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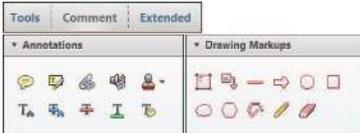
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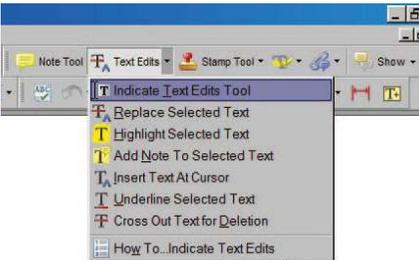
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# Toward a Lasting Anthropology of International Law/ Governance

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Miia Halme-Tuomisaari\*

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Luis Eslava. **Local Space, Global Life: the Everyday Operation of International Law and Development.** Cambridge: Cambridge University Press, 2015. Pp. 370. \$125. ISBN: 9781107092129.

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## Abstract

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*For over a decade we have heard regular assurances that the time is ripe for a sustained anthropology of international law – and that this debate forms a natural alliance between (critical) international lawyers and anthropologists. Yet we seem to be getting nowhere with the actual project, namely a sustained and vibrant inter-disciplinary debate marked by a rich co-creation of theorizations and recurring exchanges of concepts. The aim of this review essay, anchored on Luis Eslava’s new book Local Space, Global Law: the Everyday Operation of International Law and Development, is to map out potential entry points for such a conversation, with the hope of inspiring a lasting shared debate. The review addresses, in particular, the changed notion of ‘the law’ via the continued proliferation of different normative international arrangements, proposing that our current scholarly descriptions on both sides of this disciplinary equation fall short in accounting for its full complexity. While at times the review may appear critical of Eslava’s work, the tenor, rather than pointing explicitly to any shortcomings of his analysis, intends to highlight the difficulty of genuine cutting-edge, inter-disciplinary work – thus emphasizing our need for collaboration.*

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'Local and global? Anthropologists don't use those concepts any more!' It is late on a Friday night in April 2003, and a group of scholars working on the novel terrain of anthropology, human rights, global governance and international law wander towards a restaurant somewhere in New York's West Village. Despite the exhaustion caused by the long day, it feels invigorating to be part of this small group of cutting-edge researchers. I arrived at this workshop with concepts and approaches from the most recent debates among the circle of critical international lawyers that I was working with, thinking that they would also allow me to make relevant interventions in this context. The disappointment upon hearing that my conceptual apparatus was out-dated felt tangible.<sup>1</sup>

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I open my review of Luis Eslava's book *Local Space, Global Life* – a self-proclaimed work of international law with an anthropological approach – with this personal vignette to concretize the difficulties involved in genuine interdisciplinary work. These difficulties are reflected in my own work, which today is firmly anchored on the anthropological side of the scholarly equation, and they likewise manifest themselves in Eslava's book. The challenges lie not merely in finding relevant shared theoretical entry points and methodologies – rather they also stem from the need to locate concepts that reflect the 'pulse' of relevant debates in all of the involved disciplines.

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Yet, so my primary argument goes, we should not treat the resulting deficits solely as shortcomings but, rather, approach them as starting points for debates across disciplinary borders. Such a debate about the book under review would allow us to finally launch the 'anthropology of international law' as a common and sustained project. For we have long heard that the time was 'ripe', but the endeavour never really seemed to take off. With this review, I aim to show just how we could change this situation.

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Eslava's book examines decentralized modes of governance – such as policies of international organizations that challenge the exclusive jurisdiction and control of states over their territories – and their links to development policies both today and in the past. It draws attention to diverse 'artefacts of governance', including 'urban borders, local publicity campaigns, detailed maps of the city, electricity poles with "anti-fraud mechanisms" and provisional water meters' in a concrete locality, namely the rapidly transforming city of Bogotá (at 18). The outcome is an impressive argument for 'the international law of the everyday' as well as a careful analysis of the continued legacy of the imperialist era in international law, which is today reincarnated in elaborate structures of global governance.

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Eslava's narrative builds on an impressive range of recent works within international law and forms a valuable expression of the 'next generation' voices of critical legal studies (CRIT) or third world approaches to international law (TMAIL). I confess to being unfamiliar with many of them since for the past years I have been more focused on debates within the anthropology of bureaucracy, expertise, movement as well as the history of human rights.<sup>2</sup> This again reveals the difficulties of genuine

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<sup>1</sup> The workshop resulted in a special journal issue: *PoLAR: Political and Legal Anthropology Review* 28(2) (2005), edited by Annelise Riles and Iris Jean-Klein. My contribution therein is Halme, 'Review Article', *PoLAR: Political and Legal Anthropology Review* 28(2) (2005) 307. At the time, I was working on my PhD in anthropology at the Erik Castrén Institute of International Law and Human Rights, directed by Martti Koskenniemi.

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<sup>2</sup> P. Slotte and M. Halme-Tuomisaari, *Revisiting the Origins of Human Rights* (2015).

interdisciplinary endeavours. The pace of scholarly debate is today simply too rapid to allow a scholar, no matter how post-disciplinary in spirit, to stay on top of the numerous debates simultaneously. Thus, we need to collaborate across disciplinary borders.

Eslava's narrative is detailed and in many parts persuasive. On occasion, his explanatory brush strokes appear to be a bit broad, making it difficult to grasp exactly what his ultimate message is. This difficulty may be due to his style of writing as well as to his methodology. His analysis is based on multifaceted data including interviews, participant observation and a close reading of primary and secondary sources (at 52). He characterizes the outcome as an anthropologically oriented study of international law resulting from the gaze of the 'international legal ethnographer' (at 29). Yet he emphasizes that his work remains 'jurisprudential or legal in the broad sense' (at 10). This characterization may explain occasional sentiments of elusiveness that his narrative awakens, at least in part. Despite embracing minute observations of 'the everyday', his text still holds a certain distance to its target(s) of investigation. There are conspicuously few actual people present in the pages of this book.

Thus, as an anthropologist, I read his analysis with occasional mixed feelings. Save for the introduction, which features such superstars of legal anthropology as Mark Goodale, Sally Merry and Annelise Riles, among others,<sup>3</sup> anthropological works are rarely woven into the analysis itself – most recent research, in particular, is hardly taken into account. A telling reference is footnote 20 on page 13, in which Eslava discusses scholarship on the history and operation of the nation state under the banner of 'anthropology of the state', adding that 'relevant literary reviews for each of these additional anthropological fields can be found in the *Annual Review of Anthropology*'.

Consequently, the book generates an impression of 'the anthropological approach' as a static entity with a distinct pre-given content that can be embraced with an almost total absence of anthropologists themselves, instead of something dynamic that is continually redefined via collegial exchange. It also echoes with more troubling essentializing that we have recently seen in a growing number of interdisciplinary collaborations. Instead of welcoming anthropology as a participant in the joint creation of analytical frameworks on which subsequent research can build, the initiators of such collaborations forward a much more restricted invitation – that anthropologists join their ventures as an 'add on' to provide 'specialized cultural knowledge' for analytical frameworks that have been completed long before – for example, by producing 'cultural data' that can then be applied by judges in legal proceedings.

Such essentializing greatly diminishes the analytical and explanatory capacities of the discipline, as is to some extent illustrated by Eslava's book. Undoubtedly, parts of the text would have acquired greater depth had the author engaged with recent ethnographies on performance, authority, responsibility or resistance, which are all themes that he glosses over but does not really develop. The same applies to the construction of space via maps and their capacity to shape '(de facto) local physical and

<sup>3</sup> M. Goodale and S. Engle Merry, eds. *The Practice of Human Rights: Tracking Law between the Global and the Local* (2007); S. Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (2006); A. Riles, ed., *Documents: Artifacts of Modern Knowledge*, (2006); A. Riles, ed., *The Network Inside Out* (2001).

social realities' to fit into '(de jure or normative) descriptions of how localities should look and function today', a theme that he returns to repeatedly (at 17, chapters 2–4). This description resonates with the recent work of socially constructed, 'make-belief' space, discussed powerfully among others by Yael Navaro-Yashin.<sup>4</sup>

4.5 The consequences of having essentialized, to an extent, the 'anthropological gaze' also reveals on a more profound level the notion of the 'international law of the everyday' and, more specifically, how Eslava interprets the links of various exhibits that he examines with 'the law'. By the end, the reader wonders what, if anything, do many of the exhibits of the 'everyday' that Eslava discusses have to do with 'the law' – and, if they are legal, just what kind of an image of 'the law' does his analysis concomitantly result in. These questions arise within the context of the book's two main themes: first, the decentralized modes of governance and their complex links to nation states both in the past and today and, second, the role of development discourse and ideology in international law, particularly its role in legitimating international governance.

4.10 Both themes are familiar from recent TWAIL scholarship. Eslava makes a welcome contribution with his focus on the Mandates Commission of the League of Nations, elaborating how 'by making use of local structures of power ... it was possible to establish structures of government that were respected by local populations, minimizing Colonial country stations and facilitating, in turn, an uninterrupted exploitation of natural resources and the circulation of commercial flows in the colonies'. All this while simultaneously ensuring that 'they would remain inscribed within larger international structures of governance' (at 143).

4.15 These governance initiatives have direct links to the present day. However, instead of colonies, they address third world countries and are often both directed at and legitimated by 'development'. One of Eslava's most powerful moves is to show how these multifaceted governance practices extend also to the level of the individual, who becomes a party in local governance objectives to develop municipalities via legalization. The aim is to create 'a collection of disciplined and self-governed individuals capable of seeing themselves as part of a new, legally organized and sustainable city' (at 187). This desire manifests itself in continual calls on residents to participate in local decision-making processes and to respect local laws and regulations as well as in the ever-increasing payments required for residence in terms of local taxes (at 160).

4.20 These passages are reminiscent of the analysis on audit cultures initiated by Marilyn Strathern<sup>5</sup> and continued by, among others, Jane Cowan and Julie Billaud in their ongoing study of the United Nations Human Rights Council and its monitoring mechanism, the Universal Periodic Review (UPR).<sup>6</sup> Similar to the local governance programs discussed by Eslava, the legitimacy of the UPR is directly linked to its ability

<sup>4</sup> Y. Navaro-Yashin, *The Make-Believe Space: Affective Geography in a Postwar Polity* (2012).

<sup>5</sup> M. Strathern, *Audit Cultures: Anthropological Studies in Accountability, Ethics and the Academy* (2000).

<sup>6</sup> Cowan, 'Before Audit Culture: Towards a Genealogy of International Oversight of Rights', in B. Muller, ed., *The Gloss of Harmony: The Politics of Policy Making in Multilateral Organisations* (2013); Cowan, 'The Universal Periodic Review as Public Audit Ritual: An Anthropological Perspective on Emerging Practices in the Global Governance of Human Rights', in H. Charlesworth and E. Larkin (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (2015) 42; Billaud, 'Keepers of the "Truth": Producing "Transparent" Documents for the Universal Periodic Review', in Charlesworth and Larkin, *ibid.* 63.

to motivate the subjects of governance to participate via their active consent. Thus, a central question becomes: how can such participation be motivated and what kinds of bureaucratic systems and subjectivities are produced as a consequence?

Eslava offers persuasive answers, among them ‘education’ by local administrators. Yet these governance techniques and their acceptance also hold undoubted coercive elements. Eslava discusses how ‘using the classic politico-administrative, juridical and territorial structures of the state and invoking a disparate set of values that are immersed in the idea of ‘the local’, the purpose of decentralization has served to solidify instances of firm (yet flexible, in relation to market forces) sovereign control across third world nations – places where development success can be attributed to the alignment of local, national and international aspirations’ (at 15). 5.5 5.10

He characterizes the outcome as ‘forced local empowerment’ that turns local governments, local residents and local territories into the bearers of new obligations that are ‘often contradictory at best, if not actually impossible to realize, thanks to structural conditions that are entirely beyond the control of local communities’. Consequently, ‘the local everyday is increasingly shaped and regulated by international actors, norms and desires’ (at 259). These passages bring to mind much recent anthropological work on humanitarianism – again regrettably not accounted for by the author. Harri Englund’s analysis on how and why local non-governmental organizations (NGOs) in diverse southern locations adopt human rights parameters in their work as a response to international donor pressures offers merely one example of this body of scholarship.<sup>7</sup> 5.15 5.20

Eslava argues convincingly – making a significant contribution to the unfolding study of statehood also within anthropology – how, despite common perceptions to the contrary, poor states in the South and also in the North are much closer to ‘the international’ than richer ones. Their nation states are less resilient as sovereign units and have often been formed (or reformed) with extensive involvement on the part of the ‘international community’ and its ideals. In these arguments, he builds on the work of his former supervisor Anne Orford,<sup>8</sup> as well as on the classic work of Jean-Michel Trouillot, on the ‘porous’ sovereignty of third world states and the ‘state-like’ functions that many international NGOs have assumed in their territories.<sup>9</sup> 5.25 5.30

This porousness has also historical precursors, which Eslava discusses following the pioneering work of Anthony Anghie.<sup>10</sup> In addition to facilitating the expansion of imperial authority and its exercise, indirect rule also required the elevation of certain rulers over others, causing serious and long-lasting social distortions within communities (at 295). It is for this reason that the legacy of imperialism continues to plague us today and results in an infinite-seeming reproduction of unrest in places that were once governed via diverse indirect modes of governance. 5.35

<sup>7</sup> H. Englund, *Prisoners of Freedom: Human Rights and the African Poor* (2006). 5.40

<sup>8</sup> Orford, ‘Constituting Order’, in J. Crawford and M. Koskenniemi (eds), *The Cambridge Companion to International Law* (2012) 271.

<sup>9</sup> Trouillot, ‘The Anthropology of the State in the Age of Globalization’, 42(1) *Current Anthropology* (2001) 125.

<sup>10</sup> A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2007). 5.44

Naturally, these governance models meet resistance. Yet due to their distinct forms, resistance also acquires novel incarnations. Eslava discusses some local resistance techniques, which include challenging the very legality as well as the benevolence of initiatives introduced by municipal administrators (at 274). Here, Gregg Hetherington's exciting work on 'Guerilla Auditors', a term he uses to denote the peasants who have resorted to audit techniques in their fight for land rights, comes to mind.<sup>11</sup> These techniques are commonly held to be characteristic of educated urban elites and not seen as something to be employed by the uneducated, bureaucratically illiterate peasant groups, who are commonly only perceived as violent guerilla fighters. The use of these 'uncharacteristic' means results in unexpected reconfigurations of local power dynamics. It would be interesting to learn whether similar outcomes can be observed in Bogotá.

As mentioned at the beginning, an anthropological reader might question the notion of 'the law' in Eslava's work as well as his interpretation of both the process of decentralization and development as tales of legalization. His argument builds on a correlation between what is 'lawful' and what is 'developed' – and vice versa (at 173). Eslava notes how in a society described as underdeveloped, 'law today is not regarded simply as an expression of a blank juridical-administrative power lying behind state action'. Rather, the law has been conceived of as an essential foundation for the process of development – a prerequisite for the establishment of 'predictable, enforceable and efficient rules required for a market economy to flourish' (at 172). In the case of Bogotá, law has been used to 'generate virtuous humans who exist within a jurisdiction that the same law attempts to construct, regulate, secure, and develop' (at 173).

In parts of his substantive analysis, the matter appears to be relatively clear-cut – for example, in the case of legalizing Bogotá's illegal neighbourhoods (at 39–46). The links between legalization and development are also evident in his description of the shift of language from the more ambiguous language of 'incomplete' or 'in progressive development' to one of 'legalization', which is treated by local administrators and the international community at large as an uncontested sign of development (at 135). However, when the scope of his investigation broadens, his notion of law becomes more opaque. One illustration is his treatment of Kofi Annan's speech from the 2005 World Summit. Undoubtedly, we can easily agree with the conclusion that this speech – and infinite others of its kind – belongs to 'the construction of the world as a normative project' (at 57). Yet it is much more ambiguous whether this normative project is indeed one of international law, specifically, not merely the work of diverse and utterly non-legal modes of governance. In short, the question remains: how does Eslava define international law?

He offers an elaborate explanation in the introduction – so nuanced, in fact, that it does little to resolve this reviewer's dilemma. He describes international law as 'a normative project, professional field and institutional realm' that functions as a 'regime of enunciation that tells normative stories about the world: a world of which it is already an intimate part, and which it attempts to administer and constitute constantly and

<sup>11</sup> K. Hetherington, *Guerrilla Auditors: The Politics of Transparency in Neoliberal Paraguay* (2011).

at all levels' (at 25). He continues by linking this definition with his ethnographic lens, arguing how, as a result, international law appears 'less like an isolated body of rules produced by hierarchically superior institutions or a set of diplomatic relations within a state-centric universe, and more like an expansive normative and institutional system that carries with itself a very particular set of material and experiential baggage' (ibid.). 7.5

This multifaceted description has numerous strengths when compared to more rigid doctrine-oriented definitions that are analogous to those employed with reference to domestic law. Yet the original question of what distinguishes law from other normative projects persists. It becomes more relevant given the recent, unprecedented proliferation of different normative, 'law-like' monitoring mechanisms, such as UN human rights treaty bodies, as well as the supervisory practices within international law and governance regimes as a whole. This development has given rise to a plethora of previously unknown normative categories that simply fail to be captured by any existing theorizations on international law. With an increasing number of instruments such as 'constructive views', 'principles', 'observations', 'strategies', 'guidelines', not to mention 'reports' that accompany the well-established tradition of 'declarations', we have entered a space where it has become almost impossible to determine just what makes them all 'legal' in any traditional sense of legal theory. Certainly, the language of 'soft' and 'hard' law fails to serve useful analytical purposes in the current reality and talk of 'normative pluralism' does little to alleviate confusion either. 7.10 7.15 7.20

Is it necessary to distinguish between the 'legal' and the 'non-legal' – is this a division that we still need either for our analysis or in the world? These are fascinating and compelling questions, yet Eslava does not venture quite far enough to address them. Whether correctly or not, I connect his hesitance to the already mentioned legal nature of both his endeavour and his scholarly gaze as well as to the way in which it instructs the scholar to construct an impression of the world to fit this analysis. As Eslava himself phrases the matter, '[I]aw involves a particular mode of existing and seeing the world' (at 37). This statement summarizes why we need a far greater number of joint engagements across disciplinary borders. Moreover, in such endeavours, we have to grow increasingly sensitive to the fact that our answers to questions on the relationship of 'normative' governance structures and 'international law' are not neutral but, rather, complicit in defining just how important or prominent the targets of our disciplinary inquiries are in the world. Instead of mere description, our interpretations are also in important ways prescription. 7.25 7.30 7.35

This impact of scholarship may be illustrated with reference to the UN human rights monitoring framework and the classic tension therein between law and politics. This tension has intensified in recent years with the high profile creation of the already mentioned UN Human Rights Council's UPR mechanism, which is an entirely political exercise that has over-shadowed the work of the much older treaty bodies, founded on covenant provisions and doing 'legal' work. During the same time frame, desires to strengthen or 'complete' the legal side of UN human rights monitoring by establishing an international human rights court have been pushed to the sidelines, 7.40 7.44

not that this initiative held real prominence earlier either, and the very authority of treaty bodies faces intense challenges from numerous state parties.<sup>12</sup>

8.5 In the midst of such tensions, the goggles that a scholar adopts for her description have become very important and constitutive. Whether she interprets such instances as Annan's speech to speak the language of 'political', non-legal governance or, rather, incorporates them under the vast umbrella of international law – the umbrella's fuzzy, 'messy' or soft edges to be sure but within its cadre all the same. Linking these observations to Eslava's analysis, what strikes me is that one could easily envision reading an analysis of international relations, which would examine many of the same 'exhibits' discussed by Eslava – with the difference of making scarce or no mention of the language or normative framework of (international) law.

8.10 To conclude, I wish my review to be understood as an explicit call for more sustained interdisciplinary exchanges for which Eslava's book opens numerous entry points. On occasion, my assessment of these entry points has been critical, suggesting that his analysis would have gained in depth through engaging more seriously with other disciplines, in particular, anthropology. The primary motivation for this critique has not been to reveal flaws in Eslava's analysis – to the contrary. It is an impressive work that covers a significant scope of material, a wealth of scholarly references, and with its sophisticated and detailed discussion introduces numerous themes for shared reflection across disciplinary borders.

8.15 Rather, this review wishes to emphasize the limits of disciplinarily committed inquiries, thus encouraging, even provoking, us to question these borders and gain fresh collective insights into the phenomena that continually change around us – and to which we remain blind due to our disciplinary allegiances. Simultaneously, this encouragement of interdisciplinarity comes with a grain of salt. An anthropologist cannot put down Eslava's book without some melancholia, given the way in which it embraces the anthropological gaze and methodology yet overlooks what it is that we actually do. This melancholia is compounded by the impression that the CRIT, TWAIL and new approaches to international law communities as a whole seem not to notice or mind either.

8.20 The disappointment is intensified by the dark times that our universities are facing globally with increasing funding cuts and pressures to 'streamline' research-generating 'utility' and fast 'output'. Undoubtedly anthropology – a research tradition relying on data acquired via slow-paced participant observation that provides very few 'indicators' on its 'impact' and challenging the basic parameters of 'truths' relied on by policy makers who are increasingly also becoming our funders – is among the disciplines hurt the most by these changes. What chances will our scholarly community have if even those who should be our dearest scholarly friends – our academic family – ignore what we do?

12 Halme-Tuomisaari, 'Meeting "the World" at the Palais Wilson: Embodied Universalism at the UN Human Rights Committee', in R. Niezen and M. Sapignoli (eds), *Palaces of Hope: Anthropology of the United Nations* (forthcoming).

For over a decade, we have heard that the anthropology of international law (or governance) is a scholarly orientation that forms a natural fit for anthropologists, international lawyers and scholars within international relations. Yet we never really seem to get anywhere with the actual project, namely a sustained interdisciplinary debate that remains reflective also of its own basic assumptions. The goal of my review has been to inspire engagement in such a debate. Eslava's book provides an ideal starting point.

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