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Contesting the myth of legal universality: A critical reading of legal pluralism

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Abstract
This article critically examines the centuries-old assumption of legal universality in theoretical and empirical studies of legal pluralism. Drawing on a range of influential legal scholarship and anthropological theory, it challenges the dominant Eurocentric assumption of a unified, homogeneous legal system as inadequate to explain the rich legal realities that organize people's lives in multicultural and postcolonial environments. The article follows the intellectual trajectory of legal pluralism, deconstructs the normative conflicts with state-based legal systems, and offers a jurisprudential critique drawing on the works of Griffiths, Santos, and other leading critical thinkers. It concludes by arguing that the acceptance of legal pluralism is essential to ensure epistemic justice and achieve a more sophisticated understanding of law.

Keywords: Legal pluralism, legal universality, postcolonial jurisprudence, epistemic injustice, critical legal theory, politics of recognition

Introduction

Legal systems globally have long been founded upon the illusion of universality—a presumption that formalized, codified law is an unchanging standard of justice. This conception, shaped in significant part by colonial and modern theories of law, has a propensity to deny the existence of alternative legal structures both within and outside the borders of the nation-state. Legal pluralism, on the other hand, acknowledges the coexistence of diverse legal systems within the same political order, such as state law, customary law, religious law, and unofficial mechanisms of conflict resolution. The tension between these two perspectives—universalism and pluralism—poses basic jurisprudential questions regarding the nature of law, its source, and its legitimacy. The purpose of this article is to critically examine the illusion of legal universality by engaging thoughtfully with the theory and practice of legal pluralism. It draws upon insights from legal anthropology, critical legal studies, and postcolonial theory to construct an alternative conception of law as heterogeneous, contested, and inextricably entangled with social life.

The intellectual genealogy of legal pluralism

Legal pluralism first emerged as an empirical reality in colonial settings, where scholars described the existence of multiple legal orders within imperial borders. Scholars like Bronislaw Malinowski and Max Gluckman noted that indigenous cultures operated under their own order of norms in spite of colonial law enforced on them [1].

Legal pluralism gained increased theoretical importance in the seminal article by John Griffiths, whereby he distinguished between “weak” and “strong” pluralism [2]. Weak pluralism recognizes unofficial laws only when they are legitimized by the state. Strong pluralism, on the other hand, argues that different legal systems may coexist without invoking the state. Griffiths severely criticized the doctrine of legal centralism—the proposition that state law is the only valid legal system—because it is a product of colonial ideology [3].

Sally Engle Merry furthered this argument with a focus on how legal consciousness is not only created by formal state institutions but also by religious practice, social norms, and transnational human rights discourse [4]. Her argument was that law is not a constant but a continually negotiated one, always negotiated by social relations.

Boaventura de Sousa Santos built the epistemological space of legal pluralism by developing the notion of “inter legality”—the co-existence of various legal codes in daily life [5]. He promoted an "epistemology of the South" to challenge the Eurocentric character of legal knowledge and authorize subaltern standpoint epistemology [6].

Jurisprudential critique of legal universality

Legal universality has often been defined as a product of Enlightenment rationality, a neutral, secular, and universalizable work. In addition, critical legal theorists have shown that this so-called neutrality conceals important power differences [7]. The seemingly objective legal systems are implicated in histories of privilege, exclusion, and domination.

Roberto Unger condemns modern legal systems as structured and content-indeterminate but nevertheless neutral-sounding in their perpetuation of systemic injustices [8]. Duncan Kennedy also condemns the doctrinal formalism function of hiding political and class interests behind legal argumentation [9].

Feminist jurisprudence has shed light on the gendered assumptions in the idea of legal universality. Martha Fineman resists the liberal legal subject's description as independent, self-sufficient, and rational—a subject that ignores the structural vulnerabilities of care-dependent subjects, most especially women [10]. Likewise, Kimberlé Crenshaw's intersectionality theory uncovers the intersection of race, gender, and class in producing unique experiences of legal marginalization that universal legal norms are unable to recognize [11].

Legal pluralism, on the other hand, is concerned with context, community, and history. Legal pluralism resists

monolithic law by acknowledging how legal norms arise from social experience and localized meaning systems.

Legal pluralism in post-colonial and multicultural contexts

Postcolonial societies are fertile ground for legal pluralism due to their rich legal histories. Colonial powers, in their attempts to govern indirectly, usually retained or reorganized indigenous laws. In India, for instance, the British codified religiously based personal laws and marginalized tribal customary practices [12]. This created a fertile legal terrain where colonial modernity coalesced with fragmented precolonial norms.

In modern multicultural democracies, legal pluralism unfolds in a different manner. In Canada, the acknowledgment of Indigenous legal traditions in addition to federal law signifies a qualified departure from legal centralism [13]. The post-apartheid Constitution of South Africa acknowledges customary law but only if it will adapt to constitutional requirements such as gender equality [14].

Takeshi Chiba's "tripartite model"—official law (state law), unofficial law (customary/religious law), and legal postulates (moral-ethical norms)—provides a handy perspective for understanding these plural arrangements [15]. These levels tend to conflict with one another: official legal systems might acknowledge customary norms, but only to the point useful to the larger state interest.

Legal pluralism in this context is not always liberatory. Acknowledgment of non-state law may at times perpetuate prevailing hierarchies, especially patriarchal or caste-based hierarchies.

Epistemic injustice and the politics of legal recognition

A basic characteristic of legal universality relates to its role in contributing to the phenomenon of "epistemic injustice", which includes the systematic marginalization of certain types of knowledge and viewpoints. Miranda Fricker defines epistemic injustice as the harm caused to individuals as knowers, especially when their testimonies are undervalued or ignored [16].

Legal frameworks that prefer Eurocentric standards of proof and reasoning tend to make indigenous or vernacular legal knowledge illegitimate or invisible. Therefore, entire societies are denied epistemological as well as procedural access to justice.

Legal pluralism expands legal theory on the basis that law is not confined to the state and courts. Nevertheless, the "politics of recognition" complicates this claim. Governments' recognition of religious or customary legal systems is typically followed by bureaucratic standardization and hence their loss of contextuality and richness [17].

As Santos notes, the challenge is to safeguard pluralism from being "regulated pluralism" where only authorized non-state laws are allowed [18]. A critical pluralism must be vigilant against romanticizing all non-state norms and universal law's hegemonic tendency.

Conclusion

Legal pluralism is a counter-narrative to hegemonic legal centralist discourse that envisages law as a consolidated state-based and hierarchically structured system. The previous origins of legal pluralism are traceable to anthropological studies of colonial society within which there were a number of systems of norms.

In his seminal 1986 monograph, John Griffiths established an essential distinction between 'weak' and 'strong' legal pluralism. Weak legal pluralism accommodates non-state legal systems only if they are legitimized by the state, as opposed to strong legal pluralism, which holds that there may exist more than one legal system irrespective of state recognition. Griffiths argued that the notion of legal centralism is an illusion and misperception of legal fact.

Legal pluralism replaces legal universality with its revelation of assumptions and institutional limits. It shows that law is not just a social practice but is located within historical contexts, narratives, and power relations. Legal universality promotes equality and coherence but is apt to sustain domination by marginalizing alternative legal epistemologies. A necessary reflection on legal pluralism is to face challenging challenges: how to guarantee justice without relativism, and how to recognize diversity without reinforcing inequality. The objective is not so much to respect plurality in itself, but to use it as a basis for the achievement of "epistemic justice" and participatory legitimacy.

Rather than seek a monolithic, overarching legal paradigm, jurisprudence needs to cultivate the humility to learn from and dialogue with the legal knowledges that already exist within marginalized communities. Through this, legal pluralism can be more than a deconstructive critique of dominant paradigms but also a way of strengthening a more inclusive and diverse legal system.

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