suggests we do this, is by turning to African relational ontologies and environmental ethics that (re)conceptualise humans "as mere co-occupants of nature with other species".

The rejection by many scholars of the concept of sustainable development, even as the term has reached a high point in popularity among states, NGOs and the business sector alike, is comprehensible. As Donald Worster, a leading environmental historian once noted, often it "will be 'development' that makes most of the decisions, and 'sustainable' will come trotting along, smiling and genial, unable to assert any firm leadership, complaining only about the pace of travel". Many scholars have therefore questioned whether sustainable development offers any real solutions or is in fact part of the problem. Dzah gives two reasons for continuing to use the concept of sustainable development, first, that a new concept will not necessarily address the underlying challenges, and second, the "practical challenge of rallying international actors to agree on a new vocabulary" when sustainable development remains a concept around which there is wide political agreement.

However, in what he calls a "revivalist effort", Dzah argues that we should release the concept from the Eurocentric heritage in which it is trapped, and which has proven incapable of addressing the complex global environmental challenges we face today. Therefore, his call for maintaining the concept should not be equated with a maintaining of the status quo, as his reconceptualization goes to the very foundations of the concept.

A lot of the work done by this book, is in deconstructing environmental law broadly and sustainable development more specifically, from a Third World Approaches to International Law (TWAIL) perspective, also drawing on the work of other critical environmental scholars, such as Klaus Bosselman, and the fields of legal pluralism and legal anthropology. Dzah looks at sustainable development through an African lens, while situating it critically in the global politics of exclusion.

Regarding the structure of the book, Chapter 1 gives the reader a thorough introduction to TWAIL as an approach, the "Third World" and the concept of

sustainable development. One of Dzah's main assertions is that the lack of "transformative potential of sustainable development in international law currently", is the result of it being oriented in Eurocentric legal paradigms. He does an excellent job of unbundling what led us to this point and the need for reconstructing sustainable development. Chapter 2 provides a critical historical overview of key concepts – nature, environment, development and sustainable development – again illustrating their roots in colonialism, Christianity and the civilising mission of international law. Chapter 3 recounts the history of sustainable development under international law, bringing to light some of the tensions in the North/South divide and the lack of universality in the concept, that is glossed over in the literature praising the success of the early Stockholm and Rio Conferences in bringing the world together. Chapter 4 draws the links back to colonial nature conservation in Africa as Africa's entry into international environmental governance. It recounts also the shift of Africa from an object to a subject of international environmental law, including the four-fold way in which sustainable development is today part of the African legal system, with human rights being the most concrete way in which this concept is given effect. In setting up and then criticising the shortcomings of Eurocentric law and concepts, at times some nuance is missing from aspects of the discussion. In my view, Dzah is too quick to dismiss the whole human rights project as Western and individualist, even as he unpacks jurisprudence from the African human rights bodies that personify the collective dimensions and alternative conceptions of human rights, such as the right to development. Similarly, he seems to reduce the entirety of Western legal thought to the positivism of Kelsen and Hart.

After the focus mainly on deconstruction in the first four chapters, Chapter 5 starts to make a case for the concept of sustainable development to be informed by African customary law. While a note on disambiguation between customary law in this context and customary international law would have been useful, Dzah in this chapter argues for customary law to be considered law, by historically contextualizing when customary law in Africa was displaced by Western law, how this was done, and making a case for why today customary law, like other non-state sanctioned forms of law, should be considered law. A considerable part of this chapter is dedicated to the question: is customary law, law? which at times reads a bit like a plea for the participants in the very legal

system that he rejects, to accept the validity of this alternative legal system. But it is still an interesting exercise delving into questions on non-state law and the state-based system more broadly.

In Chapter 6, by revealing the myths underlying all legal systems, Dzah seeks to challenge the dominant myths of international (environmental) law with myths from other systems, African customary law in particular, but also broadening his analysis to take account of other customary or indigenous law. For Dzah, law and ethics cannot be separated in customary law, and African environmental ethics is therefore a core element of customary law. African environmental ethics, as formulated by Polycarp Ikuenube and quoted by Dzah "considers nature or the environment, human and harmonious communal relationships as part of the holistic community as ends in themselves which should be respected for its own sake". For Dzah, "[t]he ethics-as-law turn thus delegitimises human flourishing as the foremost objective of our planetary existence and refocuses instead on our human obligations to the rest of the world as a necessary alternative to ensuring ecological integrity". This then, is the main contribution from African legal thought to the radical reconceptualization of sustainable development. Nevertheless, he is at pains to point out that this does not mean that all African "eco-legal philosophies" are the same, but points rather to some, as phrased by the environmental philosopher Workineh Kelbessa as "underlying common or shared environmental value of African societies", which Dzah finds also has a common core with cosmologies of non-African indigenous groups.

In addition to the six substantive chapters, the book also offers an introduction and a hopeful conclusion. It is only in the final chapter that the book gives a few concrete, but brief, examples from national law, of what imbibing sustainable development with customary or indigenous law would look like. Also, as recognised by Dzah, while this approach "opens up alternative ways to reconceive of a new sustainable development", it does not automatically resolve all "the challenges of regulating the economic interests that threaten the human-nature balance". Thus, while the book gives some examples of environmental ethics from Africa and some examples of how it has been reflected in national contexts, a lot more remains to be done to develop what exactly its operationalisation would entail.

Dzah in this work succeeds in providing a novel and thorough critique of the Eurocentric conceptions of sustainable development and associated concepts, as well as the way in which it was used and continues to be used in a way that does not and cannot solve the complex global environmental challenges. He also succeeds in making a strong case for African customary law to be recognised, among other “marginalised sources of law and peripheralised knowledges”, as part of the plurality of legal ontologies that should be used to interpret sustainable development. Much of the focus of the book is on “why” questions: why are some forms of law considered “real” law and others not? Why should customary law be considered law? Why does customary law help us think about sustainable development differently? It however leaves open many of the “how” questions, about how to operationalise customary conceptions of sustainable development? How the nascent norms developing at the national level would translate to an international context? And how these norms would co-exist in a plurality of legal ontologies where the dominant focus is currently on economic development?

Because of its strong eco-centric and relational push, the book is very relevant at a time when more-than-human rights and rights for nature are at the forefront of international law scholarship. This book adds another strand, that of relationalism that similarly displaces humanity from its elevated pedestal but focusing on “the planet as a network of ecological communities” and “interconnectedness between humans and nature”. For Dzah, this turn to African environmental ethics should not be considered as new, but rather a return to “to a relational ontology that was interrupted through the legal violence of the colonial intervention”. It is a compelling, hopeful and imaginative work, that anyone who is concerned for the future of this planet should read.

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