

Institutions and the New History of Humanity

John Braithwaite

GRAEBER DAVID and DAVID WENGROW. *The Dawn of Everything: A New History of Humanity*. Signal Books, 2021.

The sweep of this collaboration between an eminent archaeologist and anthropologist is breathtaking. It does not quite say so, but it might be read to suggest that most ancient history books tell us nothing about how most people lived. Legal histories fail to explain how ancients resolved disputes, writing of courts of kings and kingdoms when tiny fractions of the world lived in kingdoms. They tell of empire when most people did not live under them, and even if they did, laws of the metropole touched their lives in limited ways. Rome is far away, as they used to say. History considers art that museums find civilizationally important. Laws carved in stone are civilizationally worthy of exhibit. Few inhabitants of the ancient world saw such art or law. They did cherish local painting, weaving, dance, storytelling, and singing. David Graeber and David Wengrow want us to pay more respect to the art and lore of wampum beaten from sea-shells that move from infecting a village imagination to a global imagination of law and freedom.

The authors perceive historiography and social science as granting too central a role to states, rulers, and rules. Social science is seduced by evolutionary and teleological thinking about the planet evolving toward an end of history where everyone submits to some state's sovereignty and laws. Perhaps we do better to imagine histories of regulation conceived simply as steering the flow of events rather than an evolution of law. Law plays a more intermittent part than history books suggest.

A standard view sees evolution from people initially living in bands, evolving to tribes, then chiefdoms, kingdoms, empires, and finally a state system. In this movement to scale, canonical social science explains that expanding divisions of labor, hierarchy, sovereigns, laws, and enforcement specialists are inevitable. All this is false, say Graeber and Wengrow—blindness to the evidence. If our methods tell us to look for states and their rulers, we find only hammers of that kind, and human nails they hammer. So begins the freshness of an interdisciplinary book.

WALKING AWAY FROM SOVEREIGNS AND LAWS

Their dazzling history sweeps across countless corners of the planet. The Americas get considerable focus. The book argues that most early really large cities emerged not in

John Braithwaite is a Visiting Research Professor at the University of Maryland and Emeritus at the Australian National University.

Eurasia, but Mesoamerica. River plains were among locales suitable for grains like corn farmed at scale, though urban concentrations were not dependent on any “agricultural revolution.” Large cities appeared early; many were not dominated by a sovereign; some were captured by leaders who signified the awe of their power, inscribing it on bodies of subjects and slaves through ritual sacrifice. Graeber and Wengrow speculate that subjects sometimes resented this kind of sovereignty, disliked endless toiling to build the architecture for rulers’ spectacles or tombs. So they just walked off. There is parsimony in the idea of autonomous humans deciding to walk away from passive, dominated lifestyles watching spectacles of power enacted atop stones they labored to pile, and dying in wars to defend rulers.

Teotihuacan (twenty-five miles from Mexico City) was perhaps the world’s largest city two thousand years ago, with 100,000 in the city and a million in the surrounding valley (today’s Mexico City). Archaeological records of around 300 CE suggest an uprising that desecrated its largest temple. As happened in other corners of the world, wealth then became more equally distributed. Stones stopped piling up to grand architectures. It shifted into high-quality housing of wide scale. The authors speculate that empowered Americans invented social housing at this juncture. At such sites and times more equitable distributions of precious stone and metal objects appear from building to building. One conclusion is that there is no unidirectionality where urban life inevitably leads to rule, rules, and hierarchy. These ancients may have been “political connoisseurs,” deliberative about the kind of sovereignty they favored. They may also have been connoisseurs of law who spurned what Philippe Nonet and Philip Selznick (2017) called the “coercive law” of ancient sovereigns. Rather than Nonet and Selznick’s unidirectional sequence, large American populations walked away from city life back to village life many centuries ago. Hence, they may have skipped “autonomous law,” moving back to a “responsive law” based on what Graeber and Wengrow imply to be “regulatory conversations” (Black 2002).

IROQUOIS-SPEAKING CONFEDERACIES ANTEDATE EUROPEAN ENLIGHTENMENT

One language group with an ideology of walking away from despotic urban settlements to choose the freedom of hybrids of farming, foraging, and hunting were the Iroquois-speaking nations of the Northeastern forests. They lived around the Great Lakes up into Ontario and Quebec, down the East Coast through New England as far as Chesapeake Bay. Scale and complexity were achieved by confederation, a governance model that diffused across Iroquois-speaking lands, to many North American societies. Two confederations particularly fascinate Graeber and Wengrow—the Huron-Wendat Confederacy that diffused ideas about freedom north from the shore of Lake Huron, and the Haudenosaunee Confederacy of upstate New York.

European intellectuals were learning about liberty, equality, and feminist fraternity from America two centuries before the American and French Revolutions. They learnt from some of the very peoples against whom their armies waged genocidal frontier wars. Europeans were fascinated by the advocacy of these confederacies for freedom from arbitrary power. Prominent Huron peace negotiator, Kandiaronk, had formidable impact.

He probably travelled to Paris to negotiate with Louis XIV's diplomats. He was definitely a denizen of the Hanover court where he befriended Leibniz. His ideas on a deliberative justice that was totally free of punishment of offenders, what some today call restorative justice, challenged Europeans who were ascending to peaks of spectacles of punitiveness.

Graeber and Wengrow argue that breakthroughs in Western thought about freedom were catalyzed when Jesuits and other "influencers" began to discuss American thought in trajectories toward republican transformation. Republican institutional designs of the Haudenosaunee Confederacy reinvented its relevance much later, during the US Constitutional debates. The "Great League of Peace" was founded when Hiawatha and clan mother peacemakers (perhaps in 1142 CE) symbolized on Wampum belts "The Great Law of Peace" (Hansen 2018). Haudenosaunee leaders spoke to delegates from Pennsylvania, Maryland, and Virginia on their historical experience of the Great Law of Peace. They urged union at faltering federation conferences from 1744 to the 1780s. Their wampum constitution was not carved in stone like the Code of Hammurabi but was constitutionalized according to their principle of sustainability for seven generations by recurrent reconciliation rituals of renewal of the peace constitution with gifts and dialogue. Benjamin Franklin showed deep interest when he presented his "Plan of Union" to the 1754 Albany Congress. Leaders as prominent as Franklin and William Penn were attracted to Haudenosaunee thought on deliberative Constitutionalism and union and were sincere about embracing First Nations into a peaceful Christian Constitutional design (as were grass roots movements like Sons of Liberty). Others were like Thomas Jefferson, who embraced Haudenosaunee Constitutional thought (Grinde and Johansen 1991) yet became a president of Westward-ho cavalry conquest and subjugation.

With hindsight, this appears cruel appropriation by an incoming oppressor, but not for many republicans of the time. A more helpful politics diagnoses what mistakes were made that allowed land grabbers to drive Indigenous peoples off their land. At one level, understanding racism is fundamental; at another, there is a complex politics of coalitions to unpack if we are serious about learning liberty's lessons.

Some white women on the fringes of the federalist debates joined Indigenous nations in advocating female participation. Part of bicameral Haudenosaunee design was that Councils of Women had rights of veto over all big decisions, like going to war. Deliberation led by clan mothers drove selection of successor chiefs of the Confederacy. Clan mothers were responsible for impeaching corrupt leaders. The impeachment principle *was* included in the US Constitution; the idea of the dual check and balance of federated subsidiarity and councils of women was not. Indigenous conceptions of the confederal separation of powers and offices was ritualized, symbolized on wampum, many centuries before Montesquieu, author of the text most widely read by founders on separated powers. Haudenosaunee thought on freedom was nevertheless of import at different stages of the debates (*ibid.*). Graeber and Wengrow suspect that received Indigenous wisdom drew upon Pan-American historical experience of cities and empires captured by despots. Washington was viewed as one of those despots by some Haudenosaunee when his scorched earth policies razed their villages. Graeber and Wengrow imbibe this thought on the very nature of freedom as liberation from

domination by arbitrary power mediated by reasoned community dialogue of a Huron or Haudenosaunee kind.

Graeber and Wengrow make a general point about resistance to non-orientalist Enlightenment learning from non-Europeans. Fear of orientalism, of “noble savage” narratives, still makes scholars wary of learning from pre-1700 non-European institutions. German philosopher Leibniz (1646–1716), in his rather reductionist, rationalist systematizing, claimed influence by Chinese models of statecraft:¹

Consider the case of Leibniz: over the course of the eighteenth and nineteenth centuries, European governments gradually came to adopt the idea that every government should properly preside over a population of largely uniform language and culture, run by a bureaucratic officialdom trained in the liberal arts whose members had succeeded in passing competitive exams. It might seem surprising that they did so, since nothing remotely like that had existed in any previous period of European history. Yet it was almost exactly the system that had existed for centuries in China . . . something that looks very much like Chinese models of statecraft . . . (Graeber and Wengrow 2021, ch. 2).

A big point of the book is that people are imaginative in how they choose to walk away from domination by rulers and their rules at crucial historical conjunctures. As they do so, they can become forgotten fellow founders of structures as grand as Western constitutions, federalism, and a United Nations. Founders are always diverse and numerous, even if history records only a few “founding fathers.” Moderns can, and slowly do, choose the deliberative justice of responsive law enabled by life at smaller scale in preference to the punitive justice of cities that wage Wars on Terror, Wars on Drugs, and punitive crusades against underclass crime and black lives that count for little.

COMPARATIVISM FOR A LESS DETERMINIST SOCIAL SCIENCE

This is a book that inspires comparativism on a broader canvas than seen before. It involves study of deliberated institutional design enabled by the insight that creative political choices allow civilizations to continue for centuries as they reject supposed superiority of societies based on agriculture at scale, then factories of growing scale. An especially profound challenge for comparative learning arises when societies experiment with emerging dominant institutional forms of rule and rules, then consciously reject them.

Australia could renew such learning by deploying solar and other technologies to enable minorities of First Nations people to choose retrieval of lore back on their country, while delivering children who choose to learn lore in place from their elders the

1. See discussion of tendencies to ridicule the romanticism of claims that leading Enlightenment thinkers could genuinely have been influenced by non-Western civilizations to plural appreciation of alternative paths to freedom and to comparative social science in Harvey (2012). Some simply dismiss such influence and others, like Edward Said, acknowledge it, but deny any capacity of Europe to draw meaningful inferences. Instead, European thought grasped an orientalism that was a projection of European concerns organically linked to colonial projects of domination (Said 1979).

same rights to education and healthcare choice that are delivered to children of remote white pastoralists.

Sadly, David Graeber died before this book appeared. He was a charismatic leader of movements for alternative choices, most famously through the 2008 Occupy Movement. Although the book makes no explicit pitch for anarchism, readers moved by its message may, in David's memory, ask whether they should reconsider their rejection of anarchism as an ideology. I might only reconsider to the extent of conceding the possibility of choosing to be a liberal-republican-socialist-anarchist (cf. Krygier 2002).

We understand that we can be hybrid socialists in the sense of believing that it is good for states to run the majority of schools to ensure that children everywhere have access to quality education. At the same time, we accept children and parents being able to opt out of state schools to a private market, or to community schools in which every child makes choices in conversation with their parents and teachers that settle their own learning priorities. We can be open-minded enough to think that educational challenges are so variegated that some children will better flourish in each type of school.

We are less open-minded in this way about law. I read this book as inviting us to reconsider. We can opt as moderns to jump from urban hybrids of coercive and autonomous law, to diverse contexts of responsive-autonomous hybridities of communal life.

Australia does a bit better with state funding for both rich white people and First Nations Australians who wish to choose an aged care home in a bush setting enriched by yarning circles of their culture. Australia provides state funding to Croatian, Chinese, and LGBTIQ community groups who build care homes that preserve their cultures/communities. This can be exploited. During aged care research I visited an Italian home that cut corners on food with excess of cheap pasta and pizza; this malnourished vulnerable people. Weakness of state law allowed residents to be dominated by a narrative of culinary empowerment. The locale in Australia with the worst COVID-19 death toll was an ethnic aged care facility that cut corners on infection controls to cross-subsidize the church of their ethnic community. Better state law enforcement, and indeed criminal indictment of owners, was required to check that devolved cultural empowerment.

REINVENTING LEGAL PLURALISM

Many moderns work and sleep in the metropolis a couple of days each week, but mostly in rural circumstances. At other times they retreat deeper to remote yoga retreats. Legally, some of their rural arrangements are tenancies-in-common with commune characteristics; ownership of the coastal retreat is shared; units are occupied by different cooperative members at different times. Disputes are rarely settled by punitive law, but by deliberative decision making.

Moderns choose hybrid lives with paradigms of choice not totally different from ancients who opted to live part of the year in urban concentrations and other times in dispersed bands. In ancient Australia and America, nations of scale were built by hybrids of urban sites where people chose to settle in one place and travelers who traversed distances of many hundreds of miles as they hunted and foraged, encountering at every stop along the path villagers with kinship obligations of hospitality. So, there was a micro scale of dispersed local living bonded up to a more continental scale of culture,

kinship, communal sharing, environmental care, Indigenous politics, and lawmaking. Graeber and Wengrow point out that the time of year when Plains Americans concentrated large populations for the buffalo hunt, many armed on horseback, was the only time that these ancients had a police force. For the curious comparativist, how interesting is that annual defunding/refunding of police?

The methodological implication is that it is a mistake to do comparativism by essentializing whole societies as types. Capitalism, and its law, is a deep structure, but is variegated within societies. Silicon Valley is different from financial capitals; they are different from industrial metropolises, from agricultural heartlands, from college towns, from Fly-in-Fly-Out mining towns, or communities around a military base organized by military-industrial complex contractors. The law of the locale around the base allows less freedom of movement; more freedom for some to carry guns, less for others.

For all that, colonialism cannot be uninvented. Across white settler societies, genocidal frontier wars stole most of the land that sustained diverse choices for ancients. Imperial gunboats and International Monetary Fund loans ensured that all societies pledged loyalty to state sovereigns that covered the whole planet with a patchwork quilt of westernized state law. We knuckle down under our dominated patch of Westphalian order. Yet we can invent a new legal pluralism that creates variegated spaces of partial freedom, including for genocide survivors. Anarchist thought can animate social movement contestation, as in David Graeber's life. Yet anarchist thought is not the only kind of social movement politics that can deliver this. Moreover, in the wake of the colonial history, much more than social movement politics is needed. An architecture of international law became increasingly imperative. Supranational institutions must regulate state power to insist that armies invading other peoples' lands is tolerated no more. Universal guarantees of education for every girl in societies where pockets of patriarchy oppose this requires education bureaucracies and legal capabilities to prevent families and communities from denying education rights.

Ending the slave trade to the Americas may have begun from a social movement kindled in church congregations. Yet it also took British naval power blowing empty slave-trading ships out of the water to demolish the viability of that trade. When humanity invents new technologies of domination that cannot be uninvented, the implications can be so profound that containing domination without international law enforcement is improbable. The evidence that UN peacekeeping and international peace agreement diplomacy helps prevent cascades of war and crime is now quite clear (Walter, Howard, and Fortna 2021; Braithwaite and D'Costa 2016). The pity is that genocide victims of the Americas had no access to these global regulatory institutions in the centuries after 1492.

People power movements are fonts of freedom. Like Graeber and Wengrow, we can believe that ancient Americans bequeath beautiful legacies of thought, impressive institutional designs for freedom. Institutionalized avarice and military might mean, however, that extinction cannot be avoided without social movement politics married to enforceable law. One day nuclear weapons will extinguish all civilizations with all their freedoms unless we deliberate not only to transform the politics of great powers, but also disarmament treaties and institutions of the Earth. So too with existential threats from climate change. Indigenous confederations still meet, still make decisions in their contracted living spaces. A gift of this book is that it invites legal and social

thinkers to learn from histories of resilient capabilities of human communities to deliberately discover creative paths to freedom in the worst of circumstances.

Anarchism can be a beautiful theory that leads to ugly practices. Yet books like this might help us imagine how anarchist thought on democratic deliberation and healing of hurts can create some beautiful spaces where flowers of freedom flourish without rule of formal law. However, they survive only if the rule of law, buttressed by separated powers, prevents cavalry from being sent to cut them down.

REFERENCES

- Black, Julia. "Regulatory Conversations." *Journal of Law and Society* 29, no. 1 (2002): 163–196.
- Braithwaite, John, and Bina D'Costa. *Cascades of Violence: War, Crime and Peacebuilding Across South Asia*. Acton, Australia: ANU Press, 2016.
- Grinde, Donald A., and Bruce E. Johansen. *Exemplar of Liberty: Native America and the Evolution of Democracy*. UCLA American Indian Studies Center, 1991.
- Hansen, Terri. "How the Great Law of Peace Shaped US Democracy." *Native America* (December 14, 2018).
- Harvey, David Allen. *The French Enlightenment and Its Others: The Mandarin, the Savages and the Invention of Human Sciences*. New York: Palgrave, 2012.
- Krygier, Martin. "Conservative-Liberal-Socialism Revisited." *The Good Society* 11, no. 1 (2002), 6–15.
- Nonet, Philippe, and Philip Selznick. *Law & Society in Transition: Toward Responsive Law*. New York: Routledge, 2017.
- Said, Edward W. *Orientalism*. New York: Vintage, 1979.
- Walter, Barbara, Lise Morje Howard, and V. Page Fortna. "The Extraordinary Relationship Between Peacekeeping and Peace." *British Journal of Political Science* 51, no. 4 (2021): 1705–22.

Reproduced with permission of copyright owner. Further reproduction prohibited without permission.