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ENVIRONMENTAL LAWMAKING

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Introduction

It is rare to find an environmental law development or 'innovation' announced or celebrated without some discussion of its transferability. Discourses of diffusion are becoming increasingly central to the way that we develop, communicate and frame environmental law ideas. And yet, this significant dimension of environmental law practice seems to have outgrown existing conceptual scaffolding and scholarly vocabularies. The concept, and intentionally unfamiliar terminology, of 'contagious lawmaking' creates a space for both fleshing out, and problematizing, the phenomenon of the dynamic and multi-directional transfer of environmental law ideas.

Environmental law is on the move. This reality is not lost on scholars who, using diverse discourses of transplantation, spread, transmission, diffusion, cross-fertilisation, dissemination, and even impregnation, document multiple manifestations of a similar idea - environmental law ideas travel. Indeed, it is rare to find an environmental law development or 'innovation' announced or celebrated without some discussion of its transferability. Discourses of diffusion are becoming increasingly central to the way that we develop, communicate, debate and frame environmental law ideas. This matters for both environmental law scholarship and for the practice of environmental law.

The rapid expansion and multi-level nature of these developments suggest that this increasingly significant dimension of environmental law practice has outgrown existing conceptual scaffolding and scholarly vocabularies. As a result, the visual field through which these developments are contemplated and analyzed is artificially narrow and risks obscuring the complexity of legal mobility on view. The concept, and intentionally unfamiliar terminology, of 'contagious lawmaking' creates a space for both fleshing out, and problematising, the phenomenon of the dynamic and multi-directional transfer of environmental law ideas. Such transfers are not restricted to the spread of ideas and models across national borders. Rather, they permeate supra-national and sub-national lawmaking processes (Sofie Bouteligier, Cities, Networks, and Global Environmental Governance. Spaces of Innovation, Places of Leadership (Routledge 2013), transnational legal orders, private environmental governance, sites of Indigenous lawmaking (Akchurin (n 7) 944–8) legal cultures and traditions (See Scotford's invocation of 'internal' legal cultures. Eloise Scotford, Environmental Principles and the Evolution of Environmental Law (Hart 2017) 19), judicial discourse and international organisational practice.

I. The "Global Spread" of environmental impact assessment

The international spread of environmental impact assessment (EIA) is celebrated as a landmark example of what this article identifies as contagious lawmaking. The roll-out and uptake of EIA is cited as an important step in the development of 'modern' environmental law. Its ubiquity means that any countries that have not introduced EIA are now seen as outliers; there are 'probably no more than ten countries where EIA has not been introduced, and these include countries at war as well as some of the small island states' (Arend Kolhoff and others, 'Environmental Assessment' in Roel Slootweg and others (eds), Biodiversity in Environmental Assessment: Enhancing Ecosystem Services for Human Well-Being (CUP 2010) 125, 127).

Environmental impact assessment is a fascinating legal practice to contemplate in a transnational context. It is very framing raises some flags about the quite distinct ways in which it might be conceptualised, despite a common label. EIAs are used around the world for assessing the types and extent of environmental impact likely to be caused by a given human action or activity on a species, habitat, or ecosystem (and also sometimes on the human environment). National EIA laws typically specify the circumstances under which certain prescribed projects will undergo a specified level of review before approval is granted, involving the disclosure of specific risks, proceeding within specified time periods, and conducted by a specific agency, as well as involving (sometimes) specified public or private participants. While the focus of legal EIA regimes

is heavily procedural, such a procedural focus belies the fact that EIA serves as an entryway into deeper, substantive legal understandings of public participation, standing, concepts of state authority, expert rule, evidentiary standards, and wider concepts of rights and obligations in any legal system (For an examination of the wider significance of the European Court of Justice's rulings on the EIA Directive, for example, see Vanessa Edwards, "A Review of the Court of Justice's Case Law in Relation to Waste and Environmental Impact Assessment, 1999-2011" (2013) 25 JEL 515).

A close look at some of the dominant narratives that feature in accounts of EIA's global spread reveals how easily passive, de-contextualised, and ahistorical interpretations of law's movements creep into accounts of contagious lawmaking. Identification of these narratives is not intended to disparage existing environmental law scholarship. Rather, isolating such narratives permits awareness of the significant hurdles and challenges implicated by the study of the movement of environmental law in what is inherently a comparative and transnational space. Drawing attention to narrative defaults highlights how environmental law's 'creation myths' (including its treatment of the birth and spread of EIA) develop, and are institutionalised, sometimes without a robust empirical base.

The very adoption of a 'transnational' lens, one that allows efforts to introduce EIA across the globe to come into view, itself imports biases and assumptions as to the appropriate unit of analysis. Such a lens allows us to see the movement of an idea such as EIA as the product of 'flows, networks, and governance assemblages' rather than to see this movement as the work of individual people (Mariana Valverde, Chronotopes Of Law: Jurisdiction, Scale and Governance (Routledge 2015) 106). Such a lens might work well for liberal theorists and activists who are comfortable with the idea of universal models, slightly adapted 'by giving them a local paint job'. But, for other scholars, including postcolonial and anthropologically minded scholars who emphasise historical specificity and contextual particularity, the very activity of seeing and 'mapping' the diffusion of a universal idea like EIA is problematic. The terminological and methodological traps that emerge in accounts of EIA's spread thus speak to the core argument of this article-that environmental law's mobility has outgrown the terminology and conceptual scaffolding necessary to robustly engage with it. Building out from the example of EIA, the article moves to tackle these terminological and methodological 'traps' head on.

II. Contagious environmental lawmaking

The above exercise of fine-grained sifting through the specific narratives that shape discourses of EIA spread is intended to foreshadow the tricky terrain that scholarship on contagious lawmaking inhabits. Ahistorical, de-contextualised and passive accounts of law's movements represent but a few of the 'traps' around which accounts of legal mobility in the broader literature must navigate. Before more fully exploring such traps, and with a base for thinking about environmental law's movements now established through the example of EIA, this article turns to the challenge of naming the complex processes of movement of legal ideas. This section thus situates scholarly labels for describing environmental law's movements within their wider intellectual history and seeks to make a case for what the concept of 'contagious lawmaking' might add to such existing metaphor-rich intellectual traditions.

One of the intentions of grounding this engagement with terminology and methodology in a concrete example - a study of discourses surrounding the spread of environmental impact assessment - is to offer a rich site for exploring the significant hurdles and challenges implicated by the study of the movement of environmental law in what is inherently a comparative and transnational space. The necessarily comparativist project of understanding the practices of contagious lawmaking demands methodological introspection and engages concerns about terminology, categorisation, and scale of comparison that have occupied comparative law scholars for years (Annelise Riles, 'Introduction: The Projects of Comparison' in Annelise Riles (ed), Rethinking the Masters of Comparative Law (Hart 2001) 2).

The methodological observations that follow emerge from the view that facts, events, vocabularies, outcomes, processes and people can all be erased by methodological choices and starting points. The importance of starting points is highlighted by recent scholarship that reveals how 'transnational' inquiries, investigations that privilege physical space, tend to de-emphasise temporality and to hide colonial encounters that happen in contexts other than physical spaces, such as economic contexts. Critical awareness of methodological choices is particularly valuable to transnational law research that involves stepping out of one's own legal culture and finding and labelling legal developments in less familiar places.

Moving beyond description, this article problematises scholarly practices of engagement with contagious lawmaking through the mapping of five particular 'traps'. Precisely because environmental law scholarship has not been traditionally dominated by methodological scepticism, there is value in identifying how issues of method 'remain inseparable from those concerning the politics and the "project" of any comparative undertaking'. These 'traps' are significantly interrelated - the quest for policy relevance may lead to practices that de-contextualise and ignore history given the urgency of finding transportable 'solutions' to environ-

mental problems. Obscuring the identity of key agents disseminating environmental law ideas transnationally may be a consequence of the fact that the individual writing about dissemination is the same person moving legal ideas, or writing judgments, or advocating for legal reform across jurisdictions.

Beyond description, there is an opportunity here to question, ever more thoughtfully, environmental law's very tradition of borrowing. There is space to contemplate environmental law's creation myths and what aspects of environmental law's birth and spread are missing from such accounts. For scholars and practitioners alike, this work invites intentional 'navel gazing' and self-awareness around personal and political agendas and practices. Contagious environmental lawmaking presents us ultimately with an intellectual challenge - that of imagining 'export quality' environmental law ideas.

Literature

1. Sofie Bouteligier, Cities, Networks, and Global Environmental Governance. Spaces of Innovation, Places of Leadership (Routledge 2013) 2;
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6. Mariana Valverde, Chronotopes Of Law: Jurisdiction, Scale and Governance (Routledge 2015) 106;
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Ətraf mühit qanunvericiliyi

Xülasə

Bu yazı hazırki vəziyyətdə bu sahə üzrə əhəmiyyətli məsələlərin olub-olmadığını müəyyənləşdirməyə çalışır. Bunun üçün doğru açıqlama (etiket) hələ tapılmamışdır. Məqalə ətraf mühit hüququnun qlobal şəkildə yayılmasının daha dərin araşdırılması üçün təməl rolunu oynayır. Bu "yoluxucu qanunverici" fenomenini müəyyənləşdirməklə və onun tədqiqində tətbiq olunan bəzi terminoloji və metodoloji çətinliklərə açıqlıq gətirməklə həyata keçirilir. Məqalə, "dünyada ən çox qəbul edilən ətraf mühitin idarəetmə aləti" olaraq adlandırılan ətraf mühitə təsirin qiymətləndirilməsinin "qlobal" yayılması ilə əlaqəli fikirlərə diqqət çəkir. Güclü təsir bağışlayan və oxşarlığının olmaması ilə seçilən "yoluxucu qanunverici"nin həm qanunların hərəkətlərini izləmək, həm də onlara şərh vermək üçün mübarizə aparmağı ekoloji hüquq alimlərinin diqqətində olan layihələrdir. Bu məqaləni canlandıran metodoloji tənqidlər, eyni zamanda həm yerli, həm də transmilli olan ekoloji qanunun reallığı ilə maraqlanmaq istəyənləri canlandırmağa və cəlb etməyə yönəlmişdir.

Экологическое законодательство

Резюме

Эта статья призвана определить, что здесь происходит что-то важное. Правильный ярлык для него еще не найден. Статья создает основу для дальнейшего изучения глобального распространения права окружающей среды. Это достигается путем выявления феномена заразительного законотворчества и разъяснения некоторых терминологических и методологических проблем, связанных с его изучением. В статье использованы повествования о «глобальном» распространении оценки воздействия на окружающую среду, которое названо «наиболее широко принятым инструментом экологического менеджмента в мире». Заразительный законотворческий процесс с его потенциально уничижительными коннотациями и отсутствием у него осведомленности является заполнителем, означающим, что как отслеживание движений закона, так и борьба за их маркировку являются проектами, заслуживающими внимания ученых-экологов. Методологические критические замечания, которые оживляют эту статью, направлены на то, чтобы оживить и зарядить энергией студентов, желающих познакомиться с реальностью закона об окружающей среде, который является «локальным и транснациональным одновременно».

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