

SUBALTERNITY AND INTERNATIONAL LAW: IN APPRECIATION OF DI OTTO

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Looking at Di's formidable contribution to international legal scholarship, I am struck by how little of it I know but also by how deep an impact it has had on me. In this short reflection, I want to think through my earliest and most recent engagements with Di's work, which in retrospect, reveal an enduring theme of her scholarship.

I discovered Di sometime in the early 2000s while I was working on a doctoral thesis, through her 1996 article 'Subalternity and International Law'.¹ My thesis was attempting to intervene in international normative theory, which had, at the time, become monopolised by liberal political theory and polarised — perhaps also paralysed — by a debate between cosmopolitanism and nationalism on the scope of justice. I was trying to use postcolonial theory to reveal the 'dark sides' of both cosmopolitanism and nationalism when manifest as imperialist globalism and authoritarian localism respectively. But I had reached a disciplinary and methodological impasse of my own. All the postcolonial scholarship I was reading was in other disciplines — literary studies, history and anthropology. Moreover, I was encountering a disjuncture of scale that I did not know how to work around: the postcolonial scholarship, especially in its more poststructuralist vein, seemed enamoured of the politics of the fragment, leaving open the question of how to theorise the totalities of global order that to which the disciplines of international relations and international law seemed ontologically tethered.

Di's 1996 article was crucial in helping me to bridge these apparently incommensurable frameworks, not least because incommensurability is a major theme of this piece. Drawing on the work of subaltern studies scholars, Di asks 'whether it is possible to imagine processes whereby non-dominant, non-elite, *subaltern* individuals and groupings could participate as subjects of international law'.² The major contribution of subaltern studies scholarship lies in its critique of both colonial and bourgeois-nationalist schools of Indian historiography on account of their occlusion of subaltern agency. Di ingeniously deploys its arguments to criticise, by analogy, both the foundational premises of the *Charter of the United Nations* and the politics of the Group of 77 that ostensibly sought to challenge them. While the former institutionalises Eurocentric and orientalist conceptions of international legal personhood, the latter reinforces these through an uncritical embrace of the form of the modern nation state and an insidious silencing of subalterns within Third World societies. In contrast to some of the more uncritical celebrations of Third World state assertion in some Third World

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¹ Dianne Otto, 'Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference' (1996) 5 *Society and Legal Studies* 337, 364.

² *Ibid* 338 (emphasis in original) (citations omitted).

Approaches to International Law ('TWAIL') scholarship, Di's argument opens up space for the theorisation of subaltern challenges expressed in modes of speech that are typically inaudible to the international legal scholar. In a disciplinary sense, her article helped to make audible the foundational work of postcolonial scholars — Edward Said, Gayatri Spivak, Homi K Bhabha, Dipesh Chakrabarty — in the registers of international law and politics.

It would be several years before I met Di in person during one of her stints as a visiting fellow at SOAS University of London. By this time, I had been working at SOAS for nearly three years and thinking increasingly about the politics of sexual orientation and gender identity as a salient issue in global politics. I had been considering offering a graduate course on queer politics, but was unsure about the prospects for institutional support given that there were, to the best of my knowledge, no courses explicitly foregrounding queer perspectives in their titles in SOAS at the time. In May 2011, Di co-organised a workshop entitled 'Queer Perspectives on Law' with Aeyal Gross.³ It is fair to say, I think, that this workshop was something of an institutional and a disciplinary 'coming out' for many of us at SOAS, making visible just how *much* queer scholarship was in fact being produced within the institution, as well as by colleagues in other nearby schools (Birkbeck, King's College London, Kent, Sussex), even if obscured by the institutional silos of departments and faculties.

More recently, Di mobilised these and other networks to curate an extraordinarily stimulating workshop on 'Queering International Law', held at Melbourne Law School in December 2015. The workshop culminated in an eponymous edited volume, in the introduction to which Di urges us to embrace a 'queer curiosity'.⁴ Reminding us of the feminist and subversive genealogy of 'curiosity' as an investigative method, Di invites us to explore both the use of international law to ensure respect for the dignity and personhood of queer subjects as well as the ways in which queer theory casts a different light on the conceptual and analytical underpinnings of international law's adjudication of the normal. But there is also space for pleasure in this curiosity, as Di asks us to 'take a break' from the politics of heteronormative injury to celebrate the expression of human sexuality and gender identity in all its diversity and fluidity.⁵ Certainly I can attest to the pleasure of taking a break from the workshop to visit Ai Weiwei's exhibition honouring Australian human rights advocates at the National Gallery of Victoria, among whom Di has a well-earned place. It was thrilling to look around Ai's room-scale installation built out of Lego-like blocks and to see Di's inspiring words high up on one wall: 'Without hope, solidarity and imagination, change is impossible.'⁶

³ Queer Perspectives on Law: Sharing Reflections, Centre for the Study of Colonialism, Empire and International Law, SOAS University of London, 13 May 2011 <<https://soas.ac.uk/cceil/events/13may2011-queer-perspectives-on-law-sharing-reflections.html>>, archived at <<https://perma.cc/J6KQ-C3FH>>.

⁴ Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2017).

⁵ Dianne Otto, 'Introduction: Embracing Queer Curiosity' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2017) 1.

⁶ Andy Walsh, *Chinese Artist Ai Weiwei Recognises Work of MLS Professor Di Otto* (22 January 2016) Melbourne Law School <<http://law.unimelb.edu.au/news/MLS/chinese-artist-ai-weiwei-recognises-work-of-mls-professor-di-otto>>, archived at <<https://perma.cc/NM88-RWRG>>.

My current work explores questions of temporality in struggles around queer rights in the Global South. In thinking about questions of time, I have been struck by the way in which contemporary controversies around LGBTI rights in international politics are haunted by the shadow of a much longer struggle around women's rights.⁷ While it is instructive to think about the resonances and dissonances between these different struggles, one of the dangers — as much analytical as political — of such juxtapositions is that they can misleadingly represent these movements as organised around the concerns of cisgendered heterosexual women and gay men respectively, occluding queer and trans feminine subjectivities. Di's work has consistently struggled against these tendencies, making lesbian identities visible in international law while also identifying commonalities that cut across feminist and queer engagements with sexuality and gender identity.⁸ In her critique of the 1995 Fourth World Conference on Women at Beijing, Di writes with a kind of meticulous outrage of the way in which references to sexual orientation were deleted from the final Beijing Platform for Action in return for a watering down of objections to women's rights on grounds of cultural relativism: lesbians here become collateral damage in the skirmishes between so-called progressives and conservatives over women's rights.⁹ In foregrounding the lesbian question, Di populates the abstract categories of her account of 'subalternity and international law' with embodied subjects who struggle, fall, and pick themselves up again to begin anew on the changed terrain enabled by their earlier efforts.

⁷ Rahul Rao, 'Queer Questions' (2014) 16 *International Feminist Journal of Politics* 199.

⁸ Loveday Hodson, 'Queering the Terrain: Lesbian Identity and Rights in International Law' (2017) 7(1) *feminists@law*
<<http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/378/979>>, archived at
<<https://perma.cc/MEB6-XB8Q>>.

⁹ Dianne Otto, 'Holding up Half the Sky, But for Whose Benefit? A Critical Analysis of the Fourth World Conference on Women' (1996) 6 *Australian Feminist Law Journal* 7, 19.