



Book review

Kaius Tuori. *Lawyers and Savages; Ancient History and Legal Realism in the Making of Legal Anthropology*. Oxon; New York: Routledge 2015, pp. 224, ISBN (Pb) 9781138685949 £34.99, ISBN (Hb) 9780415737012 £95.00, ISBN (eBook) 9781317816201 £24,49.

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1. Introduction

The title of Kaius Tuori's book *Lawyers and Savages; Ancient History and Legal Realism in the Making of Legal Anthropology* (Routledge, 2015) appears to trace the narratives of primates and lawyers from ancient times. However, the readers do not simply put on the lens of the (anthropological) observer. Tuori turns the tables around and the observer is now the observed.

2. Observer and the observed

Similar to the "observer effect" in quantum mechanics where observation may be altered by the observed, Tuori recognizes that observations as detailed in anthropological narratives may be enmeshed and affected when the observer tries to position anthropological artefacts against the observer's own landmarks of familiarity (e.g. legal institutions, codes of law).

By dissecting the epistemology of the observer, Tuori seeks to expose the lattice of influences that intertwines and shapes the observation of the narrative (pp13). Thereafter, Tuori uncovers and questions the assumptions behind the observer's teleology such as the ideas of law, tradition and innovation (pp13), and how the observers' own underpinnings shaped the observations. Through observing the observer, Tuori weaves the ideas of violence and revenge, sexuality and polygamy and magic around critical analytical themes and shows how western legal traditions shades the observers' purposes and scope of inquiry.

The first question that the book poses and answers is: *What was the impact of the deep past of the western legal tradition on the doctrines of legal primitivism?* As the book reveals, to the colonial observer enchanted by the romanticized idea of legal evolution indigenous to civilised, the observer unearths folklores and celebrates law as a product of tradition. On the other hand, the 19th century colonial observer who subscribes to the view that law is a civilising process, focuses on practices of blood vengeance where primitivism is characterized by unbridled barbarism such as honour killings requiring the moralising intervention of the law through concepts such as Lex Talionis, reinforcing the observers' viewpoint that law is a beacon of light in civilizing the barbarians. Seen in this light, anthropological observations are geared to confirm the observers' own standpoint, and it is only by observing the observer can we deconstruct and refine these observations.

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Tuori proceeds to move beyond the Romanticism and civilising rhetoric of legal anthropology to consider *how did the legal debates between formalistic and realistic scholarship influence the study of legal anthropology?* This is where Tuori leads us to the heart of his book where he argues that instead of searching for the usual western signposts (codes of law etc.) in primitive societies, it is more meaningful to locate our understanding in the resolution of disputes on law's periphery (pp188). This coincided with the rise of empiricism and scientific realism where observers could be freed from formalistic approaches to anthropology that focus on abstract rules and could now turn their attention to the resolution of disputes. This debate between formalism and realism allowed the indigenous to claim an identity rather than being pigeonholed within the western framework. The primitive was observed for his/her behaviour and not against imaginary constructs of law and legal system that had no bearing on their social ordering.

This leads to the final question that the book seeks to answer: *In what way are the changes in colonial encounter reflected in the study of primitive law and legal anthropology and how did legal primitivism influence colonial administrators?* A realist appreciation of the "fluid" and "situational" character of indigenous/primitive "law" influenced colonial administrators by encouraging them to broaden their vision beyond state-established institutions and to embrace a pluralistic legal order that is not confined to established legal institutions (pp189).

Overall, by observing the observer, Tuori has spun a convincing case for the influence of western legal traditions on anthropological narratives – how the stories of primitives were at the mercy of the story-tellers (the observers). However, a realist approach towards anthropology coupled with an intimate understanding of the barriers erected by the observers allows the observed to reclaim the indigenous stories from the colonizers. Tuori concludes by rejecting the colonial purposes that influenced much of the pre-existing anthropological literature. The oppressive overlay of western legalism in the civilising process is declared as an important observational burden. That said, the book does not offer any fool-proof solution for how this might be neutralised. In fact, to do so would deny one of its central tenets; that the thing to be observed can only be understood through stripping back the perspective of the observer and taking it for what it is.

3. Bridging the observed and the observer

True to his methodology, Tuori declares his own teleological foundations in the Preface so that the anthropological lens is not disconnected and objectified as some titillation, West to East, or some orientalist apology for the arrogance of modern legal traditions over more fundamental situations of social bonding and obligation. From the outset, in the Introduction, Tuori suggests that his book is more than a history of rise and fall of legal primitivism. Beyond this it is about the fascination of a small group of scholars looking at aspects of blood feud, polygamy and magic in tribal cultures.

A virtue of the book is that Tuori's approach presents a fresh twist to the perennial problem faced by anthropologists – of bridging the insider/observed and outsider/observer's perspective. Instead of conducting extensive fieldwork to lower (or even demolish) the barriers between the insider/observed and the outsider/observer, an awareness of the observer's own epistemology promotes a critical reflection of constructs and/or categories through which the observer views the world and to challenge the assumptions underpinning those constructs. From this position of appreciating the self and the other Tuori explores the observations through the anthropological lens, rather than critiquing the adequacy of what the lens reveals.

This is apt in the study of the inherent contradictions of "legal anthropology" and "primitive law", as it calls for an acknowledgement that "law" and what is known as "legal" are constructs which may not exist within a primitive frame in forms familiar

to the observer. While Tuori grounds his method in legal realism, which calls for the observation of behaviour rather than abstract rules and constructs, it is argued that Tuori's method has the potential of going further. After all, even if we were to adopt a strictly legal realist viewpoint, the behaviour isolated for observation will be chosen, interrogated and inextricably understood based on certain influences and assumptions essential in the observer's world. A critical reflection of these influences and assumptions (as uncovered by observing the observer) will allow for a more nuance understanding of the primitive and societal behaviour whose point of reference is not the usual legal system.

4. Limitations?

While recognising the literature which juxtaposes the civilised and the savage, Tuori concedes that the book is a broad brush coverage of the origins of law within indigenous cultures where written narratives are absent. That said, the book recognises that there are many other rich narrative forms within such cultures which reveal the nature and function of what could be said to exist within indigenous society providing the obligations and resolutions which an observer might expect of law.

Tuori rightly locates developments in 19th century scholarship alongside the evolution of natural science, and the quest for a more universalised theory of mankind. In this context he makes the telling observation that "the story of legal primitivism can be seen as one of the dark stories of the European project, a story of arrogance and empire" (pp8). It appears that the author is not inclined to accept that the study of primitive law essentially provides a referent on the pathway to civilisation as a liberal theory of progress. It is perhaps unfortunate that such circumspection is not readily apparent in economic and political theories of modernity.

Perhaps the criticisms of the book also offer a platform for measuring its unique contribution. The author concedes the limitation of his chronological approach as it ranges lightly across vast terrains of culture and social relations. However, the bravery of this breadth offers the reader a birds-eye view of the history of this scholarship. By the time the reader enters into the concluding critique of cultural relativism and pluralism, they might be confused as to whether this is a text on method or the application of historical and anthropological methodologies. Again, if the crucial place of method in unravelling legal anthropology is to be reiterated then both aspects of the book have the capacity to enrich its outcomes.

5. Decolonisation and globalisation

Other than methodology, Tuori's contributions to contemporary scholarship is understated. Tuori modestly locates the present-day relevance of observing the observer in the development of legal pluralism wherein a recognition that "law" exists outside legal mechanism allows for the inclusion of indigenous/primitive practices that do not sit within the legal framework (pp182).

It is argued that while the subject situates itself in anthropology and history, there is potential for Tuori's ideas and methods to be applied to deconstruct and understand the nuances of globalisation. Tuori's analysis is set in a decolonisation framework (pp151) where readers are encouraged to look beyond the western imposition of Law. Similarly, if we adopt Susan Silbey's view that globalisation is in reality post-modern colonialism (Silbey 2000, p. 264), where Law is utilized to colonize consciousness (Silbey 2000, p. 265), applying Tuori's methodology, we are encouraged to venture to the outskirts of western notions of legality and look at the cracks and crevices of societies where social problems find their resolutions.

Indeed, as seen in Boaventura de Sousa Santos' (1992) study of the urban struggles in Recife (Brazil), the fringes of society developed an "internal legal

system" in defence to the capitalist insurgency that was backed by the law. It is these "internal legal systems" that form the network of resistance against the enterprise of globalisation and as Tuori illustrates, it is only when we cast our gaze away from familiar western landmarks of what the "law" entails towards how societies organise themselves in resolving disputes can we appreciate the ebb and flow of globalisation. To this end, what might be useful if Tuori had further developed the "de-colonial" framework he used and elaborate on whether the colonizing west is the hegemonic north against the south, or the globalised indoctrination of neo-liberalism, or as the West's prevailing democratic ethos.

6. Conclusion

One lesson that resound in the book is that if the starting point of the inquiry is to distinguish between primitive and civilised law it forces the observer into a predetermined analytical camp – does the observer idealise the primitive and deride the negative impacts of modernity? Does the observer celebrate the process of civilisation as a road to enlightenment? The problem is well evidenced in chapter 1's focus on the correlation between the savage and violent ways of life. The chapter evolves almost as a voyeuristic catalogue of the excesses of revenge, which could lead the reader to conclude that civilising law brings with it a diminution of violent vengeance. Fortunately, the reader is warned off such a simplistic denouement

"The problem of tradition, violence and revenge is central to the civilising narrative... However, in the colonial context, the logical conclusion from the theory of the civilising process was to place the monopoly of violence in the hands of the state, and to prevent alternative dispute resolution mechanisms." (pp53)

A beauty of this book is to take us deeper from cheap dichotomies, to what the author refers to as 'the paradigms of loss' where we are at risk always of observing the original form of a tradition through remnants and traces existing in the present culture. Therefore, the narrative of the violent savage is now seen as a narrative of the provident (if violent) state, managing vengeance through law, but violent nonetheless.

As is the case in physics, the observer effect can be reduced to insignificance by sharper methodology. Likewise, the tension in bridging the insider/outsider's perspective can be reduced (to insignificance) by a critical reflection of the observing process so that one's observations will not be shaded by the monuments of one's own culture and traditions. It might be said there is nothing new in this. However, in setting as his task the search for law's origins, Tuori confronts a duality on which the hopes of others with such aims have been distracted or dashed.

References

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