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## Globalizing Legal History

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### Introduction

Trained as an anthropologist and sociologist, I do not have sufficient knowledge or expertise to comment on the field of European legal history as it has developed in the post-WWII period. However, as a self-identifying scholar of Global Studies, I am immersed in various intellectual debates about the past, present and future of global processes and how these impact disciplines such as sociology, political science, anthropology, literature, history and law. It is in this context that I find Thomas Duve's essay »European Legal History – Global Perspectives« a truly innovative and important contribution toward rethinking disciplinary paradigms and their normative theoretical and methodological approaches.

The field of Global Studies is a relatively new interdisciplinary field of inquiry that is rapidly growing and becoming institutionalized in academic institutions around the world. It is a dynamic field of inquiry that draws upon the humanities, social and natural sciences to explore globalizing processes that challenge the analytical frames that to date have dominated Western scholarship in the modern period. Similar to most modern Western scholarship, European legal scholarship is founded upon and is limited by core Enlightenment ideals such as individualism, rationalism and secularism. Globalizing Western legal scholarship requires us to complicate fundamental assumptions about individual responsibility, private ownership and property, authorship, and state-bound notions of citizenship and civic rights. It requires us to seek, as Duve notes, »emancipation from one's own Eurocentric traditions«.<sup>1</sup> This article describes global perspectives that inform the field of Global Studies and argues for the relevance of these perspectives to all scholarly research including that of European Legal History.

The article begins with a brief outline of the development of Global Studies as an emerging interdisciplinary field of inquiry. Part II reviews key global perspectives that animate scholars of historical and contemporary global processes. Part

III presents some specific comments that build upon Thomas Duve's path-breaking essay and locates his comments firmly within a Global Studies paradigm. I conclude, along with Duve, that legal historians must interrogate the historiographical biases and limitations of European Legal History in light of the global processes and contexts in which those histories developed. Global processes played a significant – albeit unacknowledged – role in shaping modern European capitalism, nationalism and the formation of Europe's legal norms. Moreover, these processes continue to play a role and so destabilize the centrality and primacy of »Europe« in analyzing legal normativity and its hybrid formations around the world.

### I. Development of Global Studies

I was confronted with economic globalization in the early 1990's as an anthropologist studying peasant agriculture in central Mexico. To my chagrin a large multinational food company dropped a chicken factory-farm operation in the isolated village in which I was studying. In a matter of months, quiet isolation was replaced with chaotic interconnection. Nearly every aspect of village life was transformed as modernity and consumer culture quickly took hold. Beyond obvious superficial changes, the entire social, economic and political structure of the village was overturned. The village elders became increasingly redundant and the youth fled for jobs the city. I was at a loss because I could not complete a conventional ethnographic study of a traditional agricultural village. I was too late. Globalization had arrived and, to my thinking at the time, ruined everything.

Anthropologists, along with scholars across the disciplines, encountered a world that was much more complex than they had imagined. Enormous transformations were going on in a complicated world system and the pace of change, fast as it was, seemed to be increasing. The impacts of these changes were being felt not just in one remote village, but everywhere. It became increasingly

1 DUVE (2013) 1.

apparent that the conceptual tools provided by the disciplines were no longer adequate. In my own work, I became painfully aware that my anthropological training was simply not designed to deal with the complex transformations that accompanied the onset of globalized capitalism. Scholars were faced with the daunting task of developing new theories and analytical approaches that could grapple with complex ongoing global processes. The prospect of engaging the global was so daunting that I remember a day in 1995 when one of my senior colleagues stormed down the hall asking »What is all this nonsense about globalization? There is no such thing!« Since then I have often wished he had been right.

Global Studies can be understood as an extension of interdisciplinary efforts that influenced academia during the 1970's and 80's. Huge increases in post-World War II integration made it clear that no single academic discipline was sufficient to describe the economic, social and political changes going on in the world. New interdisciplinary approaches such as World-Systems Analysis built upon existing approaches such as Political Economy and International Relations. A variety of interdisciplinary fields and programs were established including Environmental Studies, Postcolonial Studies, Feminist Studies, Cultural Studies, Development Studies, as well as Race, Ethnic, Diaspora and Area Studies. It is from these critical and interdisciplinary trajectories that a coherent body of scholarship began to emerge dealing with new challenges posed by globalization, the neoliberal deregulation of the global economy, and widespread social and political transformations accompanying events such as the fall of the Berlin Wall and Tiananmen Square.

Throughout the 1990s most scholarship engaged in global issues revolved around what is often called the globalization debate. What is globalization? How do we know it exists? When did it start? What are its causes and effects? How can we go about studying these macro-scale processes? As a result, much of the early work in Global Studies tended to focus on locating, de-

scribing and measuring the complex macro-social, political and economic processes of globalization.<sup>2</sup> Initially the analytical and methodological tools used to study these complex global-scale issues evolved from the various disciplines in which the global scholars themselves were trained. These included political science, economics, sociology, anthropology, history, law and environmental sciences, along with many other disciplines that span the humanities, social and natural sciences. Like other interdisciplinary programs that developed during this same period, Global Studies was often presented as a confusing multi-disciplinary agglomeration of wildly different approaches taken from all these disciplines.<sup>3</sup> In Global Studies there was, and remains, a strong tendency to revel in the mesmerizing complexity of it all. However, over the past two decades an increasing number of scholars began to synthesize and articulate a more coherent field of inquiry and explore historical linkages to contemporary global issues as they played out in the vast diversity of local settings around the globe.<sup>4</sup>

Without denying the complexity of global issues, or the field's mongrel multidisciplinary pedigree, I argue that in the last few years Global Studies has reached new levels of interdisciplinary synthesis, a deeper historical contextualization of contemporary issues, and new understandings of global-scale issues.<sup>5</sup> With these developments Global Studies has begun to emerge as a coherent interdisciplinary field with unique analytical perspectives and approaches that are not necessarily replicated in conventional disciplines. These unique global perspectives suggest that with respect to European Legal History we need to destabilize the prevailing construct of Europe as a privileged /superior assemblage of secular nation-states transferring legal norms to non-Western societies around the world. As Duve argues, »If there is one important message in Postcolonial Studies, or Global History, for Legal History, it lies in the emancipation from the nationally or regionally bound analytical categories which constrain our research«.<sup>6</sup>

2 GIDDENS (1991), ROBERTSON (1992).

3 NEDERVEEN PIETERSE (2013) 6.

4 AXFORD (1995), APPADURAI (1996), HELD 1995, HELD et al. (1999), JUERGENSEMEYER (2000).

5 NEDERVEEN PIETERSE (2013) 8.

6 DUVE (2013) 17.

## II. Integrated Perspectives in Global Studies

The interdisciplinary analytical perspectives that have developed in Global Studies reflect both the field's interdisciplinary roots and the complex characteristics of global issues.<sup>7</sup> I would argue that global processes and the tools we use to analyze them are essentially transgressive and integrative. By transgressive I mean the breaking down of boundaries, in a spatial sense of crossing geopolitical boundaries and in a temporal sense of crossing discrete historical periods. This transgressive impulse blurs disciplinary boundaries and many fundamental categories of Enlightenment thinking. By integrative I don't just mean an interdisciplinary synthesis, but recognizing multiple connections between what are often thought of as discrete social, political and economic processes, as well as the fundamental interdependence of apparently autonomous phenomena. The global perspectives discussed below are examples of transgressive and integrative themes in Global Studies.

### *Global and Local – Issues of Scale*

The first thing one may notice about global issues such as climate change, economic development, human rights, immigration, transnational violence and processes of democratization is their sheer size and scale. Global-scale issues are so large and encompass so much variation that it can be difficult to wrap your head around any one global issue. However, it is important to note that »global-scale« doesn't simply mean big – it does not mean that we need »to study everything and everywhere«. <sup>8</sup> Global-scale issues are not only imposed on the local in a top-down fashion.<sup>9</sup> For global scholars the local, national, regional and the global are mutually constitutive, they create and recreate each other.<sup>10</sup>

Global Studies scholars are interested in global-scale issues not simply as grand abstractions. For most of us large, abstract or monolithic global-scale issues only become real when they become tangible in the world. It is a characteristic of large global-scale issues that they frequently manifest differently at regional, national, and local levels.

Global-scale issues can also manifest in different ways across a variety of cultural contexts.<sup>11</sup> One difficulty of our work is that in some cases the variation of global issues at the local level is so extreme that it challenges the definition of abstract Western analytical concepts and their assumed universality.<sup>12</sup> Nonetheless, global-scale issues necessarily link large analytical abstractions to their myriad local variations.

From this discussion it should be clear that global-scale issues aren't found only in the large macro processes of globalization. Global-scale processes become manifest in the lives of ordinary people and across the full range of human activities. The global can be found in large cities but also in villages and neighborhoods. The global can be found in multinational corporations but also in the workplace, in mass culture and in the rituals of daily life. The global can be found in grand historical narratives and individual life stories. Focusing on the sites where global issues become substantive helps to keep Global Studies grounded, critical, relevant and accessible.

### *Interconnection and Interdependence*

Modern Western scholarship seeks to rationalize the study of society and social practices, breaking units of analysis down into ever finer categories and discrete areas of specialization. In contrast, Global Studies is about re-integrating our understanding of the world, and proceeds from the assumption that studying the separate components of society may obscure the massive interconnectivity of all of its parts. Historical and archaeological records indicate that human civilizations have always been interconnected and that it rarely makes sense to separate human history into distinct geographical regions or specific time periods. The ingrained habit of dividing up the study of different aspects of society into distinct units is one of the main reasons that scholars find it difficult to see the myriad interconnections that define societies and connect them across time and space. Today the economic, political, legal and cultural realms of social activity are clearly interconnected.<sup>13</sup> In an increasingly globalized world, whenever and wher-

7 GUNN (2013), JUERGENSEMEYER (2014), NEDERVEEN PIETERSE (2013), SEN (2009), SPARKE (2013), STEGER (2003).

8 DUVE (2013) 23.

9 NEDERVEEN PIETERSE (2013) 11.

10 See *structuration* in GIDDENS (1984).

11 DUVE (2013) 22.

12 CHAKRABARTY (2000) 9.

13 DUVE (2013) 7.

ever we look for connections we find that apparently discrete elements are interconnected, interdependent and mutually constitutive.

Global Studies has the potential to show us connections we could not have otherwise seen or even imagined. It suggests that important connections exist between events and processes even when events appear to be disconnected and separated by time, space, or even our own categories of thought. By problematizing our dominant Western logics and binary thinking, a global perspective has the power to destabilize our modern and linear understanding of cause and effect in the social world.

Analyzing interconnections and interdependence is not a purely theoretical exercise and has important practical applications. For example, Global Studies shows us that the more policy-makers underestimate the structural interconnectedness of related global issues, the more likely it is that their policies and programs will have fewer predictable outcomes and more unintended consequences. The multiplication of unintended consequences has real-world implications for international development programs and many other public policies.

Engaging the transgressive and interdependent qualities of global issues may at first make the world appear disorganized and chaotic. However, the disruption of established ways of knowing has the potential to yield new understandings; in this case disruption and re-integration can yield new analyses of systemic global-scale issues. For example, the interconnection and interdependence of global issues such as recent increases in poverty, growing urban slums and terrorism indicate that these apparently discrete phenomena are interactive elements in a larger global system.<sup>14</sup>

#### *Decentralized and Distributed Processes*

Scholars that are trained to find clear connections and simple dichotomies may be dismayed when they find global issues are not only large and complex, but like the Internet they can also be decentralized and distributed. Global processes may have more than one center or no center at all.<sup>15</sup> They may have no hierarchy, directional flow or even clear linear causality. They tend to have a

de-territorialized quality in that they are everywhere and nowhere, or at least not neatly contained within established political borders and natural boundaries in the ways we are accustomed.

As an example, take the controversial issue of immigration. Even a cursory study reveals that the migration of people no longer happens from one point to another, from Third World to First World, or vice versa. Immigration, transmigration and return migration have become so widespread and complex that immigration can no longer be said to have a clear directional flow. The sense of violation that accompanies the massive cross-migration of people fleeing poverty and war is not limited to one nation or another. The borders of all nations are impacted by this problem and the crisis is felt simultaneously – though to different degrees – all over the world. The Third World is no longer somewhere »out there,« safely far off as it may once have seemed.

The point-to-point model of immigration fails to adequately describe the complex flow of people around the world. From a global perspective the ebb and flow of immigrants has over the last two hundred years been closely tied to the flow of global capital through a global economy. Where global-scale issues such as immigration are driven by global-scale economic processes these issues tend to defy geographic and political boundaries. This makes it difficult to study global-scale issues using territorial categories such as the nation-state. It follows that in terms of a global analysis the data sets that nation-states collect are also territorially bound and essentially flawed. If immigration is a distributed issue driven by decentralized global-scale processes then it should be no wonder that national immigration policies based on flawed nation-bound understandings of immigration will fail to deal with the issue.

#### *Synchronic Contextualization*

Global Studies scholars seek to situate apparently discrete phenomena back into the fabric of society, the social, political, economic, historical and geographic relations from which they have been artificially extracted and abstracted.<sup>16</sup> What can appear as discrete institutions and realms of

14 KALDOR (1999), DAVIS (2006).

15 NEDERVEEN PIETERSE (2013) 10.

16 WOLF (1982).

productive activity in society are necessarily functioning parts of a whole. Treating them as separate units is a fundamental misrepresentation that obscures their interdependence and function within the social system. This is an important point, since modern scholars typically approach topics such as economics, politics, culture and law as singular fields of analysis.

With respect to European Legal History it is essential to remember that law is a social construct that can't be removed from its cultural context and must always be situated within the fabric of social, political and economic relations. Duve argues, as have other socio-legal scholars, that we must not »consider ›law‹ as something categorically different from other fields of cultural production, but as one modus of normativity«. <sup>17</sup>

#### *Historical Contextualization*

Global Studies scholars recognize that history matters and that what went before explains a great deal about the world today. <sup>18</sup> It is impossible to understand the current geo-political map and multiple conflicts without some understanding of colonial and imperial histories that in many cases established modern national boundaries and set up enduring ethnic and territorial tensions. In short, a complex, interconnected and globalizing present can only be understood in the context of a complex, interconnected and globalizing past.

Take for example terrorism. In some ways the kinds of terrorism we are seeing today are completely new, yet terrorism as a political tool has existed for centuries. By inserting contemporary terrorism into historical contexts we can see that while terrorists might claim religious motivations, acts of terrorism are political – not religious – acts. <sup>19</sup> Reinserting global processes into historical contexts allows us to reconnect the dots and begin to make sense of what may otherwise appear to be discrete phenomena and random events. Global analyses look for both patterns of change and patterns of continuity, highlighting the deep historical continuities between the past and ongoing global processes today. <sup>20</sup>

Moreover, it is important to note that histories are always plural. Global histories should be decentralized and not privilege one historical narrative over another. This means that one community's understandings of the past must be situated against other peoples' narratives and historical memories that may be contradictory or even oppositional. <sup>21</sup> As Duve points out with respect to law »we have many legal histories within the space called Europe«. <sup>22</sup> It is not sufficient to tell a singular or dominant history that presents European law being transported around the world influencing others. Notes Duve, this analytical point of view eliminates internal differentiation of legal cultures within the spatial construct of Europe, and externally reinforces »the image of the unity of a European legal culture by juxtaposing ›in‹ and ›outside‹«. <sup>23</sup>

#### *Critical and Constructive*

From the above discussion, it is hopefully clear that global perspectives challenge ways of knowing that are bound in modern scholarly disciplines. Beyond this, Global Studies is essentially critical in the sense that it challenges the status quo and taken-for-granted assumptions in all kinds of discourse, knowledge production, and knowledge paradigms. Moreover, global perspectives recognize that the modern global system produces unprecedented economic growth and concentrations of wealth, as well as extreme poverty and various kinds of economic, racial, ethnic, and gendered inequality. Global perspectives are also inherently critical because they include a multiplicity of voices and alternative histories that bear witness to the violence and inequalities within the global system.

Global Studies questions historical narratives and political ideologies that are embedded in a given culture and tradition, and ultimately empower certain groups and disempower others. Narratives and ideologies are not taken at face value but interrogated, highlighting intersectional dimensions of power around issues of gender, class, race, religion and ethnicity. <sup>24</sup> Global Studies is also essentially postmodern in the sense that it chal-

17 DUVE (2013) 18; see also DARIAN-SMITH (2013a).

18 MINTZ (1985), HOBBSAWM (2014).

19 JUERGENSMEYER (2000).

20 McCARTY (2014).

21 TROUILLOT (1995).

22 DUVE (2013) 4.

23 DUVE (2013) 6, DARIAN-SMITH (2013b).

24 COLLINS (2000).

lenges taken-for-granted assumptions that too often went unquestioned in the modern period. For example, Global Studies probes the limits of the nation-state and the international relations paradigm, problematizing nationalism and monolithic national identities.<sup>25</sup> Global Studies also criticizes mainstream economics, free-market ideologies, and the assumptions behind economic modernization and development models that put Europe at the center and relegate everyone else to the periphery.<sup>26</sup> This is important for European Legal History which, Duve points out, largely presupposes that enlightened Europeans developed the »rule of law« and continue to deliver it to the rest of the world.

I would add that being critical should not be understood as a destructive or negative impulse, but rather as a constructive and inclusive impulse. The unpacking of dominant paradigms is often analytically constructive. Opening up scholarship to multiple and alternative viewpoints can be threatening, but it is also creative, producing new avenues of inquiry and pointing toward new syntheses and solutions.<sup>27</sup>

#### *Breaking Down Binaries*

Increasing levels of communication, integration and interdependence in the global system require us to complicate simple binaries such as East and West, colonizer and colonized, First and Third Worlds, developed and developing. Such binaries can be used effectively to emphasize inequality and injustice. However, these same binaries also obscure the complexity of global issues. We may talk of rich and poor countries, but only a handful of countries are unequivocally rich or poor and the large majority of them fall somewhere in between. Dichotomies such as rich and poor obscure the variation between countries, as well as the internal variation within each country. Even the poorest countries have wealthy elites, middle and working classes. And conversely, even the richest regions have poverty and inequality.

Immanuel Wallerstein's world-systems approach is a good early example of systemic thinking that moved beyond nation-states and simpli-

fied binaries (1974). Even though Wallerstein's core/semi-periphery/periphery model is often used as if it were a simple binary or triad, this is not an accurate portrayal of his work. Wallerstein described a complex global system made up of distributed systemic processes that are de-territorialized in the sense that they can exist side-by-side in the same place. In his approach, core and periphery are the two ends of a spectrum. Along this spectrum some nations have more diversified economies and more total core processes than other nations. It is important to note that in his model this spectrum could also be applied to sub-national regions. Within every nation there are sub-regions made up of predominantly core, semi-peripheral or peripheral processes. For example »global cities« can be understood as core areas containing many diverse core, semi and peripheral processes, and these cities are in some ways more closely linked to each other than to the peripheral rural areas that surround them.<sup>28</sup>

One must always be careful when applying Western binary logics and abstractions to non-Western regions. As the world becomes more globalized the lines between East and West, First and Third worlds, global North and South, are increasingly blurred. The people and issues that Europeans historically positioned »out there« at the margins are now right next door, and vice versa. At the same time we should recognize that it is becoming more appropriate to apply developmental and human rights paradigms to our own post-industrial societies. In Global Studies, and across the humanities and social sciences more generally, scholars should avoid using binary logics that oversimplify and obscure variation. We should continually work to develop new terminology that more accurately reflects the range of variation across a continuum.

#### *Hybridity and Fluidity*

In addition to a strong preference for binaries, Western scholarship has a particular fondness for fixed categorical distinctions. It is assumed that categories such as race, ethnicity, class, gender or nationality accurately describe the world. The im-

25 ANDERSON (1983).

26 ESCOBAR (1995).

27 NEDERVEEN PIETERSE (2013) 7.

28 SASSEN (1991), DUVE (2013) 15.

plicit assumption behind these kinds of categorical schemas is that they are both *comprehensive* and *mutually exclusive*. As we know, such categories have many overlapping variations and are never truly *comprehensive* or *mutually exclusive*.

Categories are assumed to be *mutually exclusive* when a person cannot fit into more than one category. With increasing immigration, and a better understanding of the deep histories of human movement, it is clear that our tidy racial and ethnic categories are overly simplistic and essentializing. Similarly national identities have become complex, hyphenated and multiple. There have always been groups that don't fit neatly into the available categories, and globalization is making it increasingly difficult to ignore the limitations of our categorical schemata.

Developing new terminology that more accurately reflects the range of possible identities in a globalized world is not sufficient. Any new understanding of hybrid identities also needs to take into account the transient nature of identity itself. People have the ability to take on different identities in different social settings. People in hybrid racial, ethnic and national categories can shift back and forth between categories, or occupy their hybrid identities, depending on the context. This kind of fluidity indicates that we need to increase the range of variation of our categories, allow overlapping categories, as well as movement between categories.

#### *Multiple Perspectives and Voices*

When dealing with complex global issues there isn't just one side, or even two sides, to every issue. It is important to recognize that people around the world have their own cultures, religions, values and their own ways of knowing grounded in historical traditions and validated by lived experiences. This means that there is never just one community, history, understanding, or truth since each cultural tradition has its own understandings and truths. The ability to understand an issue from multiple perspectives is an important part of critical global scholarship. This makes cultural relativism, standpoint and intersectional theories, plural-

ism and cosmopolitanism key concepts in Global Studies.<sup>29</sup>

Acknowledging pluralism is not only about recognizing the existence of other cultures in the events and processes we study. Pluralism shapes the field of global studies itself and impacts every aspect of our work. Like the global processes we study, global scholarship is a distributed process.<sup>30</sup> Global scholarship is produced by people in all the regions and cultures of the world. It doesn't come from one place and can't be just one thing. As a result, global scholarship should not recoil from plurality but embrace a plurality of voices and perspectives. Duve makes this point when he argues, »In an age of globalization of research, and of a certain tendency to adopt Anglo-American scholarly practices, it is ever more important to preserve and cultivate different canons and concepts, to safeguard and promote epistemic plurality.«<sup>31</sup> Global scholarship should recognize historical asymmetries of power in the production of knowledge, actively work to include scholars from the Global South and support the multi-vocal production of knowledge around the world.

### III. Globalizing Legal Histories

Duve's achievement in situating European Legal History in global perspectives is very important. I would like to suggest that Duve could push his argument further in terms of both temporal and spatial integration. Firstly, regarding time, Duve notes that legal historians must take into account medieval histories of law that filter into the nation-state building projects of the early modern era. Global perspectives suggest that even these medieval histories of law were legally pluralistic formulations drawn from deep global historical contexts that included Middle Eastern, Far Eastern and African conceptions of government and law. As a result, many European business and legal practices that emerged in the early modern era were appropriated directly from African, Middle and Far Eastern cultures.

Secondly, with respect to spatial integration, Duve's essay rightly recognizes the global impact

29 SMITH (1977), COLLINS (1980), APPIAH (2006), GUNN (2013).

30 DUVE (2013) 2 and 24.

31 DUVE (2013) 20.



that European law had on other cultures in the colonial context of the 18th and 19th centuries via processes of diffusion, reception, translation and imitation.<sup>32</sup> This diffusion model implicitly affirms a center-periphery model of causal influence, whereby Europeans influenced their colonial outposts. We need to acknowledge a more robust multi-directional exchange throughout the colonial context. This argument could be expanded to show that the colonies also influenced European societies and their legal systems.<sup>33</sup> European societies reaped the natural and economic resources of the colonies and at the same time were influenced by the intellectual and cultural traditions they encountered. Historical events in the colonies, such as the American and Haitian Revolutions, played an important role in shaping European law and politics.<sup>34</sup> The flourishing of European arts, sciences, politics and laws during the modern period can't be separated from bloody histories of conquest and imperialism.<sup>35</sup> Similarly, it would not be possible to conceive of the formation of our current trade, immigration and asylum laws outside of our more recent neo-colonial and neo-imperial histories. In short, European laws and

societies have been, and continue to be, influenced by colonial others in many unacknowledged ways.

In conclusion, Duve's essay has given me an opportunity to think about global perspectives as they play out in European Legal History. I am confident that his pioneering contribution will spur others to confront historiographical biases and Eurocentric assumptions, and strive for new analytical syntheses in the global history of law. The global perspectives outlined above indicate that the ongoing evolution of European law has always been embedded in a web of other legal pluralities that includes non-Western legal traditions in the ancient, colonial, and contemporary moments. Global perspectives also challenge legal scholars to incorporate emerging systems of transnational governance, sub-national legal cultures, and a variety of informal and illegal normative systems. Whatever the object of study or field of inquiry, global perspectives shape the kinds of questions we ask, the analytical approaches we take, and the ways we engage the world.



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32 DUVE (2013) 7.

33 DUVE (2013) 15.

34 HORNE (2014) 209.

35 DUVE (2013) 1.

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