

International Covenant on the Right to Development, Implications for Developing Countries and the Global Balance of Power, by Carol Chi Ngang (ed)

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The subject matter of every volume is inevitably bounded by an appropriate title, which is itself a deliberate choice of words. This particular title is intriguing and provides a useful starting point for my review from a human rights law perspective.

Title

For the last 50 years,¹ the traditional notion of rights has been reformed and expanded. The ethical perspectives of rights have become so essential, such that human rights have become a starting point for a range of justice claims. Among such claims are the rights to a healthy environment, and more recently, the right to development, both of which are core provisions of the African Charter on Human and Peoples' Rights.² The African Charter significantly adopts an integrative approach to environmental rights by linking it to the right to development. Over the years, much reflection has been given to the protection of first-generation rights (civil and political rights) and second-generation rights (economic, social and cultural rights) within well-established institutions and mechanisms. However, third-generation rights (rights to development and a protected environment) tend to be realised primarily through first- and second-generation rights. Regardless of how we categorise human rights, we all agree on the indivisibility and interdependence of human rights. Away from such transformations, it is worth asking: what makes it particularly interesting for a volume to be framed from a rights perspective? For a reader not immersed in the language of rights, a compelling answer

1 Since the 1972 United Nations Conference on the Human Environment.

2 Article 24 of the African Charter provides that '[a]ll peoples shall have the right to a general satisfactory environment favorable to their development.'

to this question invites a re-examination of the notion that '[h]uman rights can be seen as primarily ethical demands. They are not principally "legal," "proto-legal" or "ideal-legal" commands'³ and are therefore imbued with the propensity to reshape laws, so much so that they command profound feelings for alternative futures, with the right to development contained in such futures.

The title of the volume, *International Covenant on the Right to Development, Implications for Developing Countries and the Global Balance of Power*, goes beyond encompassing the International Bill of Human Rights. Specifically, the second part of the title—*Implications for Developing Countries and the Global Balance of Power*—implies a combination of considerations, some grounded in and others extending beyond legal analysis or a rights-based discourse (See Chapters 8, 9, 10 and 13). Together, however, these combinations form part of a continuum that supports a more inclusive discussion of the right to development. Thus, the title appropriately frames a premise for incorporating related approaches to the right to development, as reflected in the various chapter contributions.

Methodology

In their essay examining the materialisations of law within disciplinary spaces, and taking into account methodology, foundational concepts, and possible directions in the evolution of legal geography, Luke Bennet and Antonia Layard use the metaphor of the 'spatial detective'⁴ to demonstrate that socio-legal scholars are unafraid of the challenges that arise when legal ideas cross disciplinary borders. Although this reflection concerns the geography of law, it is becoming clear that engaging in projects with features extending outside the discipline, invites thinking beyond the subject's borders. This is often referred to as 'border thinking', a concept that Mignolo presents alongside 'border epistemology' as '[...] the antidotes to the virus of zero point epistemology.'⁵ For those not engrossed in legal research methods, the volume presents a rich weaving of methodologies. To put it more appropriately, the volume comprises an assemblage of methodologies, examples, and timelines. This corresponds to what Gilles Deleuze and Félix Guattari, carefully craft in their assertion that '[a] book has neither object nor subject; it is made of variously formed matters, and very different dates and speeds.'⁶

The whole idea of a right to development, especially to a continent like Africa, is a complex issue. Following the introduction, the volume is divided into four parts: Part 1,

3 Sen Amartya, 'Elements of a Theory of Human Rights' (2004) 32(4) *Philosophy and Public Affairs* 315–56, 319.

4 Luke Bennet and Antonia Layard, 'Legal Geography: Becoming Spatial Detectives' (2015) 9 *Geography Compass* 406.

5 Walter Mignolo, 'I Am Where I Think: Remapping the Order of Knowing' in F Lionnet and S Shi (eds), *The Creolization of Theory* (Duke University Press 2011) 167.

6 Gilles Deleuze and Félix Guattari, *A Thousand Plateaus* (Continuum 2004) 4.

Nature of the Right to Development; Part 2, Global Framework for Development and the Matrix of Power; Part 3, Perspectives on Right to Development Justice, and Part 4, Systemic Impediments to Realising the Right to Development. An excellent feature of the volume's structure is that it allows readers to freely negotiate the boundaries between various themes and opens up possibilities for understanding and developing interest in each section, without stifling interest in others.

The volume is exceptionally well framed. To quote Todd Gitlin, '[f]rames are principles of selection, emphasis and presentation composed of little tacit theories about what exists, what happens, and what matters.'⁷ The Notes on Contributors invites readers into the background of authors and their angle of writing. However, one may be persuaded to think that the conclusions at the end of the various chapters separate each chapter from the others and form a plurality of knowledges. This is hardly the case. First, breaking the volume into four parts ensures that the various themes do not fall apart from each other. Chapter 17 appropriately serves as a concluding chapter to ensure that chapters do not just produce a plurality of knowledges, and they do not rupture from each other. Ngang, who is not just a legal scholar but doubles as editor and contributor (to Chapters 1, 6 and 17) provides a careful framing at the beginning (Chapter 1) and at the end (Chapter 17), which, if I may borrow from Maksymillian Del Mar, 'guides inquiry [...] gently' and also encourages 'on-going, interactive and collective discussion.'⁸ He makes use of this craft to break down borders of knowledge and extend them towards the sort of knowledge that is often referred to in legal research as 'transformative interrogation'.⁹

Referencing

A significant point concerns referencing. Footnotes are carefully considered as 'a writer's direct address to the reader, a message slipped under the door, whispered aside in counterpoint to the formal discourse of the text.'¹⁰ If not used judiciously, they become what has been described as 'an abomination',¹¹ especially when they interrupt readers' engagement. There is sufficient use of footnotes within the various chapters. A careful read-through of the footnotes indicates that they appropriately cite and communicate helpful information. They are carefully crafted and, to quote Liz Fisher on their use, serve to 'draw the reader to the material and illuminate [...] it.'¹²

7 Todd Gitlin, *The Whole World Is Watching: Mass Media in the Making and Unmaking of the New Left* (University of California Press 1980) 6.

8 Maksymillian Del Mar, *Artefacts of Legal Inquiry: The Value of Imagination in Legal Inquiry* (Hart 2020) 281.

9 Helen Longino, *Science as Social Knowledge: Values and Objectivity in Scientific Inquiry* (Princeton UP 1990) 216.

10 Betsy Hilbert, 'Elegy for Excursus: The Descent of the Footnote' (1989) 51 CE 400.

11 Abner J Mikva, 'Goodbye to Footnotes' (1985) 56 UCLR 647, 653.

12 Liz Fisher, 'Craft Matters: Seven Tips for Legal Scholars' (2023) 35 JEL 11, 16.

Additionally, the references at the end of each chapter provide a useful resource for readers who may feel distracted having to consult footnotes at the bottom of each page.

Different Narratives, Shared Conversation, and a Shared Future

The craft of legal analyses in this volume is successfully achieved to the extent that it animates scholarship and figuratively, to borrow from Del Mar, places readers on ‘epistemic alert; [and what is more to us as readers] disorient[s] us and interrupt[s] us;... create[s] tension, discordance or incongruity; and ... imbalance[s] our usual associations or what we ordinarily take to be meaningful.’¹³

Attention has been placed on the role of international organisations and international financial institutions (Chapters 3, 7, and 8) that acquire more leverage in development, especially when dealing with extensive development projects that interfere with human rights generally and Indigenous rights specifically. Again, there is extensive reference to development activities and interference with special groups of peoples such as Indigenous peoples in Chapter 3. These undertake a somewhat disconcerting task: engaging in socio-legal research, examining some of the concepts implicated by the spread of modern concepts into Indigenous spaces, and exploring those intangible outcomes often overlooked when laws are moved across borders into Indigenous settings.

There is something salient about establishing the roots of development and environmental injustice as a transmutation from colonialism in chapters 1, 5, and 6. There are also references to international cooperation, the role of the international community, and extraterritoriality in Chapters 1, 2, 3, 5 and 6. These often require the transnationalisation of international law. When we look further at a thread running through much of the scholarship—namely, the advocacy for an international treaty (the International Covenant on the Right to Development), without rejecting the current treaty framework—the book makes a special appeal to epistemic communities engaged in the decolonisation of knowledges and border thinking. Decolonial thinking or border thinking searches for ways ‘to move through the borders drawn by the always-mutating imperial and colonial differences [...] Border thinking and border epistemology are the antidotes to the virus of zero point epistemology. These are the anchors that support the shift in the geography of reasoning. Thus, the way to the future is the way toward pluriversality as a universal project.’¹⁴

Thus, the subtle outcome of references to international cooperation and the non-rejection of the current international rights system is the mobilisation of opinions and, more significantly, the espousal of Karl Marx’s perception that ‘we do not attempt to

13 Del Mar (n 8) 280.

14 Mignolo (n 5) 167.

dogmatically [...] prefigure the future but want to find the new world only through a criticism of the old.’¹⁵

It is my wish that, in a subsequent series to this volume, if possible, emphasis be placed on why developing states should commit to and comply with the proposed International Covenant on the Right to Development, and whether ratification would be without hurdles—issues implicitly raised in Chapter 6. I also hope attention will be given to how the accessibility and usability of the internet could play an important role in development, as raised in Chapter 10.

In searching for epistemological justice in transnational spaces such as developing countries, coloniality is considered an epistemic hierarchy that advocates for the promotion of Western ideals in place of non-Western ideals. One such ideal is sustainable development, a regulatory parameter, which has been described as ‘eco-knowledges’ that influence ‘the administration of life itself—individuals, populations and the natural environment.’¹⁶ Sustainable development has been criticised as a hegemonic epistemology which:

epitomise[s] a global form of power tied to the modern administrative state, mega-science and the business community. It entails the administration of life itself, including individuals, population and the natural environment. In parallel with green governmentality, a discourse of ecological modernisation has gained ground in Western industrial societies since the 1980s. The distinct feature of this discourse is the compatibility between economic growth and environmental protection, or more specifically between a liberal market order and sustainable development.¹⁷

While sustainable development is the focus of Chapter 4, I hope a future series will explore whether something laudable can be drawn from it in relation to the transnationalisation and decolonisation of knowledges with reference to environmental law.

References

Bäckstrand K and Lövbrand E, ‘Planting Trees to Mitigate Climate Change: Contested Discourses of Ecological Modernization, Green Governmentality and Civic Environmentalism’ (2006) 6 *Global Environmental Politics* 50–75
<<https://doi.org/10.1162/glep.2006.6.1.50>>

15 Karl Marx, ‘For a Ruthless Criticism of Everything Existing’ in RC Tucker (ed), *The Marx-Engels Reader* (Norton 1978) 13.

16 Karin Bäckstrand and Eva Lövbrand, ‘Planting Trees to Mitigate Climate Change: Contested Discourses of Ecological Modernization, Green Governmentality and Civic Environmentalism’ (2006) 6 *Global Environmental Politics* 50–75, 54.

17 Mary E Pettenger, *The Social Construction of Climate Change: Power, Knowledge, Norms, Discourses* (Ashgate 2007) 129.

Bennet L and Layard A, 'Legal Geography: Becoming Spatial Detectives' (2015) 9 *Geography Compass* 406–22 <<https://doi.org/10.1111/gec3.12209>>

Deleuze G and Guattari F, *A Thousand Plateaus* (Continuum 2004).

Del Mar M, *Artefacts of Legal Inquiry: The Value of Imagination in Legal Inquiry* (Hart 2020) <<https://doi.org/10.5040/9781509995585>>

Fisher L, 'Craft Matters: Seven Tips for Legal Scholars' (2023) 35 *Journal of Environmental Law* 11–21 <<https://doi.org/10.1093/jel/eqad001>>

Gitlin T, *The Whole World Is Watching: Mass Media in the Making and Unmaking of the New Left* (University of California Press 1980).

Hilbert B, 'Elegy for Excursus: The Descent of the Footnote' (1989) 51 *College English* 400–14 <<https://doi.org/10.2307/377528>>

Longino H, *Science as Social Knowledge: Values and Objectivity in Scientific Inquiry* (Princeton University Press 1990) <<https://doi.org/10.1515/9780691209753>>

Marx K, 'For a Ruthless Criticism of Everything Existing' in Tucker RC (ed), *The Marx-Engels Reader* (Norton 1978).

Mignolo W, 'I Am Where I Think: Remapping the Order of Knowing' in Lionnet F and Shi S (eds), *The Creolization of Theory* (Duke University Press 2011) <<https://doi.org/10.1215/9780822393320-007>>

Mikva AJ, 'Goodbye to Footnotes' (1985) 56 *University of Colorado Law Review* 647–56.

Pettenger ME, *The Social Construction of Climate Change: Power, Knowledge, Norms, Discourses* (Ashgate 2007).

Sen A, 'Elements of a Theory of Human Rights' (2004) 32(4) *Philosophy and Public Affairs* 315–56 <<https://doi.org/10.1111/j.1088-4963.2004.00017.x>>

International Instruments

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

United Nations Conference on the Human Environment, Stockholm Declaration (adopted 16 June 1972).