Book Review I: Towards Worldview Interactions: A Review of Godwin Eli Kwadzo Dzah, Sustainable Development, International Law and African Legal Cosmologies (Cambridge: Cambridge University Press, 2024)

By:

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Dr. Godwin Dzah's thought-provoking book investigates the actual and potential contributions of Africa and its peoples, including through their rich worldviews, to the making and doing of international law, treating sustainable development as a microcosm. At its core is a vision to deploy Africa's Indigenous worldviews to reimagine sustainable development, advance thinking on how it should be applied in international law going forward. These are issues

I have also been thinking about under the "Re-Imagining Agenda 2063" Project, especially contributions to our "Re-Imagining Sustainable Development" conferences at Law and Society Association and UBC and a book volume drawing on them. Like the book under review, our basic premise under the project is that sustainable development, often defined as "development that meets the needs of the present without comprising the ability of future generations to meet their own needs," is a heavily flawed concept, largely because of its anthropocentric, colonial and ecological modernist roots. Dr. Dzah's book clearly articulates this point.

The contributions of the book develop in three parts. Part 1 sets the scene. It covers context and central theoretical underpinnings in chapters 1 and 2. Part 2 applies theoretical ideas to deconstruct the history and substance of sustainable development. In chapters 3 and 4, it examines how sustainable development has evolved and been applied internationally and in Africa, revealing some deep problems, notably colonial motivations and exclusion of African peoples. Part 3 responds to these problems by re-imagining the legal dimension of sustainable development. Under this part, chapter 5 critiques colonial treatment and legacy and revisits the potential of customary law while chapter 6 promotes African environmental ethics and allied worldviews from the global south to rethink law as something beyond the positivist's limited notion and vision of law, presenting this analysis as a new building block for ecological law.

There is much to digest and unpack in this book. In this short commentary however, I focus on three key themes that I am most interested in and conclude by reflecting on the book's relevance to my own evolving research agenda.

1. *The Myth of Law*

An important point from the book is that Western law is as mythical as Indigenous or customary law, making any argument contesting the validity of African indigenous customs based on their mythical nature or foundation misplaced. This point is in response to the prevalent criticism of African customs as mythical, which allegedly makes them less of laws and more of ethics. The book's analysis on this point is excellent. But the point is so important that I want to buttress it.

Many of the theories that inform how we think about law and government are as mythical as it could get. Consider the theories of social contract advanced by Thomas Hobbes and John Locke, which are perhaps the most influential in grounding our understanding of political and legal ordering. Those theories have been successful to the extent that some people may imagine that there was a real "state of nature" when life was "solitary, poor, nasty, brutish, and short" and anyone could be overpowered, justifying the need to cooperate to protect themselves. Also, to illustrate with a more contemporary contribution, John Rawls' theory of "justice as fairness" builds on a mythical "veil of ignorance," a state in which one does not have enough information to make informed decisions to protect one's interests, incentivizing one's willingness to compensate the least advantaged in society, which may include oneself. We have been moving to an era of theorizing law empirically. But our current legal reasoning and practices are mostly based on those earlier mythical theories.

If much of the theoretical foundation of the law we currently practice is mythical, why then should anyone attack African customs for being mythical? Clearly, such opposition is not about the quality of African customs but rather about western subjugation of African worldviews.

2. *Customs versus Customary Law*

For readers thinking about Africa's Indigenous ways of knowing, being and doing and how it informs law, it is difficult to miss the theme of customs versus customary law. Some thinkers and practitioners do not clearly distinguish these two concepts. For instance, in the Nigerian case of *Olubodun v. Lawal*, Justice Aderemi of the Supreme Court of Nigeria defined "Custom or Customary Law is a set of rules of conduct applying to persons and things in a particular locality." However, following some of the leading scholars in the field, I consider them to be different. For instance, in *The Nature of African Customary Law*, perhaps the most influential book on Africa's customary law, Justice (Dr.) Taslim Olawale Elias starts out his groundbreaking work distinguishing between the two. Accordingly, I understand customs as patterns of behaviour that are predominant and widely accepted in a particular community, informing and constituting part of their worldview, while customary law is a body of law made up of customs. This distinction is not to uphold the simplistic legal positivist view that customary law should be backed by sanction. Rather, it is to bring out

important implications for the role of customs in re-imagining sustainable development.

The book under review largely blurs this distinction but, nonetheless, recognizes the important implications. For instance, it draws our attention to the colonial doctrine of repugnancy, which advances standards by which customs become customary. I broaden and problematize this issue. I draw on my Nigerian legal experience to explore how customs become customary law, but many other African countries have similar practices.

Customs become customary law when they have passed a judicial recognition test with key stages. The first stage is the proof that such custom has legal intention and impact of causing behavioural change, although this legal impact does not translate to the positivist's idea of sanction. Rather, courts often call witnesses, such as chiefs or others knowledgeable on the relevant customs, to ascertain that such customs have legal intention and impact. This is necessary because customs are often handed down orally from one generation to another, making it potentially difficult to ascertain. Also, "superior court judges cannot be presumed to know the rules of customary law prevalent in their area of jurisdiction," although this reasoning does not necessarily apply to customary courts with judges knowledgeable about such customs in question. The second stage of judicial recognition, which the book emphasizes, is that such customs pass the repugnancy test. Sometimes legislated, the tests are that customs are enforceable only where they are not "repugnancy to natural justice, equity and good conscience", of "incompatibility" and of "public policy." There might be other tests or stages of judicial recognition across countries, depending on how respective case law or civil codes evolve. For instance, in common law countries, judges can also take judicial notice of customary law, called proof by judicial notice.

Judicial recognition tests have serious problems and implications. The book rightly calls them out for using "a pseudo-judicial process that was not Indigenous, not representative of the colonised peoples, nor sensitive to their cosmologies…", and emphasizes that this practice subordinates customary law. But more relevant to the book are the specific implications for sustainable development. For instance, the tests are applied by judges who may be wholly or mostly trained in colonial law and may not be well grounded in the relevant

customs that have evolved to restrain resource extraction, consumption and pollution, or they may apply their own limited (colonial or colonial-inspired) understanding of natural justice, equity and good conscience. For instance, where customs that promote communal land ownership or certain taboos seeking to reduce human presence in forests and rivers undermine the interests of a state-mandated forest conservation or resource development project, such a judge may not appreciate the value of this custom and might weigh the alleged "environmental," "conservation," or economic benefits of such projects higher, even considering the approval of such projects equitable. Although such customary law issues could be addressed by judges who are experts in the relevant custom, there is no guarantee. Some other judges who know nothing about such customs might have a say over the life cycle of a case, such as in its progression across levels of courts.

However, although "the British colonial courts ingeniously tended to reinforce a particular version of customary law which was quite different from what was practiced in the communities" (p.208), this is not to say that all African customs were "good." No community, within or beyond Africa, has customs that are all "good," however defined. For me, this makes it important to anticipate a future body of laws that draws on the interactions of customs and other sources of law that best drive global sustainability, defined to uphold the integrity of nature. We do not yet have meaningful work on such legal corpus.

3. *Ecological Law*

Advancing the idea of "ecological law," an emerging idea in the literature that mostly seeks to transcend the anthropocentric nature of environmental law, the book under review argues for "the turn to marginalised sources of law and peripheralised knowledges in transforming international law" to achieve effective operationalisation of sustainable development. To repackage this vision of ecological law, it builds on environmental ethics as a stepping stone to inform legal thinking and practice, illustrating with concepts across Africa and non-African communities, including ubuntu (roughly translating to "I am because you are") from East Africa and buen vivir [Ecuador]/ Vivir Bien [Bolivia] (roughly translating to living a good life in harmony with nature, although there are multiple approaches to its practice) from some Latin American countries.

Having given these concepts serious thought, a major challenge I see is how to engage them to reform law. Engaging them within their homes is less problematic. For instance, informed by policy documents advancing the idea of living in harmony with nature and formulated as a constitutional right of nature, buen vivir was incorporated into Ecuador's 2008 Constitution, inspired by the objective to move away from the colonial business as usual, albeit still based on an extractivist rather than an ecological integrity approach. Less clear is how to engage them outside their homes, and there are at least two camps on this point. One camp insists that we should not transplant them. For instance, buen vivir comes from a largely self-contained worldview, making them less transferrable. More popular in legal scholarship, another camp thinks that we should indeed transplant these philosophies, or aspects thereof, because we do not really have a better alternative.

I share the vision that such concepts could add something new to global sustainability and legal thinking but doubt that we have adequate tools to engage them. As far as I know, the most relevant tools we have in law, such as from legal pluralism and comparative law, perhaps most notably the concepts of legal transplant and functional comparison, are unfit. While they might provide some initial issues to reflect on, they are extremely limited by several factors, including their colonial roots.

4. *Towards Worldview Interactions*

As the book under review suggests, there is promise in having multiple worldviews, including ethics. If we are serious about addressing environmental and other deeper problems, such as the values of consumerism and self-interest that ultimately drive environmental crises, wars and other problems, we must draw on the most promising aspects of such worldviews for new kinds of laws that could promote sustainability. We do not yet have a body of knowledge for this. To fill this gap, starting with a guest lecture at the University of South Africa, I take a cue from design studies to suggest thinking systematically about the interactions of modalities of worldviews, such as values, instruments, institutions and processes, to enhance laws driving sustainability, but I am still scratching the surface. Such thinking could inform a new form of legal corpus, which considers modalities that interact across worldviews and the implications of such interactions.

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