

Book Review

A reflection on re-racialising: comments on Eve Darian-Smith's book, *Laws and Societies in Global Contexts*

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I. Introduction

Eve Darian-Smith's *Law and Societies in Global Contexts* did not make much of an impact upon publication in 2013, perhaps because it chose not to ally itself with any of the major Cambridge University Press series or, more likely, because of its strange hybrid format: neither textbook nor monograph nor texts and materials, but instead a little of each, it is difficult to pigeon hole and its audience is not readily apparent. This meant that, despite the glowing endorsements on the back, it did not seem to top many people's reading list in 2013. *Law and Societies* has been a slow burner though, quietly but insistently inserting itself into a central position in the emerging canon of global legal scholarship. It has become a go-to book for both education and scholars in this field. That it has done so is due to the quality of the writing, the smart contextualisation and use of law and society scholarship to lay the foundations of Darian-Smith's call for the emergence of a global socio-legal scholarship and the timeliness of that message. That it has taken a while for the qualities of the book to emerge is, I think, a consequence of the format confusion.¹

II. Re-racialising my work

Darian-Smith uses *Law and Societies* to demonstrate the need for a new way of thinking about law in a global context – one that is de-centred, interactive and de-stabilising of our ideas of what law is, how it works and where we can find it – at the same time as she provides the outlines of a framework in which law needs to demonstrate its enduring relevancy (something she does not take as a given) in a multicultural, multireligious and multiracial world. This framework highlights the need for scholars to focus on questions of the production of legal knowledge, the assertion (and presumably also reception) of legal authority and the processes of legal accountability. There is little in Darian-Smith's call for a critical engagement of legal sociology with the global with which I disagree²; nor do I find myself in disagreement with her outlining of the new approach and the starting points for the development of a global socio-legal scholarship. So much for a review. What I will do instead is engage with one of the chapters of the book from which I learned most – 'Re-Racialising the World' – and reflect upon it in the context of a project that I currently convene. I started the project before reading *Law and Societies* and I was unfamiliar with

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1 I should note that, while I am not a fan of this hybrid format, I use *Law and Societies* as one of two core texts in a second-year bachelor course – 'Global Perspectives on Law' – in the LL.B. Global Law programme at Tilburg Law School and the students love the book, format and all.

2 See my own, brief, attempt to sketch the contours of a global legal scholarship, which unconsciously echoes many of the points that Darian-Smith makes (Goodwin, 2013).

much of the literature that is discussed in this chapter. Reading it has helped me in contextualising this particular project within broader global narratives.

The project, entitled 'Investigating Structural Barriers to Batwa Inclusion in Development in Rwanda', is a three-year collaboration between Tilburg Law School and two Rwandese partners: the Institute of Research and Dialogue for Peace (IRDP) and the Communauté des Potiers du Rwanda (COPORWA).³ The aim of the project is to investigate the relationship between the contemporary economic and socio-political marginality of the Batwa in Rwanda and identity ascription. The project's main hypothesis is that, while ostensibly a positive acknowledgement of Batwan difference, the framing of Batwa identity within the indigenous discourse by international and national actors (including the Batwa leadership, international non-governmental organisations (NGOs), governmental authorities and other local actors) plays a determining role in persistent socio-economic marginality of the community. While the project is broader than simply the question of identity – we are attempting to elaborate on a qualitative approach based on the method of dynamic public reflective equilibrium developed by Wolff and de-Shalit in their study of the socio-economically marginalised in the UK and Israel (Wolff and de-Shalit, 2007) – what is interesting in the context of Darian-Smith's reflection on re-racialisation in Chapter 6 is the way in which ethnic or racial identity is either ascribed or denied to members of this community. Race is central to our analysis of Batwan socio-economic marginality, even if we had not stated so explicitly in the original project design.

Batwa represent the third largest community in Rwandan society but constitutes only around 1 per cent of the population.⁴ The Batwa are historically associated with the 'Pygmy' population of tropical Africa who sustained livelihoods as hunter gatherers. Successive waves of migrations of Bantu farmers and Nilo-Hamitic herders exerted pressure over Batwa lands, leading to the latter's subjugation (Vansina, 1994, pp. 49ff.). The Batwa were pushed to frontier territories; the shrinking of their resource base was further impacted by the establishment of conservation areas. The loss of living ecologies and of traditional modes of production were not accompanied by suitable compensatory alternatives. Today, most Batwa communities live in extremely precarious conditions: they traditionally provided for themselves through pottery but this marginal industry cannot sustain the livelihoods of the entire community. Instead, most members of this community now live a more or less sedentary life in small communities across the country, mostly on inhospitable and unproductive lands. As one of the most densely populated countries in the world, the unavailability of arable land in Rwanda, as elsewhere in much of Africa, entails that the Batwa are reduced to the acutely vulnerable economic position of occasional day labourers. As a consequence, members of Batwa communities are generally the poorest and most vulnerable across the range of socio-economic indicators.

Nowhere more so than in Rwanda has the constructed nature of race been so brutally exposed (see Dowden, 2015, Chapter 9 for a good summary). Belgian and German colonisers, together with the Catholic Church, constructed deeply divisive and ultimately violent racial categories in Rwanda and neighbouring countries to replace the fluidity of pre-colonial social ordering. Their work was the product first of colonial narratives of racial superiority, and then later post-independence nation-state construction, democratic idealism and the attempt of former colonisers – both

3 The project is funded by WOTRO, a section of the Dutch Science Foundation dedicated to development studies, as part of their exploration of Strategic Actors for Inclusive Development in Sub-Saharan Africa, available at: <<http://www.nwo.nl/en/research-and-results/programmes/research-for-inclusive-development-in-sub-saharan-africa>> (accessed 23 November 2017). We have only just completed the pilot part of the project, with the main bulk of interviews just starting, and so any impressions are hypotheses that have yet to be tested.

4 It is difficult to gather accurate numbers because it is illegal to collect ethnic statistics in Rwanda.

administrative and religious – to maintain their grip on the newly independent state. Even if we were to discount the political machinations of certain Northern powers in the region in the post-independence decades, the waves of violence that culminated in the Rwandan genocide cannot be understood outside of a broader global narrative of colonial racial politics.

The response of the post-1994, post-genocidal, national authorities has been to prohibit ethnic identification within the public realm. Within this contemporary national context, the Batwa are, variously, labelled Batwa, potters and Historically Marginalised Peoples (abbreviated to HMPs), with the latter being the currently favoured descriptive. So sensitive is the question of racial descriptions in Rwanda that our partner COPORWA operates in a precarious position and has been required, under threat of closure, to change its name a number of times, with the latest term determined by their economic designation as potters. This attempt at enforcing a racially blind society, in which individualism and meritocracy (or one's economic position) replace racial categorisation, while rooted in the Rwandan context, also of course belongs to a broader global dynamic of 'post-racial' societies. And, although the local context is distinct, the consequences of post-racial constructions are largely familiar; as Darian-Smith, quoting Howard Winant, notes, '[t]he rearticulation of (in)equality in an ostensibly color-blind framework ... preserves the legacy of racial hierarchy far more effectively than its explicit defence' (Winant, 2004, quoted by Darian-Smith, p. 321). In Rwanda, the denial of ethnic categories runs the risk of entrenching the dominance of the current government and the racial categorisations that it is attempting to overcome by making it impossible to talk about deep inequality.⁵

In addition to the global historical narratives of race, there is also of course a contemporary global racial politics at play in relation to the positioning of Batwa within Rwandan society – one that is created and kept in play by multiple interactions between actors at the global, national, local and intercommunity levels. The Batwa are recognised as an indigenous people by the UN and are included in official UN reports, as well as NGO reports, on the plight of indigenous groups. What is particularly interesting about the indigenous status of the Batwa is the active role of international NGOs based in the Global North in pushing their identification as indigenous against the explicit wishes of the government in Kigali. The Copenhagen-based International Working Group for Indigenous Affairs took on much of the early work of gathering the necessary support for Batwa's international recognition as indigenous; another Scandinavian NGO, Norwegian Peoples Aid, do much of the work of financing Batwa indigenous status. The pushing of the indigenous narrative by humanitarian organisations in the Global North within countries of the Global South is no less a part of global racial politics than the relationship of labour to capitalism that Darian-Smith foregrounds in her discussion.

III. Global indigeneity

Indigenous identity is the acceptable form of racial identity in a post-racial capitalist system: non-threatening because of indigenous people's tiny population size and the extent of their culture difference, they become a curiosity. In addition, while more complicated in the arenas of the immigrant societies of the US, Canada and Australia, in the African context, the imposition of the indigenous narrative allows us in the Global North to continue to assert our (racial) superiority by demanding the recognition of a favoured group as special and by portraying a country as oppressive and as failing to respect human rights when they refuse. As my colleague on this project, Felix Ndahinda, has shown in his work, the concept of indigeneity has no history in Africa and makes little sense in such diverse societies (Ndahinda, 2014; Ndahinda, 2013; also

5 It should be noted that the Rwandan government has active poverty-reduction programmes targeted at the most impoverished, who are, on the whole, Batwa.

Ndahinda, 2011). As such, he suggests, it has little empowerment potential; this different context is not considered by these humanitarian organisations, who view indigenous status as an unqualified good.

The global indigeneity narrative is denied at the national Rwandan level and appears to have little purchase at the local level – we did not encounter any self-labelling as indigenous during our pilot wave of interviews with local Batwa community members; it plays, however, an important role in power dynamics within the Batwa community, linking that local to the global. One further level of local dynamic interaction with global identity politics that appeared frequently in our pilot interviews – and which I do not have space here to develop – is the way in which a number of our Batwan interviewees viewed their identity as Batwa as an impediment to progress, both at a personal and on a community level. Progress here was seen largely as economic, namely in material terms; this is perhaps not surprising given the general level of economic deprivation of the interviewees. Nonetheless, it is a thread worth exploring in greater detail in the main interview round.

By viewing our study of the position of Rwandan Batwa within the context of re-racialising politics, it becomes clear that (the denial of) race is a tool for asserting authority at the national level; at the intercommunity level; and, certainly not least, at the global level – in multiple ways that we are yet fully to unravel. Indigeneity in this context can be viewed as a legal construction – a form of legal knowledge in the shape of rights – that is deeply implicated in the colonial project and, as such, constitutes a contemporary site of contestation – on grounds of legitimacy – between the Global North and South, and particularly between the North and Africa. The accountability of the various actors for the role they play in constructing and asserting Batwan identity in the context of their continuing socio-economic marginalisation will be the subject of further work, as will the notion of resistance – a concept that features strongly throughout *Law and Societies* in the many case-studies and examples but which does not feature explicitly in Darian-Smith's analysis. Hopefully, this is something she will look to rectify in a follow-up edition: I would be very interested in reading what she has to say on the part that resistance has to play in re-shaping law for our complex world.

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