



Introduction: The political mobilisation of criminal law and its resistance in the Global South

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Abstract

The articles presented in this special issue explore the relationship between politics and law in the context of the Global South. While some of the contributions examined this relationship through the symbolic power of the law, others focused on how violence is embedded into the relationship between law and politics. The first group, which focused on the symbolic dimension of power relations, dug into struggles to either accommodate political projects into the existing law or whenever such interpretation was not possible, to propose new legislation consistent with those political goals. Meanwhile, the other group of contributions, those who paid special attention to the association between law and violence, described how the relationship between politics and law is centred disputed legitimacy of law in those societies. This introduction discusses how these two approaches complement each other and offer us a better understanding of the particular role law plays in societies in the Global South.

Key words

Law and politics; Global South; state violence; minorities

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Resumen

Los artículos reunidos en este número especial exploran la relación entre política y la ley en el contexto del Sur Global. Mientras que algunas de las contribuciones examinaron esta relación a través del poder simbólico de la ley, otras se centraron en cómo la violencia está incrustada en la relación entre la ley y la política. El primer grupo de artículos, que se centró en la dimensión simbólica del poder, profundizó su análisis en luchas para lograr canalizar proyectos políticos en la ley existente o, cuando tal interpretación no era posible, para proponer una nueva legislación coherente con esos objetivos políticos. El otro grupo de contribuciones a este número especial, aquel que examinó el lugar que ocupa la violencia en el derecho, dirigió su mirada a la disputa de legitimidad del derecho en sociedades periféricas. Esta introducción analiza cómo estos dos enfoques se complementan entre sí y nos ofrecen una mejor comprensión del papel particular que desempeña el derecho en las sociedades del Sur Global.

Palabras clave

Derecho y política; Sur Global; violencia estatal; minorías

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Introduction

This special issue entitled *The political mobilisation of criminal law and its resistance in the Global South* is the outcome of the IISL workshop “Criminal Legalities in the Global South” that took place between 8-9 July 2021. Due to the pandemic the workshop was held virtually, and thanks to the technical assistance of Malen and Leire from the IISL, despite being held online, we were able to enjoy a fruitful academic debate which resulted in the contributions included in this issue. Discussions on the early drafts of the articles presented here already showed two aspects of the main theme emerging of the workshop: the relationship between politics and law in the context of the Global South. Some of the contributions examined this relationship through the symbolic power of the law. They dug into struggles to either accommodate political projects into the existing law or whenever such interpretation was not possible, to propose new legislation consistent with those political goals. Another set of articles focused on how violence is embedded into the relationship between law and politics. Their exploration was centred disputed legitimacy of law in those societies.

These discussions were informed by the previous work our network has been doing for about a decade now analysing the role law plays in societies of the Global South.¹ When our network was born, we were mostly concerned with a dominant Eurocentrism in the socio-legal field, and how the voices from scholars of the Global South struggled to be heard. Thankfully now the outlets available to discuss issues concerning peripheral societies are growing, though we still have much work to do.² In our first discussions, we were also interested in exploring how Western-centric discourses of human rights, rule of law, and democracy legitimated reforms on courts and the legal enforcement agencies in the Global South. Such exploration was not founded in the rejection or denial of the relevance of those ideas or values for social progress, but on the recognition of their cultural bias, and perhaps more significant, on how were used by global elites to promote their own agenda. We were both based in Singapore at that time, so we were well aware of local challenges to these discourses, in the form, e.g., of a vindication of Asian Values, allegedly incompatible with the individualism underpinning the dominant Human Rights’ values.³ We advocate for, as this collection shows, a methodological scepticism towards hegemonic discourses but without falling into the romanticization of regional and local values. We reckon culture, whether conforming or not to the global hegemonic set of values, is always a product of power asymmetries and as such it reproduces that inequality.⁴ It was under these cultural lenses that we examined law, so we started talking about legalities instead, trying to grasp the precarious status of the legal field in peripheral societies.

¹ The outcomes of that work can be found in the two special issues previously published (Ciocchini and Kostenwein 2017, Radics and Ciocchini 2018) and the two edited volumes (Ciocchini and Radics 2019, Radics and Ciocchini 2023).

² This has been the result of the establishment of journals based on the Global South (e.g. *Asian Journal of Law and Society*) as well as the willingness of journals based on the Global North to publish authors and topics related to the region (see e.g. Harrington and Manji 2017, Chua and Radics 2021, Atapattu *et al.* 2023).

³ For an updated critical discussion on the debate see Thompson (2023).

⁴ For an in-depth discussion of the specific ways in which cultural process reproduce inequality see Lamont *et al.* (2014).

All these aspects of the original approach are still present in the contributions to this special issue, though expressed with diverse forms and tones. This collection offers a specific focus on the mobilization of law. Although this topic has been much discussed in the Global North,⁵ it is often neglected in the Global South. This is usually due to adopting approaches that fail to recognise the relevance of the law in what are perceived as chaotic and anomic social contexts. This is particularly the case whenever societies in the Global South are experiencing open political violence. However, the papers presented in the workshop showed that law is actually very significant in those contexts, often deployed in combination with other more clearly political strategies to neutralise the opposition. For example, Ciocchini's analysis, included in this issue, of the "War on Drugs" implemented in the Philippines during president Duterte's term (2016-2022) highlights the continuous relevance of law, even amid rampant police brutality, as a necessary anchor of the more general state's legitimacy. Furthermore, some of the contributions testify on how law is appropriated by the subaltern as a tactic in more complex counter-hegemonic political strategies, and perhaps unexpectedly, those counter-hegemonic strategies are not necessarily driven by emancipatory or egalitarian goals, but conversely, are reactionary and oppressive. This is the case of South African traders studied by Gastrow in her article, one of the contributions to this special issue, who resort to a combination of legal and illegal tactics to block foreign shopkeepers to open new business under the protection of constitutional rights.

From the contributions it is clear that the relation between politics and law is more complex than the one some instrumentalist theories claim. As we were discussing the title for the workshop, we questioned whether the reference to political mobilisation of the law was broad enough to include not only the tension between competing legal interpretations promoted by antagonistic interests, but also the sometimes contradictory or even paradoxically legal consequences resulting from attempts to use the law to achieve political aims. If anything, it is clear that the relationship between political projects and the law is extremely dynamic, contingent to the relative strength of the actors invoking the law in the concrete situation, but also heavily shaped by the institutional and cultural history. Neto and Santiago's analysis of the prosecution of Lula Da Silva, former Brazilian president is illustrative of how a radical change in the relative strengths of political factions can lead opposition forces to use legal procedures to achieve political goals while, paradoxically, attacking basic principles of the legal framework they are doing. This type of political mobilization of the law at the expense of law's legitimacy itself and consequently bringing the whole institutional arrangement into crisis, illustrates the foolishness of instrumental accounts in which law is perceived as a tool of the powerful. The point is not only that law can, under certain conditions, be mobilised by the subaltern to restrain or even be used against powerful actors, but that elites are not monolithic, and their mobilisation of law can, and has been done, by risking the very social arrangements that benefit them. The analysis of these tensions among elites, the intra-class struggles, requires acknowledging the historical as well as current geopolitical situation of the country itself. The analysis of anticorruption legislation recently introduced in Puerto Rico by Atilas shows the relevance of this dimension. He persuasively argues that this new legislation, which usually is associated with policing

⁵ From the classical work by Black (1973) and Zemans (1983) to the contemporary contributions found in Handmaker (2023). -

the powerful political and corporate elites, is actually a neo-colonial strategy operating in the company of other punitive measures aimed at legitimising austerity policies that benefits American elites at the expense of the Puerto Rican people.

We should note that some of the contributions offer revealing descriptions on how legal disputes are not reduced to debates on the legal interpretation of a particular legislation, but also on how the existing legislation can accommodate alternative political projects. In that respect Jain's piece highlights a dispute over legal imagination, i.e. how to create a regulatory framework capable of emancipating social relations. In this sense, the relation between politics and law is mediated by culture, but not understood as some kind of a static set of values and ideas alike to tradition, on the contrary, culture in this context represents an opportunity to create new ways to approach daily interactions that challenge those which reproduce marginalisation and others forms of social violence. Rojas Páez's article in this special issue offers a thorough description of the Peace Community of San José de Apartadó in Colombia and their attempt to use the international humanitarian law principle of neutrality to develop a legality based on prioritising community values and solidarity is a good example of this strategy. An apparently less radical approach to law as a strategy for cultural change, though perhaps more pragmatic and effective, is described by Radics contribution to this issue. He documents the struggles for recognition by the LGBT community in Singapore. His analysis the importance of courts as sites of resistance. This finding is even more significant when we take into consideration two key characteristics of the Singaporean political system: the strong emphasis on the rule of law and the significant resistance to Western-promoted liberal values. Paradoxically, the resistance to Western values coexists with Western imposed legislation inherit from the colonial period. In this context, the LGBT adopted low intensity strategy, avoided big public demonstrations and much publicity, and instead focused on persistently challenging discriminatory legal provisions over the span of a decade. Though many of the challenges ended in an apparent defeat, Radics shows how the strategy has been fruitful in the long term.

It is also noteworthy the more material dimension of the relationship between law and politics, particularly regarding coercive strategies deployed under social distress. Here law does not adopt the form of a means to develop potential collective projects and instead is experienced as social threshold, which is formally established to differentiate between legitimate and illegitimate social violence, but as the articles describe, actors, especially powerful ones, cross it so often that its boundaries are blurred into a continuum of degrees of (i)legality. The status of law in these contexts is constantly contested to the point where the dispute is no longer about the content of the law, but about the legitimacy of law itself. This is a common topic in Ciocchini's analysis of the War on Drugs in the Philippines. Atila's examination of anticorruption legal frameworks imposed in Puerto Rico by the United States, and Rojas Páez's exploration of the transitional justice implemented in Colombia after the end of the armed conflict. But as Gastrow also shows, the very legitimacy of law is also contested for its perceived failure to mobilise effective violence as the local traders of South Africa resort to illegal practices to evict foreign shopkeepers. If anything, this shows that the relationship between politics and law cannot only be read as the capacity of one to inform or shape the other, though this is actually true, but to recognise how indistinguishable one is from the other. This blurring of the limits of these two forces is perhaps more visible on peripheral

societies, partially because of the contradictions inherited from the colonial past, but also caused by current factors, such as the position in a deeply unequal global economy, local political and economic elites unwilling to disassemble social arrangements based on traditions, and the local tensions brought by the expansion of dominant cultural values which express a different relation of forces.

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