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Book Review
An outsider's comment on Eve Darian-Smith's *Laws and Societies in Global Contexts*

Isabel C. Jaramillo-Sierra*

I will reflect on Eve Darian-Smith's (2013) book, *Laws and Societies in Global Contexts*, from the positions of both an outsider, someone rather indifferent to its claims and its best audience – someone interpellated, invented and brought into the conversation: as a critical legal scholar and as a professor in a university located in what has been continuously referred to as the 'Global South'.

Indeed, Professor Darian-Smith locates herself very definitely as a 'socio-legal' scholar and defines this scholarship as work oriented to 'better understand' (p. 2) in 'order to make law more widely accessible, equitable, and just' (p. 2). Less explicitly, and I guess much against her own interest in being less parochial, she ends up situated as a scholar in contemporary US scholarship: the only one still working on the suppositions she wants to debunk. As I mentioned before, I am neither a socio-legal scholar in the way this group is usually defined nor part of the US teaching establishment.

However, as a matter of fact, I am interpellated by Darian-Smith as she wishes to enlist critical legal work to reach her goal of 'broadening the counter-hegemonic in law and society scholarship' and argues that she seeks to 'problematize the dominance of Euro-American legalism; highlight the need to embrace legal pluralism and alternative conceptualizations' (p. 6) and 'encourage emerging conversations among scholars and legal practitioners in the global North and global South' (p. 6). It does seem that I have something to say about this book.

In this context, I will focus my comments on two themes that the book tackles: (1) the relationship between theoretical choices concerning law and society, and political consequences; and (2) what it means to read and write globally.

For Darian-Smith, as mentioned before, scholarship is related to understanding and understanding should bring us closer to what is just. This claim, which both locates her within the long tradition of the social in law (see Kennedy, 2003; Jaramillo, 2010) and allows her to distinguish herself from Empirical Legal Realism and New Legal Realism, however, comes to be in tension with some of the critical ideas she wishes to embrace, making the book explode in unexpected ways. In particular, it contradicts the claim that law is constitutive of society, as argued beautifully and extensively by Robert Gordon in his 'Critical Legal Histories' (1984) and the idea that law is a cultural artefact, among others. On the one hand, accepting that law is constitutive of society makes any distancing, either normative or descriptive, impossible analytically. On the other hand, accepting that law is constitutive means rejecting the possibility that 'society' can teach us anything about how to make law better or that 'law' can teach us how to make society better.

To illustrate, I would like to underscore the tensions between Rajagopal's work and Erbeznik's work, both of which are included in the same chapter – Chapter 5 – as illustrations of the problems concerning security. While the first is trying to show that the 'rule of law' is used in post-conflict societies to depoliticise the foundational processes involved in reconstruction and is therefore determined to destabilise the difference between democratic and non-democratic, the

* E-mail: ijaramil@uniandes.edu.co.

second wishes to demonstrate that foreign aid affects negatively certain indicators related to the rule of law. The second exercise, in the socio-legal tradition, shows 'reality', rent-seeking and corruption, in the hope that law can be transformed to make society come closer to justice. The first is an effort to show that there is no 'reality' out there of rent-seeking and corruption, but rather demonstrates the role of actors and intentions, interests and affections (the political) in constructing these phenomena. I feel that Darian-Smith either needs to develop these ideas further to justify how they come along together or has to make a choice about her identity instead of representing the situation as one of pacific integration of these two bodies of thought.

Now, with relation to the wish to encourage conversations among scholars and legal practitioners in the Global North and Global South, I would like to make two observations. The first has to do with the relationship between the problem of the production of legal knowledge and institutional practices of funding, hiring and travel. The second has to do with the effort of writing and reading 'globally'. For this, I turn to two projects I have been involved in about what it means to say that there is a power imbalance in the production of legal knowledge. One of these projects revolves around Diego López-Medina's (2004) proposal of having an *Impure Theory of Law*, the other around Daniel Bonilla's idea of interrogating 'legal knowledge colonialism'.

In his book on the *Teoría Impura del Derecho* [*Impure Theory of Law*], López-Medina (2004) suggests that scholars in middle- and lower-income countries should abandon the abjection of resistance in order to embrace the notion of misreading for imagining a tradition and legal knowledge that is their own. He locates power imbalance in the fact that some countries have more resources and therefore have more disciplined routines of production and interpretation of true classics. He believes that poorer countries have limited access to canons of scholarship and therefore are at a disadvantage in the creation and use of legal theory. My colleague Helena Alviar and I have thus highlighted the bias in López's project towards the scholarship of White men, while accepting and promoting the need to create a 'domestic' arena with its own elites and power struggles (Alviar and Jaramillo, 2009).

Daniel Bonilla (2013), for his part, has led an initiative to map out and understand the consequences of what he now calls 'legal knowledge colonialism'. Much like López-Medina, he sees a power imbalance in the production and reception of legal knowledge between countries in the Global North and countries in the Global South. He explains that the power imbalance manifests itself in the fact that the prestige and credibility of legal knowledge and legal scholars in the North derive solely from geographical situation. In this project, I have tried to show that the claim that legal knowledge is biased has its own history and, in this history, there have been several efforts at destabilising the simplistic version of a North/South division that just follows money. One round of this was marked by the invention of comparative law, another by law and development. Much has been written on how the North–South conversations developed on these two fronts: from the surprise of finding someone to talk to, to the realisation of having little to teach, to the conclusion that work 'at home' was more urgent and the politics of globalism more complicated than spreading the gospel of 'right' knowledge.

In an attempt to understand the current trend of internationalisation and its meaning for the argument of the bias in the production of legal knowledge, I studied 'invitations' made by ten prestigious law schools in the US and eight Latin American law schools (Jaramillo-Sierra, 2013). I found that, while the most prestigious law schools in the US invite almost exclusively their own graduates and graduates from law schools they perceive as more prestigious, Yale inviting almost exclusively its own graduates and all others inviting Harvard graduates, some law schools in Latin America privilege US scholars indiscriminately and others have truly global intentions, inviting more than 400 people from more than fifty nationalities over the four years observed. I used this exploratory data to show that, beyond a simple North/South division, we should investigate how prestige is construed and maintained institutionally and how it travels, both in the North and in

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the South. In particular, I noted how the resources and channels for internationalisation could not be understood as isolated from larger political battles inside law schools and the legal profession in each jurisdiction.

Finally, I have also participated in a project led by Jorge Esquirol about how to read and write globally. Following his intuition about *failed law*, a mixed group of scholars working in universities in Latin America and scholars working on Latin America in the US debated in four different and connected workshops what would it mean to write and read 'globally' (Esquirol, 2008). I feel that we were not very successful in this project. We concluded that 'global' would mean to be fully 'fluent' in both jurisdictions in order to make an intervention at the same time in both. In other words, one would need to know and cite the relevant literature in Latin America, particularly in the concerned country, and know and cite the relevant literature in the US. Beyond this need to amass huge amounts of knowledge in order to be considered a relevant speaker in both jurisdictions, it was difficult to conclude anything about the politics of double interventions and how they could be considered 'global'. Though it was initially conceived as a book project, we had no book to show for all the efforts invested in it.

In conclusion, I feel that we need more work, theoretical and analytical, to bring together critical and socio-legal scholarship. We need to move pass the North/South binary to imagine the distributional effects of mechanisms of production and dissemination of legal knowledge. Just insisting on having more conversations will not do the trick after centuries of talking. I believe that Darian-Smith is correct in pointing us to the tensions that derive from these themes, but that we need to be cautious in supposing that the answers are either easy or that they have not been painfully attempted many times before by other bright scholars with the best of intentions.

References

ALVIAR, Helena and JARAMILLO, Isabel C. (2009) 'Políticas de un particularismo transmutado' ['Policies of a transmuted particularism'] in Daniel Bonilla Maldonado (ed.) *Teoría del derecho y transplantes jurídicos* [*Theory of Law and Legal Transplantation*]. Bogotá: Siglo del Hombre and Universidad de los Andes, 91–118.

BONILLA MALDONADO, Daniel (2013) 'Legal Clinics in the Global North and South: Between Equality and Subordination', *Yale Human Rights & Development Law Journal* 16: 176–215.

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

ESQUIROL, Jorge (2008) 'The Failed Law of Latin America', *American Journal of Comparative Law* 56(1): 75–124.

GORDON, Robert (1984) 'Critical Legal Histories', *Stanford Law Review* 36: 57–125.

JARAMILLO, Isabel C. (2010) 'The Social Approach to Family Law: Conclusions from the Canonical Family Law Treatises of Latin America', *American Journal of Comparative Law* 48(4): 843–872.

JARAMILLO-SIERRA, Isabel C. (2013) 'Mapping Academic Exchanges: Beyond the North South Divide', *Yale Human Rights and Development Law Journal* 16(2): 171–193.

KENNEDY, Duncan (2003) 'Two Globalizations of Law and Legal Thought: 1850–1968', *Suffolk Law Review* 36(3): 631–679.

LÓPEZ-MEDINA, Diego (2004) *Teoría Impura del Derecho* [*Impure Theory of Law*]. Bogotá: Legis.

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