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Decolonising Legal Pluralism, Decentring Epistemological Paradigms: An Introduction

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Abstract

This special issue advocates for critically examining the epistemological foundations of different arrangements of legal pluralism, particularly "classical" culture- or custom-based legal pluralism. It addresses conceptual colonial legacies and path-dependencies to further "epistemological disobedience" and socio-political decolonisation. The individual contributions highlight and challenge the rigidification of collective identities entrenched in binary logics reaching back to the European Enlightenment, and other dimensions of coloniality embedded in hegemonic modernist, Anglo-Eurocentric legal frameworks. Decentring dominant normative and identitarian paradigms and emphasising dialogical engagement with diverse normative rationalities, all six contributions to the special issue examine the potential of legal pluralism to foster pluriversal approaches to law. They foreground various kinds of interplay between plural legal orders and illustrate distinct colonial power dynamics in different locales that have continued until the present day. Collectively, they call for reimagining legal pluralism as a tool for emancipation, transcending (post)colonial statist epistemologies to advance decolonial, pluriversal futures.

Key words

Decolonisation; legal pluralism; coloniality; customary law; epistemological pluriversality

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Resumen

Este número especial aboga por un examen crítico de los fundamentos epistemológicos de las diferentes configuraciones del pluralismo jurídico, en particular el pluralismo jurídico «clásico» basado en la cultura o las costumbres. Aborda los legados conceptuales coloniales y las dependencias históricas para promover la "desobediencia epistemológica" y la descolonización sociopolítica. Las contribuciones individuales destacan y cuestionan la rigidez de las identidades colectivas arraigadas en lógicas binarias que se remontan a la Ilustración europea, así como otras dimensiones de la colonialidad incrustadas en los marcos jurídicos hegemónicos modernistas y anglo-eurocéntricos. Descentrando los paradigmas normativos e identitarios dominantes y haciendo hincapié en el compromiso dialógico con diversas racionalidades normativas, las seis contribuciones al número especial examinan el potencial del pluralismo jurídico para fomentar enfoques pluriversales del derecho. Ponen de relieve diversos tipos de interacción entre los órdenes jurídicos plurales e ilustran las distintas dinámicas de poder colonial en diferentes lugares que han continuado hasta la actualidad. En conjunto, abogan por reimaginar el pluralismo jurídico como una herramienta para la emancipación, trascendiendo las epistemologías estatistas (pos)coloniales para avanzar hacia futuros descoloniales y pluriversales.

Palabras clave

Descolonización; pluralismo jurídico; colonialidad; derecho consuetudinario; pluriversalidad epistemológica

This OSLS Special Issue on *Decolonising Legal Pluralism, Decentring Epistemological Paradigms*, guest-edited by Katrin Seidel and Martin Ramstedt, has its conceptual roots in a panel, jointly organised by the guest-editors at the 2022 Annual Meeting of the Law and Society Association in Lisbon, Portugal. The panel was sponsored by the Working Group on Legal Pluralism within the Research Committee on Sociology of Law (RCSL), one of the research committees of the International Sociological Association. The Working Group had been founded, and was chaired, by Martin Ramstedt with the aim to instigate novel approaches to legal pluralism research.

Over the past four decades, legal pluralism scholarship has developed into a central research paradigm within the broader field of law and society studies. Moreover, since the 1990s, attention to and normative promotion of varying facets of legal pluralism have also become a standard of international governance frameworks and policy. This, in turn, has arguably facilitated, or at least given boost to, the proliferation of both local and transregional identity politics all over the globe. The ensuing stabilisation and rigidification of primordial identities have frequently enhanced rather than abated intra- and international tensions, while also arousing substantial critique from within minority groups, not to mention human rights activists. It is therefore high time to scrutinise the epistemological roots of the concept of legal pluralism, along with the concept's alleged emancipatory potential and limits.

The guest-editors, both frequently teaching at the Oñati International Institute for Sociology of Law, have a strong track-record in legal pluralism research at various international research institutions, particularly the Max Planck Institute for Social Anthropology in Halle, Germany. Ramstedt was a senior researcher at the Max Planck Institute's Project Group 'Legal Pluralism,' chaired by Franz and Keebet von Benda-Beckmann. Both Seidel and Ramstedt pursued their own legal pluralism research in the follow-up 'Law and Anthropology' department, directed by Marie-Claire Foblets, and are still associates there. It was in the wake of the Lisbon panel, when Seidel and Ramstedt developed the idea for this special issue. All its contributors were specially selected for their empirical and conceptual experience in legal pluralism research to discuss, from highly diverse angles, the decolonising potential of different legal plural arrangements in various geographical and institutional settings. They thereby seek to enrich the broader debate on how to decolonise law.

Over the past couple of decades, the efforts of epistemological decolonialisation have become a multifaceted, trans-communal, philosophical, and political endeavour, which builds on earlier intersecting and largely mutually supportive analytical perspectives, such as poststructuralism, de-and postcolonial studies, feminist and queer studies, and critical race theory. Projects of epistemological decolonisation have meanwhile started to impact the broader field of legal scholarship beyond academic niches, such as critical legal studies or Third World Approaches to International Law (TWAIL). That said, legal research and education in continental Europe still rarely engage with post- or decolonial approaches and methodologies (Theurer and Kaleck 2020, 19). They thereby lend support to efforts of neo- and re-colonisation that affirm and strengthen extant asymmetric power relations and the continuation of hegemonic knowledge of the so-called "Global South" (re)produced in the so-called "Global North."

The aim of our collective endeavour is to go beyond this North-South binary and to uncover the larger dialectical processes that have produced and maintained it (Comaroff and Comaroff 2012, 1-2). As the papers in this special issue show, the categories of "Global South" and "Global North" are dichotomies of an Anglo-Eurocentric epistemological bifurcation of the world. Throughout the entire special issue, they are therefore used only in imagined parentheses.

In the context of legal development, the "prerogative of interpretation" (*Deutungshoheit*) of what law is, is essential (Baxi 2005, Darian-Smith 2013, Theurer 2020), not least because the narratives about law, order, and governance are commonly embedded in hegemonic epistemological and political dynamics. This special issue seeks to make these dynamics visible, while scrutinising and problematising the incessant reproduction of hegemonic normativities, governance institutions and practices at different scales, state recognition policies vis-à-vis normative plurality on the ground, conflict resolution travelling models, transitional justice mechanisms, restitution efforts, and individual forum shopping at the interstices of plural legal orders.

Against the backdrop of the multi-faceted interrelations between different normative orders and the constant negotiations among shifting constellations of actors in our globalised world, legal pluralism has become "the key concept in a post-modern view of law" (Santos 1987, 293). As such, it constitutes a conceptual paradigm shift in thinking about law and justice, the beginnings of which go back more than three decades (Santos 1987). The claim of a "post-modern view of law" beckons the question of whether the concept and practice of legal pluralism has indeed transcended the epistemological foundations of modernity, even if its purpose and genesis in postcolonial societies has been to escape, or at least abate statism informed by Westphalian conceptions of statehood, Eurocentrism and lingering aspects of colonialism. This is in fact a key question for all the contributions to this special issue.

Early research on legal pluralism (often referred to as the "classical" legal pluralism research of the 1970s) was concerned with the coexistence of relatively separate legal systems on the non-state side of the legal continuum, with a focus on "non-Western" (post-)colonial communities and societies. A concomitant binary classification characterised plural legal arrangements as either "weak" or "strong" (Griffiths 1986), "official" or "unofficial" (see title of the Journal of Legal Pluralism and Unofficial Law), "deep" or "state" (Woodman 1996), "horizontal" or "vertical" (Raiser 1995, 340), "cultural" or "structural" (Friedman 1975, 196). The same binary logic is at work, when "non-state law" is described as being recognized, rejected, appropriated, or incorporated into the law of the land, and the analytical focus comes to rest on the institutional aspects of legal pluralism and their dynamics, or when we speak of the "accommodation" of "other" than state law within the latter, without realising that we thereby normalise or naturalise "other" law(s)' subservient position. What is left out of the picture then is that "weak" or state-recognised legal pluralism is usually embedded in political schemes of *divide et impera* euphemised in hegemonic state rhetoric as *unity in diversity*.

Conceptions of law have, in other words, ensued from the pervasive Newtonian cosmology of a singular essence, out of which emerged, through separation and opposition, a binary logic preconfiguring the fundamental order of reality (Querejazu 2022). This binary logic embedded in the European Enlightenment has also given rise to

the epistemic opposition of "nature" vs. "culture" and "tradition" vs. "modernity" that separates the diverse peoples of the world. This logic, what Latour called "the great divides" (Latour 1993), is intrinsic to the Anglo- and Eurocentric ontological socio-evolutionism with its overemphasis of the difference between progressive "self" and backward "others." The totalising and universalising ideology of modernity, in turn, has penetrated almost all areas of academic work and has become the dominant ratio in dealing with reality and its "objects of study" (Querejazu 2022).

Legal pluralism, one can argue, is thus compromised by being rooted in the epistemological foundations of modernity, and thus by an inherent coloniality. This is not the least borne out by the fact that the concept of global legal pluralism has effectively been instrumentalised as a normative political project by the broader "law and development" movement (Benda-Beckmann and Turner 2020). Thus co-opted, the concept keeps being embedded within a (neo-)colonial matrix of power and knowledge (Quijano 2000, Mignolo 2007), which merely replaces "the state" as an essentialist reference point with international governance institutions. This in turn enables the reproduction of existing colonial categories, rather than deconstructing, let alone decentring or decolonising them. The colonial path dependency of "classical" legal pluralism research, which is ultimately rooted in a dualist approach to law and the epistemological bifurcation of the world into "self" and "others," compromises the emancipatory development of legal pluralism as a "sensitising" concept (Benda-Beckmann 2002).

Foregrounding the interrelation between the statist and the legal pluralist concepts of law and their embeddedness in the same (neo)colonial power relations, the six authors contributing to the present special issue seek to expose the coloniality of legal pluralism in several different contexts, by making visible the dynamics of who speaks (for whom or what, from where), and who does not (and why). They thus portray legal pluralism as an as yet unfulfilled promise of decolonisation:

(1) The opening article by **Sara Araújo** - a senior researcher at the Centre for Social Studies and invited assistant professor in sociology at the University of Coimbra – systematically analyses "**Legal Pluralism as Co-Presence: Disobeying the Hierarchies of the Western Canon"**. Araújo provides a vocal argument for legal pluralism becoming "more than a marginal field" in socio-legal studies, namely "a core instrument to expand legal and political possibilities." For legal pluralism to become so, it requires rejecting monocultural, Eurocentric legal centralism and a reimagining of *law* as a plural, dynamic and emancipatory "map" that challenges the fiction of a singular, hierarchical legal order. Drawing on her fieldwork in East-Timor and Mozambique, Araújo critiques *modern* law's role in legitimising capitalism and in fostering coloniality. She advocates for cross-disciplinary "versions of legal pluralism" debate, involving not only anthropology and sociology, but also other disciplines, such as political economy, history or biology. Moreover, hers is a decolonial plea for learning from diverse, often marginalised or "unfamiliar" normative maps, moving away from the coloniality of established epistemological dichotomies to re-centre "non-Western" relational conceptions of justice and sociality.

(2) The article by **Jonas Bens** - Heisenberg Professor of Anthropology, Institute of Social and Cultural Anthropology, University of Hamburg – zooms in on the particular nexus between legal pluralism and capitalism, by revealing "**Capitalist property as epistemic violence: Ethnographic museums, colonial restitution and the cosmopolitical challenge".** Bens shows how the "[c]apitalist [concept of] property and the specific assumptions of materiality and personhood that underpin it are a fundamental aspect of … naturalised ontologies of the global North". Examining the debates over repatriating ethnographic collections, he argues that the perpetuation of the capitalist property right regimes and their colonial epistemological foundations erases "indigenous" ontological conceptions of personhood, ownership, and relationality. It is therefore essential for a meaningful restitution, so Bens, to confront the Eurocentric property norms prevalent in the state-based legal frameworks in which museums are embedded as institutions, and to foreground "non-Western" legal orders and cosmologies.

(3) **Kalindi Kokal** - Senior Research Fellow at the Kotak School of Sustainability, IIT Kanpur - brings into focus **"Moments of decolonisation in Indian women's navigations of interpersonal conflict"** that illustrate – against the backdrop of India's "vividly plural legal landscape" and ongoing "decolonisation of law" debate - how (far) the coloniality of normative knowledge production can be transcended. Drawing on empirical evidence from her fieldwork in the city of Mumbai on matters of divorce and socially tabooed sexual relations, Kokal locates moments of decoloniality in the normative choices of individual Indian women from a process-oriented, bottom-up perspective. She convincingly shows that the "decoloniality of law" really "rests in the 'decoloniality of thought' of those who make the normative choices, whether as individual citizens or as law-related office holders." By highlighting individual women's experiences, Kokal's paper makes a point for decolonial legal pluralism being an emergent, context-specific, relational practice that challenges Eurocentric postcolonial legal hierarchies in the context of everyday conflicts.

(4) **Katrin Seidel** – senior researcher at the Just Transition Center of Martin Luther University, associate of the "Law and Anthropology" Department at the Max Planck Institute for Social Anthropology in Halle, and acting professor for Critical African Studies at the University of Leipzig – examines the implications of the transfer of conflict resolution models to African contexts for the development of emancipatory forms of legal pluralism. In her contribution "**Towards a decentring of standardised peace mediation governance: a postcolonial reading of an interventionist travelling model in African contexts",** Seidel traces the coloniality of dispute resolution mechanisms and policies in transnational arenas. Dismantling the Anglo/Eurocentric foundations of regional and international peace mediation frameworks, she argues that the *standardisation* of these frames in African contexts perpetuates colonial knowledge hierarchies and fosters Anglo-Eurocentric legal centralism through the decontextualisation, depoliticisation, and de-pluralisation of conflict resolution. Her efforts of decolonising legal pluralism thus concentrate on the decentring of hegemonic mediation models and the foregrounding of diverse,

context-specific conflict resolution knowledges to foster inclusive, pluriversal peace practices.

(5) In his article, "**Towards an epistemological decolonization of legal pluralism: The case of Indonesia," Martin Ramstedt** – Extraordinary Professor for Social Anthropology at Martin Luther University and research associate at the "Law and Anthropology" Department of the Max Planck Institute for Social Anthropology in Halle – traces the epistemological foundations of colonial legal pluralism in the Netherlands East Indies to 19th century European organicist thought. Identifying the colonial strategy of *divide et impera* as an important motor for the conceptual pluralisation of "the native" into distinct ethnic minorities and the classificatory separation of the various native "customary laws" from Islamic law, Ramstedt argues that both conceptual constructions have continued to haunt postcolonial Indonesia until today, particularly so since the recent revival of the colonial category of "customary law communities," which has been successfully harnessed against the ramifications of a long history of authoritarian centralism paired to extractivist state policies. Lingering mechanisms of discrimination inherent in the concept of customary law communities as well as the ongoing tension between conservative Muslims and the adherents of customary normativities nevertheless warrant a decolonial reappraisal of the epistemological and political foundations of colonial legal pluralism.

(6) In her epilogue, **"Horizons of Justice in a Pluriversal World," Franziska Dübgen** – Professor of Philosophy, Political Philosophy and Philosophy of Law at the University of Münster – congeals the analyses of the five papers into six methodological strategies of what it means to decolonise law in general and plural legal orders in particular.

All contributions support a broader effort of "provincializing" Anglo-European epistemologies (Chakrabarty 2000), while "working through and with edges, tensions, contradictions and ambiguities, and acknowledging multiplicity, uncertainty, partiality and experimentation" (Stein *et al.* 2020, 48ff). All authors thus amply demonstrate that only in-depth, collaborative and dialogical engagement with multiple rationalities on their own terms will make possible the development of new, pluriversal angles for conceptualising law in and for the 21st century (Rorty 1991, Barreto 2013, 8, Mignolo 2018).

The cover image of this special issue – depicting a circular arrangement of various pencils of different colours forming an eye – seems to capture well the essence of such a scholarly effort. Each pen symbolising a particular knowledge register forms a necessary part in the arrangement from which the shape of an eye emerges. And just as the eye is the essential wherewithal with which to perceive the world in its colours and nuances, only a pluriversal approach will inspire plural legal arrangements that can aspire to do justice to the complexities of the world. The interconnected societal challenges of today require multi-layered analytical approaches that are attuned to complexity and multiplicity. This special issue invites its readers to reimagine legal worlds from a decolonial and inclusive legal plural perspective, in which the diversity of knowledge

repertoires becomes a catalyst for transformative understandings and the possibility of pluriversal futures.

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