

BOOK REVIEW

Property, Power and Human Rights: Lived Universalism In and Through the Margins

Laura Dehaibi

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Critiques of liberalism are both abundant¹ and the subject of prolific research² including within the human rights sphere.³ The critical scholarship of proponents of Third World Approaches to International Law ('TWAİL') is now equally well-established.⁴ The TWAİL critique is characterised by the view that international law as it is currently formulated is illegitimate because it is a, "regime and discourse of domination and subordination...TWAİL is [consequently] driven by [a need to]...understand, deconstruct, and unpack the uses of international law as a medium for the creation and perpetuation of a racialized hierarchy of

¹ See, eg, Maureen Ramsay, *What's Wrong with Liberalism?: A Radical Critique of Liberal Political Philosophy* (Leicester University Press, 1997); Steven B Smith, 'Hegel's Critique of Liberalism' (1986) 80(4) *American Political Science Review* 121; Colin M Macleod, *Liberalism, Justice, and Markets: A Critique of Liberal Equality* (Oxford University Press, 1998); Thomas Fossen, 'Agonistic Critiques of Liberalism: Perfection and Emancipation' (2008) 7 *Contemporary Political Theory* 376.

² See, eg, Martha C Nussbaum, *The Feminist Critique of Liberalism* (The University of Kansas, 1997); Michael Walzer, 'The Communitarian Critique of Liberalism' (1990) 18(1) *Political Theory* 6.

³ Makau W Mutua, 'The Ideology of Human Rights' (1996) (Spring) *Virginia Journal of International Law* 589; Robert B Thigpen and Lyle A Downing, 'Liberalism and the Communitarian Critique' (1987) 31(3) *American Journal of Political Science* 637.

⁴ Makau W Mutua, 'What is TWAİL' (2000) 94 *University at Buffalo School of Law* 31; Luis Eslava and Sundhya Pahuja, 'Beyond the (Post)Colonial: TWAİL and the Everyday Life of International Law' (2012) 45(2) *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* 195; James Thuo Gathii, 'TWAİL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3(1) *Trade, Law and Development* 26.

international norms and institutions”.⁵ In this book however, Dehaibi presents an arguably altogether more unique and pioneering approach to the TWAIL critique by setting out the dual-perspective of dialogical comparative analysis and TWAIL considerations in relation to human rights. Dehaibi states that she is not as concerned with the moral or philosophical justifications for international law – but with the process of shifting its discourse to a methodology focused more on lived experiences.⁶ The purpose of TWAIL in Dehaibi’s work then, is to present views from those ‘in the margins’ – the disenfranchised – as they present typically unorthodox, boundary-pushing examples of bottom-up interactions with human rights.

Though Dehaibi’s initial chapters are substantial and intricate –they are nonetheless distillable into five distinctive, but interrelated propositions that are then expanded upon throughout her book. First, Dehaibi proposes that liberalism is dominant, but not necessarily the correct approach to human rights given its inability to account for alternative non-liberal property arrangements.⁷ Second, liberalism’s dominance ensures faux-neutrality and faux-apoliticisation. Third, this dominance necessarily leads to exclusionary adjudication and exclusion is not likely to be congruent with universalism. Finally, the dominance of liberalism thus necessitates the need for alternative lived experiences to afford human rights discourse an equitable plurality of voices rather than its current inequitable singularity.⁸

Dehaibi concludes her formative chapters by demonstrating that every component of the liberal mythologisation of property has been called into question; namely permanence, material and economic security, privacy, and social existence.⁹ Dehaibi’s most evocative de-mythologising tool in this regard, is the 2008 American housing crash. Dehaibi suggests that the American fixation on home ownership did not bring the security, prosperity, and safety promised by liberal mythology – but personal sacrifices. Dehaibi places it into words best, when she states that in seeking

⁵ Makau W Mutua, ‘What is TWAIL’ (2000) 94 *University at Buffalo School of Law* 31, 31.

⁶ Laura Dehaibi, *Property, Power and Human Rights, Lived Universalism In and Through the Margins* (Edward Elgar Publishing, 2024) 5.

⁷ *Ibid* 36–69, see also 107–150.

⁸ *Ibid* 49–65.

⁹ *Ibid* 60.

security, people were willing to place themselves, ‘in an actual state of insecurity’.¹⁰

Dehaibi then evaluates the complex history of the drafting process of the human right to property. However, despite an informative analysis – Dehaibi’s work here presents an inconsistency of logic with her previous chapters. Specifically, Dehaibi argues that there were ‘disruptions’ to the liberal discourse of the drafting process due to the two representatives of the Global South present at the UN in 1948.¹¹ Earlier in her book, however, Dehaibi had instead stated the opposite as she described how neither representative was particularly disruptive, as they were trained in Western universities, learnt liberal concepts, and ultimately presented minimal contest to the liberal assertions made during the drafting process.¹²

Dehaibi’s following chapters, ‘What place for stories of property?’ and ‘When stories matter’ are her most persuasive. Dehaibi effectively demonstrates that the dominance of liberalism can only infrequently allow adequate remedies when considering nonconformist relationships with property, as liberalism must always return the discourse to a position that favours its own institutions. For example, Dehaibi readily encapsulates how during adjudication, the Romani, the Sami, and those relegated to the slums of urban developments – all remain at a disadvantage under liberalism due to their unique socialisations with property. Some suffer from informal titles, others with ‘illegality’ and others still with transience and non-alienability.¹³ Dehaibi then presents her view of ‘emancipation’ as the replacement of inadequate liberal remedies to human rights violations with the adoption of dialogical analysis that can afford applicants with personalised remedies – acknowledging the sheer variety of human experiences that may take place with property – while avoiding the parochial and myopic remedies of liberal adjudication. Dehaibi’s final pages provide a fitting conclusion then, as she remarks that the dialogical approach has been established as the more sensible, beneficial, and enfranchising approach to advancing human rights; particularly for those persons ‘in the margins’.

Though Dehaibi runs with a clear narrative in mind, to her benefit, she is not ideologically immutable. Dehaibi engages not only with academics that

¹⁰ Ibid 57.

¹¹ Ibid 71.

¹² Ibid 17.

¹³ Ibid 171, 173 and 150–190.

support her position but propose, in her view, too radical an approach¹⁴ but also with critics of her approach.¹⁵ Dehaibi does this both concisely and systematically – with her deconstruction of academic Nigel Bankes’ argument being simple, but effective. Dehaibi suggests that Bankes’ view of adjudication, seeks to, much like liberalism itself – omit broader contexts to present itself as genuine and objective; thus, placing Bankes’ defence on the same shaky foundation as liberalism generally.¹⁶

Overall, Dehaibi’s book is a comprehensive and thought-provoking text that provides a new perspective on established approaches. Given the necessity of Dehaibi’s introductory dissections of liberalism’s dominance, its mythology, and the shortcomings of that mythology and dominance – the length of her book is not a hinderance to its overall compellability. Though some may criticise the brief inconsistency of logic – there is no doubt that when examined as a whole, Dehaibi undeniably accomplishes what they set out to do in establishing the legitimacy of a bottom-up, TWAIL-influenced, dialogical approach to international law and the human right to property.

Dehaibi’s text is of integral importance to both scholars and ordinary readers alike if they should find themselves at all intrigued by human rights, conceptions of property, and the founding mythologies of liberalism and the vestiges of its dominance over matters of property in international law adjudication.

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¹⁴ Ibid 21.

¹⁵ Ibid 187 and 202.

¹⁶ Ibid 187.

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