Book Review IV: Sustainable Development, International Law, and a Turn to African Legal Cosmologies (Godwin Eli Kwadzo Dzah)

By:

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Since its popularisation at the Stockholm Conference in 1972, and in the Brundtland Commission Report of 1987, as development that meets the needs of current generations without compromising future generations' ability to meet theirs, sustainable development has become a cornerstone principle of international environmental law. Its popularity has grown in tandem with criticisms levelled against it. Scholars point out that the concept's failure to commit to an overriding objective among the three competing pillars has made economic development its default core objective. Due to its open-textured nature, sustainable development has long been a popular surface discourse that lends linguistic cover for extractive neoliberal development deceptively

passing off as true sustainability. As a result, the concept has succeeded, not in seamlessly balancing its three constitutive pillars as initially conceived, but in providing cover for socially and ecologically unsustainable development demonstrated by the continued devastation of nature and negative social outcomes for peoples, especially those of the Global South.

These critiques foreshadow the book under review. In Sustainable Development, International Law, and a Turn to African Legal Cosmologies, Dzah's objective is to deconstruct the history, politics and law of sustainable development under international law. Drawing on Third World Approaches to International Law (TWAIL), the author's main argument is that sustainable development as currently conceptualised and implemented under international environmental law is defective and should be reconfigured to become a truly ecological law norm. The contemplated reconfiguration can be achieved by drawing on the legal value of African eco-cosmologies as a source of a countervailing logic and praxis to displace the Eurocentric and neoliberal logic that has curtailed its ability to advance human and ecological wellbeing.

The book comprises eight chapters, beginning with an introduction, and the substantive parts in Chapter 1 and a conclusion in Chapter 7. The introduction provides an outline explaining the structure of the entire book, setting the stage for the exploration that follows. In chapters 2 to 6, the author develops the core lines of the argument. The author's choice of TWAIL as a framework for critique stands to reason. As an intellectual project, TWAIL aims to do more than mere critique. It is committed to discerning and exposing the biases of international law and transforming it to foster fairness and justice for the Third World. While these two goals–critique and transformation–remain central to TWAIL, it is often criticised for failing to offer practical solutions to the problems it identifies. In the book under review, the author demonstrates sensitivity to both objectives of TWAIL in deconstructing sustainable development as it currently exists under international environmental law and proposing a concrete strategy for reorienting to become ecological law.

The need to reconfigure sustainable development implies that the concept's current conceptualisation and implementation are inadequate, flawed, or misaligned with its intended objectives. The author dedicates chapters 1, 2 and 3 to diagnose and explain these deficiencies. Chapter 2 focuses on the

conceptual evolution of sustainable development by explaining how specific ideas have shaped the relationship between human humanity and nature over time. Humanity and nature are initially conceptualised as being profoundly intertwined such that humanity is nature, in nature and surrounded by nature. With the influence of modern European thought infused in religion, capitalism and international law, this ontological standing is upended and nature comes to be seen as the environment, that is, the thing that surrounds humans and over which humans can exercise dominance and control. This thinking gives way to development, animated by the idea that the environment consists of resources that are necessary to achieve and sustain acceptable levels of economic development. In the final step, development mutates to sustainable development, reflecting emerging concerns about the biosphere's limitations to economic development. Thus, while contemporary discourse couches sustainable development as an idea expressing the 'ultimate human aspiration,' according to which States can achieve desired levels of economic development while remaining within ecological limits, its conceptual evolution has progressively hollowed out holistic human welfare as its core concern, inaugurating a radical conceptual separation between humans and nature.

Next, the author focuses on the concept's presumed universality (Chapter 3). It is common knowledge that the popularity of sustainable development gives it universal remit. The embrace of universality manifests in several marked ways. For example, its influence on international environmental law has been so pervasive that it now assumes an 'international constitutional law-like character ' shaping 'the content, form, and objectives of many, if not most, multilateral environmental agreements.' Furthermore, the concept has gained popularity as a handy metaphor for framing all manner of environmental concerns by states, corporate actors and civil society and responses to them even though such responses may be antithetical to human welfare and conflict depending on the motivation of the actor advancing them.

At first glance, universality appears to be a welcome attribute signifying the unity of actors around the objective of advancing human flourishing within ecological limits. However, the author argues that the claim to universality should be resisted on several grounds. First, the universalisation of the idea of sustainable development in its present iteration has facilitated epistemic violence in the form of silencing different and alternative ways of defining the

relationship between humans and nature, particularly those drawn from Indigenous cosmologies and African environmental ethics. This silencing, the author argues, happens in tandem with the second problem of presumed universality, that is, the advancement of Western civilisational hegemony, marked by the dominance of Western cultural, economic, and political values serving as an interpretative lens for determining what counts as sustainable development. A third reason to reject the concept's presumed universality is that universal acceptance conceals the fact that sustainable development is a neoliberal legal technology deployed mainly as a linguistic artefact to make capital extractivism more acceptable to developing nations.

Since, as the author argues, sustainable development's presumed universality is a contrivance, the natural implication here is that the concept has a specific history and takes a particular form in different legal contexts. Focusing on this theme, Chapter 4 traces the evolution of sustainable development in the African legal context to legal developments in colonial Africa. The author demonstrates how sustainable development began its evolutionary journey in Africa through colonial nature conservation treaties designed to facilitate the control and extraction of natural resources while violently excluding African peoples from accessing those resources. This occurred alongside various forms of epistemic violence that suppressed Indigenous laws and ways of co-existing with nature. As the author explains, the end of colonialism in Africa heralded a period in which African agency in law-making took centre stage as African states took the reins to develop nature conservation treaties under the auspices of the African Union. Regrettably, leveraging Africa's agency in law-making and implementation has not always been sufficiently progressive. The jurisprudence on sustainable development, now framed as development, rights and the environment, by the African Commission and the African Court, has not been sufficiently sensitive to the normative value of African customary law and Indigenous values and implementation has been poor, as African States are hesitant to cede state sovereignty in the interest of advancing environmental protection.

A recurring theme in the book, and more specifically in chapters 2, 3, and 4 is the author's emphasis on the influence of neoliberalism and Eurocentric legalism in shaping the evolution of sustainable development and its contemporary implementation. These observations align with the views of

critical international law scholars, who often contend that international law is profoundly Eurocentric and embeds market-oriented principles into legal frameworks and frequently prioritises economic goals above all else. Consequently, dislodging Eurocentrism and neoliberalism remains a significant challenge to render international law truly progressive and inclusive. Chapters 5 and 6 can be understood as the author's response to this challenge though the analysis focuses mainly on displacing Eurocentrism and less on neoliberalism. In the two chapters, the author develops the argument that African ecocosmologies can offer a countervailing logic to reorient sustainable development and 'transform it into an effective international legal concept.' (p. 205).

This prescription is by no means uncontroversial. It raises several methodological and practical challenges that must be tackled to make a convincing case for the role of African ecocosmologies as an alternative logic to ground sustainable development. The first challenge relates to the place of Indigenous law under the international law framework. Whereas Indigenous customs and laws may be recognised in international instruments addressing Indigenous Peoples' rights, they are not formally acknowledged as a source of international law or as an interpretative framework for it. To overcome the first challenge, the author suggests three methodological approaches to justify the normativity of African customary law. These approaches are legal pluralism, legal anthropology, and transnational law. The author's selection of these methodological approaches is guided by the common thread; the assertion that law exists beyond the state-centric mould. One may be curious why African customary law finds itself in need of normative justification considering its embeddedness in people's daily lives in many African communities. On this point, Dzah's analysis reveals that colonial exclusionary policies and practices usually cast aside and denigrated African customary law as non-law utilising legal schemes such as the doctrine of repugnancy.

The second methodological challenge is the risk of subsuming Indigenous and customary law within the conceptual frames and metaphors of formal law. Integrating Indigenous and customary law within formal law runs the risk of eroding their integrity as legal systems in their own right and disable their potential as a framework of critique for positive law. Dzah understands customary law as a legal phenomenon that manifests in two ways. The first

version consists of aspects of customary law that have been integrated into formal law. The second version, which the author refers to as ‘living customary law,’ consists of aspects of customary law that remain outside the framework of formal law and its machinery of interpretation and enforcement. Accordingly, living customary should exist in a ‘manner that assures co-evolution’ with sustainable development.

The third challenge is the trap of exceptionalism, an attitude historically used to impose Eurocentric legalism, displace Indigenous systems of law and denigrate their normative value. On this point, the author eschews any claim to such exceptionalism. Instead, the book focuses on what African ecocosmologies can offer as a framework for re-orienting sustainable development in practical terms. This is the substance of the analysis in chapter 6. The argument in support of the utility of African cosmovisions as a source of an alternative ethical foundation for international (environmental) law has been salient for some time now within Third World scholarship. This book adds a fresh perspective to this scholarship by making a compelling case for the normativity of African ecocosmologies and identifying their legal value as an alternative logic for reimagining sustainable development. According to the author, African ecocosmologies encompasses laws, customs and values that capture ways of knowing and co-existing with the non-human world that while not uniform across diverse social-cultural traditions share certain common aspects forged through experiences common to many African communities and that are legally valuable as a normative basis for reconfiguring sustainable development. Specifically, the author argues that customary law would infuse SD with an ‘eco-communitarian core’, which is animated by the repudiation of human dominance over the non-human domain while emphasising humanity’s obligations to the ‘community of interests between human and non-human worlds,’ (p.260) and a ‘relational cosmology’ as an alternative to the conceptual separation between humans and nature. Lastly, a common idea binding diverse traditions that make up the rich body of African environmental ethics is that environmental destruction is not simply an affront to individual interests but a violation of the cosmic order. This type of ontology would problematise the prevailing assumption that environmental destruction can be tolerated as the necessary price to pay to advance economic interests. In addition to their normative value, Dzah argues that integrating African cosmologies would

topple the supremacy of Western law and the attendant logic that has facilitated its dominance and exclusionary stance towards Indigenous legal systems.

Dzah's analysis succeeds in meeting the objective stated at the beginning of the book. It does so by diagnosing deficiencies of sustainable development and pointing the reader to a conceptual toolbox from which to draw ethical principles for re-imagining sustainable development. One angle of analysis that could have been addressed in this book is whether there are any drawbacks inherent to African ecocosmologies as a rationality for sustainable development. The analysis leaves the reader with an altogether positive outlook on the legal value of African ecocosmologies. Whereas the author is clear in stating that the proposal to turn to Indigenous African ways of knowing and existing with nature is not anchored on African exceptionalism, this point could have been pursued more vigorously. However, this is a minor issue and one that could be pursued as a future research agenda. Overall, this book is a valuable addition to TWAIL scholarship in general and on critical environmental law in particular. It offers new insights that would be useful to scholars interested in these fields and jurists involved in interpreting and implementing sustainable development in judicial and quasi-judicial settings and in the context of environmental governance.

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