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Legal pluralism as co-presence: Disobeying the hierarchies of the western canon

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Abstract

This paper aims to offer a contribution for the debate on how to decolonize sociolegal thinking by discussing possibilities of decolonizing legal pluralism. Avoiding the endless debate about what is law, and focused on the need to disobey modern epistemological hierarchies, I use a cartographic metaphor – law as map – to argue that legal centralism is not only a fiction, but a Eurocentric instrument that limits political imagination. Law, in its plurality, is an indicator of the world's possibilities. Legal pluralism must be more than a marginal field, but a core instrument to expand legal and political possibilities. After addressing the role of modern law as an instrument that legitimizes capitalism, I claim that we need to move ahead from modern dichotomies that fail to decolonize science. Finally, using notes from fieldwork in East-Timor and Mozambique, I reflect as a feminist woman on how to learn from unfamiliar legal maps.

Key words

Legal pluralism; legal and political imagination; legal maps; law and epistemology; decolonizing sociolegal thinking

Resumen

Este artículo pretende ofrecer una contribución al debate sobre cómo descolonizar el pensamiento sociojurídico discutiendo las posibilidades de descolonizar el pluralismo jurídico. Evitando el interminable debate sobre qué es el derecho, y centrándome en la necesidad de desobedecer las jerarquías epistemológicas modernas,

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utilizo una metáfora cartográfica -el derecho como mapa- para argumentar que el centralismo jurídico no es sólo una ficción, sino un instrumento eurocéntrico que limita la imaginación política. El Derecho, en su pluralidad, es un indicador de las posibilidades del mundo. El pluralismo jurídico debe ser algo más que un campo marginal, sino un instrumento central para ampliar las posibilidades jurídicas y políticas. Tras abordar el papel del derecho moderno como instrumento que legitima el capitalismo, afirmo que necesitamos avanzar desde las dicotomías modernas que no consiguen descolonizar la ciencia. Por último, utilizando notas del trabajo de campo en Timor Oriental y Mozambique, reflexiono como mujer feminista sobre cómo aprender de mapas jurídicos desconocidos.

Palabras clave

Pluralismo jurídico; imaginación jurídica; mapa jurídico; derecho y epistemología; descolonización del pensamiento sociojurídico

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1. Introduction

Postcolonial approaches, within their different traditions and conceptualizations, are not closed theories of continuity, fitting in footnotes that can be added to academic writing without disturbing what scholars, in their fields, assume to be established knowledge. The Epistemologies of the South (Santos 2014, 2018), the Subaltern studies (Guha 1984, Chakrabarty 2000a 2000b, Kaiwar 2014), the so-called Post-colonial Studies (Said 1978, Spivak 1988, Hall 1992, Young 2003), or the proposals of the Decolonial group (Quijano 1991, Mignolo 2003, Escobar 2003, Castro-Gómez and Grosfoguel 2007, Maldonado-Torres 2008, Lugones 2010, Mignolo and Walsh 2018), among the work of many writers and activists that refuse to see the world through the narrow lens of the Eurocentric canon, challenge researchers to identify and denounce the limits of classic concepts, methodologies and theories; to identify the invisibilities they produce, expanding the available knowledge to make sense of the world's injustices and possibilities of struggle; and to problematize the questions from which the research starts. This paper aims to participate in the debate on how to decolonize sociolegal thinking by discussing the possibilities of decolonizing the understanding and uses of the concept of legal pluralism.

Western modernity, imposed on the world through a history of colonial violence and post-colonial continuities, and grounded in three main modes of domination – capitalism, colonialism, and heteropatriarchy –, was established as the universal goal of a linear path of development that promised equality, ignoring the structural inequalities that result from naturalized forms of oppression (Santos *et al.* 2023). Scientific knowledge and state law, sustained by a rationality compatible with the requests of capitalist development, were defined as the indicators of civilization while legal pluralism and knowledge diversity were homogenised and wasted under the classification of "the other", that in light of the western modern reason is always inferior and labelled as "ignorant", "nonproductive", "primitive", "underdeveloped", "local" (Said 1978, Mudimbe 1988, Hall 1992, Mbembe 2001, Collins 2002, Lander 2005, Santos 2014).

Modern societies are thus grounded on a monocultural project that accepts diversity only to the extent it does not question the linear conception of progress and civilization (Goldberg 2009, Rodríguez Maeso 2021, Santos *et al.* 2023). Difference is validated only when modern superiority and the established terms of the debate are not questioned (Kapur 2018. When G. Spivak (1988), in her seminal text, asked if the subaltern can speak, she was not doubting their competence to express themselves. It was an epistemological critic to the impossibility of being heard on their own terms and in consideration of their own questions. Spivak's point is far from outdated, and socio-legal studies need to feel challenged by the question: Can contemporary modern societies listen to the subaltern's legal diversity? Put more ambitiously: Can we learn from the world's legal pluralism to overcome current dangers, including the growth of extreme right movements or climate crisis? I believe the answers are positive if we are available to disobey western hierarchies and accept diversity as co-presence,[1] refusing the narrative of development

[1] The idea of copresence is part of the conceptualization of the Epistemologies of the South proposal. It requires the abandonment of the linear conception of time, that results in the classification of difference as primitive or backwards, i. e., non-contemporary; and the overlapping of simultaneity and contemporaneity (Santos 2014, Santos *et al.* 2023).

that identifies what is not modern with the past. We need to embrace legal pluralism and simultaneously reject modern hierarchical thinking that establishes constitutional law and human rights as technical instruments that impose the limits of acceptable difference. The concepts of democracy and fair governance need to be challenged by the questions and terms of reference of those who were dehumanized by modernity and classified as ignorant.

Embracing postcolonialism is not about quoting the right scholars, it is about deeply listening to the silences, identifying the invisibilities produced in modern history, and being open to question the unquestionable in the past and in the present. It requires provincializing models of intelligibility (concepts, theories, terms of validation of what is knowledge), turning modern maps upside down (Galeano 1998) and recognizing marginal or excluded forms of making sense of the world. In other words, postcolonial approaches invite every researcher to see beyond the narrative of the winners and academic criterium of validation (Collins 2002). This means that recognizing the violence against colonized, racialized, commodified bodies is crucial, but not enough; we also need to recognize the narratives built from the ones who suffered violence (reading colonialism from the point of view of the slaves and not the slave traders), and their erased ontologies, and epistemologies. Academic minds and subjectivities require deep decolonizing processes to create possibilities to learn from the subjects that were historically objectified and from knowledge that colonial modernity invalidated. This "epistemological disobedience" (Mignolo 2010) implies accepting the discomfort of unfamiliar categories, questioning the neutrality of what has been cast as "merely" technical and refusing the naturalized hierarchies between different types of knowledge. All of this involves creative thinking, that might give fresh uses to relevant old concepts, like legal pluralism, and expand conceptualizations and methods to disobey the western canon and promote epistemic justice, resulting in more relevant knowledge.

Avoiding the endless debate about what is law and the question of when do we stop speaking about law and start speaking about social norms – that are not my focus – I return here to a much-forgotten broad definition of law developed in the 1980s (Santos 1987), using a cartographic metaphor to argue that legal centralism is not only a fiction (Griffiths 1986), but an instrument to impose limits to social transformation. Law is here conceived as a map of imagination, social representation, and description of reality (Santos 1987). Like maps, law inevitably distorts reality by means of three mechanisms that are not neutral: scale, projection, and symbolization. The choices on which they are based promote certain interests and disputes while suppressing others. Legal maps not only configure our representation of the present, but also our imagined notions of future possibilities. It is not the distortion that configures the real problem – as every map has distortion which needs to be reflected and addressed –, but rather the recognition of an exclusive cartographic process (*idem*). Law, in its plurality, is an indicator of the world's diversity and possibilities of legal and political imagination. I argue that legal pluralism must be more than a marginal field of the socio-legal studies, but a central conceptual instrument to learn from the world's diversity.

The article is divided in two main parts. In the first part, I start by critically analysing the fallacy of modern law's neutrality and technical superiority; and continue with a discussion of modern law's Eurocentric roots and the colonialist dimension of the rule

of law, namely when instrumentalized for nature appropriation and plunder. I argue then that we need to critically observe the limits of academic questions and imagine new ones in order amplify the silenced voices. I close this part with a conceptualization that recognizes different forms of inequalities in contemporary societies and turns visible the colonial continuities that are (re)produced through Eurocentric state law. In the second part, I discuss some of the methodological challenges to overcome Eurocentric hierarchies and to learn from legal pluralism. I start by sharing some notes concerning ethnographic strategies I pursued in the city centre of Maputo to show how the recognition of legal pluralism does not mean overcoming colonial hierarchies and that legal pluralism, in practice, is a hybrid reality that escapes the limits of formal recognition or academic concepts. That is why I opt for fluid concepts, open to non-anticipated empirical realities. Categories that contain closed expectations about what the reality looks like tend to produce invisibilities. In the last section, focused on fieldwork conducted in East-Timor and Mozambique, I discuss how to balance legal pluralism with constitutional law and human rights, arguing that we can only overcome colonialist and relativist approaches if we provincialize the globalized legal instruments and open our mindset to learn from diversity not validated by the modern canon.[2]

2. Modern law and the fallacy of linear progress

2.1. Law as science: the commodification of nature and the naturalization capitalist (dis)order

Capitalism requires a type of knowledge that commodifies nature, and colonialism demands exportable models that naturalize Eurocentric conceptions of civilization, progress, productivity, and development (Santos 2002, Kaiwar 2014). The victory of modern science and its terms of validation over other forms of knowledge and other epistemologies, in the last two centuries, was a result of the imposition of that political project. The order it required was fulfilled by the scientifically legitimized codified state law. Modern science has ensured technological development, while modern law has provided the legal mechanisms for transforming nature into capital (Capra and Mattei 2015).

The future's direction could now be scientifically defined and legally imposed through a codified law that is compatible with the values of the liberal and capitalist project, such as equality, political unity, legal security, individual freedom, and order (Galanter 1966, Griffiths 1986, Wolkmer 1994, Santos 2002). Citizens were linked to the production

[2] My empirical experience with legal pluralism in Mozambique results from continuous research developed, collectively and individually, between 2003 and 2010. From 2003 to 2004, I was part of the bi-national research team, involving the Centre for Juridical and Judiciary Training of Mozambique and the Centre for Social Studies of the University of Coimbra, for the Mozambican Justice Reform (including the revision of the Organic Law of Judicial Courts, the revision and regulation of the Community Courts, and the conception of a new system of access to justice). This project included empirical research in Maputo, Angoche, Nampula and Macossa. From 2004 to 2006, I participated in the research project *Law, Justice and Globalization in Mozambique* (CFJJ), that included fieldwork in Angoche and Nampula. From 2008 to 2010, I did field research in Maputo as part of my PhD research on legal pluralism and epistemologies of the South. Between 2016 and 2017, I participated in the Diagnostic study on the justice system in East-Timor, with the Commission for Legislative Reform and Justice in Timor-Leste and the Centre for Social Studies, as part of the Informal Justice Research Team.

process by submitting their time and body to scientific laws determined by the State (Castro-Gómez 2005) and administered through a hierarchical and professional system whose legitimacy results from the faith in the bureaucracy, in Weberian terms. As Antônio Carlos Wolkmer – a Brazilian specialist in legal pluralism – puts it, "the dogmatic representation of legal positivism, that manifests itself through a rigorous normative formalism with pretensions of 'science', becomes the authentic product of a bourgeois society solidly built on industrial, technical and scientific progress" (Wolkmer 1994, 60).

Using the terms of the well-known socio-legal scholar Peter Fitzpatrick (1992), modern law is a "Eurocentric myth", allegedly immune to context and politics, which sustains the linear historical narrative that moves from disorder to order and merges the latter with the rule of law. It was built up as an "European enterprise" celebrating the Eurocentric cultural experience and contributing to its hegemony (Nunn 1997). In a deeply critical reading, Mattei and Morpurgo argue that "law has been constructively turned into a technology and a mere component of an economic system of capitalism, thus hiding its intrinsic political nature, and annulling the relevance of local political systems, now impotent in front of the dynamics of global law" (Mattei and Morpurgo 2009, 18). In a book in honour of Edward Said written more than one decade ago, Ugo Mattei and Laura Nader identify the need for studies on colonialism and imperialism to pay more attention to the role of law. Also, the studies of law need to pay more attention to what they call the negative side of the rule of law. In other words, they invite us to observe rule of law imperialists foundations and contemporary real consequences. Committed to this objective, the authors develop the thesis that the rule of law is a model that promotes expropriation: the agreement of the World Trade Organization, the International Monetary Fund, the constraints of the World Bank and the ethnocentric nature of many discourses on rights impose a legal paradigm that legitimizes plunder. They argue that, in the context of colonialism and imperialism, the rule of law can result in disorder rather than order, promoting the continuity of oppression, rather than the interruption of colonial practice (Mattei and Nader 2008, 2, 3). Associated with the ideas of rationality, neutrality, objectivity and justice, modern legal language plays a fundamental role in legitimizing the dominant, colonial, and capitalist model, spreading an alleged "natural order" that certifies the values and goals of neoliberal capitalism globalization (Chimni 2006).

It is in this context that I argue that the subaltern cannot speak, meaning that they are not heard on their own terms. Without interrupting this order, the only legitimate ambition of the excluded is to be assimilated, i.e., forced to learn and to accept speaking within the frame or on the terms defined by the culture of the oppressor and its established limits. When the system of validation is biased (Collins 2002), diversity becomes invalidated and unseen under the homogenised labels of non-scientific or non-legally binding (or illegal). The modern form "one state, one nation, one law", legitimized as the civilized model, excludes what does not fit its terms of intelligibility, unless it becomes integrated, in other words "civilized", i.e., assimilated. Under this system, modern science establishes the parameters for civilized societies, and modern law ensures their translation into maps that circumscribe the horizon of possibilities.

2.2. Modern law and the map of emancipation as assimilation

In 2002, in the book *Toward a new Legal Common Sense*, Boaventura de Sousa Santos raised a question that mobilized many debates: "Can law be emancipatory?" More than twenty years later, blind spots of that question are identified in the light of the postcolonial challenges. Does the question about the possibilities of social emancipation through law allow the subaltern to speak, or does it confine the debate and the possibilities of social transformation within the limits established by Eurocentric modern law? In sum, does that question move beyond the paradigm of assimilation?

The 20th century was a period of important changes in the West that affected the state's role. From the 1980's onwards, we observe the raise of the technocratic dimension of democracies and the decrease of the social responsibilities assumed by the state. With the consolidation of neoliberalism as the hegemonic ideology in the 21st century, the state's role was effectively reoriented away from social concerns and toward facilitating profit. Economic questions are increasingly seen as technical issues (Castro Caldas 2017), and law has become a technocratic instrument that serves market transactions and profit (Brabazon 2017). With democracy coopted by technocracy, the potential of law to serve social emancipation, i.e., the claims of the most vulnerable social groups, is decreasing. In other words, the dialectic tension between emancipation and regulation (Santos 2002) has been disturbed, with law and institutions leaning stronger to the latter. Law has become an instrument to impose what António Casimiro Ferreira called the "austerity society", a paradigm characterized by a) fear as a source of legitimacy; b) the emergence of a new constellation of power that combines elected and unelected power; and c) destabilization of the normative structure with the use of a right of exception (Ferreira 2016).

The revolts of the first decade of the century, from *Occupy Wallstreet* to *Indignado*s, used the slogan "we are the 99%" to denounce the immense concentration of resources in the group of the richest and the growing polarization in relation to the poorest, who pay the price for the decisions and luxury of the financial elite. If this slogan calls attention to the small world elite that controls resources, it does not account for intersectional differences among the 99%, that became available to be instrumentalized by populist discourses (Ahmed 2004). Ten years later, it is worth focusing on the silences of these discourses. In my view, the afore-mentioned slogan carries with it the limits of the question on the possibilities of social emancipation through law and other social sciences' conceptual frameworks. These fail to consider societies' heterogeneity. When we deeply listen to *Black Lives Matter*, black feminists, postcolonial discourses, among others, we understand that inequalities can only be fully observed when we consider the colonial foundations of society and what Franz Fanon called the zones of nonbeing (Fanon 1952/2008), where people might be object of law intervention, but not subject of rights and knowledge.

While developing one of the basic metaphors of the Epistemologies of the South – the abyssal line –, Santos (2014) came to realize that the tension between social regulation and social emancipation (central to his sociology of law until then) is only partially valid as many individuals are excluded from civil society and the social contract does not

apply to them.[3] The abyssal line is not a division between protected and less protected citizens. The abyssal line is a metaphor for the exclusionary foundations of modernity, representing an ontological and epistemological division between what Mamdani (1996) called citizens and subjects. The former are on this side of the line, the latter are on the other side of the line. On this side of the line, oppression might be expressed in validated legal and scientific language. Social struggles are therefore recognized as legitimate. On the other side, the social contract has no value. Claims are not heard as they come from people not recognized as full citizens (e.g., refugees, illegal migrants, homeless, indigenous) and/or are expressed in categories not intelligible by the modern canon (e.g., community needs over individual freedom, Nature's rights over private property protection, dignity over citizenship, non-binary conceptions of gender rights over binary conceptions of gender, polyamorous and extended family's claims over nuclear conceptions of family), so they are ignored, their knowledge is disregarded and the violence they suffer is invisible. Their ideas for a different society can be formulated but crash on the naturalized language and principles of modern legal centralism and hence remain inaudible on this side of the line (Santos *et al.* 2023).

Though it offers a visual image, and it is an operational concept in the sociolegal empirical field, the idea of abyssal line is not a novelty. Many authors and activists in the past identified the foundational exclusions of the modern social contract. To exemplify, abyssal exclusions were observed by Sojourner Truth in her famous speech "Ain't I a women?", in 1951, when she denounced the process of dehumanization of black women, whose reality was not addressed by the state, neither by black men or white feminists. It was identified by Kimberlé Crenshaw when she demonstrated that black women's claims for justice were theoretically erased and legally obliterated by the way class, race and gender intersect in modern societies (Crenshaw 1999).

The abyssal line is not a division between the geographical North and the geographical South, a very misleading way of observing modern forms of oppression. It is the "bifurcated state" in the African continent (Mamdani 1996), where it establishes a hierarchy between modern law and customary law and legitimizes the distinction between the civilized and the savage, expropriating the latter from the possibility of self-representation. It is also found in Europe (Grosfoguel and Suarez-Krabbe 2013, Araújo and Brito 2018, Araújo 2021, Vergès 2023), where violence continues to be imposed against the "ungrievable lives" (Butler 2016) of the "living dead" (Mbembe 2019) that inhabit the "zone of non-being" (Fanon 1952/2008). This violence includes the epistemic injustice (Fricker 2007) of declaring as ignorant or non-legitimate what is another knowledge and another law. The argument I will try to clarify in the next pages is that to build a post-abyssal mindset is not about just shifting the abyssal line and making this side more inclusive without changing it. That is what the colonial politics of assimilation were all about (Araújo 2016). In other words, as I will try to demonstrate, I am not just

[3] The differences between social contractualists are not relevant for my argument. I want to draw attention to the certainty that pervaded all the social contract theories: the development from the state of nature to civil society is conceived as the linear path from barbary to civilization. Following this view, people who do not share Eurocentric cultural premises remain in the state of nature, excluded from civil society, out of the social contract that would recognize them as citizens and conceive them as enjoying civil rights (Santos 2002).

claiming for an extension of citizenship rights to everyone, I am talking about being open to discuss the very idea of citizenship in the light of non-Eurocentric legal systems.

The promises of civilization and progress are today discredited by huge social inequalities, growing polarization between political movements, planet destruction and climatic emergency. The modern idea of linear progress, meaning that if we keep moving in the same direction inequalities will disappear or that if we just work harder the planet might recover can no longer be sustained. There is an urgency to do different and better and the neoliberal claim that "there are no alternatives" fails to convince the ones who were historically excluded, like racialized communities, but also the middle-class sons and daughters that are living worse than their parents (Araújo and Meneses 2018).

2.3. The uncivil civil society and the excluded maps of legal and political imagination

To clarify the multiple forms of exclusion, I combine the metaphor of the abyssal line (Santos 2014) with an abandoned conceptualization of the three circles of civil society (Santos 2002): The "intimate civil society" is the sphere of hyper-inclusion, of citizens profiting with the global markets and controlling its laws, close to the state power, enjoying full rights and accessing public resources far beyond those guaranteed by the policy of rights. The "strange civil society" is the intermediate circle composed of people who enjoy moderate inclusion. People identify themselves with the terms and language of modern social contract and might use state law mechanisms to claim for rights. Civic and political rights are moderately exercised but there is little access to social, economic, and cultural rights. An abyssal line separates the strange civil society from the "uncivil civil society". This is the outer circle, composed of individuals excluded from the social contract who inhabit the zone of nonbeing. Those are the subaltern who express themselves in languages not recognized by the modern social contract.

The elimination of the abyssal line will not occur by the selective inclusion of the uncivil civil society into the strange civil society, i.e., by the modernization and assimilation of "the other". The other side of the line is not only the place of "appropriation and violence", as described by Santos (2014). As he also recognizes, it is where we find the wasted experience of the world that was declassified by modern scientific and legal monocultures. On the other side of the line, there is the enormous diversity of subaltern legal maps that are obliterated under the negative poles of artificial modern dichotomies – non state, informal, popular, traditional, customary. As I will argue, those legalities, in their diversity, are sustained by their own systems of validation and include plural conceptions of organizing society, of relation with nature, of human dignity, of economy, of production, of gender, etc.

The conceptualization I am proposing recognizes not only the classic forms of legal pluralism, as identified in postcolonial societies, but also the legalities of the invented others inside Europe, like Roma or Muslim communities, refugees, undocumented immigrants, among other "ungrievable lives" whose knowledge and questions are not considered. It includes also what has been called the "law found on the street" (Sousa Júnior 2019), i.e., the claims and actions of social movements that reject the limits of the rule of law, the neoliberal rhetoric of absence of alternatives and struggle for a better society. In social struggle processes, new legal maps are created and recreated, opening breaches to observe reality beyond modern certainties and questions. Those maps are

not always expressed in traditional legal terms. They might be found in non-canonical art, with great examples coming from music and poetry that grow in the peripheries of the cities (Gomes 2018, Oliveira 2020).

3. Legal pluralism and Eurocentric hierarchies

Acknowledging the existence of multiple legal orders without being open to learn from epistemological diversity does not challenge the centralist view of the modern constitutional paradigm – one state, one nation, one law – and does not decolonize the hegemonic Eurocentric canon and the hierarchies it entails. In a recent publication on modern constitutionalism and legal pluralism, I use the conceptual tools of epistemologies of the South – namely sociology of absences and sociology of emergences – to analyse five different academic and political approaches to legal pluralism: classical legal pluralism, new legal pluralism, global legal pluralism, instrumental legal pluralism, and intercultural legal pluralism (Araújo 2023). Without reproducing that theoretical exercise, it is worth highlighting some ideas that resulted from it: most approaches obey modern hierarchies, failing to provincialize (Chakrabarty 2000b) the western legal canon; the recognition of legal pluralism might come with the consolidation of subalternity, reinforcement of otherness and recreation of colonial forms of neo-indirect rule; diversity tends to be classified only in opposition to modern state law, being defined mostly by what it is not, and not by what it is; global legal pluralism is a very complex and unequal arena, grounded on Eurocentric hierarchies, undermining the social state from above; when legal pluralism is recognized from below, as in Bolivia and Ecuador, indigenous cosmovisions tend to loose meaning when translated into western legal language and instruments of recognition (Araújo 2023).

In this section I propose a critical discussion about the decolonization of legal pluralism based on my experience and challenges as an ethnographic researcher. I start by focusing on the conceptual and methodological options I used in Mozambique to see beyond dichotomous categories and better understand the limits of formal processes of legal pluralism recognition. In the last part, building on my experience in Mozambique and East-Timor, I try to build a decolonial feminist reflexion about how to learn from the world's legal diversity and to expand legal and political feminist imagination.

3.1. The failed promises of recognition without co-presence

In 2006, in a workshop specially directed to young African researchers, in which I was lucky to participate as a researcher living in Mozambique, a senior scholar criticized my work, questioning the actual relevance of Mozambican legal pluralism and the research projects that insisted on studying it. In his perception, legal pluralism is a fact, but there is nothing of notice about structures that will always arise in the absence of state's formal offer. I believe my interlocutor was concerned with the romanticization of tradition – as if community forums of dispute resolution were static premodern forms and idyllic non-oppressive legal spaces – and with the reinforcement of alterity that results from the institutionalization of a dual citizenship, with state law for first class citizens and customary law for second class citizens.

Although those concerns are very relevant, that view sustains the linear conception of progress, the colonialist bias that conflates tradition with underdevelopment. Some

questions come to mind from this type of academic discussions: Does the recognition of legal pluralism always mean to formally accept a first-class and a second-class citizenship? Are we sure that modern citizens are always best served when accessing state law? Can legal pluralism promote forms of accessing justice that are culturally closer to citizens? Is legal pluralism relevant only where citizens are geographically far from the judicial institutions? Are we capable of accepting difference without demonizing, romanticizing or being relativists? What can we learn from studying legal pluralism?

In the history of Mozambique, the association of traditional justice with second class justice has its origins in the colonial period. Formally introduced in the 1920', the "Indigenato" regime was characterized by a division between citizens and natives and rested upon two administrative models and two forms of law and justice: one for the colonizers, which followed the law and the administrative model of the metropolis; and the indigenous zones ("regedorias" or "chefaturas"), supposedly the reincarnation of the pre-colonial tribes, ruled by the customary law administrated by the traditional chiefs ("régulos"). The "assimilados", a small minority of citizens of an inferior status, had identity cards that distinguished them from the native population and granted them access to certain spaces that were prohibited to the latter (Gentili 1998, Meneses *et al.* 2003, Araújo 2008, José and Araújo 2016).

In 1975, as the country's independence was established, the socialist project involved the destruction of both the colonial residues and the tradition. *Régulos* were seen as allies of the colonial power and tradition as the symbol of humiliation and inferiority. After the independence, as argue Margaret Hall and Tom Young, the "Frelimo elite and the social strata to which it appealed were profoundly convinced of the superiority of modern civilization and the need to "catch up' with it" (Hall and Young 1997, 65). Although traditional chiefs never stopped operating throughout the country, the ideology of modernity remained important after the liberal constitution of 1992. Jason Sumich in his work about the Mozambican elites revealed that the capacity of the elites to see themselves as moderns, allows them to mark a difference. The ideology of modernity is based on ideas of equality with the outside world, but at the same time it is a tool that promotes internal hierarchies, distinguishing those who use modern knowledge and manage tools. The members of the elite, with higher levels of formal education, are the only ones qualified to rule a modern nation (Sumich 2008).

The case of Mozambique is illustrative of an instrumental policy of legal pluralism (Araújo 2023): a form of weak legal pluralism (Griffiths 1986) used to free the state from its responsibility to guarantee universal access to justice, in which political and legal discourses valuing legal pluralism are not accompanied by effective recognition, investment in infrastructure, support, and compensation for professionals responsible for delivering justice. In 1992, community courts were established by law, building on the structures and experiences of the grassroots popular courts created in 1978,[4] and, in

[4] In 1978, three years after the country's independence, the Law of the Popular Courts created popular courts in different territorial levels where professional judges worked side by side with judges elected by the population. At the bottom of the popular courts' pyramid, popular local courts operated exclusively with non-professionalized elected judges, who dealt with less severe infractions and made decisions based upon common sense and justice and by considering the principles that guided the socialist revolution. The

2004, the Constitution recognized the various normative and conflict resolution systems that coexist in society (art. 4). However, the delay in regulating community courts has created legal loopholes in matters as important as the recruitment of judges or funding conditions. The absence of support, enhancement and monitoring measures that integrate community courts into a global project to promote access to law and justice tends to relegate them to a subordinate position, a place of second-class justice for those who cannot access the full modern state. Left to their own luck and their creative ability to overcome difficulties, community courts respond by basing their decisions on individual strategies, sometimes successfully and at other times by trampling the most basic rights or closing doors (Gomes *et al.* 2003, Araújo 2012, 2015, Kyed and Trindade 2012, José and Araújo 2016).

In 2008, after four years researching legal pluralism in several provinces of Mozambique and in peripherical neighbourhoods of the capital city, I decided to investigate the most urban centre of Mozambique – the city centre of Maputo –, where judicial courts are geographically close to citizens and levels of formal education are the highest in the country. My previous experience revealed that configurations of legal pluralism in Mozambique are never what we read in history books, published ethnographies or legal documents, resulting from locally creative combinations of multiple legal orders (local, national, supra national) and different "stratigraphic legal and political layers" (Moore 1986) of each historical period (colonialism, independence, socialism, civil war, capitalism, and liberal democracy).

In this context my hypothesis was: In Maputo city centre, legal pluralism has an important role in citizen's access to justice because it offers proximity to justice, promoting forms of dispute resolution culturally closer to citizens (Araújo 2012, 2014, 2016). This does not mean that its configuration is like what is found in other places or that it can be easily identified by outsiders with their own preconceptions or predefined models of what access to justice is. My aim was to promote what I called then an ecology of justices,[5] confronting the liberal conception of law and justice with the diversity of law

Constitution of 1990, within the context of a liberal democracy, consecrated the principles of the separation of powers, of independence, of impartiality, of irresponsibility and legality, launching the basis for substantial alterations to the organization of the judiciary. The Law of Popular Courts came to be replaced by the 1992 Organic Law of the Judicial Courts. The local courts were excluded from the judiciary, but, that same year (1992), community courts were created. These courts, which fell outside of the judiciary, continued to operate with judges elected by the community, and to execute the role of popular local courts. Nevertheless, they were never regulated. They are an example of hybridism as they are recognized by law but are out of the judicial system and have not been regulated to date (Araújo 2014).

[5] The concept of ecology of justices was originally coined in Portuguese as "ecología de justiças" and some meaning is lost in the translation as the concept of justice in Portuguese is broader. Underlying my research is Santos's *Sociology of Absences and Emergencies* (Santos 2014), an epistemological proposal conceived against the waste of experience, i.e., the invisibility of diversity. The sociology of absences is based on the idea that what does not exist is, in fact, actively produced as non-existent, i.e., as a non-credible alternative to what does exist. In this sense, the author suggests an "ecology of knowledges" (also a problematic translation), whose objective is to challenge the monoculture of modern science by acknowledging the diversity of knowledge that exists in the world. Based on the concept of "ecology of knowledge", I have been seeking to promote an "ecology of justices." The objective is to contribute towards the knowledge of the large and complex reality that fits into the notion of legal pluralism. This explains the choice of the concept of community justices. I need a broad category to promote an approach to the field that is as free from prejudices as possible. It is imperative to avoid excluding forms of justice solely because they fail to fit in a

and justice that exists in the empirical world. Many times, this diversity is not predictable and is produced as invisible through the absence of scientific concepts to observe it.

The conceptualization of the multiple justice providers and dispute resolution mechanisms that co-exist is highly problematic. Regardless of the designation – local, traditional, non-state, informal, customary, popular, indigenous – diversity is always classified by opposition to the canon and complex and hybrid reality is compressed to fit the classification. I opted to use "community justices" as an intermediate concept that was defined mostly in a negative form: community justices are forums of conflict resolution that are not judicial courts. The concept does not refer to homogeneous entities or conforms to romanticized communitarian ideals of consensus and unity. Community justices vary considerably in their composition, in their differentiated use of legal orders, and in the extent to which they are influenced by state law. I will demonstrate the relevance of a flexible concept in the next pages.

Though I came to conclude that legal pluralism is present, relevant and desired in the city centre of Maputo, the path to that conclusion took much more time than current research projects usually allow. It is not so common for a social scientist using ethnographic work to choose Maputo city center as case study (unless the object of the research is something you find mainly in urban places – universities, political or economic elites, etc.). *Municipal District Nr. 1* or *Kampfumo* (MD1) is usually not the place or object of research but of researchers, universities, academic debates, bookstores, and decision centers. The importance of community justices is pretty much discussed in the country's capital, in the universities, in formal institutions and in the media. As I mentioned, it is constitutionally recognized and frequently used in official documents. However, it is many times seen as something which is used out there, "in the community", not in "a modern place" like Maputo. The following transcriptions of interviews ([a] [b]) show how community justice is associated with a past that is overcome by urban development. The sentence of the Police Officer [b] resembles Durkheim's argument about modernization: the transformation of mechanic solidarity (community) to organic solidarity (society).

> [a]
>
> E– Here, in District n.º 1, do you think there are any kind of leaders doing mediation, any form of conflict resolution?
>
> e – Nr. 1, no! [laughs] Because (…) we think that a more urban place must be more leaned to use judicial mechanisms. So, we think that it is in the suburbs that extra-judicial mechanisms are used.[6]
>
> [b]
>
> Police officer – (…) I prefer to say that, in the city, we have more of a society than anything else. At the level of the neighborhoods' [periphery] I say that those are real communities, because there we can still find those customs, that way of solving disputes, I mean, running to the neighborhood secretary [secretário de bairro] (…) then,

previously established closed definition. I want to acknowledge and investigate an often unforeseeable mobile and diverse reality and learn from it.

[6] Interview to trainer/facilitator of OREC (Organisation for Conflict Resolution), November 15, 2008.

> if they cannot do it, they go to the so-called community courts and from there to the police office, isn't it?[7]

Sometimes, people talked as if something important was lost in the city centre [c]. Other times, the city centre was classified as superior, a civilized place that moves faster through the linear path of development [d].

> [c]
>
> COOPs' Neighborhood secretary – The blocks of this neighborhood which work because of community are only two. In the others as people have knowledge of other structures they go to the court, directly to the court or through the NGOs. Everyone is a doctor, an intellectual… Neighborhood secretary, who is the neighborhood secretary? (…) They don't want to know. They don't respect. It is different from the suburbs; there a secretary is respected![8]
>
> [d]
>
> Malhangalene B's Neighborhood secretary – Here, this zone [the more central] is the place, let's say, of civilized people. So, here people do not have problems. When there is a fight, I am not saying they do not fight, they do, but when they fight, they go to the police station, they don't come here.
>
> But with the others it is different. Even if it is a serious subject, they will bring it here. They still have the old culture. In the other side of the city people don't call each other witches, but here, in the suburban side, there are many, many cases. Witchcraft conflicts are always happening. [9]

I was not looking for acknowledged structures, I was not looking for the traditional or the exotic. My concept allowed me to include old and new forms of community justices. So I continued knocking on different doors. I did 46 interviews and started drawing a large and complex map of the community justices that constitute the cartography of legal pluralism in the city centre. If I had been looking for structures validated by political or scientific discourses, like traditional chiefs, neighborhood secretaries or community courts, the conclusion would have been that there are no community justices in MD1 because modern law is always the first choice.

However, as I never defined a closed research object, but a geographical area to be mapped, I was able to conclude that community justices play an important role in the urban centre of Maputo. They are mainly composed of legal hybrids that do not fit the dichotomies official/non-official, formal/informal, or traditional/modern. I identified four types of community justices: instances created within the scope of the State; private instances created in the sphere of the market or the community; traditional instances and religious instances.

Given the state's extreme "heterogeneity" (Santos 2006), the category of instances created within the scope of the State was interesting and complex.[10] It comprised

[7] Interview to a Police Chief of Maputo City Center, February 21, 2009.
[8] Interview with the COOP Neighborhood Secretary, January 28, 2009.
[9] Interview with the Malhangalene "B" Neighborhood Secretary, February 20, 2009.
[10] The heterogeneous State, according to Santos, is a state where internal legal pluralism dominates. Internal legal pluralism means that although the state is defined as official, formal, modern, and national, when observed in action, we detect the presence of some or all dichotomies' poles: of non-official, informal, traditional, local or global. The heterogeneous state "is characterized by the uncontrolled coexistence of

instances whose mediation function was officially foreseen (like the Institute of Sponsorship and Legal Assistance [IPAJ], the Arbitration Centre, or the neighbourhood secretaries) and state structures that were created to follow criminal law procedures, but mimic "traditional", "community" or "popular" forms of mediation. That is the case of Police stations and the Assistance Office for Women and Children Victims of Violence. During the months of observation in each one of those instances, I ascertained how most of the cases were solved through informal conciliation procedures and did not lead to the opening of formal processes. My argument here is that legal pluralism is not a second choice for when the state fails. Ignoring the importance of subaltern legal maps in the city made legal pluralism grow invisible and develop not under the best conditions.

The history of Mozambique, as in other countries of the continent, is highly marked by the reinvention of tradition and the instrumentalization of local leaders. Differently from Latin America – where indigenous collectives are frequently organized, have spokespersons, and are recognized as valid interlocutors (Santos *et al.* 2023) – in Mozambique it is hard to know who can speak in the name of local legal systems, deeply reconfigured and instrumentalized during colonialism and after independency. Contrarily to what colonial rulers believed, traditional justice in Mozambique is not static, but fluid, and adaptable. It does not belong to old people in rural areas. It is appropriated by young man and women in rural and urban areas that use community justices to pursue their aims for justice. In the next section, I enter the discussion of what is justice and the compatibilization between globalized legal instruments and local legal maps.

3.2. The alternative to universalism is co-presence, not relativism!

Modern law and human rights are crucial instruments to impose limits to disruptive difference. As previously discussed, the scientific validation of modern law sustains its alleged neutrality and, in that sense, its universal potential. Human rights instruments, grounded on Western and liberal assumptions and in line with the expectations of modern law, configure an important part of expanding the modern view of the individual and society (Merry 2006). "Freedom in a fishbowl" is the interesting title of Ratna Kapur's book where she addresses the "parochial, provincialized identity of human rights as liberal, overwhelmingly Western and Eurocentric" (Kapur 2018).

Law is a place of contestation and international human rights have the potential to be creatively appropriated locally and interconnected with other normative orders (Wilson 1997, Merry 2006, Araújo 2008, 2014, Meneses *et al.* 2017). Rejecting the alleged universality of human rights does not make them irrelevant. It means rejecting its imperialistic posture and identifying its limits in face of different legal maps. However, as stated by Ratna Kapur,

> the commitment to reimagining and reformulating human rights and its futurity is largely informed not only by a fear that the critique will send us into epistemic free fall, but also by the erroneous assumptions that there are no workable or sustainable

starkly different political cultures and regulatory logics in different sectors (e.g., in economic policies and family or religious policies) or levels (local, regional, and national) of state action" (Santos 2006).

> alternatives outside of a liberal formulation or reformulation, and that any ventures beyond the liberal fishbowl are nihilistic and defeatist. (Kapur 2018, 3)

The debate concerning the right to equality and to the right to difference can only be virtuous if we overcome the discourses that associate constitutional law and human rights with equality and progress and customary law with domination and backwardness. This is not assuming a relativist position but recognizing that modern law must be subjected to criticism as much as any other legal map and that evaluating legal pluralism in the light of modern principles and values is a deeply Eurocentric procedure. My argument is that not only the subaltern must have the right to speak using their own language and choosing the terms of discussion, but also that we – academics all over the world and western feminists – need to learn to identify the limits of our own culture and law by accepting the discomfort of watching our condition through the language, principles and questions of other legal maps. My proposal is to move beyond relativism through reciprocal learning and reciprocal transformation.

During fieldwork in Mozambique and East-Timor, academic and public debate on legal pluralism was always particularly intense and complex when it came to women's rights and violence against women. In both countries specific legislation against domestic violence had been recently created aiming to judicialize every situation of domestic violence. This Eurocentric way of understanding justice is highly problematic, for several reasons. Studies on women's rights and access to justice in western countries (Crenshaw 1989, Cusak 2014, Ahmed 2021) and worldwide movements like *#MeToo* show that patriarchy shapes modern institutions, promoting gender inequalities concerning access to justice and failing to protect women from repeated violence. In this context, it is difficult to understand the faith on the superiority of modern law to solve the problems of women in East-Timor or Mozambique.

I emphasise once more, that I am not defending a relativist approach or assuming a posture of indifference when it comes to violence against women. On the contrary. A postcolonial approach demands much more from the researchers than using western categories to describe realities grounded on different principles. It requires an effort to understand the norms and procedures of each legal map according to its own references and terms of validations and not against imported classifications. When we use the western legal map founded on the idea of individual, in which law protects persons and not groups, the collective discussion, involving the families, in cases of domestic violence is hardly understandable.

In East-Timor, the wedding brings together families and not individuals, meaning that couples' problems are solved through families working together for reconciliation (Meneses *et al.* 2017). As Daniel Simião puts it:

> More than a dispute between people, it is a question of solving frictions between families. In this sense, a fight between a couple is not an intra-family fight, but a dispute that involves different families of origin, that of the husband and that of the wife – perhaps we can say that in Timorese villages the 'the private is political' for long time. (Simião 2006, 137)

When local structures (the *lian-na'in*, the *suco* chief or the village chief) are called to solve a dispute, they are expected to help families. In addition to the involvement of family members and the search for reconciliation between the parties, the resolution process

involves a set of highly questionable elements when observed in the light of the modern state law, namely the possible justification for the act of violence or pressure for the woman to accept the deal. On the other hand, punishment instead of reconciliation, the non-involvement of the parties in the construction of solutions or the non-involvement of the family in the process of overcoming the problem are elements of the western legal paradigm that are highly foreign to most Timorese citizens (Meneses *et al.* 2017).

The understanding of couples' conflicts as a problem of the extended family or of the community was also common in Mozambique. In the city centre of Maputo, in the absence of community courts or traditional chiefs, women could ask for help at the Assistance Office for Women and Children Victims of Violence. Part of the Mozambican Police, this office was created as a pilot project in 1999 with the aim of offering a proper answer to domestic violence. While expected to provide complainants with a criminal procedure, during the period of my field research, the office used to offer solutions that mimic community justices' procedures. Most of the cases, even when involving physical violence, were resolved by mediation and/or advice, involving elements from the extended family (Araújo 2014). The state's internal legal pluralism is very common, assuming the form of an "heterogeneous state" (Santos 2002).[11]

While I was doing research, my focus was to observe the legal hybrids, the interlegality (Santos 2002), namely how community justices' procedures may pervade the modern state, crossing official limits and growing inside the state with new configurations (Araújo 2012, 2014, 2016). Like I also ascertained in the ordinary police office, the resolution processes could involve references to state law, customary law, religious law and human rights. I concluded then that, ignoring the specificity of the country and its local legal maps will not overrule people's expectations, but can result in hybrid practices that not always bring together the best of each legal map. Although the agents used to call the families, mimicking local practices, they faced several obstacles for a good use of the traditional model: police officers do not enjoy the same type of legitimacy that community leaders do and, considering that the Cabinet is part of the Police of the Republic of Mozambique, there was always a latent threat of the legitimate use of force that could be used to impose false consensus (Araújo 2014).

The question that this paper raises results from the decolonial and feminists challenges I have been facing since then. The ethnographic work I produced is not only in the countless notebook pages, but in my personal processes of unlearning and relearning about myself and my condition as a woman. What did I learn with the Mozambican and East-Timorese women? When I see myself through the lenses of the women from Mozambique and East-Timor, I see, among other lessons, the loneliness of Western women facing situations of abuse, avoiding the embarrassment of reporting them, raising their kids, balancing the multiple demands of life. I am not trying to crystalize any romanticized image, as this is a permanent learning process. I am not debating which culture is better but challenging the mindset allows me to identify oppression, by questioning what oppression actually looks like and expanding the feminist legal and political imagination.

[11] For the concepts of internal legal pluralism and heterogeneous state, see the previous footnote.

Mozambican and East-Timorese conceptions of family denaturalize the nuclear family model. It is not, in fact, the normal model of organizing societies, but the result of the western capitalist needs to transform women into machines that produce workers (Federici 2009, Peterson 2013). The naturalization of the nuclear family is a Western invention, just like private property or individuals born to compete in the market.[12] The black feminist bell hooks expresses extremely well how modernity shrank women's possibilities and why we need to expand our legal and political feminist imagination:

> Capitalism and patriarchy together, as structures of domination, have worked overtime to undermine and destroy this larger unit of extended kin. Replacing the family community with a more privatized small autocratic unit helped increase alienation and made abuses of power more possible. It gave absolute rule to the father, and secondary rule over children to the mother. By encouraging the segregation of nuclear families from the extended family, women were forced to become more dependent on an individual man, and children more dependent on an individual woman. It is this dependency that became, and is, the breeding ground for abuses of power. (hooks 2000, 130)

4. Conclusion

Modern societies face contemporary challenges that have arisen from their historical foundations and cannot be answered by using the same old Eurocentric recipes. The linear conception of progress, legitimized by modern science and modern law, produces the illusion that class inequalities, gender bias and racial violence result from unreached goals to be met one day through development. This fallacy sustains the narrative that modern societies might improve with no structural changes. However, oppression results from the convenient combination of the structural axes of oppression that sustain modernity, namely capitalism, colonialism, and heteropatriarchy. Modern legal maps legitimize capitalist competitiveness, naturalize the exploitation of people and nature, impose restrictive family models, sustain the illusion of meritocracy and the legitimacy of hierarchies between people. Modern legal thought fails to see alternatives to the dystopic neoliberal present and imposes limits to political struggle aiming real transformation.

Since 2003, I have been researching legal pluralism, mostly in Mozambique and East Timor, either through individual research, or as part of international research teams. When I started, my aim was mainly to understand how strong legal pluralism worked in action, its fluidity, its hybridity, and its relevance. The concept appeared to have enormous potential to reflect on how to democratize access to justice. However, in the last twenty years, legal pluralism became a coopted concept, instrumentalized by international institutions, like the World Bank, and states. The instrumental policies of recognition use a weak conception of legal pluralism; promote second-class justice systems for the poor; fail to challenge Eurocentric hierarchies; and support monocultural development projects guided by the technocratic principles of good governance.

[12] As V. Spike Peterson argues, "[E]ffective [state] centralization required a reconfiguration of social arrangements, which typically involved states establishing relatively independent heteropatriarchal "family"/households as the basic socio-economic unit; the latter facilitated resource extraction, military conscription, regulation of property (including women), and centralized control more generally" (Peterson 2013, 59).

In this paper, I bring empirical data, questions and thoughts that result from my research path, aiming to participate in the debate on how to decolonize sociolegal thinking. After addressing modern state law as a colonialist instrument that legitimizes capitalism and colonialism and limits social transformation, I discuss the possibilities of decolonizing the understandings and the uses of the concept of legal pluralism. First, I resort to my fieldwork in the city centre of Maputo to show that promoting legal pluralism does not always mean intercultural recognition and it might reinforce what Mamhood Mamdani called the bifurcated state. I argue that we need to move ahead from modern dichotomous thought – formal/informal; modern/traditional; state/non state – as they fail to address the complex reality, reinforce Eurocentric hierarchies (the different is not only different, it is always inferior), and are responsible for rendering invisible the diverse knowledge that fit the negative pole of the dichotomies (the other).

In the following section, I use notes from the field work in East-Timor and Mozambique to address the (in)compatibility between the right to equality and the right to difference. I am critical of the Eurocentric feminist work that approaches women's rights through the Eurocentric conception of what equality means or reads Mozambican or East-Timorese legalities through western questions and concepts. Decolonizing legal pluralism requires co-presence and co-learning processes. Co-presence is not relativism. It is refusing to read diversity with Eurocentric lens. This means that recognizing the violence against colonized, racialized, commodified bodies is crucial, but not enough; we also need to recognize the narratives and transformative proposals built from the ones who suffered violence and their erased ontologies and epistemologies.

The way forward from the traditional proposals of legal pluralism is epistemological. This concept may challenge western hierarchies and the invisibility of diversity if formulated as an ecology of legal maps. This is not a proposal to discard the possibilities that exist in modern law, but to provincialize the western legal map, identifying its limits in view of the world's legal diversity; and to promote reciprocal learning processes to expand legal and political imagination. That requires an approach to legal pluralism that refuses hierarchies between legal systems and observes them as co-present. Given that most of our analytical tools have been built by Northern epistemologies, this is a highly challenging exercise which needs to focus on the decolonization of epistemological instruments and methodologies and the production of knowledge with the "other", and not about the "other". It also requires the recognition of alterity as a reciprocal and not an essentialist condition, as diversity means to be mutually different.

A decolonized version of legal pluralism needs to occupy other debates in which the rules of modern law are presented as neutral and universally valid, and Eurocentric technocratic criteria support political choices that promote inequalities. It must cross disciplinary boundaries, fostering dialogues not only with anthropology and sociology, but also with other disciplines, such as political economy, history or biology.

This is not only a challenge for the societies of the geographical South. Social movements, like Black Lives Matter, and the growth of the extreme right do not result from a recent polarization, but from historically fractures, which silenced knowledges and legal maps and made violence against the bodies that produced them invisible. That is why radical antiracist, anticapitalistic or feminist movements are not equivalent to extreme right groups. The former claim the right to be heard and are responsible for relevant legal

maps found at the street, the latter contest their right to talk and claim more state repression. We need to expand our legal and political imagination by learning from the silences of history and not by reinforcing them. There are alternatives in the world, we need to listen to them.

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