

Editorial

## The Diversity of Law as an Intellectual Activity

NoFo is proud of the diversity of this issue; a diversity that is thematic, methodological, and geographical (with articles from the five continents!).

The topics covered are wide-ranging: Ingo Venzke offers a theoretical approach to the concepts of authority and legal change in the international and post-national constellation; Vivian Ferreira uses the lens of normative pluralism to analyze the case of Community Development Banks in Brazil; Karin Van Marle reflects on the parallel paths of jurisprudence and historical (and life) narratives in post-Apartheid South Africa; Richard Dawson explores the intercultural encounter between white settlers and indigenous communities—an encounter between literacy and orality—in 19<sup>th</sup> century New Zealand; Oishik Sircar critically examines the memorialization of the 2002 ethnic violence in the Indian state of Gujarat through a jurisprudential engagement with its cinematic register.

In addition, NoFo12 features three book reviews: Marianne Constable's *Our Word is Our Bond: How Legal Speech Acts* (reviewed by Julen Etxabe); Roberta Kwall's *The Myth of the Cultural Jew: Culture and Law in Jewish Tradition* (reviewed by Susan Liemer) and Jeremy Webber's *The Constitution of Canada: A Contextual Analysis* (reviewed by John Erik Fossum).

NoFo remains committed to bridging the gap between law and other social and human activities and experiences, for law cannot be understood as an isolated field, or as a practice exclusive to lawyers, government officials, and those who hold judicial office. The variety and interdisciplinarity of approaches—legal theory, qualitative case-study, critical jurisprudence, law and culture, law and film—demonstrate that, if law is a professional activity, it is also an intellectually rich and stimulating endeavor.

In the opening article, 'Semantic Authority, Legal Change and the Dynamics of International Law', Ingo Venzke offers a theoretical exploration of international law as the product of a communicative process in which different actors struggle for the law. In particular, Venzke puts forward the concept of 'semantic authority' in

response to the recognition that a variety of actors, who typically find no place in the received doctrine of legal sources, impact the dynamic development of international law through their practice. This conception of lawmaking and legal change seeks to transcend the divide between both actor-centered and structural approaches that either zoom in on policy-oriented actors and then lose a grip on the contextual constraints that come with speaking the language of international law, or else stay attuned to those constraints but fade out the actors in the process. It is precisely the relationship between the actors and their strategic environment that contains within itself the dynamic for change.

Venzke's understanding of semantic authority—to be distinguished equally from coercion and from persuasion—entails the actors' capacity to have their legal claims recognized and to establish reference points for legal discourse that others can hardly escape. This notion of semantic authority is dynamic, because it is attuned to thinking of international law as a communicative and creative practice in which actors struggle for, and thus shape, the law. While many different factors sustain an actor's capacity to find recognition for their claims (from the appearance of rationality, to having been right in the past, to having a sufficiently prestigious university affiliation), Venzke underlines the role of social expectations: that one should at least refer to, and deal with, an actor's claim in international legal discourse. Interestingly, the effects of semantic authority thus understood are not merely backward looking (linked to past precedents), but forward looking, for they redistribute argumentative burdens in the future.

Moving from the theoretical underpinnings of the International arena, in 'Microfinances and Legal Pluralism: A Case Study of the Community Development Banks in Brazil', Vivian Ferreira traces the genesis and evolution of Community Development Banks (CDB) in Brazil. In a case study that combines literature on legal pluralism and interviews with key players, Ferreira describes the emergence and expansion of CDBs, with special focus on their own singular normative universe: non-profit organizations that operate according to the principles of a solidarity economy. Characteristically, CDBs are created, owned and managed by community members; they make use of microcredit and a social currency as instruments to develop a local network of consumers and producers; and operate in territories with high levels of social exclusion to mitigate its effects and advance local development.

The article traces the development of Community Banks in four stages: a first initial stage of institutional imagination; a second stage of clashes with state authorities; a third stage of collaborative relationships and consolidation of a network of CDBs; and a fourth and final stage of demands to transform state law to incorporate the new normative reality.

Jumping from community banks in Brazil to post-apartheid South Africa, Karin Van Marle explores two possible ways to read a post 1994 South Africa, by reflecting on the life stories of Nelson Mandela and his first wife Winnie Madikizela-Mandela. In 'Post-1994 Jurisprudence and South African Coming of Age Stories', Van Marle reflects on the becoming of jurisprudence through the lives of these two figures,

connecting with attempts by South African scholars to rely on aesthetic metaphors to reflect on the past, present and future of South African law.

On the one hand, Nelson Mandela's life has often been understood in the form of a *bildungsroman*, a 'Long Walk to Freedom' where Mandela, like the South African nation itself, has managed to leave behind an unjust past for the sake of reconciliation and democracy. Van Marle suggests that this narrative is underpinned by a form of imagination that hails progress and the promises of constitutionalism and human rights. She warns, however, that such a simplistic reading may draw an over-optimistic picture.

In contrast to that of Nelson, the tumultuous life of Winnie—full of disruption, equivocation and resistance—cannot equally be read as a coming of age story. Winnie has ever occupied a marginal position; she represents the excess, that which cannot be stilled or contained by a modern legal order. In offering such a reading, Van Marle does not wish to suggest Winnie as a model, but rather to recognize the possibility of contingency, inter-connectedness, and the limitations on fully comprehending others. Ultimately Van Marle is wary of grand narratives that would allegedly mirror post-Apartheid South African law and jurisprudence. Instead, she leans towards a 'minor jurisprudence' (an aim also shared by Oishik Sirkar in the last essay of this volume), where the design and meaning of the narrative cannot be foreseen, projected or controlled.

In his article 'On Close Reading the Treaty of Waitangi: An Encounter with Joseph Vining', Richard Dawson is also interested in reading a historical and intercultural encounter. Dawson approaches the encounter between the indigenous Māori and British settlers, a remarkable moment of contact between literate and oral cultures, formalized in the Treaty of Waitangi in 1840, whereby the Chiefs ceded 'sovereignty' to the Queen of England, while maintaining 'exclusive possession' of their lands. What makes the task of reading this Treaty more complicated is that central terms such as 'sovereignty' and 'possession' were alien to the aboriginal cultures they were meant to govern, and it is doubtful what exactly both parties agreed to. As a case in point, Dawson recalls Chief Nopera Panakareao's metaphor to describe the terms of the treaty, according to which 'The Shadow of the Land is to the Queen, but the substance remains with us'.

Dawson asks how one is to approach such a metaphor if one aims to understand, and be faithful to, the treaty—an issue with profound legal and political implications in present-day New Zealand. He finds his way through the writings of Joseph Vining, who has been described as 'among the more elusive legal thinkers in recent decades' on account of his poetic sensibility. Dawson focuses on close reading; not on what Vining says *about* this activity, but as *participation in* what he does. Dawson aims to develop a self-reflective sensibility and apply it to our own processes of reading, on the assumption that the meaning of the treaty is not 'in' the text, but in the experiential process of re-creating it. In the process, Dawson forces us to re-evaluate terms such as 'sovereignty', 'treaty', 'literal', 'metaphoric', 'text', 'substance', and 'principles'.

In the closing article, Oishik Sirkar scrutinizes the memorialization of the ethnic

violence in Gujarat in 2002, as one of the most litigated, mediatized and politically polarizing events of mass atrocity ('pogrom') against its Muslim minority population in contemporary India. Rather than the events themselves, or their litigation in court cases, what interests Sircar is the way the pogrom has been memorialized and passed on to Indian collective memory through the archive of Bollywood cinema. In doing so, Sircar does not limit the role of film to a mimetic reconstruction of events, but expands it to embrace its affective and aesthetic dimensions. Moreover, in questioning cinema's role in doing the work of reconstructive imagination, Sircar not only interrogates cinema's ability to keep alive an archive of collective memory, but takes it as a credible jurisprudential source to engender imaginations of justice: a 'minor jurisprudence' that challenges the hegemony of state legalism.

Sircar focuses on *Dev*, the first Bollywood film memorializing the pogrom, which appeared in 2004. In his reading, *Dev* offers a memorial reconstruction of Gujarat 2002 that reduces religious strife in India to an amorphous politics, and portrays it as the consequence of the sectarian agendas of individual fundamentalist politicians. For Sircar, this memorialization conceals the ideological and structural foundations that lend legitimacy to such hatred, and hence keeps the deep-seated structural and ideological violence of the State intact, even as it visibly condemns the violence of religious sectarianism. Sircar suggests further that such remembrance works through a 'developmental juridical rationality'—a triad of secularism, legalism and developmentalism—which reposes enormous faith in the Constitution and rule of law as unquestionable paths to justice. These aesthetic reconstructions call on law to recognize the violence of the pogrom, but at the same time to valorize the state-making practices of the new India that laid the foundations of the pogrom.

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