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Dayna Nadine Scott

Osgoode Hall Law School of York University, dscott@osgoode.yorku.ca

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Dayna Nadine Scott

Editors:

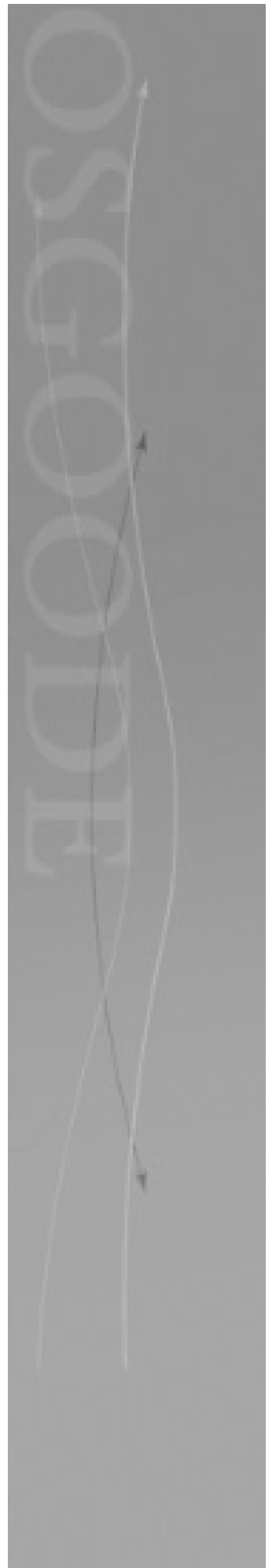
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Leeanne Footman (Osgoode Hall Law School, Toronto, Production Editor)



Comparative Research in
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Law's Slow Violence. A review of Rob Nixon's "Slow Violence and the Environmentalism of the Poor" (HUP, 2010). By Dayna Nadine Scott.* Forthcoming, 2012, Osgoode Hall Law Journal.

In seeking to understand the relationships of the local to the global in contemporary environmental justice struggles, we have yearned for a way to trace the "occluded relationships" between transnational economic actors and the things that tie them to particular places, such as labour, land, resources and commodity dynamics.¹ The bodies caught in the middle have been raced and erased, made invisible, wiped away. With gripping urgency, Rob Nixon's book *Slow Violence and the Environmentalism of the Poor* brings those bodies back into view by exposing the violence perpetrated against them across time and space.

Nixon, who is the Rachel Carson Professor of English at the University of Wisconsin-Madison, aims at a broad synthesis of a seemingly disparate set of literatures in post-colonial studies, eco-criticism and literary studies. His arresting narrative engages three primary concerns: the phenomenon of "slow violence"; the environmentalism of the poor; and the role of the writer-activist in the work of making the first two 'visible'. Slow violence, in Nixon's conception, is "a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all".² It remains obscured, he argues, precisely because it is not what we expect violence to be: explosive and sensationally visible. Instead, slow violence is incremental and accretive, and it jumbles expected connections between spatial and temporal scales. Because he views a major aspect of the critical challenge to be representational – the problem of devising "stories, images and symbols adequate to the pervasive but elusive violence of delayed effects"³ – Nixon focuses on the storytellers themselves. And the storytellers he chooses are the writer-activists that have inspired an environmentalism of the poor, primarily in the Global south. They include Arundhati Roy, Ken Saro-Wiwa, Abdulrahman Munif, and Jamaica Kincaid, among others. They are all figures who, in Nixon's words, "are alive to the inhabited impact of corrosive transnational forces, including petro-imperialism, the mega-dam industry, out-sourced toxicity...and the militarization of commerce, forces that disproportionately jeopardize the livelihoods, prospects, and memory banks of the global poor".⁴

*I would like to thank Bryony Halpin, Ph.D. Candidate in the Faculty of Environmental Studies at York University, for agreeing to read this book with me, and for engaging in challenging and thoughtful debate about its themes. I have learned a great deal from working with her. Adrian Smith provided provocative feedback on an earlier draft. Mohawk scholar Taiaiake Alfred's November 19, 2001 lecture, "The Psychic Landscape of Contemporary Colonialism", at the University of Ottawa also influenced my thinking as I wrote this review.

¹ Some of the authors I would include in this common project include the following, among many others: David Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice* (MIT Press, 2007); Benjamin Richardson, "Environmental Law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum" (2000) 11 *Colo. J. Int'l Env'tl. L. & Pol'y* 1-82; Luke W. Cole and Sheila R. Foster, "From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement" (New York University Press, 2001); Gordon Walker, "Beyond Distribution and Proximity: Exploring the Multiple Spatialities of Environmental Justice" in Ryan Holifield, Michael Porter and Gordon Walker (eds.) *Spaces of environmental justice* (Wiley-Blackwell, 2010).

² Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (HUP, 2010) [hereinafter "Nixon"] at 2.

³ Nixon at 3.

⁴ Nixon at 5.

The book's central theme is **displacement** -- temporal, geographical and rhetorical.⁵ The displacements that Nixon observes serve two ends: they simplify and obscure violence, and they “underestimate, in *advance and in retrospect*, [its] human and environmental costs”.⁶ One of the stories Nixon examines is Indra Sinha's fictional reworking of the Bhopal disaster – the catastrophic 1984 gas leak at the Union Carbide factory in Bhopal, India. Sinha's novel, *Animal's People*, in Nixon's hands, is a story of transnational risk relocation. It brings a “radical particularity” to the aftermath of the disaster and to both the intimate/cellular and the distant/transnational violence that ensued.⁷ Sinha's *Animal* is an “indigent social outcast” who allows us a window on a world in which biological citizenship is forged in a battle to gain recognition and admittance into the state-created category of ‘sufferers’. The dynamic revealed bears much in common with the social relations Adriana Petryna has documented in a post-Chernobyl Ukraine.⁸ What emerges is a “contest over the administration of difference between those who gain official recognition as sufferers and those dismissed as non-sufferers because their narratives of injury are deemed to fail the prevailing politico-scientific logic of causation”.⁹ The consequence of a failure to articulate the right story translates into a failure to secure compensation. For administrative law scholars, it is a devastating critique of the regimes we devise for distributing dignity, and it demonstrates the way that our rules penetrate outwards into social relations, not only because they influence how people experience their bodies, but how those very bodies are constituted. In other words, the contours of the regime of compensation that follows an environmental or industrial disaster determines the ability of culpable actors to absorb it, and thus ultimately shapes the prospects of its repeat, constituting bodies into the future.

About *Animal's People*, Sinha himself has stated that “the book could have been set anywhere the chemical industry has destroyed people's lives”¹⁰, and if this is true, then it could have been set not just in any of the places Sinha rhymes off, “Central or South America, West Africa or the Phillipines” but also in the Global north, in a place like Sarnia Ontario. There, in Canada's Chemical Valley, the “downwinders” include the Anishnawbe people of Aamjiwnaang First Nation, who live and breathe with the country's largest petro-chemical complex literally on the fenceline of their reserve.¹¹ The people of Aamjiwnaang

⁵ David Harvey remarks that our theorizing of the production of scale is underdeveloped. He observes that we “imply the production of a nested hierarchy of scales (from global to local) leaving us always with the political-ecological question of how to 'arbitrate and translate between them'” (Harvey, *Justice, nature and the geography of difference* (Blackwell:1996) at 203-204.

⁶ Nixon at 7.

⁷ Perhaps with a nod to David Harvey's calls for (and critiques of) “militant particularisms”: the key is to strive for local mobilizations linked to wider social movements (See for example, Harvey, *Spaces of Capital* (Routledge: 2001)).

⁸ Adriana Petryna, *Life Exposed: Biological Citizens after Chernobyl* (Princeton University Press: 2002).

⁹ Nixon at 47.

¹⁰ Nixon at 48.

¹¹ Dayna Nadine Scott, “Confronting Chronic Pollution: A Socio-Legal Analysis of Risk and Precaution” (2008) 46:2 *Osgoode Hall Law Journal* 293-343; Deborah Davis Jackson, “Shelter in place: a First Nation community in

are unfortunately not alone amongst Canada's native peoples in being aptly described by Nixon's idea of "displacement without moving".¹² He is referring not to the tragic but familiar forced "movement of people from their places of belonging", but rather to "the loss of the land and resources beneath them, a loss that leaves communities stranded in a place stripped of the very characteristics that made it inhabitable".¹³ The Mohawk community at Akwesasne, whose contaminated territory straddles a US/Canadian border it does not recognize, has experienced a similar displacement.¹⁴ The contamination of Akwesasne is industrial as well, related to manufacturing of aluminum and automobiles, tied in many ways to the availability of cheap hydro-electric power from the St. Lawrence Seaway. As the extent of the contamination of the land and the animals has been revealed, the people have described a sense of finding themselves, to employ Nixon's characterization of affected communities in the Global south, "existing out of place in place".¹⁵

The fact that Nixon's descriptions of the experiences of marginalized communities in the Global south affected by the "resource curse", for example, map so effortlessly onto descriptions by indigenous activists in communities in the Global north demonstrates, perhaps, the ongoing percolations of colonialism that scholars such as Bonita Lawrence work to expose.¹⁶ As Nixon relates the experience of

Canada's Chemical Valley" *Interdisciplinary Environmental Review*, Vol. 11, No. 4, 2010; Sarah Wiebe, "Bodies on the Line: The In/security of Everyday Life in Aamjiwnaang" in Matthew A. Schnurr and Larry A. Swatuk (eds.) *Critical Environmental Security: Rethinking the Links between Natural Resources and Political Violence* (2010).

¹² Nixon at 19.

¹³ Nixon at 19.

¹⁴ In Akwesasne, the consumption of fish and the practice of breastfeeding have been identified as important routes of toxic exposure. In fact, "the Mohawk community at Akwesasne has found itself with two alternatives, neither of which is fully acceptable to the community. The first is to continue dietary and cultural practices that increase exposure to environmental contaminants; this is, of course, not an option for many community members because of the health risks to adults, children, and generations to come. The second is to ask community members to avoid dietary and cultural practices related to exposure". Lawrence M. Schell, Julia Ravenscroft, Maxine Cole, Agnes Jacobs, Joan Newman, and Akwesasne Task Force on the Environment, Health Disparities and Toxicant Exposure of Akwesasne Mohawk Young Adults: A Partnership Approach to Research, *Environmental Health Perspectives* 2005 December; 113(12): 1826–1832. See also Winona Laduke, *All Our Relations: Native Struggles for Land and Life* (South End Press, 1999) at 9-23 and Mary Arquette, Maxine Cole, Katsi Cook, Brenda LaFrance, Margaret Peters, James Ransom, Elvera Sargent, Vivian Smoke, and Arlene Stairs, Holistic Risk-Based Environmental Decision Making: A Native Perspective, *Environmental Health Perspectives*, 110:2, April 2002. Mohawk scholar Taiaiake Alfred who studies the effects of environmental contamination on Indigenous cultural practices in Akwesasne, also described the sense of alienation from the land in a recent public address ("The Psychic Landscape of Contemporary Colonialism", November 9, 2011, University of Ottawa).

¹⁵ Nixon at 19. Tarbell, Alice, and Mary Arquette. "Akwesasne: A Native American Community's Resistance to Cultural and Environmental Damage," in Richard Hofrichter, ed., *Reclaiming the Politics of Health: Environmental Debate in a Toxic Culture* (Cambridge: MIT Press, 2000), 93–111.

¹⁶ As Bonita Lawrence shows in relation to Canada, the violent dispossession of aboriginal peoples continues relentlessly (Lawrence, "Re-Writing Histories of the Land" in Sherene Razack (ed.) *Race, space, and the law: unmapping a white settler society* (Sumach Press, 2002) 21-46. Todd Gordon's book also makes a forceful

being “moved out of one’s living knowledge as one’s place loses its life-sustaining features”¹⁷, of discovering that “once sustaining landscapes have been gutted of their capacity to sustain...”, it is impossible not to reflect on the ongoing struggles of Canada’s native peoples. “If the idea of the modern nation-state is sustained by producing imagined communities”, Nixon argues, “it also involves actively producing *unimagined* communities” -- not beyond the national boundaries, but within.¹⁸ These are the communities, according to Nixon, “whose vigorously unimagined conditions are...indispensable to maintaining a highly selective discourse of national development”.¹⁹ This move is also evident within the Global north, and in fact, has been prominently employed in the recent debates in North America over the Keystone XL pipeline, and the stated goal of developing Canada into an “energy superpower” by ramping up extraction activities in Alberta’s contested tar sands region. The singular aim of ‘development’ that is implied in the calls for a (new) national energy strategy for Canada, hides from view all of the communities downstream of both the extractive sites and the facilities refining tar sands crude; their inclusion would, as Nixon shows in other contexts, “disturb the implied trajectory of unitary national ascent”.²⁰

Transnational circuits of toxicity

Another pervasive theme in Nixon’s book is the *integrity or porosity* of borders – from a somatic, to a bodily, to a transnational scale. In the environmental politics of permeation and duration, “leakages suffuse”.²¹ As Nixon argues, and the experience of people in Aamjiwnaang and Akwesasne confirms, “industrial particulates and effluents live on in the environmental elements we inhabit and in our very bodies, which epidemiologically and ecologically are never our simple contemporaries”.²² We know that contemporary pollution harms are material – that they are body-altering, and probably generational in character.²³ But what it is impossible to know is whether the afflictions experienced today – cancer, reproductive problems, developmental difficulties – are caused by presently occurring, continuing

intervention, arguing that the Canadian state’s imperialist project abroad is one that commences in its “empire at home” (Gordon, *Imperialist Canada* (Arbeiter Press, 2010).

¹⁷ Nixon at 19.

¹⁸ Nixon at 150. We might consider the notion of unimagined communities as an inversion of Benedict Anderson’s influential idea of “imagined communities”, but Nixon prefers to move straight into the links between this idea and anthropologist Thayer Scudder’s “developmental refugees” and writer Rebecca Solnit’s “uninhabitants”.

¹⁹ Nixon at 150.

²⁰ Nixon at 150. For narratives of national development related to Canada’s energy superpower status, see for example Eric Reguly, North America back in saddle as black gold superpower, *Globe & Mail*, November 19, 2011 and Shawn McCarthy, National energy strategy gains clout, *Globe & Mail*, July 10, 2011.

²¹ See Nixon at 63.

²² Nixon at 8.

²³ Scott, *supra* note 11.

pollution or are manifestations of exposures long past. Increasing attention to the possible inter-generational impacts of pollution, and the related field of “epigenetics”, only serves to cement the sense that synthetic chemicals in our bodies exhibit “embodied, ongoing percolations”²⁴ beyond our own lives.²⁵

In this way, the suspected generational effect of the pollution draws on ideas central to feminist theory of the body and the emerging notion of “trans-corporeality”.²⁶ This line of inquiry has taken a ‘material turn’, with a conception of nature that is neither biologically reductive, nor strictly socially constructed.²⁷ It posits that the environment and the body are essentially continuous; that the environment “runs right through us in endless waves”.²⁸ For example, Elizabeth Grosz argues that as living beings we trace our existence not only to a specific maternal body, but to a “chain of bodies...a genealogical and maternal element”.²⁹ She makes us into “the accumulation and concretion of our history, of what has happened to us and what we have done, perhaps even before our personal or subjective existence”.³⁰ In other words, our own pasts, the pasts of our parents, the places in which that chain of bodies has lived, worked and played are carried forward as “constituent bits...re-arranged and re-configured” within each of us.³¹ Conceptually, it provides a mechanism for how the past remains “persistently in the present”.³² Nixon’s take on this is nuanced and it advances the theory in an important way. In pointing out that the “bits” of synthetic chemicals in environmental elements – air, water, soils - and in our very bodies, are epidemiologically and ecologically “never our simple contemporaries”, he makes clear that they exist in the world here now with us, and they not only extend back but they reach forward. He concludes that we need to close the distance between the “incorporeality of corporate power and its convulsive, material effects”.³³

There is a parallel to the way Nixon theorizes law’s role as well. For Nixon, law functions to underestimate – “in advance and in retrospect” -- the human and environmental costs of slow violence.

²⁴ Nixon at 67.

²⁵ See for example Lynda M. Collins, “Environmental Rights for the Future? Intergenerational Equity in the EU” (2007) 16(3) *RECIEL* 321.

²⁶ Stacey Alaimo, *Bodily Natures: Science, Environment and the Material Self* (Indiana University Press: 2010).

²⁷ Alaimo, *supra* note 26 at 7.

²⁸ Harold Fromm, *The nature of being human: from environmentalism to consciousness* (Johns Hopkins University Press, 2009) at 95.

²⁹ Elizabeth Grosz. *The nick of time: Politics, evolution and the untimely* (Durham, NC: Duke University Press, 2004) at 2.

³⁰ *Ibid.* at 196.

³¹ *Ibid.* at 257-258.

³² *Ibid.*

³³ Nixon at 169.

Specifically, law provides complex principles, institutions and mechanisms through which to ensure the systematic underestimation of those costs. Although Nixon himself does not confront the question of how the underestimation is accomplished, legal scholars might imagine the following. For accomplishing it *in advance*, we employ the mechanisms of “environmental impact assessments” or “risk assessments”. In Nixon’s book, this is made clear through the consideration of Arundhati Roy’s vigorous literary resistance to mega-dam projects in the Global south, beginning with her opposition to the serial damming of India’s Narmada River. In the “silted language of the hydro-bureaucrat’s report”³⁴, she says, the notion of knowledge shrinks into that of ‘expertise’ and power is centralized by the “indirect violence of euphemism and acronym”.³⁵ As an example, Nixon offers the fact that for the World Bank, people doomed by the dams – those involuntarily displaced, facing a loss of land and community, with “plummeting life prospects” -- are called “Project-Affected People” or PAPs.³⁶

For accomplishing the underestimation of the human and environmental costs of slow violence *in retrospect*, we have tort law and the administrative regimes of compensation. This is featured in Nixon’s book in the description of a former US medic’s struggle for recognition from the Department of Defense after her “catastrophic physical collapse” just days after returning from service along the notorious Highway of Death in the 1991 Gulf War. Years later, with soaring levels of depleted-uranium still in her blood (the consequence of “precision-warfare”), she began her battle to have the Department’s determination that her illness and disability were “non-combat related” overturned.³⁷ It was a struggle to displace “etiology unknown” with what the Department now finally, almost 20 years later, acknowledges: that Gulf War syndrome has known, identifiable chemical causes.

In these spaces, what law does is force people to “fit their life stories, their self-narrations, into the limited generic narratives of suffering” that the legal categories of recovery allow.³⁸ This is shaped according to the political determination of where and when compensation should flow, and then it is draped in the objectivity of scientific methodologies and legal adjudication. Actual people experience this as being “thrust into a labyrinth of self-fashioning as they seek to fit their bodily stories to the story lines that dangle hope of recognition and (possibly, though elusively,) even recompense”.³⁹ The challenge Nixon issues to legal scholars, if we can discern one, is to develop “different notions of causation and agency with respect to violent effects”.⁴⁰ This work is ongoing in socio-legal circles, although not without some scepticism related to the severe limitations of tort law to tackle the problems inherent in contemporary

³⁴ Nixon at 170.

³⁵ Nixon at 163.

³⁶ Ibid.

³⁷ Nixon at 205.

³⁸ Nixon at 50.

³⁹ Nixon at 65.

⁴⁰ Nixon at 11.

circuits of toxicity.⁴¹ Law, as an institution, it must be noted, is not seen by any of the writers Nixon examines as offering hope or assistance. This discounting seems tied, again, to law's relationship with time: it is blamed, alternatively, on "the slow emergence of morbidity", on "legal procrastination", and "interminable trials".⁴² Sinha's fictional stand-in for Union Carbide, the *Kampani*, is located, but dislocated – elusively afloat outside the reach or application of Indian law.⁴³ The best ally of those who perpetuate slow violence, according to Nixon, "is the protracted, convoluted vapour trail of blame".⁴⁴

A crucial insight of Nixon's text, then, is the way it makes evident that the "environmentally afflicted are bound in complex ways to past and future".⁴⁵ When Nixon says that he wants to expose the "chasm that divides those who can act with impunity and those who have no choice but to inhabit intimately, over the long term, the physical and environmental fallout" – he means not only of decisions 'taken elsewhere' in a spatial sense, but also in time.⁴⁶ If the prospect of devising effective legal means for reaching from the Global south into the Global north to hold "distant shadowy economic overlords" to account seems slim, then the task of imagining means to bridge that chasm in time is even more overwhelming. These are the "dissociative rituals of a neo-liberal transnationalism".⁴⁷

The environmentalism of the poor, one might get the impression from Nixon's choices of writer-activists, seems to be limited to the environmentalism of actors in the Global south.⁴⁸ This is not to suggest that he does not recognize how these practices might play out both *intranationally and transnationally*.⁴⁹ In fact, the intranational aspects of the dynamic are illustrated well in the book – with the struggles of marginalized majorities in class, race and ethnicity terms featuring prominently. Nixon's treatment of the

⁴¹ Lynda M. Collins and Heather McLeod-Kilmurray, "Toxic Battery: A Tort for our Time?" (2008) *Tort Law Review* 16:131-149; Lynda M. Collins, "Material Contribution to Risk and Causation in Toxic Torts" (2001) 11 *Environmental Law and Practice* 106; Dayna Nadine Scott, "Body Polluted: Questions of Scale, Gender and Remedy", (2010) 44(1) *Loyola of Los Angeles Law Review* 121-156; Carl Cranor, *Science, Law and the Possibility of Justice* (CUP: 2006); David Berstein, "Getting to Causation in Toxic Tort Cases" *Brooklyn Law Review*, 74:1, 2008.

⁴² Nixon at 51.

⁴³ Nixon at 57.

⁴⁴ Nixon at 136.

⁴⁵ Nixon at 58.

⁴⁶ Nixon at 53.

⁴⁷ Nixon at 55.

⁴⁸ Nixon's choices are justified, of course, on the basis that the bulk of scholarship on the environmental justice movement to date has focussed on the US and authors have been critiqued for ignoring or essentializing how actors in the Global south have been resisting the advance of industrial capitalism (see for example, Glyn Williams and Emma Mawdsley, Postcolonial environmental justice: Government and governance in India (2006) 37 *Geoforum* 660–670 at 661-662.

⁴⁹ Nixon at 65.

gender aspects of the dynamic, however, is less compelling. Explicit consideration of gender is largely confined to Nixon's account of Kenya's Green Belt Movement and the writings of Wangari Maathai. It is a convincing account of the way that activism in Kenya, including the "theatre of the tree", was gendered in specific response to the gendered dynamics of land politics, with a focus on how women became disproportionately disempowered under neo-colonial structural adjustment and the resultant cash economy.⁵⁰ But an over-arching theory of how slow violence impacts women in the context of the local and global is still to be developed.

Conclusion: Law's Slow Violence

The title of this review is intended to raise the question of law's role in the perpetuation of the harms wrought by the environmental devastation and relentless resource extraction that Nixon describes. How do we implicate law in the perpetuation of slow violence, and what do we, as legal scholars, make of the resistance of the world's poor? As Jeannine Purdy says, and Fanon demonstrated over 50 years ago now, "the violent law that was known to the colonized was not the same law that was known to others".⁵¹ This is clear from Nixon's book, and it is clearly also true within the rich nations of the Global north. But does law's *slow* violence function as law "always has"⁵²: to "speak the language of pure force "to the wretched of the Earth"?⁵³ Or, does the way that law is implicated in slow violence differ in any material respects?

Certainly, the barricades and rifle butts that Purdy emphasizes are present in Nixon's book: in Saro-Wiwa's incarceration and brutal execution, in the forced relocations to make way for India's mega-dams, in the blurring of public and private security forces patrolling in the petro-states. But what Nixon makes clear is that law's *slow* violence is in the provision of complex principles, institutions and mechanisms by which we judge it to be rational to systematically underestimate and discount human and environmental costs that can be displaced over time or space. Thus, law's violence must be appreciated and made visible in its day-to-day rigging of the 'contests' over land, bodies, labour, and resources that Nixon describes. Law provides the structures through which the *displacements* are done. Nixon and the writer-activists of the Global south he reads each demonstrate, in distinct ways, a stubborn resistance to liberalism's urge to

⁵⁰ Nixon at 133.

⁵¹ Jeannine Purdy, "Postcolonialism: The Emperor's New Clothes?" (2006) 5(3) *Social & Legal Studies* 405-426 at 406; Franz Fanon, *The Wretched of the Earth* (tr. C. Farrington) (1961/1990: London, Penguin).

⁵² *Ibid.* at 420.

⁵³ Fanon, *supra* note 51 at 29. Law's violence, as Doug Hay has shown, is not just violence authorized by law, but violence tolerated by legal authorities. The distinction, he says, is irrelevant to those who suffer the violence. Hay's example is the way state authorities openly tolerated lynchings which turned into "massive public affairs" in certain US states of the American South in the early twentieth century (Hay, "Time, Inequality and Law's Violence" in Sarat and Kearns, *Law's Violence* at 154).

“locate violence *outside* law”.⁵⁴ Instead of treating law as that which contains violence, they plainly confront its complicity.

⁵⁴ Nicholas Blomley, “Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid”, *Annals of the Association of American Geographers*, 93(1), 2003, pp. 121–141 at 121.