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Horizons of Justice in a Pluriversal World

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Abstract

In this epilogue to the special issue *Decolonising Legal Pluralism, Decentring Epistemological Paradigms*, the author interrogates what kind of methodological strategies the contributors have used to adopt a 'decolonial' form of critique. Six approaches are identified as particularly relevant to this kind of perspective: an awareness of historicity, the deconstruction of binaries, the critique of asymmetrical power relations, a sensitivity to social ontologies informing law, a plea for epistemic diversity, and finally a decentration of the modern state system. Subsequently, the article reflects on the ethical basis of these critical perspectives and suggests a 'transcultural universalism' from below as normative horizon(s). By way of conclusion, it considers whether and how law could contribute to achieving more 'justice' in a postcolonial, pluriversal world.

Key words

Decolonial theory; legal criticism; legal pluralism; justice; social ontology

Resumen

En este epílogo al número especial titulado *Decolonising Legal Pluralism, Decentring Epistemological Paradigms* (Descolonizar el pluralismo jurídico, descentrar los paradigmas epistemológicos), la autora analiza qué tipo de estrategias metodológicas han utilizado los colaboradores para adoptar una forma de crítica "descolonial". Se identifican seis enfoques especialmente relevantes para este tipo de perspectiva: la conciencia de la historicidad, la deconstrucción de los binarios, la crítica de las relaciones de poder asimétricas, la sensibilidad hacia las ontologías sociales que informan el derecho, la defensa de la diversidad epistémica y, por último, la descentralización del sistema estatal moderno. Posteriormente, el artículo reflexiona sobre la base ética de

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estas perspectivas críticas y sugiere un “universalismo transcultural” desde abajo como horizonte normativo. A modo de conclusión, se plantea si el derecho podría contribuir a lograr una mayor “justicia” en un mundo poscolonial y pluriversal, y de qué manera.

Palabras clave

Teoría descolonial; crítica jurídica; pluralismo jurídico; justicia; ontología social

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Introduction

Law has always been a battleground for struggles over power and for greater justice. From early on, it has been used as a means of domination. At the same time, however, social struggles have repeatedly seized upon the law to enshrine achievements and limit existing power structures. These struggles have been scrutinized from various critical perspectives in a variety of disciplines for decades now, including critical legal studies, materialist, and feminist legal criticism. By contrast, the analysis of the role of law during colonialism has been a rather marginalized field of research in Western academic jurisprudence up to now. This makes an analysis of legal pluralism as a site where coloniality persists an urgent and exciting endeavour. After all, legal pluralism has been embraced by international organisations as a strategy for promoting greater self-determination, higher context sensitivity, and cultural autonomy. Moreover, legal plural arrangements proliferated across the globe, particularly in postcolonial contexts.

The individual articles contained in this special issue entitled *Decolonising Legal Pluralism, Decentring Epistemological Paradigms*, guest-edited by Katrin Seidel and Martin Ramstedt, entail a number of strategies of what it means to decolonise law in general — and legal pluralist systems in particular. These strategies concern the actors involved, the different knowledge archives used, and the goals of these decolonizing processes. I would like to use this short epilogue in order to reflect, first, on what scholars in this special issue actually did when seeking to adopt a 'decolonial' perspective. Hence, as a first step and as a means of clarification, I will carve out from my readings specific elements of a 'decolonial' critique of legal pluralism (I.). As a second step, based on this account, I will scrutinize the ethical-political grounds of these critiques. By way of conclusion, this epilogue asks whether and how legal arrangements might, conversely, serve to achieve more 'justice' in a postcolonial, pluriversal world (II.)

I.

Considering the contributions of this special issue, I propose six different methodological strategies used for adopting a 'decolonial' form of critique. The first four could be said to relate to decolonial *legal* criticism in general, while the last two relate to *legal pluralism* more specifically.

a. Highlighting Historical Continuities

A decolonial critique shows the extent to which existing legal arrangements are (partly) a legacy of colonial legal history. This does not only apply to evident cases in which laws or constitutions were defined within metropolitan areas and exported to the colonies/the Global South. It also applies to legal policy strategies that were ostensibly intended to enable greater context sensitivity, ownership, and autonomy. From this angle, current systems of legal plurality can be analyzed as resembling the colonial governance strategy of indirect rule (cf. the contribution of Ramstedt). Particularly in the British empire, this strategy was used to introduce hierarchical distinctions into a political community, differentiating between full legal subjects (*citizens*) on the one hand and inhabitants of the colonies, *subject* to the law, as second-class citizens, on the other hand (cf. Mamdani 1996/2018). The division between legal citizens and subjects during colonialism was mainly based on racialized divisions. Today, not simply 'ethnicity', but rather religion

and 'culture' tend to demarcate the current boundaries of legal belonging and membership.

However, legal pluralism still today, as it is practiced in postcolonial states, runs the risk of perpetuating a bifurcation and unequal treatment within the population on the basis of older asymmetrical power constellations during the colonial era. The reinstitutionalization and reconfiguration of customary law and traditional authority can be a means of asserting the interests of a group defined by criteria of belonging against other social groups.

Yet, contemporary subject formations are rarely characterized by a single affiliation, but rather by overlaps and fusions of different identity narratives, which are themselves in a state of continuous change. This brings me to the next point that problematizes the attribution of legal personality.

b. Deconstructing Binaries, Exhibiting Hybridity

A decolonial perspective on law further questions the construction of essentialized identities, particularly if done from an outsiders' perspective. Historically, the recognition of customary law served as a narrative to legally represent what was considered to constitute fundamental differences between the 'civilized' European world and its exoticized Others. These differences were either hierarchically ordered, or some groups were even excluded from the taxonomy altogether.

A decolonial perspective on law, conversely, needs to deconstruct simplistic, essentializing, and ahistorical narratives of social, ethnic or religious groupings. An emancipatory use of law might consist precisely in a legal subject's evasion of any identity-related attributions (cf. the contribution of Kokal). As another strategy, a decolonial critique might also focalize the apparently clear demarcations between legal orders, such as state and customary law, and reveal their de facto hybridity (cf. the contribution by Araújo). These endeavors promise to reveal how citizens appropriate different legal tools and how the concrete workings of legal institutions are de facto informed by different legal traditions. Last but not least, since a decolonial perspective opposes any form of simplifying group ascription, it needs to highlight the contested nature of norms and practices *within* subaltern groups and expose their heterogeneities, as has been stressed in several contributions.

c. Critiquing Asymmetrical Power Relations

In addition, a critical decolonial perspective on law evidently addresses the extent, to which legal relationships freeze existing social power hierarchies through processes of judicial codification. Examples of this include the establishment of exploitative economic relations. A case in point are neoliberal rules that are secured by modern liberal laws (cf. Araújo's contribution), allowing for private access to collective resources (cf. Ramstedt's contribution) and the legal establishment and protection of property relations (cf. Bens' contribution), thereby creating social inequities. Power relations can also be enshrined within legal pluralist settings. An example are social hierarchies between social groups, justified by exclusive membership rules, through the codification of customary law (cf. Ramstedt's contribution).

It is pertinent, therefore, to examine more prominently the relationship between law and power relations, including the socio-economic realm, in order to identify the mechanisms of how the former consolidates the latter. From this angle, however, it is equally possible to show how legal mechanisms can be used to challenge, destabilize and dismantle social power hierarchies. After all, there is an inherent emancipatory potential in law that social movements can use to challenge the status quo (Santos 2020).

The tension between subjugation and emancipation in and through the law is evident also in international law. While international law and the UN Declaration of Human Rights have been used in part as vehicles to undermine democratic self-determination and to justify violent interventions (Anghie 2007), human rights have also been analyzed as 'enabling violations' to achieve empowerment (Spivak 1988). Both can be used to criticize the militaristic interventions by hegemonic actors or to demand individual rights against repressive social norms. A decolonial critical perspective then might do both: critique and strategically (ab)use the dialectic entanglements between power and law.

d. Questioning the Social Ontologies Informing Law

Considering the ontological assumptions informing legal imaginations, I suggest that there are differing accounts in the contributions to this special issue. First, Araújo's contribution emphasizes the mutual interdependence of legal subjects (based on a relational ontology) in contrast to Western social ontologies, which tend to focus on the autonomous individual. She considers how, in the Global South, conflicts between legal subjects are oftentimes considered as a matter of the family/community involved. A social ontology that stresses relatedness and interdependence needs to be translated into legal arrangements that take account of this. By contrast, the contribution by Kokal stresses the importance of subjective rights by individuals – also against the demands of one's own community –, which must be balanced with integration into and duties towards communal structures (Masolo 2010).

Another exciting perspective is provided by the article contributed by Jonas Bens, who discusses the anthropocentric narrowing view of life, personhood, and legal subjectivity. According to his analysis, entities that are usually presented as 'things' in Western ontologies might be considered as animate or sacred in certain communities in the Global South. This has relevance for debates about restitution and reparative justice. Likewise, from a post-anthropocentric, cosmological perspective, legal personhood might be extended to animals, plants or landscapes and transform the language of law accordingly.

e. Wither the Monolingualism of Hegemonic Law

Decolonization also claims to overcome the monolingualism of law and to listen to and acknowledge (previously) silenced normative grammars. These different normative systems are usually rooted in alternative epistemic archives that predominantly Western scientific knowledge systems have difficulties in adequately grasping or 'translating'. Hence, specific features are at risk of being lost when customary law traditions are translated into a hegemonic language of law of the national state or by international stakeholders in the process of codification (cf. the contributions by Araújo and Seidel).

Therefore, legal pluralism requires multilingualism and an awareness of the diversity of epistemes that nourishes it. It must actively resist the power of dominant notions of law and justice and recognize a cognitive pluriverse (cf. in particular the contribution by Seidel).

f. Decentering the State

Last but not least, modern statehood, which in many postcolonial regions is also a relic of colonialism, is usually considered as the sole legitimate addressee of law in modern law systems and Western jurisprudence. Legal pluralist approaches also anchor the recognition of alternative legal systems within state law as the supreme legal order and usually demand a certain concordance between different legal systems on fundamental legal and moral issues.

However, if the state apparatus is dominated by social power elites, juridically justifies exploitative relationships, promotes social inequalities as well as marginalizes subaltern life forms, then, from a decolonial perspective, emancipatory law must also be conceivable beyond the state or within a different kind of 'state system'. Before, during, and after colonialism, legal relationships have arisen within communities, religious contexts, etc. These realms are not necessarily free of domination and exploitation either. However, it seems central to recognize that legal relationships are not necessarily tied to the existence of modern statehood, as assumed in many narratives of progress of European origin.

II.

Considering these briefly sketched six elements of a decolonial critique of legal pluralism (of course, there are for sure many more), I still wonder what the ethical foundations are, they are based on. What kind of alternative vision might social movements and politically involved persons deduct from these accounts in order to achieve 'better', or more 'just' legal arrangements?

The contributions voice severe criticism of European modernity, Enlightenment philosophy and Eurocentric universalism – since they have been entangled in the history of colonialism, slavery and scientific racism (cf. the contributions by Seidel and Araújo). Hence, this 'false universalism', tightly linked to a sense of civilizational superiority and a teleological notion of uniform progress, needs to be rejected and can therefore not provide normative grounds. Nevertheless, in my view, it is crucial to ask what alternative normative resources are available to justify decolonial criticism. Considering the six different strategies outlined above, all authors apparently criticize asymmetrical power relations, epistemic violence, political exclusion and economic exploitation. They seem to be guided by a vision of a moral egalitarianism that presupposes that any unequal treatment of a human being or a group is ethically highly questionable. This, in my view, is the minimal ethical base line, we might agree on to be intellectually and politically coherent. In addition, self-determination, individual and collective emancipation, epistemic justice and dignity appear in my reading as horizons of a decolonization process, implicitly voiced by the authors. Accordingly, if relativism is to be rejected (cf. Araújo's contribution), a transcultural universalism might still serve as an alternative, even if it is a never fully attainable horizon – like the Beninese philosopher

Paulin Hountondji (2017) argued. He pledged for a universalism under construction, to which all people of the earth should contribute, in order to struggle against all manifestations of injustice, cruelty, arrogance, and cynicism in the contemporary globe. In addition, in the eyes of many thinkers from the Global South, this alternative horizon of a transcultural universalism 'from below' needs to overcome the anthropocentrism in the hegemonic moral grammar and include also non-human entities (Dübgen 2024).

However, is the legal realm a sphere, after all, in which it is worth struggling for a new horizon of justice, informed by transcultural universalism(s)? As outlined in the beginning, there is a dialectic in legal arrangements: social struggles tend to manifest themselves in a legal language (struggles for better working conditions, the right to divorce, environmental protection, etc.) just as (and oftentimes more easily) economic interests and property relations do. The relationship between power and legal structures largely depends on the political and social system as well as transnational structures, in which a legal order is embedded. As the various contributions in this anthology have shown, the fact of legal pluralism in itself is *not* an indication of how a legal system should be assessed from a normative perspective or what social effects it has. Plural legal systems, on the one hand, can recognize epistemic diversity, help to make the law more context-sensitive, increase local participation in law-making processes and thus enable local empowerment. On the other hand, they can also introduce differences into the social fabric, create second-class citizens, artificially freeze identity narratives, and stabilize local power structures in the name of 'invented' traditions. Likewise, a uniform legal system can negate or suppress differences and cement domination structures. Moreover, it can also create equality, enable broad participation and generate solidarity within a political context.

Santos (2020) is therefore correct in arguing that legal pluralism is not intrinsically emancipatory. Rather, it requires specific conditions in order to maximize law's positive potential. By way of conclusion, I would therefore like to suggest that there will be no more justice in and through the legal sphere, if we do not change the economic and epistemic power structures at its base on a local and transnational level, so that the promise of law(s) for a better life for all can unfold in its potential diversity and beauty.

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