

 Open access • Journal Article • DOI:10.1177/0964663917729874

## **The Limits of Socio-Legal Radicalism: Social and Legal Studies and Third World Scholarship** — [Source link](#)

Ambreena Manji, John Harrington

**Institutions:** Cardiff University

**Published on:** 16 Nov 2017 - Social & Legal Studies (SAGE Publications)

**Topics:** Empirical legal studies, Legal realism, Scholarship, Jurisprudence and Legal education

Related papers:

- [Imperial Agendas, Global Solidarities, and Third World Socio-Legal Studies: Methodological Reflections](#)
- [Imperial Agendas, Global Solidarities, and Third World Socio-Legal Studies: Methodological Reflections](#)
- [Socio-Legal Studies in Germany and the UK: Theory and Methods](#)
- [The sociology of law: from industrialisation to globalisation](#)
- [Law and History](#)

Share this paper:    

View more about this paper here: <https://typeset.io/papers/the-limits-of-socio-legal-radicalism-social-and-legal-3ujtjalosn>

# Online Research @ Cardiff

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository: <https://orca.cardiff.ac.uk/id/eprint/104511/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Manji, Ambreena and Harrington, John 2017. The limits of socio-legal radicalism: social and legal studies and third world scholarship. *Social and Legal Studies* 26 (6) , pp. 700-715. 10.1177/0964663917729874 file

Publishers page: <https://doi.org/10.1177/0964663917729874>  
<<https://doi.org/10.1177/0964663917729874>>

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies.

See

<http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.



**The Limits of Socio-Legal Radicalism**  
***Social and Legal Studies* and Third World Scholarship**

**John Harrington<sup>1</sup> and Ambreena Manji<sup>2</sup>**

**Abstract**

In this review to mark the 25th anniversary of *Social and Legal Studies*, we offer an assessment of the evolution of socio-legal scholarship on the Third World. We seek to locate the journal in the broader history of socio-legal studies and legal education in the UK and to consider its engagement with the work of Third World scholars. In order to do this, we recall the founding commitment of the journal's first editorial board to non-western perspectives on law, and locate this commitment both historically and biographically. We explore a number of important interventions concerned with socio-legal studies in the Third World, but also point to significant gaps and omissions since 1992. To end, we argue for a reassertion of SLS's founding commitments to anti-imperial scholarship and the challenges posed by critical, non-western perspectives.

**Keywords**

Socio-legal studies; Legal Education; Anti-imperialism; Law and Development; Law and Postcolonialism.

**Now and Then: Introduction and Overview**

At its foundation in 1992 *Social and Legal Studies* committed to publish work on the Third World and by scholars from outside the Western academy.<sup>3</sup> The journal's 25<sup>th</sup> anniversary is a good time to review this commitment, to think about the circumstances in which it was made, the extent to which it was honoured and the manner of its reinterpretation since then. Where did it come from and what has been made of it? We ask this not in the abstract, but in a new conjuncture when race, exploitation and empire again frame urgent questions for citizens, students and scholars.

---

<sup>1</sup> Professor of Global Health Law, Centre for Law and Global Justice, Cardiff University, Wales, UK.

<sup>2</sup> Professor of Land Law and Development, Centre for Law and Global Justice, Cardiff University, Wales, UK. We are grateful to Christina Adalakun, Josephine Hebestreit and Elizabeth Willmington for their invaluable assistance in the preparation of this review.

<sup>3</sup> We follow Sundhya Pahuja in preferring 'Third World' to such commonly used terms as 'Developing' or 'Non-Industrialized' countries. Unlike them it connotes a political relationship, not a set of demographic or economic facts. We share her view that 'the Third World was not a place. It was a project ... [and the vehicle through which the] peoples of Africa, Asia and Latin America dreamed of a new world' (Pahuja 2011: 261 quoting Prashad 2007: xv).

Our paper is organised as follows. First, we consider the historical moment in which the journal was brought into being and explore how this affected the intellectual perspective of its first editors and their founding commitments. We argue that the place occupied by *Social and Legal Studies* must be understood by exploring the biographies and especially the mobility of legal academics in the preceding decades, their own self-understanding and the considerable personal and political influences of Third World scholars and anti-imperialist ideas on their thinking. Then we examine the journal's contribution to promoting third world perspectives over the past twenty-five years and trace the main areas in which it has published interventions. We consider the extent to which it has succeeded in realizing its early objectives and also note the significant gaps, areas of Third World scholarship which we might have expected to see represented in the archive, but don't. In accounting for these gaps, we are drawn to a 1986 volume edited by Issa Shivji on the 25<sup>th</sup> anniversary of the Law Faculty at Dar es Salaam whose title we have adapted for our own review. Contributors were called on to document but also to probe the limits of the legal radicalism which the Faculty had nurtured and which, as we shall see, played an essential if neglected role in the emergence of British socio-legal studies (Shivji 1986: 11). In conclusion, we consider how the journal's founding values of critical engagement, political internationalism and cosmopolitan scholarship can be refurbished and mobilized for new times.

### **Conjunctures and Founding Commitments**

In the first issue of *Social and Legal Studies* the editors set out their reasons for founding a new journal. Included among their four main ambitions was 'the promotion of non-Western perspectives on law, regulation and criminology'. The journal would, they said,

'promote a greater knowledge and understanding of work being carried out in developing countries, Eastern Europe, and the less dominant Western

countries. We are of the firm belief that exciting and innovating work is being produced yet remains at risk of invisibility on the international scene, leaving dominant western traditions and perspectives unmoved by their potential challenge.' (1: 1992, 5-6)

This was more than a plea for generic diversity, a simple demand to refresh the stock of socio-legal knowledge in European and North American academies. It needs to be read in its time. 1992 roughly marks the halfway point between today and the independence of Ghana in 1957, the first of a wave of decolonisation that ended formal imperialism on the African continent. The creation of new law schools had played a part in the contested project of building new nations which took place over that period. But by 1992, the aspiration to sustain independent centres of knowledge production in and about the countries of the Third World had been thwarted by the reassertion of the economic and political supremacy of the Western powers and the international financial institutions (IFIs) which they dominated (Paliwala 2017). An insurgent alliance of states across the global south, seeking to achieve a New International Economic Order, had been defeated and pushed back. Domestically nationalist movements based on top-down state control had run out of the popular legitimacy which many enjoyed in the early years of independence. Unsustainable debt forced the capitulation of formerly assertive regimes to the World Bank and IMF. Hegemonic neo-liberalism worked its way out from the central banks and finance ministries reshaping social sectors including higher education.<sup>4</sup> With university staff dependent on private practice and consultancies to scrape a living, legal scholarship became increasingly oriented to the priorities of the IFIs (Majamba 2011; Adelman and Paliwala 1993). As a result of this material transformation distinctive voices in and about the Third World were marginalized by the new orthodoxy. With the fall of the Soviet Union in 1991, non-aligned states lost the strategic capacity to operate between East and West. The founding of the journal was an act of hope, then, a defensive, but also a defiant gesture.

---

<sup>4</sup> For a socio-legal review of the impact of adjustment on Tanzania's health sector, see Harrington (1998).

## **Who and Where? Some Origins**

Context explains the founding commitment, but so does biography. Among the journal's first editors were Sol Picciotto and Peter Fitzpatrick, who had spent a significant part their early careers in Dar es Salaam and Papua New Guinea respectively. Both this choice of starting point and their subsequent moves to the UK were part of a broader pattern of academic mobility which had challenged the parochialism of British legal education (Harrington and Manji 2003a). In the late 1950s and early 1960s, staff for newly founded universities across the Commonwealth were recruited in Britain by the Inter-University Council (Harrington and Manji 2003b). Young scholars took up their first posts at law schools in Sudan, Nigeria, Zambia, Kenya, Tanzania and elsewhere. They found themselves in countries marked by wide and deep legal pluralism, insecure political leaderships and a popular desire for development as the fruit of independence. But the insular doctrinal focus and magisterial lecturing style of English law schools were clearly inappropriate for teaching and research in this setting. As William Twining put it

'One did not have to be very alert or sensitive to realize that, despite British influence, law in East Africa ... was radically different from law in England and Wales and that many of the differences can only be explained by reference to what is vaguely labelled 'context' – history, culture, economic conditions and politics.' (Twining interview: Atienza and Gama 2015: 5).

They rebelled against the constraints of their own legal education, seeking alliances first with ex-patriate American colleagues, themselves inspired by legal realism, who were working overseas with Ford Foundation support (Sugarman 2011; Krishnan 2012). Deeper engagement also followed with local colleagues and particularly students (Fimbo 2011). Undergraduate campaigns at Dar es Salaam and Accra, in the mid-1960s, challenging government authoritarianism and enduring neo-colonialism, were an important vector of political struggle both within and beyond the universities. Harsh official responses called

forth the active sympathy of some expatriate law teachers. They also provided the impetus for a radical reform of the law school curriculum in the name of social relevance and critical awareness. At Dar es Salaam an interdisciplinary first-year foundation course on 'Economic and Social Problems of East Africa' was developed first in the Law Faculty, and then taught across the university (Picciotto 1986; Twining 2017).

Expatriate scholars returned to the UK to play a significant part in the founding of a 'radical generation' of law schools in the 1970s. They were subsequently joined for longer or shorter periods by former colleagues and students from East Africa and elsewhere, sustaining a web of exchange and influence which has endured notwithstanding the depredations of the intervening decades. The new British law schools were nodes in this network, some of them succeeding in breaking with the blackletter outlook associated predominantly with Oxford and Cambridge, innovating in teaching and assessment methods, expanding the range of scholarly inquiry into and around the law. We can confidently add that the movements for law and society and critical legal studies were forged jointly in the new universities of the Third World (Twining interview: Atienza and Gama 2015: 11). The *Law in Context* book series, the *Journal of Law and Society* and, as we have seen, *Social and Legal Studies* all emerged to a significant degree from this partnership. The tangle of biographies which we have gestured at here casts further light on the editorial board's re-affirmation that its

'commitments to feminism, to minority voices, to those marginalised by structures of social, economic and political power were advanced in the context of challenging the traditions, orthodoxies and perspectives available in academically dominant Western countries.'

(SLS 1998: 5-6)

This is surely more than a programmatic statement of values. It also acknowledges an intellectual and political debt, recognizing locations like Dar es Salaam, Lusaka, Port Moresby and Accra as essential points of origin for British socio-legal studies.

## **Interventions and Achievements**

On the journal's sixth anniversary in 1998, the editors reiterated their founding commitment in stronger terms and with greater urgency. 'We are aware', they said,

'that there are significant social and economic forces operating, more powerfully than ever, to impose Western intellectual traditions and orthodoxies on an international scale. We live in a world in which the 'globalization' of a particular neo-liberal agenda can be broadcast at socio-legal conference plenaries and this threatens to stifle alternative voices and critiques. We accordingly recognize the need to encourage and stimulate socio-legal work from those who seek to understand critically the sometimes beguiling persuasiveness of Western orthodoxies.' (SLS 1998: 5-6).

'Others will judge how far we have achieved these different and layered objectives', they added and indeed the record for that period is creditable. The journal had carried articles dealing with law in Brazil, Canada, Chile, China, India, Japan, Mexico, Mozambique, Nicaragua, Sri Lanka, South Africa and Zimbabwe. In this section, we revisit a selection these papers. They provide evidence of the journal's early efforts to develop an international - and internationalist – perspective. They also index some of the most important trends within Third World legal scholarship at the time, in response to the weakening of nation states and the imposition of neo-liberalism, noted by the editors in the quote above. However, unlike the field of gender and the law, discussed elsewhere in this anniversary issue, we cannot say that SLS succeeded in making a sustained contribution to legal scholarship on and from the Third World. For one thing, we discern a falling off in the attention paid to non-western perspectives, as the journal's early commitment was eclipsed



by a preponderance of output focussed on the Anglo-American sphere. For another we find that the range of themes addressed is rich, but heterogeneous. Most important among these were Law, Class and the State; Popular Justice and Postcolonialism; Gender Justice; and Land Rights, Customary Law and Legal Pluralism. We briefly review key papers on each, accepting that there are considerable overlaps in their themes and theoretical perspectives.

### ***Law, Class and the State***

These themes are common to the work of two scholars based in the Third World published in SLS in its early years. Boaventura de Sousa Santos's 1992 article on urban struggles in the Brazilian city of Recife is less well known than his 1970s study of 'Pasargada law' (De Sousa Santos 1977-1978). But it encapsulates many of the key debates amongst sociologists of law in the early 1990s, exploring the use of state legality by the residents of squatter settlements to defend their rights to adequate housing. Whereas the Pasargada research focussed on the internal legality of the settlements, in Recife Santos studied how conflicts were collectivized as the struggle went on (De Sousa Santos 1992: 236). This was a period of intense conflict between workers and industrial capital in Sao Paulo, between peasants and landowners in rural Brazil, and between urban squatters on one hand and developers and the state on the other. With the city unable to deal with growing inward migration either in 'production terms (employment)' or in 'reproduction terms (housing)' there was increased pressure on land being occupied by 'the popular classes' (De Sousa Santos 1992: 236, 237). Focussing on the 'microphysics of political legality' he showed that these small-scale social struggles were a prism for more general strategic questions about the state, land and orthodox property rights in contemporary society (De Sousa Santos 1992: 241). Effective defence of challenges to land occupations required that the dispute be reconstructed in political and social terms before the legal system 'got a grip' (De Sousa Santos 1992: 242). Only where politicization preceded legalization could popular demands be adequately aired and addressed.

Santos is concerned in this paper with the nature of the state, with the malleability of legality and illegality, with the workings of legal strategy, with class struggle and state power, and with the use of principles of private property to block socio-economic claims. All questions preoccupying Third World scholars in this period, they are echoed with different emphases in two SLS papers by another leading scholar based in the Third World, Issa Shivji. In 'The Rule of Law and Ujamaa in the Ideological Formation of Tanzania' (1995), Shivji also asks what strategic role law might play in popular struggles and in constructing counter-hegemonic ideologies. Can social movements anchored in rights politics be effective or are law and rights better viewed as a 'class project' reinforcing capitalist inequality and best held at a distance (Shivji 1995: 150)? Like Santos, Shivji explores law in popular struggle writing from the concrete circumstances of the periphery. By 1991, under pressure of structural adjustment policies prescribed by the international financial institutions (IFIs), Tanzania's ruling party had abandoned the socialist-communitarian doctrine of *Ujamaa* in favour of a largely orthodox neo-liberal line which fed through to conceptions of law and its role in state-citizen relations. Where *Ujamaa* was a broadly popular, though not uncontested ideology, now ascendant 'rule of law' values failed to resonate in the same way (Shivji 1995: 149; Fouéré 2014). The failure of orthodox scholars to understand the role of legal ideology in legitimating political rule was keenly felt by academics, activists and intellectuals in Tanzania and elsewhere in Africa (Shivji 1995: 148-149). He built on this analysis in the later paper, challenging the engagement of human rights discourse with impoverishment which was 'the life-condition of the large majority in the countries of the South' (Shivji 1999: 253). He extended this excoriating critique with an assessment of the public interest litigation strategies then emerging in India and set to have a significant impact on Third World scholars and activists in coming years.

### ***Popular Justice and Postcolonialism***

The journal published three important papers on popular justice in the early 1990s in keeping with the radical outlook of the 1960s and 1970s when debates on popular justice were still current.<sup>5</sup> In a paper on revolutionary Nicaragua, McDonald and Zatz (1992) explore popular participation in judicial decision-making and the creation of Sandinista legal institutions. They argued that the pre-revolutionary legal order was thought to express the 'entrenched class-based nature of Nicaragua under conditions of dependent capitalism' (1992: 284). For the authors, the country constituted an important site for ideological struggles over how mechanisms for resolving conflicts are chosen. The government created revolutionary legal structures and encouraged popular participation in order to foster a new 'Sandinista legality'. Echoing Santos's (1992) discussion of politicization and legalization reviewed above, the paper argues that this new model came under attack by those with 'a strict professional-legal orientation' who viewed the popular tribunals experiment as a 'dangerous departure from Western judicial norms and due process guarantees' (1992: 294). Gundersen similarly describes Mozambique's attempt to depart from a class-dominated legal system, of colonial origin, and to replace it with one democratic and popular in character (1992). At its heart were local tribunals (*fustiça popular*). Mediation was the main function of the lay judges who staffed these tribunals and they functioned between so-called formal and informal legal systems. The paper explores the ideology of popular justice in the Mozambican context and argues for close attention to be paid to relationship between form and content, using a legal pluralist framework to explain the meshing of state and local law in the work of the tribunals.

Alan Norrie drew on Gundersen's study to explore the 'conceptual failure at the heart of popular justice' (1996: 384). He challenges the use of the label 'informal law' for such initiatives, arguing that it reproduces and solidifies a binary distinction which privileges bourgeois, western law as the embodiment of pure form and fairness. To this he

---

<sup>5</sup> For a literary treatment see Sembene Ousmane's *Les Bouts de Bois de Dieu* (1960) explored in Manji (2005).

counterposed a dialectical reading of both official and popular law, which sees each as mutually constituted. For Norrie, formal law cannot escape the 'substance' of its political context and historical time. Equally, as Gundersen had shown, popular justice is shaped by revolutionary and official legality, alongside grassroots normativity. Norrie's contribution formed part of a special issue on postcolonialism edited by Eve Darian-Smith (1996). In her introduction, she distinguished two usages of that term. One, associated with optimistic expectations of a break with the colonial, marked off two blocks of time divided by the grant of formal independence. The other, more pessimistic, suggested enduring influence beyond and in spite of notional political freedom.

The continuity is traced for international law in Dianne Otto's retrospective engagement with the New International Economic Order, mentioned above (1996). Decolonization had reproduced the western state form across the global south with effects diagnosed by the Indian subaltern studies movement: the stifling and silencing of individuals and groups outside the nationalist elite. Jeannine Purdy went further turning the critique against legal postcolonialism itself (1996). She argued that scholarship in that mode tended to obscure the deep contemporary entanglement of law and violence as the latest phase of capitalist globalization was constructed and policed around the Third World (1996).

### ***Gender and the Law***

Gender justice has perhaps been the most consistent area of strength in the journal's Third World archive. Shirin Rai explored women's relationship to the postcolonial state in a paper of 1995. Her detailed investigation of disputes involving women pavement traders and the metropolitan authorities in New Delhi between 1991 and 1992 shares many of the concerns aired in the pieces by Santos and Shivji discussed above. For Rai, the 'splintered complexity of the postcolonial state' means that official institutions 'figure only marginally' in the lives of 'lower and upper class' Indian women (Rai 1995: 406). Beyond the reach of regulatory

authorities women needed to develop innovative strategies to defend their interests (Rai 1995: 391). In another contribution of the same year, Ann Stewart documented one such strategy in the case of three Indian legislative proposals on sexual violence, the regulation of sex work and the political representation of women. Each was sponsored, not by established law reform institutions, but by an alliance of gender activists and lawyer intellectuals. Stewart's aim was to explore the strategic engagement of feminists with the state, to assess how they framed their proposals and by drawing on similar feminist legal initiatives in Zimbabwe and Kenya, to urge a rethink of Western assumptions about Third World activism for gender justice. She summed up the latter as 'Western feminism theorizes, women in postcolonial societies suffer and act' (Stewart 1995: 271). Later papers would supplement these accounts of Third World judicial and legislative activism (see Manji 1999). Green and Lim (1998) developed a similar critique of universalist notions of gender justice investigating how female genital mutilation (FGM) had become what they call 'the 'obvious' site upon which to explain to university students conflicts and tensions surrounding claims to the universalism of human rights' (Green and Lim 1998: 365). Seeking not to evaluate the rights and wrongs of FGM, but to use it to hold up a mirror to the legal academy, they argued that those teaching about cultural relativism versus universalism could not do so ahistorically, ignoring the role of empire in subjection and relying on an 'exotic other' as the basis of their pedagogy (Green and Lim 1998: 382).

In a prescient essay Kapur explored the 'cultural wars ... being fought out in India in the legal domain' (1999: 353). Her focus is threefold: on a legal challenge to the sodomy laws in the Indian Penal Code, a legal challenge to satellite broadcasting and an attempt to decriminalise prostitution. Kapur shows how claims to authentic Indian tradition are mobilised in relation to gender, sex and sexuality in law. Faced with the early stages of the rise of the Hindu Right, she urged critics to theorise 'desire and pleasure as an important political project within postcolonial India' (353). Papers on sexual exploitation, trafficking and

sex work have appeared in the journal through the years. Doezema (2005) explored the struggle over the definition of prostitution and of consent during debates on the UN Trafficking Protocol in 2000. She paid particular attention to the interventions of sex workers in proposing alternative conceptions of 'sex work' and this shaping the debate. Bradley and Szablewska (2015) also critiqued the idea of the Third World sex worker as victim of trafficking for sexual exploitation. They argued that legal reform in Cambodia was counterproductive, leading to a decrease in sex workers' autonomy, aggravating the incidence of abuse, and denying Cambodian women their right to marry foreigners.

### ***Land Rights, Customary Law and Legal Pluralism***

SLS has also hosted a sustained engagement with land rights and agrarian change in the Third World, and specifically on customary land law and legal pluralism. This is not surprising, since the early 1990s, when the journal was founded, marked the beginning of a wave of land law reform in the Third World sponsored by the IFIs (McAuslan 2003; McAuslan 2015). The treatment of these themes in their national and global contexts by SLS contributors changed considerably over the period. McDonald and Zatz's paper (1992), discussed above, includes a discussion of the Agrarian Tribunals set up in revolutionary Nicaragua in 1991. On establishing that land had been abandoned or was being insufficiently farmed, they were empowered to redistribute it from the existing landowner to small scale and peasant farmers and to determine whether compensation was payable to the landowner by the government. Drawing on fieldwork in East Africa, O'Rourke explored the evolution of customary law and the use of tradition by men and women in relation to land claims and the negotiation of access to productive resources (1992). Tshuma, writing in 1998, took a similarly historical approach, investigating the colonial roots of customary land tenure and its evolution in postcolonial Zimbabwe (1998). Both are very much of their time, mobilizing perspectives from legal anthropology and legal pluralism to resist the disparagement by the World Bank at that time of customary land relations.

Similar resources were deployed to clarify the implications of the Convention for the Elimination of Discrimination Against Women for land law, particularly as determined and enforced in Third World courts (see Stewart 1996). Later years saw a shift away from this dual emphasis on legal anthropology and national contexts, in favour of a concern with international land policy which dealt more squarely with the output of the World Bank, itself changing in emphasis (McAuslan 2015; Fortin 2005). Dancer's recent paper on women's land claims in northern Tanzania, for example, revives the earlier focus on legal pluralism, but now in a changed context where the value of customary land tenure regimes is accepted and, indeed co-opted by the global regime (Dancer 2017; Huizenga 2017).

In sum, early contributions on the Third World bear the mark of transition. A series of papers thematise this directly, offering for instance a conspectus of the local government and privatization in the later years of Pinochet's Chile (Parraguez 1992), and reviewing the role of popular justice in socialist construction under the Sandinista government, not long after it had lost power in Nicaragua (McDonald and Zatz 1992). But the sense of change was also evident at the level of theory in the greater traction of wider New Left approaches, as opposed to orthodox Marxist perspectives on law in the Third World which had foregrounded the state, anti-colonialism and political economy. By the early 1990s, scholars were responding to the less favourable political conjuncture by widening their theoretical and thematic focus. Santos's paper discussed above, for example, ranked struggles over land and housing rights on an equal footing with those between capital and labour, which would have been given primacy by more orthodox Marxist approaches. There was also a growing willingness to unpick unified models of the state. Feminist interventions, like those of Rai and Stewart, establishing gender as a cross-cutting and independent focus of analysis were most important in this. Otto and Purdy drew on postcolonial theory, and its critics, to challenge authoritarian developmentalism and nationalism. Finally, the strategic need to engage with law presented itself forcefully, as the need to engage with political liberalism and its models

of the rule of law displaced earlier simpler concerns with models of state formation and development. Though exhibiting different degrees of scepticism about the return of the juridical, both Santos and Shivji were careful to argue for the continued relevance of the political in widening social and legal contests.

### **Gaps and Omissions**

Along with these significant contributions there are a number of gaps and omissions in the journal's coverage of Third World scholarship. There is, for instance, little or no explicit engagement in the journal with the theoretical debates over the meaning, purpose and direction of law and development. Whilst it is certainly true that many articles published in SLS come from within this broad tradition (O'Rourke 1995; Stewart 1995; Manji 1998; Harrington and Manji 2012; McAuslan 2015), they are not centrally concerned with debating the history and contours of the field as such (an exception is de Souza 2005).

This is surprising for two reasons one biographical, one conjunctural. First, the original iteration of Law and Development had been a key frame for much of the scholarly work in and on the Third World in the 1960s. Ford-funded US scholars and their British peers worked through, challenged and ultimately repudiated the canons of Law and Development Mark I. Trubek and Galanter's widely cited 1973 essay 'Scholars in Self-Estrangement' served as *confiteor* for the generation of ex-patriate scholars in Britain, as well as North America (see de Souza 2005). Second, Law and Development was revived by the World Bank in the decade from 1992 as it responded to the social and political chaos which had followed its structural adjustment programmes. Expanding beyond its narrow focus on fiscal and monetary policy, the Bank used loan conditionalities to force the wider reconstruction of Third World states. Fashionable institutional economics prescribed well-funded rule of law programmes in the name of restarting economic growth. But Law and Development Mark II made scant appearance in the pages of the journal. Why?



Most importantly it was the north American academy, not the British, which dominated this second wave of scholarship (Daniels and Trebilcock 2004; Carothers 2013). Well-resourced centres like Harvard Law School, NYU and Wisconsin-Madison were better placed to attract influential policy makers from the IFI's which are headquartered in Washington. The pattern of academic mobility also shifted with students and staff from around the Third World increasingly moving in much larger numbers to American universities than to those based in the old imperial metropole. Where it existed, British engagement was considerably more critical of the new law and development. Warwick Law School, in particular, carried on the Dar es Salaam tradition of anti-imperialist scepticism about US-led orthodoxies (see the essays collected Adelman and Paliwala 1994). Nevertheless, the most prominent challenge to western legal perspectives in the 1990s came from the Third World Approaches to International Law movement, originating at Harvard Law School and with major contributions from US-based Nigerian, Kenyan and Indian scholars (Gathii 2011). While Anghie's (1996) excavation of the colonial origins of international law through the role of Francisco de Vitoria is a key point of reference for the movement it was not followed by further related contributions.

The second significant gap we have identified is in relation to legal education in the Third World. This is also surprising given the political importance attached to curriculum content and teaching practice by the journal's founders and their erstwhile colleagues in African and other law schools. As we have seen, student demands had crystallized ex-patriate dissatisfaction with the then dominant British style. Law in context and critical legal studies, both inspired by this encounter, were and still are about teaching in the first instance. Paliwala (2017) offers the plausible explanation that by 1992 many Third World law schools had been hollowed out by slashed budgets, salary cuts and staff shortages imposed by structural adjustment programmes. The nation-building function which leaders like Kwame

Nkrumah, Kenneth Kaunda and Julius Nyerere had ascribed to them was no more. 'The money men' had walked 'away from legal education and law schools' (Paliwala 2017: 59). This scarcity of resources was not relieved by the revival of Law and Development in the 1990s, which concentrated on governance and institutional reforms, to the exclusion of legal education. Third World law schools were no longer the venue for lively struggles over the form and substance of legal pedagogy.

SLS has reviewed a reasonable number of monographs authored by Third World scholars. But when it comes to full-length papers we are struck by the relative invisibility of scholars based in the global south. Issa Shivji was a rare exception and, even then, his 1995 paper, which we discussed above, appeared during a two-year visiting professorship at Warwick Law School. This shortcoming is replicated even in the UK's area studies journals. Thus, a recent study showed that the percentage of papers by Africa-based authors published in the *Journal of Modern African Studies* and *African Affairs* had declined between 1993 and 2013. Astonishingly acceptance rates had fallen, though submissions were increasing (Briggs and Weather 2016). Even where published, these authors are cited less often than their Western-based counterparts, and while the former focus on specific countries, the latter are more likely to generalize across regions and sectors. This pattern should challenge editors and reviewers in all journals to move beyond ostensibly neutral pre-conceptions of what constitutes world-leading or authentically socio-legal work and to correct for unconscious bias. Again, area studies offer insights and remedies, with the *Review of African Political Economy* recently shifting the venue and leadership for a number of its workshops to the African continent.<sup>6</sup>

### **Past Futures, Present Futures**

---

<sup>6</sup> In 2017-18 the Review will convene workshops on 'Structural Transformation in Africa' in Accra, Johannesburg and Dar es Salaam: <http://roape.net/2017/06/26/structural-transformations-africa-today-interventions-left/> (accessed 4 July 2017).

The current tasks of socio-legal studies are influenced by three related developments: the departure of Britain from the European Union; the attendant impetus to renew contact with the territories of the old empire; and the return of race and colonialism as concerns for legal educators. Membership of the Common Market absorbed the attention of scholars in the years from 1973, especially as it extended its purview beyond narrow questions of trade and commerce. It is an irony of Brexit that the process itself will demand academic and policy engagement at the same, if not greater levels over the coming years.

However, diplomatic efforts are already intensifying across the Commonwealth and other countries of the Third World. This will expand opportunities for advisory work already opened-up by the legislative commitment to spend 0.7 of GNI on development aid (Manji 2016) and its academic outlet, the Global Challenges Research Fund. The abundance of resources has already unleashed a wave of programmatic work on the Third World by a cohort of new and sometimes less experienced scholars (Manji 2017). New partnerships and pathways of mobility are being forged, as in the early post-independence years. While provincializing Europe in the minds of British academics may be a useful side-effect of Brexit, it cannot be denied that xenophobia and a certain imperialist nostalgia were integral to the campaign and its ugly aftermath (Chakrabarty 2000; El-Enany 2017). The violence and abuse directed at new and old immigrants suggested that British racism and supremacism hadn't gone away with the end of empire. The constraints on black and minority ethnic staff in universities and their notably low numbers at senior levels provides further evidence. Inspired by the 'Black Lives Matter' and 'Rhodes Must Fall' movements, students also demand a curriculum that takes seriously the deep implication of colonial practices and thought in British and indeed European law.<sup>7</sup> These were not the precise challenges faced by the founders of SLS in 1992, nor those concerning African and expatriate law teachers in the 1960s. Nonetheless, as we have seen, the journal's archive, its

---

<sup>7</sup> On the enduring traces of colonial forms and anxieties in European and national citizenship law, see Harrington (2005).

founding values and the traditions on which it builds can undoubtedly illuminate present controversies and injustices. Texts like Shivji's *Intellectuals at the Hill*, JK Kanywanyi's 'Decolonizing and Demystifying Legal Education', as well as Walter Rodney's *How Europe Underdeveloped Africa* and *Cheche*, the magazine of radical Tanzanian students, can offer some guidance to today's critical race theorists and students of transnational law and global justice.

## **Conclusion**

In this review to mark twenty-five years since the founding of *Social and Legal Studies*, we have sought to locate the journal in the broader history of socio-legal studies and legal education in the UK and to consider its engagement with non-western or Third World scholarship. We have shown how the journal recognised that the production of critical knowledge about law depends on a recognition of the deep implication of colonialism and imperialism in its creation and evolution. William Twining gave this a positive formulation in his book-length appraisal of the work of Francis Mading Deng and Abdullahi An-Na'im (Sudan), Yash Pal Ghai (Kenya) and Upendra Baxi. He argued that a

'just international order and a healthy cosmopolitan discipline of law need to include perspectives that take account of the standpoints, interests, concerns, and beliefs of non-Western people and traditions. The dominant Western scholarly and activists discourses about human rights have developed largely without reference to these other standpoints and traditions. Claims to universality sit uneasily with ignorance of other traditions and parochial or ethnocentric tendencies (Twining 2009: 1).

While SLS has made considerable progress in fulfilling the radical promise of its early mission statements, these have not been fully realised. Significant jurists in the Third World tradition and their broader intellectual contexts are still little known by their peers in the UK,

nor are they read by our students. The juristic canon remains largely unchanged, though the need for change is great. The journal's current editors offer some hope, recalling recently that SLS 'was born out of a commitment to feminist, anti-colonial and socialist economic perspectives to the study of law' (2017). More defiant than defensive now, this articulates the political and epistemic strands of the journal's best traditions when both are again in demand.

## References

Adelman S and Paliwala A (eds) (1993) *Law and Crisis in the Third World*. London: Hans Zell.

Anghie A (1996) 'Francisco de Victoria and the Colonial Origins of International Law'. *Social and Legal Studies* 5(3): 321-336.

Atiena M and Gama R (2015) An Intellectual Journey with William Twining: An Interview. In: Baxi U, McCrudden C and Paliwala A (eds) *Law's Ethical, Global and Theoretical Contexts: Essays in Honour of William Twining*. Cambridge: Cambridge University Press, 1-17.

Berry, DS (1998) 'Conflicts Between Minority Women and Traditional Structures: International Law, Rights and Culture' *Social & Legal Studies* 7 (1): 55-75.

Bradley, C and N Szablewska (2015) 'Anti-Trafficking (ILL-) Efforts The Legal Regulation of Women's Bodies and Relationships in Cambodia' *Social & Legal Studies* 25 (4): 461-488.

Briggs, RC and S Weathers (2016) Gender and Location in African Politics Scholarship: The Other White Man's Burden? *African Affairs* 115: 460: 466-489.

Carothers T, De Gramont D (2013) *Development Aid Confronts Politics: The Almost Revolution*. Washington DC: Carnegie Endowment for International Peace.

Chakrabarty D (2000) *Provincialising Europe: Postcolonial Thought and Historical Difference*. Princeton NJ: Princeton University Press.

Daniels R, Trebilcock M (2004) The Political Economy of Rule of Law Reform in Developing Countries. *Michigan Journal of International Law* 26: 99-140.

Darian-Smith, E (1996) 'Postcolonialism: a Brief Introduction' *Social & Legal Studies* 5(3): 291-299.

De Sousa Santos B (1977-1978) The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada. *Law & Society Review* 12: 5-126.

De Sousa Santos B (1992) Law, State and Urban Struggles in Recife, Brazil. *Social & Legal Studies* 1(2): 235–255.

De Souza, R (2005) 'Third World' and Socio-Legal Studies: Neo-Liberalism and Lessons from India's Legal Innovations. *Social & Legal Studies* 14(4): 487-513.

Doezema, J (2005) 'Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation' *Social & Legal Studies* 14(1): 61-89.

Editorial Board (1992) Editorial. *Social & Legal Studies* 1(1): 5-6.

Editorial Board (1998) Editorial: Six Years On. *Social & Legal Studies* 7(1): 5-6.

El-Enany N (2017) Brexit is not only an expression of nostalgia for empire, it is also the fruit of empire. *LSE*. Available at: <http://blogs.lse.ac.uk/brexit/2017/05/11/brexit-is-not-only-an-expression-of-nostalgia-for-empire-it-is-also-the-fruit-of-empire/>.

Erlanger HS (2005) Organizations, Institutions, and the Story of Shmuel: Reflections on the 40th Anniversary of the Law and Society Association. *Law & Society Review* 39(1): 1-10.

Fimbo GM (ed) (2011) *Fifty Years of Legal Education in Tanzania: Development of the LLB Curriculum* Dar es Salaam: University of Dar es Salaam Press.

Fouéré, MA (2014) 'Julius Nyerere, Ujamaa, and Contemporary Political Morality in Tanzania', *African Studies Review* 57(1): 1-24.

Gathii J (2011) 'TWAAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography', *Trade Law and Development* 3(1): 26.

Green, K and H Lim (1998) 'What Is This Thing About Female Circumcision? Legal Education and Human Rights' *Social & Legal Studies* 7(3): 365-387.

Gundersen A (1992) Popular Justice in Mozambique: Between State Law and Folk Law. *Social & Legal Studies* 1(2): 257-282.

Harrington, J (1998) 'Privatizing Scarcity: Civil Liability and Health Care in Tanzania. *Journal of African Law*, 42(2): 147-171.

Harrington, J (2005) 'Citizenship and the Biopolitics of Post-nationalist Ireland' *Journal of Law and Society* 32(3): 424-449,

Harrington, J and Manji A (2012) 'Satire and the Politics of Corruption in Kenya' *Social & Legal Studies* 22(1): 3-23.

Harrington J and Manji A (2003a) 'Mind with mind and spirit with spirit': Lord Denning and African legal education. *Journal of Law and Society* 30(3): 376-399.

Harrington J and Manji A (2003b) The Emergence of African Law as an Academic Discipline in Britain. *African Affairs* 102 (406): 109-134

Hirji K (2010) *Cheche: Reminiscences of a Radical Magazine*. Tanzania: Mkuki Na Nyota Publishers.

Huizenga, D (2017) 'Articulations of Aboriginal Title, Indigenous Rights, and Living Customary Law in South Africa' *Social & Legal Studies*.

Kapur, R (1999) 'A Love Song to Our Mongrel Selves': Hybridity, Sexuality and the Law' *Social & Legal Studies* 8(3): 353-368.

Kamanga K (2011) The UDSM Faculty of Law 1999 Arusha Declaration Review: 'A Midas Touch?'. In: Fimbo GM (ed) *Fifty Years of Legal Education in Tanzania: Development of the LLB Curriculum*. Dar es Salaam: University of Dar es Salaam Press.

Krishnan JK (2012) Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957-1977. *American Journal of Legal History* 52(3): 261-324.

Loomba A et al (2005) Beyond What? An Introduction. In: Loomba A et al (eds) *Postcolonial Studies and Beyond*. Durham, MD: Duke University Press, pp. 1-38.

Majamba H (2011) Ideological Inclinations in Postgraduate Dssertations: Trends in Five Decades at the Faculty of Law' in Fimbo GM (ed) (2011) *Fifty Years of Legal Education in Tanzania: Development of the LLB Curriculum*. Dar es Salaam: University of Dar es Salaam Press.

Manji, A (1999) 'Imagining Women's 'Legal World': Towards a Feminist Theory of Legal Pluralism in Africa' *Social & Legal Studies* 8(4): 435-455.

Manji, A (2005) 'Law, Labour and Resistance to French colonialism in Sembene Ousmane's *Les Bouts de Bois de Dieu*' *Legal Studies* 25(2): 320–336.

Manji, A (2016). The International Development (Official Development Assistance Target) Act 2015: legislative spending targets, poverty alleviation and aid scrutiny. *Modern Law Review* 79(4): 655-677.

Manji, A (2017) 'Africa in a Time of Aid Funded Research.' Paper presented to Politics of Transnational Law Workshop, Transnational Law Institute, The Dickson Poon School of Law, King's College London (on file with the author).

McAuslan P (2015) Property and Empire: From Colonialism to Globalization and Back. *Social and Legal Studies* 24(3): 339-357.

Mcdonald JH and Zatz MS (1992) Popular Justice in Revolutionary Nicaragua. *Social & Legal Studies* 1(2): 283-305.

Moon C (2006) Narrating Political Reconciliation: Truth and Reconciliation in South Africa. *Social & Legal Studies* 15(2): 257-275.

Norrie A (1996) From Law to Popular Justice: Beyond Antinomianism. *Social & Legal Studies* 5(3): 383-404.

O'Rourke N (1992) Land Rights and Gender Relations in Areas of Rural Africa: a Question of Power and Discourse. *Social & Legal Studies* 4(1): 75 – 97.

Otto D (1996) 'Subalternity and International Law: the Problems of Global Community and the Incommensurability of Difference Subalternity and International Law: the Problems of Global Community and the Incommensurability of Difference', *Social and Legal Studies* 5(3): 337.

Omeje, K (2001) 'Sexual Exploitation of Cult Women: The Challenges of Problematizing Harmful Traditional Practices in Africa from a Doctrinalist Approach' *Social & Legal Studies* 10 (1): 45-60.

Ousmane, S *Les Bouts de Bois de Dieu* (London: Heinemann, 1960).

Pahuja, S (2011) *Decolonising International Law. Development, Economic Growth and the Politics of Universality*. Cambridge: Cambridge University Press.



Pailey, RN (2016) Where is the 'African' in African Studies? *African Arguments* Available at <http://africanarguments.org/2016/06/07/where-is-the-african-in-african-studies/>

Paliwala A (2017) Context, Political Economy and Good Governance: Avatars of Dar Legal Education. In: Zartaloudis T (ed) *Land Law and Urban Policy in Context: Essays on the Contributions of Patrick McAuslan*. London: Birkbeck Law Press pp 56-78.

Park, ASJ (2006) 'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone' *Social & Legal Studies* 15 (3): 315-337.

Parraguez MAJ (1992) 'The Privatization of the State and Community Legal Strategies in the Democratization of Local Power in Chile', *Social and Legal Studies* 1(2): 229.

Picciotto S (1986) Law, Life and Politics. In: Shivji IG (ed) *Limits of Legal Radicalism*. Dar es Salaam: University of Dar es Salaam, pp. 36-47.

Prashad, V (2007) *The Darker Nations: A People's History of the Third World*. New York: The New Press.

Purdy, J (1996) 'Postcolonialism: the Emperor's New Clothes?' *Social & Legal Studies* 5(3): 405-426.

Rai SM (1995) Women Negotiating Boundaries: Gender, Law and the Indian State. *Social & Legal Studies* 4(3): 391-410.

Rodney W (1973) *How Europe Underdeveloped Africa*. London, Bogle-L'Ouverture Publications.

Shivji IG (1986) (ed) *Limits of Legal Radicalism*. Dar es Salaam: University of Dar es Salaam Faculty of Law.

Shivji IG (1993) *Intellectuals at the Hill: Essays and Talks 1969-1993*. Dar es Salaam: Dar es Salaam University Press.

Shivji IG (1995) The Rule of Law and Ujamaa in the Ideological Formation of Tanzania. *Social & Legal Studies* 4(2): 147-174.

Shivji IG (1999) Constructing a New Rights Regime: Promises, Problems and Prospects. *Social & Legal Studies* 8 (2): 253-276.

Stewart A (1996) *Should women give up on the state? The African experience*. In: Rai S and Lievesley G (eds) *Women and the state: international perspectives*. Exeter: Taylor & Francis, pp. 23–44.

Stewart, A (1995) 'Debating Gender Justice in India' *Social & Legal Studies* 4(2): 253-274

Sugarman D (2011) A special relationship? American influences on English legal education, c. 1870–1965'. *International Journal of the Legal Profession* 18(1-2): 7-57.

Thomas, P (2015) The Journal of Law and Society at 40: History, Work, and Prospects *Journal of Law and Society*.

Twining W (2017) McAuslan in Context: Early Days in Dar and Warwick. In: Zartaloudis T (ed) *Land Law and Urban Policy in Context: Essays on the Contributions of Patrick McAuslan*. London: Birkbeck Law Press, pp. 35-55.

Twining W (2009) Introduction. In: Twining W (ed) *Human Rights, Southern Voices*. Cambridge: Cambridge University Press, pp. 1-3.