



A Decolonial Philosophy of Law: Decolonial Cosmopolitanism, Love, and Reconceptualising the Law

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'Nothing is less rational ... than the pretension that the specific worldview of a particular ethnies should be taken as universal rationality, even if such an ethnies is called Western Europe ... [This would be] to impose a provincialism as universalism.'

Anibal Quijano

Presentation abstract:

In this presentation I introduce some main points from a larger study which I am undertaking on the development of a decolonial account of law. Spurred on by the need for global solutions to global problems this presentation aims to investigate whether a decolonial philosophy of law can offer a legal imaginary required to address the problems that we face as local communities, internationally, and as a species. This moves beyond overtly historical and conceptually Eurocentric, legalistic and state-centric accounts of pluralism and posits an account of legal agency not reduced to passivity. Instead, drawing on a novel and innovative account of decolonial cosmopolitan social theory, the presentation sets out the first principles of a cosmopolitan decolonial philosophy of law, an enactive relational social ontology and radical pluralism, and their capacity to reorient jurisprudence and legal theory away from a single universal cartography of law. A decolonial philosophy of law situates law as both an institution and mechanism for the transmission of *normative information*. It considers law's relationship with other spheres of human activity as relationally interdependent, in which normative information is produced, captured and *transformed* by communities of practice. This is within the social imaginary and *practice of constituted power*. It is within this "gap" between what is, *to be*, and what could be, *becoming*, that the legal imaginary of a decolonial philosophy of law can draw on the cooperative capacity of 'convivencia'. The aim is to set out the potential parameters of a legal imaginary to open new and novel areas of human action through a process of constant questioning of law and multiple sites of jurigenetic rationality of creative constitute power (Immanent transcendence). This could begin to address democracy's inherent short-termism and its intergenerational theft and empowers future generations to decolonise the future.



The decolonial critique represents an important challenge to social, political, and legal theory. It is equally significant in that it draws not only on knowledge and epistemology but also from ontology. Colonialism was not only inextricably linked to the concepts of race, gender, civilisation or hygiene, it is in turn mirrored in jurisprudence. Colonialism also had a direct impact on legal terms such as sovereignty, legal personality, property, state, and people. The decolonial epistemic and ontic critique allows it to move beyond the theoretical 'narcissism' of conceptually Eurocentric social, political, and legal theories, which have shown themselves incapable of incorporating the historical trauma of colonialism and slavery into their ultimate units of analysis – the free, autonomous, and distinct individual. However, as formulated by Walter Dignolo we are faced with a totalization of reality which causes ambivalence in his account of difference and identity. To rely on the categories of modernity to transform the legal and political imaginaries represents a failure to decolonise decolonial thought. To decolonise decolonial thought is to bridge the gap between an abstract 'I' and an abstract 'state' or 'community', to bring to life new thoughts through which 'she' can decolonise herself: where she/he can re-appropriate her/his life. In this presentation, we will explore the potential for a decolonial philosophy of law to provide a legal imaginary capable offering the resources to reconsider the material and symbolic relationship between the law and the individual. This will be carried out through a critical application of the social ontology of Watsuji Tetsurō.

To achieve our goal, the presentation will develop as follows. First, it will address the question of whether a decolonial philosophy of law is required or even possible through a necessarily brief overview of the evolution and construction of modern law into a legally binding standard of civilization. As we shall see over this long century of the legal tradition's evolution and construction, a counter-truth of legal thought also begins to (re)emerge: decolonial and post-colonial theory.

The presentation will then set out a critical reading of Watsuji's social ontology. The social ontology of Watsuji allows us to explore the 'darkness' and 'light' of our shared consciousness, and which can accommodate the tension between individuality and social relations. Rather than present the individual as the homo economicus, or as the norm-following and role-playing actor of the homo sociologicus, Watsuji was instead concerned with exploring how ethical practice is enacted and communicated within concrete human relationships. Moving away from perceptual, conceptual, and linguistic reification, here agency does not take place within a neutral space but conceives of the agent as constantly and generatively enacting with their world –



the point of analysis is in in-betweenness. It is in this gap, betweenness, that we find a shared ground with the other, in which we also see not only the other's infinite depth but also infinity within ourselves. This allows her/him to recognize the structure and limitations of her/his own existence and that of totality and its institutions.

Drawing on my previous work with Watsuji's social ontology allows us to begin to develop a concept of love in which the dialectic of self and other society that Watsuji proposed "empties each other" offers a means to overcome the absolutism of modernity and its accompanying competences, political structures, and settlements. This analysis forms the basis for the social dynamics of Convivencia and allow us to apply love as a jurisprudential concept, as border thinking, as a phase of mutual development and responsibility. The concept of love has played an important role in the development of political and social theory. If colonialism represents a totalising and universalising mode of thought, amongst other aspects, then the English Common Law principle of nullification by jury represents, when extrapolated, a form of decolonial Convivencia and decolonial love that corrects the one-directionality of power. Rather than a legalism of listed attributes of democratic and legal institutions, in placing the legal imaginary in this 'in betweenness' of convivencia provides a critical ontological rooting for the values, customs, norms, institutions and how values are transmitted patterns within an open community of shared consciousness. In addition, as well as offering legitimacy for the inclusion of multiple sources of reasoning, the social dynamics of nullification by jury represent a form of 'foundational rights' as expressed in the notion of decolonial constitutionalism. This relates to structural rights, not as fleeting moments of freedom, but as pluralist and as a deep relational ontology that allows for the emergence of new spaces of independent sources for political legitimacy, and the ability to create new personal (self-realisation), social, and political relations.

Combined, these principles provide first, an account of the relationship between different traditions of 'normative information' below the level of the state and toward a more localised loci of enunciation. Second, it sets out a restructuring of the relationship between self, society, and state, and between being a citizen and being a member of humanity. The final part of the presentation will open up for further discussion by suggesting that in refocusing the legal imaginary *from* the practices of everyday life, a legal imaginary that positively reciprocates between indigenous values, faiths, and traditions of normative information, could be an important medium and counterweight to statist and corporate over-positioning in the face of global problems.