Encyclopedia of Law & Society: American and Global Perspectives

Pluralism, Legal

http://dx.doi.org/10.4135/9781412952637.n519

Legal pluralism is a concept that some sociologists and anthropologists have used since World War II to describe multiple layers of law, usually with different sources of legitimacy, that exist within a single state or society. The origins of the idea go back earlier in the twentieth century, however, to work by Eugen Ehrlich (1862–1922), Georges Gurvitch (1894–1965), Santi Romano (1875–1947), and others.

Today, sociolegal scholars in many countries frequently use the concept, and some believe it could serve as the basis for a general theory of law and society. There is a *Journal of Legal Pluralism and Unofficial Law*, which has published fifty issues through 2004. The current editor in chief, Gordon Woodman, teaches in the United Kingdom, but the UCLA African Studies Center in the United States cosponsors the *Journal.*

In 1978, the International Union of Anthropological and Ethnological Sciences (IUAES) established the Commission on Folk Law and Legal Pluralism on the initiative of a Dutch professor, Geert van der Steenhoven. Hundreds of lawyers and social scientists participate in the Commission's activities, which include contributing to solving problems connected with the interaction of folk law and state law to the benefit of indigenous, ethnic, and social groups.

Finally, the Max Planck Institute for Social Anthropology in Halle, Germany, has a project group **[p. 1117 ↓]** on legal pluralism directed by Franz and Keebet von Benda-Beckmann. Its research focuses on the mutual interdependences among customary law, religious law, national law, and international law. It also aims to better understand the constraining and enabling influences of plural legal orders on social interaction and how this affects power relationships and the distribution of wealth between social groups and individuals.

Some scholars, such as Vittorio Olgiati, distinguish between legal pluralism and the plurality of law. The latter is descriptive and refers to the empirical existence of multiple legal orders in a society without particular regard to the nature of their relationship. Legal pluralism studies postulate that different legal sources, values, and techniques exist together so that no one order can assert a direct monopoly over any other normative realm, and certainly not an absolute supremacy over the functioning of the social system as a whole. As such, legal pluralism seriously questions the existence of

law as a universal, everlasting pattern, whether or not abstractly deduced from equally universal, everlasting traits of human organization and conduct. It conceives of legal experience as a product of conflict among social groups. It rejects the possibility of a conceptual unity or coherence of law, either in a natural form or as a purely rational idea.

Brian Tamanaha argues that there are two principal versions of legal pluralism, although others would reply that many more exist. Tamanaha identifies an older version that legal anthropologists developed in studying European colonial systems. The home countries sometimes tried to incorporate local customary law from the colony into the overall structure of colonial legal institutions, a pattern that new governmental officials often continued even after decolonization.

The second, newer idea of legal pluralism stipulates that all states have multiple legal orders that function in society. One of these is the formal positive legal order, but it is not necessarily the most powerful source of law. This notion was attractive to some legal sociologists, as well as to anthropologists who studied nonstate social orders. They realized that the influence of state law was limited in the communities or subcultures they studied. Moreover, the norms these people followed were often inconsistent with state law or unknown to governmental officials. Researchers carried over this mode of thinking to describe the normative order for small social groups or organizations, such as companies, universities, or clubs.

This broader version of legal pluralism is important because it emphasizes that the official legal system is often powerless, in the sense that many if not most people ignore it or successfully contest it. These people, who scholars may describe by race, gender, geography, social status, religion, or language, tend to follow another set of norms to regulate their social relations or use alternatives to the state's court system to resolve their disputes. This situation is obvious in developing nations, but also exists in developed countries—in rural areas or city ghettos, for instance.

VittorioOlgiati

See also

- Aboriginal and Indigenous Peoples, Legal Systems of
- Comparative Law
- Colonialism
- Custom and Law
- Ehrlich, Eugen
- Gurvitch, Georges
- IUAES Commission on Folk Law and Legal Pluralism
- MPI for Social Anthropology Project Group Legal Pluralism
- Private Legal Systems
- Religious Minorities
- Romano, Santi

Further Readings

Belley, Jean-Guy. "L' État et la regulation juridique des sociétés globales: Pour une problematique du pluralisme juridique." Sociologie et Sociétés 18 (1986). 11–32.

Carbonnier, Jean. (1969). Flexible droit: Textes pour une sociologie du droit sans rigeur . Paris: Librairie générale de droit et de jurisprudence.

Chiba, Masaji. (1989). Legal Pluralism: Toward a General Theory through Japanese Legal Culture . Tokyo: Tokai University Press.

Ehrlich, Eugen. (1936) Fundamental Principles of the Sociology of Law . Cambridge: Harvard University Press. Original work (in German) published 1913.

Gilissen, John. (1972). Le pluralisme juridique . Brussels: Editions de l' Université de Bruxelles.

Griffiths, John. "What Is Legal Pluralism?" Journal of Legal Pluralism 24 (1986). 1–55.

Gurvitch, Georges. (1935). L'Expérience juridique et la philosophie pluraliste du droit . Paris: A. Pedone.

Hooker, M. B. (1975). Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws . Oxford: Clarendon Press.

SAGE knowledge

Melissaris, Emmanuel. "The More the Merrier? A New Take on Legal Pluralism." Social & Legal Studies 13 (2004). 57–79.

Merry, Sally E. "Legal Pluralism." Law and Society Review 22 (1988). 869–96. http://dx.doi.org/10.2307/3053638

Olgiati, Vittorio. "Le pluralisme juridique comme lutte pour le droit: La folie théorique et méthodologique d'une récente proposition." Canadian Journal of Law and Society 12 (1997). 47–74.

Petersen, Hanne, ed. , and Henrik Zahle, eds. (1995). Legal Polycentricity: Consequences of Pluralism in Law . Aldershot, UK: Dartmouth.

Tamanaha, Brian Z. (2001). A General Jurisprudence of Law and Society . Oxford: Oxford University Press.

Tie, Warwick. (1999). Legal Pluralism: Toward a Multicultural Conception of Law . Aldershot, UK: Ashgate/Dartmouth.

Woodman, Gordon R. "Ideological Combat and Social Observation: Recent Debate about Legal Pluralism." Journal of Legal Pluralism 42 (1998). 21–59.

SAGE knowledge