The More the Merrier? A New Take on Legal Pluralism

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Abstract

Legal pluralism provides an alternative and very useful way of thinking about the legal as well as about discourses about the legal, as it sets itself the multiple task of looking at the law and theory both from an internal and an external point of view. This article distinguishes between two main theoretical strands of legal pluralism. Empiricism-positivism includes early sociological endeavours that trace self-regulating social groups and point out that the formal law of the state is not and cannot be responsive enough to those legal orders. Anthropological legal pluralism, which studies the ways peoples living within a congruent State regulate themselves despite the existence of a central law, also belongs here. Empiricism-positivism commits the fallacy of trying to define the law criterially, thus importing in that pluralistic law the knowledge of a dominant legality. This is what the 'other' legal pluralism is anxious to avoid. It turns to new ways of understanding the legal and seeks to make sense of and also facilitate the interpenetration of dispersed legalities. In particular, I refer to the work of three theorists. Günther Teubner and his systems-theoretical legal pluralism, Boaventura de Sousa Santos and his suggestion that new subjectivities emerge, and Robert Cover and his account of jurisgenerative commitments and the violence committed by state law. I argue that, although they too suffer from various shortcomings, these three approaches to legal pluralism can be fruitfully combined. From that combination a new understanding of legal pluralism will emerge as the radicalization of the way we think about the legal, an understanding that collapses observation into participation and thus leaves it up to regulatory discourses themselves to organize their communication. Finally, I argue that this legal pluralistic knowledge cannot be achieved by an already established and institutionalized legal order. At a first stage it is academic legal studies that must provide a forum, in which the dispersed legal discourses and theories can reveal themselves and communicate with each other.

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THERE IS something very intriguing about the notion of legal pluralism. It can be *legal theory*, for it is discourse about the law, it looks for an answer to the question of what the law is. To the extent that it deals with law substantively by making claims concerning the right, it is also *jurisprudence*, it sets itself a positive, normative, quasi-legal task. At the same time though, and it is here that the intriguing idiosyncrasy mainly lies, legal pluralism is the study of other legal systems and subsequently legal theories. Thus it becomes *meta-theory*, that is a discourse on other discourses on the legal and, to the extent that it implicitly or explicitly sets legal orders in a hierarchical order with substantive criteria, it becomes *meta-jurisprudence* as well (which legal order ought to prevail?). So, legal pluralism means being attentive both to the plurality of norms but also to the ways, in which they are organized in and around practices. This multiple task of legal pluralism is what differentiates it from any other kind of legal theory and to what it owes its exceptional value. It comes with the promise that it will facilitate a spherical view of the legal universe, that, unlike other approaches to the legal, it will help us achieve a multiplicity of points of view and legitimately oscillate between them. But great expectations can lead to great disappointments. The question is how and to what extent these attractive promises of legal pluralism can be realized.

In this article I assess the most important legal pluralistic theories and examine whether they manage to achieve the full potential of legal pluralism. I argue that theories that have tried to make sense of legal pluralism have not yet managed to wed its theoretical, meta-theoretical, jurisprudential, and meta-jurisprudential aspects. I classify those theories into two broad strands that I name empirical-positivistic and theories of diverse, dispersed legality, and come to the conclusion that, despite the great differences between them, they all share a basic shortcoming: they overemphasize one aspect of legal pluralism over the others, thus reducing themselves to either a legal theory that views the law from well within a legal system or just a sociological, external recording of legal phenomena. I shall argue that the reason why these theories have fallen short of the full potential of legal pluralism is that they have been thinking about the latter in the wrong terms. Their aim has been to form one uniform theory with a diverse research object and either a normative or an explanatory value. But by doing do, they already fail to recognize the crucial fact that legal pluralism *must itself be pluralistic*, that it cannot be contained in the form of a one-dimensional legal theory. In other words, they fail to make the best of the concurrent diverse natures of legal pluralism.

I argue that, because of its inherent diversity, legal pluralism must be approached not as another legal theory but as *a radicalization of the way we think about the law*, *which must permeate and inform all theorizing of the law*. This means shifting the focus from strictly defined and hermetically closed *legal systems* to *legal discourses* that are vested with the commitment of their participants. It also means giving those discourses a voice in order for them to explain themselves without the distorting interference of a distant

observer. I propose that thus legal pluralism can enrich our understanding of the legal both philosophically, as it concerns itself with the substantive content of norms, but also sociologically, to the extent that it is attentive to the social relevance of these norms. This radicalization of thinking about the legal cannot happen from within a legal system, which is necessarily closed and inflexible. I argue that the only available forum for the development of the project of legal pluralism is academic legal theory, which must detach itself from state law and provide a forum in which the dispersed legal discourses and theories can reveal themselves as such and communicate with each other.

THEORIES OF LEGAL PLURALISM[1]

EMPIRICISM–POSITIVISM

Early theoretical endeavours in legal pluralism concentrated on the ability of the law to be responsive to the community by acknowledging its actual needs. It was the study of the tension between formal law and the ways in which social co-existence was regulated in actuality. These endeavours range from sociological critiques of formal law to the legal anthropological study of the effects of colonization and the imposition of the law of the colonizing nations upon the colonized peoples. What all these versions of legal pluralism have in common is their empiricist-positivistic approach to law. They apply formal criteria in order to identify non-state legal orders and their relationship with state legal orders.

In 1935 Georges Gurvitch demonstrated that judicial monism corresponded to a contingent political situation, namely the creation of large modern States between the sixteenth and nineteenth centuries (Carbonnier, 1983). Eugen Ehrlich (1936) was one of the first to contribute a great deal to the sociological turn of the debate by pointing out that in many cases the legislators were totally unaware of the social needs and the normative orders that various communities were developing and that very often there was a conflict between the latter and state law. He argued that the major legal codifications outrageously ignored the 'living law', which he claims is the concrete as opposed to the abstract expressed in legal texts (Ehrlich, 1936: 501). He sought to demonstrate that every official legal ordering has to be based upon the actual social reality and that the law cannot remain isolated and alienated from the people. Romantic as that may sound, it was a very important first step, because it actually proposed a socially oriented legal pluralism distinguishing between the 'law of the lawyers', the technical concept of law void of social or moral meaning and relevance, or at least unaware of it, and the self-regulating capacities of social formations. Thus it overcame the fixed instrumentalist notion of law, which portrayed it as a means in the hands of the power centres (Cotterrell, 1995). Ehrlich emphasized that purpose-oriented effectiveness and formalization of the law can no

longer be incompatible. The only way to achieve that would be to use living law as a source for state legislation. According to Ehrlich, state law has mainly a dispute-resolving function. What makes 'living law' (*lebendes Recht*) unique is the fact that it prevents people from appealing to state law, since it provides them with more flexible and uncontroversial ways of resolving disputes. Social relations emerge mainly within associations, which have their own regulatory functions (Ehrlich 1936: 58; Cotterrell, 1984: 32). What binds the person to the association and in the second instance to society as a whole is the fear of exclusion, since this is usually the sanction for violating a norm of most social groups. Ehrlich's analysis is valuable in that it brings to the surface social formations with self-regulating mechanisms, which are independent from the law of the state and that this 'living law', being much more direct, is subsequently more binding for the people. This explicitly questions the exclusivity of state law and clearly broadens the horizons of the study of the legal. However, despite Ehrlich's attempt to redefine the concept of legality by extending it, he remains well within positivism to the extent that he understands law exclusively as a formal rational order. Moreover, he tends to understand phenomena of self-regulation in the terms of and in opposition to state law. Gurvitch was among those who accused him of broadening the concept of the legal too much and hence neglecting the 'spiritual elements' in social relations (Cotterrell, 1984).

Carbonnier (1983) espouses a perception of legal pluralism similar to Ehrlich's. He imagines it basically as a conflict between different normative orders of structurally complete social formations such as the State and the Church, or as a conflict between the *loi nouvelle*, the *droit actuel* on the one hand and the *droit ancien* on the other. This conflict is generated by the fact that juridical abrogation does not coincide necessarily with sociological abrogation, which leaves a void to be filled by the public conscience.

Anthropological studies of legal pluralism move along similar lines. John Griffiths (1986) defines legal pluralism as 'that state of affairs, for any social field, in which behaviour pursuant to more than one legal orders occurs' (p. 2). Although there is a tendency to emphasize the continuity of the legal phenomenon and indeed anthropologists are very reluctant to define the law,[2] more often than not there is talk of 'central and peripheral' laws, indigenous and folk law, and so on. Although there is no theory determining the criterial definition of the various legal orders, the point of departure of research is the assumption that there *are* such legal orders, institutionalized and closed, which clash with state law. This is evident even in the most careful anthropological-ethnographic studies of legal pluralism, such as Sally Falk Moore's (1973) and her concept of semi-autonomous social fields.

This anxiety to look for empirically identifiable laws is evident in von Benda-Beckmann's comment (1988) on Merry's impressively comprehensive article of legal pluralistic theories (1988). Von Benda-Beckmann believes that there is an analytical question that has to be answered first, namely the one concerning the essential qualities of the law. The main argument is that although there are so many descriptive theories of legal plurality 'little

conceptual progress has been made' (von Benda-Beckmann, 1988: 897); that 'talking of intertwining, interaction or mutual constitution presupposes distinguishing what is being intertwined' (p. 898).

THE OTHER LEGAL PLURALISM: IN SEARCH OF A DIVERSE, DISPERSED LEGALITY

Merry (1988) diagnoses a transition in the way legal pluralism is approached by theory. After discussing a very large number of legal pluralistic theories she formulates some suggestions, which should guide legal theory in the light of the recognition of the dispersal of the legal phenomenon:

- Theory must move away from the ideology of legal centralism, that is the assumption that the only legitimate legal order is the one applied and enforced by the state.
- In order for that to be achieved, the law has to be understood in a historical rather than a conceptual manner: 'Defining the essence of law or custom is less valuable than situating these concepts in particular sets of relations between particular legal orders in particular historical contexts' (Merry, 1988: 889).
- Moreover, the law ought to cease being understood as merely a set of rules and start being perceived more spherically as a system of thought:

> Law is not simply a set of rules exercising coercive power, but a system of thought by which certain forms of relations come to seem natural and taken for granted, modes of thought that are inscribed in institutions that exercise some coercion in support of their categories and theories of explanation. (Merry, 1988: 889)

- Legal pluralistic thinking in the above terms also facilitates the study of social ordering in non-dispute situations.
- Finally, comprehending the interconnectedness of various legal orders offers a new way of thinking about social relations of domination.

In what follows I shall devote some time to three theorists, who, in one way or another, have taken up those challenges and have offered alternative theories of legal pluralism. Namely, I shall refer to Günther Teubner's systems theoretical approach to pluralism from the point of view of structural coupling, Boaventura de Sousa Santos's account of intertwined legalities and Robert Cover's account of the utterly real commitments that give rise to legal universes and the violence that state law does to these other legal orders.

GÜNTHER TEUBNER AND A SYSTEMS-THEORETICAL LEGAL PLURALISM

Teubner (1992) subscribes to the programme of the new legal pluralism described by Merry and tries to qualify it from a systems-theoretical point

of view. His point of departure is the closure of legal systems and their inability to make sense of other discourses in their terms. Drawing on his notion of reflexivity, Teubner's aim (1983) is to propose a new way of theorizing legal pluralism so that it becomes helpful in the project of making the law as responsive as possible to other discourses.

He asks the fundamental question of what is to count as distinctively legal and how state and other laws are to be interrelated. Unlike anthropological and early sociological legal pluralistic theories Teubner does not apply empirical criteria. His aim is to clarify what makes communication between state and other law possible in the first place and secondly fruitful. Moreover, and as will become clear further on, his understanding of the legal *proprium* has a different and distinct basis.

Teubner rejects theories that set normativity as the ultimate criterion for the recognition of a legal order (Teubner, 1983: 1449), according to which legal pluralism consists in normative expectations and excludes cognitive and behavioural ones. He finds this solution inadequate firstly because it regresses into the debate concerning how legal and non-legal are to be distinguished and, secondly, because it does not grasp the processual and dynamic character of legal pluralism. Similarly, functionalist theories, which promote *social control* as the ultimate criterion are not adequate either (p. 1450). They are too inclusive and although they might be useful in pointing out functional equivalents of the law, they are not especially helpful in distinguishing between legal and non-legal norms.

Teubner proposes an understanding of legal pluralism in the vein of the linguistic turn: 'Legal pluralism is then defined not as a set of conflicting social norms in a given social field but as a multiplicity of diverse communicative processes that observe social action under the binary code legal/illegal' (p. 1451). This understanding of the legal is essentially positivistic to the extent that it focuses on demarcation of the law from its environment but, at the same time, it differs from ordinary positivism in that *it leaves it up to legal discourse itself to delineate its boundaries in relation to its environment*.

If the legal seals itself from its environment in such a way, communication between legal orders becomes rather improbable. This is what Teubner tries to make sense of. He is very sceptical about the use of terms such as 'interdiscursivity'. He points out that communication between legal orders is inevitably distorted. He explains that in terms of what he calls 'productive misreading'. When norms transcend the boundaries of a discourse and enter a new one, their meaning undergoes a critical shift. They either cease to be read in the light of the binary code 'legal-illegal' and therefore lose their legality altogether, or they are adapted to the programme[3] of the discourse, which they have become part of, and change their meaning although they are still classified under the code 'legal-illegal'. So, meaning cannot be imported or exported unaltered. For that reason Teubner prefers the term 'mutual constitution' coined by Fitzpatrick (1984) to describe the way state and non-state legal orders make sense of each other. However, he sets three necessary conditions:

> First, against all recent assertions on blurring the 'law/society' distinction, the boundaries of meaning that separate closed discourses need to be recognized. Second, mutual constitution cannot be understood as a transfer of meaning from one field to the other but needs to be seen as an internal reconstruction process. Third, the internal constraints that render the mutual constitution highly selective must be taken seriously. (Teubner, 1983: 1456)

If the binary code 'legal/illegal' is promoted as the element, which crucially determines the legality of regulatory phenomena, legal pluralism shifts its emphasis from the study of *social groups* developing legal orders to *self-regulating discourses* and the legalization of various language games. In this process linkage institutions (p. 1457) change character as well. Linkage institutions are those essentially contested concepts, such as *bona fides*, the meaning of which varies depending on the context in which they are placed. In the new project of legal pluralism, those adaptable linkage institutions facilitate the connection of the law with social processes. Thus, a new channel of communication is established that prevents the law from colonizing its environment and instead enables the productive misreading of the latter by the former.

When the law is structurally coupled with society *informed by legal pluralistic critique*, it becomes more responsive as it co-evolves with regulatory discourses dispersed in society. Understanding legal pluralism as the law's tacit knowledge of its social ecology (p. 1461) will relieve socio-legal theory from the constant anxious concern to import the knowledge of politics or that of social sciences so as to make it more responsive, both of which end up juridifying politics and science without guaranteeing the responsiveness of the law.

BOAVENTURA DE SOUSA SANTOS AND THE EMERGENCE OF NEW SUBJECTIVITITIES The fundamental question Santos (1995)[4] seeks to answer with reference to legal pluralism is how the apparently mutually excluding pillars of regulation and emancipation can be made compatible. Legal pluralism is for him the new reality in which we develop new ways of understanding the world and therefore new ways of regulating our lives. However, this regulation is not static, it does not and cannot claim finality. It is an ongoing process of rediscovering and regulating the world.

He distinguishes between three phases in the debate about legal pluralism: (1) the colonial period; (2) the post-colonial period in capitalist modern societies; and (3) post-modern legal plurality, which includes transnational, suprastate orders. He claims that what makes the third period exceptionally post-modern is the fact that what is crucial is no longer a search for a definition of law but the identification of the three distinct levels of analysis which correspond to the three time-spaces of the legal phenomenon: the local the national and the transnational (de Sousa Santos, 1995: 117).

The third stage is marked or is preceded by an epistemological transition, a new form of knowledge and understanding of the world. Instead of modern

knowledge, which is an aggregate of unquestionable truth claims making sense of our world with a claim to absolute rightness and certainty, he suggests that it is a different kind of knowledge we should be pursuing. Namely, what he terms 'a prudent knowledge for a decent life' (de Sousa Santos, 1995: 489). This emergent epistemological paradigm weds science and society. Unlike modern knowledge, which claims exclusivity, post-modern knowledge is knowledge of the self and the community. It does not offer tools for explaining the world and to which the world must fit; it is an ongoing process of understanding and revising our explanatory tools.

In the discussion about the ways to identify the various normative orders Santos begins with the remark that *it is not enough to acknowledge their plurality but it is necessary to also ground it theoretically* (p. 403) thus pointing to the shortcoming of empirical-positivistic legal pluralism that is content to simply observe from a distance. Santos then tries to do so by isolating social configurations, i.e. six-dimensional and thus complex structures, and by observing which kind of law they are regulated by, which kind of power relations one can trace in them and which epistemological form permeates them. At the same time he examines which institutions guarantee the regularization of patterns of social relations, the social agencies, and the developmental dynamics, which basically are the factors that perpetuate their existence and can be both aims and means of reproduction. The six structural places are the *household*place, the workplace, the marketplace, the *community* place, the *citizen*place and the *world*place. He argues that these structural places always remain stable and hence reliable as social 'topoi' and observational standpoints. According to Santos, what makes those places unique is the fact that they are both social and geographical constellations and that their specific spatiality makes locational and temporal reference always possible. What each of these structures represents is more or less revealed by their own name. Nevertheless some points of the typology and the argument seem *prima facie* rather vague. What appears to be the cohesive element of each of these structural places is the specific form of social relations that are being developed within them. These social relations constitute a web around a basic element, which imbues them and determines their development and appearance. This element, as Santos perceives it, varies from one structural place to the other and is associated with the functions of each of the latter. Thus, for instance, the *community* place is 'clustered around the production and reproduction of physical and symbolic territories and communal identities' (de Sousa Santos, 1995: 421) whereas the *work*place is 'the set of social relations clustered around the production of economic exchange values and of labour processes, relations of production stricto sensu . . . and relations in production . . .' (p. 421).

The *world*place, a concept that sounds rather broad and somewhat obscure, is defined as 'the sum total of the internal pertinent effects of the social relations through which a global division of labour is produced and reproduced' (p. 421). It constitutes a universal umbrella for all the other structural places. Comprising both social and political spheres (namely

nation-states), the *world*place provides the necessary universal framework and the organizing pattern for their development and reproduction. Santos relates structural places to other social phenomena and concepts (p. 417).

It is also useful to see how Santos understands the law in the first place. He identifies three distinctive features, three structural components of the legal phenomenon, which characterize every normative order and not just state law. These three characteristics are rhetoric, violence and bureaucracy (de Sousa Santos, 1995: 112). Rhetoric, as the art of persuasion by argumentation, is both a communication form and a decision-making strategy. So are violence and bureaucracy, the former implying and involving the use or threat of physical force and the latter referring to the regularization of procedures. These three structural components have no stable form but function in mutual articulations within each normative order. The way in which they are combined determines the final form of the legal order and its functional pattern. It must be noted that Santos does not use these three features as strict criteria in order to identify legal orders. Rather, he detects normative phenomena in various social fields, then tries to apply rhetoric, violence and bureaucracy and comments on the form of interpenetration of the three structural components.

The synthesis of the above forms Santos's picture of legal pluralism. He imagines it as a cluster of interpenetrating legalities, which regulate all instances of our whole lives and correspond to our knowledge of the world. As this knowledge changes, so do the forms of regulation we experience. He uses three telling metaphors to describe the new epistemological and legal paradigm. The *frontier* means we never belong fully to one or the other side. We do and do not have the internal point of view at the same time, to borrow a Hartian image. Living on the frontier enables us to perceive the centre as oppression rather than emancipatory regulation. Achieving a *baroque* subjectivity means that order is always suspended. The baroque is always suspicious of totalities, it is extreme and does not subscribe to rational calculations. Finally, the South must recover its voice. We must rediscover the *colonized different*, only not in an imperialistic manner, which purports to be scientifically universalistic. It must be regiven its voice and its language and the North must be prepared to listen to it carefully.

ROBERT COVER AND THE PLURALITY OF JURISGENERATIVE COMMITMENTS

Cover never subscribed explicitly to a legal pluralistic research programme. His target were theories of law as literature and abstract legal interpretation. As a result, he is never referred to as a 'legal pluralist' and he is never indexed as one in the accounts of legal pluralism. However, his work is marked by his strong anti-state thought and very clear pluralistic tendencies.

It is in his 'Nomos and Narrative' (Cover, 1983) and 'Violence and the Word' (Cover, 1986) that he tried to establish the inherent connection between state law and violence. The pivot of his argument is that state law operates with violence in order to establish itself as the sole legitimate normative system in contrast to other normative orders that develop within communities in the

margins of state law. In addition to that he gives his account of how the state institutionally and hierarchically organizes its violence. His final argument is that legal interpretation and the enrichment of legal meaning meet an insurmountable barrier raised by the state with the use of violence.

In 'Nomos and Narrative' Cover begins by establishing that the Nomos we all inhabit is unavoidably related to a narrative in which it is embodied:

> Narratives are models through which we study and experience transformations that result when a given simplified state of affairs is made to pass through the force field of a similarly simplified set of norms. (Cover, 1983: 10)

The normative world, which determines our lives, is created by predominantly cultural means and is constituted by a bulk of symbols: rituals, traditions, texts and objects. Therefore, the richness of legal meaning is inevitable. Cover makes clear that he is neither interested in the legal, technical term of legal meaning nor in the distinction between living law and law in action. What he argues is that within the same legal universe there is room to accommodate an enormous number of interpretations, Nomoi and narratives, that seem to be incompatible with each other because one of them is bound to be predominant by the use of means other than interpretation and commitment, namely by violence.

Cover distinguishes between two types of law, the paideic and the imperial. His intention is not so much to form a typology that could accommodate all the historical legal paradigms but rather to comment upon two fundamental functions of the legal, i.e. the world-creating and world-maintaining functions, that can coexist, as indeed they do, even in late modern legal systems of advanced capitalist states. The former is achieved by what he terms 'paideic law'. It implies the existence of a community, the members of which acknowledge a set of common needs and obligations, base their life and world views upon these and their 'obedience is correlative to understanding' (Cover, 1983: 13). On the other hand, in the model of imperial law 'norms are universal and enforced by institutions. They need not be taught as well, as long as they are effective' (Cover, 1983). In this paradigm social relations are not determined by the commonality of needs and obligations and the unity that this commonality establishes but rather by the principle of peaceful coexistence set up by the aforementioned institutionally enforced norms.

The ever-expanding social differentiation and the subsequent proliferation of various kinds of social bonds, groups and discourses lead inevitably to the proliferation of interpretations and legal meanings. Different communities share different narratives, which are the outcome, to a great extent, of the materiality of the bonds that hold communities together. What safeguards these narratives and at the same time consecrates them is their objectification and the degree of personal commitment to them (Cover, 1983: 45). 'To know the law – and certainly to live the law – is to know not only the objectified dimension of validation but also the commitments that warrant interpretations' (p. 46). The reality that the law creates and the alternatives to reality it offers would simply exist in the world of ideas, if it weren't for the personal

commitment of those who share the nomos. It is the strength of that commitment that determines the extent of law's hegemony. 'Law is the projection of an imagined future upon reality' (p. 1604). This alternity designed by the law is being substantiated through the transformation of word into action on behalf of the people.

> 'Law' is never just a mental or spiritual act. A legal world is built only to the extent that there are commitments that place bodies on the line. (p. 1605)

At the stage of jurisgenesis, that is at the stage of the creation of a Nomos, commitment is a *sine qua non* condition of the outset of the new normative world. Social bonds, common beliefs and cultural possessions are embodied in the commitment to the common objectified value, that will become the fundamental norm of the new Nomos. Commitment can urge people to shield their normative universe with their own bodies; it makes martyrs and murderers at the same time, depending on the normative dogma, of the community or the individual. The importance of commitment is not exhausted in the jurisgenerative stage. Normative world-maintaining would not be feasible without acts of commitment. But this time the commitment is towards the normative word instead of the law-generating idea. As long as there are distinct cultural media, that give birth to common worlds shared by a number of people, that subsequently form communities, where they share beliefs, shrines and weapons and are prepared to defend them irrespective of the undesirable consequences of their struggle, there will be a plethora of legal interpretations, and legal meaning will have a bulk of different properties.

The question then is how state law responds to this plurality of legal meaning. Cover argues that state law, being the only interpretation that can establish itself with institutionalized means, resorts to violence. He does not seem to accept that sanctions, violence and the law are internalized. What he argues is that communities are seeking either to maintain their own normative world, like for instance communities living in insular autonomy such as the Amish and the Mennonites (Cover, 1983: 26), or more politicized communities, struggle against the state and question the legal interpretation of the latter (a project which Cover terms 'redemptive constitutionalism'), for instance, the civil rights movement (p. 31). But the state and its institutions overlook this multiplicity of legal meanings by usually stating 'the problem not as one of too much law, but as one of unclear law'. In this way the state denies the legitimacy of any other interpretation, Nomos and narrative. Therefore, from a number of equally legitimate legal meanings, state law is bound to prevail.

An already established Nomos, a normative world that managed to impose itself after the clash of the multiple interpretative communities and assumes universal legitimacy, does not need acts of commitment for its maintenance and perpetuation. What substitutes commitment is institutionalization and the formulation of hierarchical structures. An institutionalized normative order protects itself by hiding behind the legal meaning, to which it has

attributed the privilege of exclusivity in legitimation and behind its apparatuses and institutions. When the judge resolves disputes by silencing one of the demands produced before her/him or when s/he deals with pain and death as for instance in the course of a criminal trial (Cover, 1986), s/he is never alone. S/he shares the responsibility of his/her actions and words with a number of people. The legal system invents its mechanisms of depersonifying its operations and thus making them more flexible and effective. These operations sit comfortably with legitimacy, because they are carried out with the vocabulary formed in reference to the predominant legal meaning.

IS LEGAL PLURALISM POSSIBLE?

POSITIVISM IS NOT VERY INSTRUCTIVE

Those theories of legal pluralism, which I have called 'empirical-positivistic' seem to have a rather clear-cut and often naïve picture of the world in which law is what meets certain criteria such as the existence of a system of rules, institutionalization, enforcement of these rules with sanctions and so on. By applying these formal criteria to *prima facie* regulatory orders, positivism draws conclusions as to whether they are legal or not. If yes, then state law has to recognize them as such, they have to be respected and not interfered with.

But who is to judge the legality of these orders? Whence are the criteria drawn? Let me look at two possible answers.

WE DRAW THE CRITERIA FROM OUR EXPERIENCE OF THE LAW We all live by and in the law, we can all tell the difference between the law and other normative orders. There are some features, which recur in various contexts. Therefore, they are designated as the conceptual core of the law and, every time their combination is traced, we can safely claim that there is law.

A very grave fallacy is committed with this line of reasoning. It undermines the relativism, which legal pluralism seeks to establish in the first place. If there are self-regulated groups, which are colonized by the dominant legality, classifying their form of regulation in the terms of the dominant legality has an equally colonizing effect. It is a form of epistemological heteronomy, which is bound to prove detrimental for the substantive autonomy of the group in question; it is an attempt to impose externally a meaning, which has been formed under different material and normative conditions. To allude to H. L. A. Hart once more, it is wrong to assume the content of the internal point of view of a different people based on the external observation of their practices. That amounts to projecting *our* internal point of view to a different context and inevitably misinterprets the object of our study. Thus a kind of injustice is done as a final judgement *is* imposed in the absence of the interested party in the guise of descriptive objectivity.

LAW IS WHAT ITS SUBJECTS DESIGNATE AS LAW[5] This way of understanding the law and thus setting the agenda of legal pluralism is more consistent with its relativistic basis. If the concepts of right and wrong cannot be transcendental and uniform, then there cannot be a central and authoritative way of deciding what the method of attributing content to these concepts is. Both these ventures are located in the social and they depend upon the real conditions of existence of various communities and the representation of these conditions, that is the way they perceive of themselves and others.

This time the problem is substantive and therefore more serious. What happens when the peripheral orders, which have been granted or, more correctly assume, legal status seem wrong? Can they be put to a substantive test of rightness? At the end of the day, the discussion returns to whether legal discourse is open to information outwith its pedigree and, if yes, to what extent. It is easier to understand the problem from a point of view within a 'peripheral' legal order. Then the question is reformulated from 'can state law exercise control on other legal orders?' to 'do these legal orders allow any intervention in the first place?'. Positivism does not offer an explicit answer but prefers to adhere to its one-sided pseudo-objectivity.

According to the positivistic understanding of the law, legal systems are hermetically closed and not able to make sense of any other normative order as such *unless it is reduced to their own source of validity*. Therefore, communication between legal orders is impossible unless they are merged into one. In other words, when such communication looks possible, it is really a case of disagreement *about the law from within it* rather than a conflict of different legal orders. They share their ultimate source of validity both in content and form, be that a practice, a *Grundnorm* or a sovereign. The prevalence of one order (usually the one sanctioned by the state) over the others is not due to its normative superiority but is rather a matter of political power, it has to do with the actual and contingent ability to impose itself upon the rest. However, denying the possibility of communication between multiple legal orders already raises the *raison d'être* of legal pluralism, for the latter's meta-jurisprudential character, to which after all it owes much of its epistemological autonomy, makes a normative selection necessary. The subconscious realization of this substantive void makes positivism instinctively try and cover it. Thus it assumes the role of an ultimate law by hierarchizing legal orders but still remains unaware of that task, it does not carry it out in a conscious manner. Therefore, it conceals the fact that it effectively imposes externally a substantive judgement and subsequently colonizes the legal orders that it studies. Instead of integration, it achieves colonization. In those conditions, the main objective, which is precisely to raise the tension between speaking from within a law while at the same time including other laws, is far from being achieved.

The instructive role of positivistic legal pluralism is exhausted in the empirical conclusion that there are institutionalized normative orders, whose boundaries do not allow any external normative input. Unfortunately, empiricism-positivism does not and cannot go any further. Even its more

progressive strand that is guided by the anxiety to contribute to the emancipation of non-state legal orders, only goes as far as acknowledging the fact that the state is not a necessary, conceptual prerequisite of the law. That, though, does not even pose the question, let alone answer it, of the rightness of these legal orders. The fact that state law prevails violently with its communicative closure does not necessarily say something about the moral merit or demerit of the legal systems, which are excluded. If one thinks of these legal systems in terms of groups, as legal anthropology customarily does, the denial of their right to self-regulation does not necessarily mean that their law is legitimate or right. Peripheral law is equally exclusive and discursively closed. In fact, on numerous occasions it is more so than state law, precisely because it assumes a very high degree of legitimation.

So, the problem with the positivistic take on legal pluralism is that it is not inherently pluralistic enough precisely because it ends up either disregarding the legal theories accompanying the legal systems it selects as its research object, that is it remains unaware of its meta-theoretical potential, or it avoids taking an evaluative stance, thus silencing its meta-jurisprudential side.

THE OTHER LEGAL PLURALISM CANNOT STOP SHORT OF UTOPIA

Santos tries to reach justificatory bedrock, so to speak, and drive the justification of the plurality of legal orders, which exist in the margins of state law but in the heart of society, to a stage of irreducibility. He recognizes the need for communication between these dispersed laws not as domination but in *a mutually constitutive way*. He does so with reference to subjectivities corresponding to forms of post-modern knowledge, which allow for the possibility of change and do not collapse regulation and justice with constancy and universalization.[6] At the same time though, he does not seem to give up on the existence of institutions, within which the integration of these subjectivities will take place, whether integration means mutual recognition or outright conflict. To be fair, Santos does not profess to be offering a normative account. His less ambitious goal is to diagnose and describe the transition to a new societal paradigmatic transition. Still, this does not make any less urgent the question of how this transition can be accommodated in an institutional context.

Santos never makes any suggestion as to what kind of an institutional framework these subjectivities will sit comfortably in. If positivism tells us that *there are more than one legal institutions*, Santos tells us that *there is a multiplicity of conceptions of right and wrong*. Neither statement is very useful for the opposite reasons. Santos rejects the standpoint of pseudo-objectivity and tries to see things from the inside and forgets altogether about the institutional framework of normativity. He does not explain why his theory is one of *legal* as opposed to *value* plurality,[7] thus leaving a void, which we must try and cover reconstructively. I shall look at two possibilities.

LEGAL PLURALISM EXISTS IN THE SHADOW OF AN ULTIMATE LAW OF LAWS Such a concession clearly and critically undermines legal pluralism. It is the same problem, which does not allow positivistic legal pluralism to get off the ground. The central argument concerning the plurality of legal orders is undermined by the promotion of one of these orders as the last instance of judgement.

Cover makes a compromise by admitting the inevitability of maintaining a 'central' law, which I believe can only be detrimental to the project of legal pluralism. He originally seems to be unfolding a profoundly anarchistic argument but does not quite drive it home. He stops short of the provocatively defiant thesis that all law is to be discarded as violent, thus tempering his argument and making it sound like an alternative liberal thesis: it is good that all nomoi be heard but a certain degree of central regulation has to be maintained. But this inevitability is never explained and nor is the fact that it is detrimental to the rest of the argument addressed. Analysts of Cover's work have protested against this concession of his to liberalism. Sarat and Kearns (1995) argue that law and violence are irreconcilable. In their own words, the law cannot be 'homicidal' without being 'jurispathic' (p. 241). Cover, they argue, cannot have it both ways. On the other hand, they too slip into a form of unqualified liberalism, as they seem to assume that alternative legal orders are unquestionably good and they are not critical enough towards them. Because they are anxious to prove the jurispathic nature of state law, they seem to be oblivious to the fact that other legal orders share the same nature, thus committing the same fallacy as positivism.

What urges Cover to look for such rigid frameworks is the fact that he cannot quite make sense of legal normativity without law, as we know it. Santos wisely realizes that but prefers to leave it open and only looks for normative phenomena in social topoi of loose institutional bonds. Either way, neither of them makes any suggestions as to how the intertwining of normativities is to be achieved. But losing sight of the institutional environment can easily trap a theory of legal pluralism in one institution, the boundaries of which are invisible from within (in the way the boundaries of any universe are invisible from within) and subsequently make that theory blind to extraneous normativities. In other words, it regresses into a kind of positivism, which overlooks the meta-theoretical and meta-jurisprudential aspects of legal pluralism. Thus, the existence of different legal universes is misread as a problem of unclear law. This already undermines the most valuable of Cover's arguments, namely that even the same text can give rise to different legal orders, if its interpretation is backed by different acts of commitment and different narratives.

LEGAL PLURALISM CAN ONLY BE RADICAL VALUE PLURALISM If the law can indeed exist only by silencing other normative orders, then a theory of legal pluralism must go as far as denying the existence of law altogether, if it wants to adhere to its agenda of emancipation. In this light legal pluralism

becomes the theory of dispersed normativities, which adapt to each other and thus set the conditions of their compatibility without the mediation of an institution, to which will be left the ultimate choice between these orders.

Radical value pluralism not only entails the proliferation of informational input in particular instances of normative discourse. Such an understanding of it confines it in the dimension of space, thus disabling the possibility of change in time or at least making it extremely unlikely. To put it more schematically, it is not enough to allow participation in the decision-making procedure of all the interested communities. One has to make sure that this discourse will not end in a binding and coercively enforced decision, which will either redirect the discourse or disallow it altogether in the future. The possible emergence of other communities must be taken into consideration and the appearance of more information or interpretative approaches enabled. If theories of pluralism only referred to space, they would not go much further than perceptions of the law as a system of formal logic, which does not allow in the decision-making discourse any information that cannot be translated into its language or classified into its categories. Pluralism must signify the suspension of the decision, the postponement of the moment of finality. As soon as it is submitted to the constraints of institutionalization, it is tempered and becomes a compromise. One cannot have pluralism and a definite right answer at the same time. There *can* be an answer, even a satisfying one, but it can never be *the right answer*, as judgement concerning its rightness is always *to come*.

It is for those reasons that I called Santos's version of legal pluralism utopian. He admits that what he offers is not a utopia but a heterotopia:

> Rather than the invention of a place elsewhere or nowhere, I propose a radical displacement within the same place: ours. From orthotopia to heterotopia, from the center to the margin. The purpose of this displacement is to allow for a telescopic vision of the center and a microscopic vision of what the center is led to reject, in order to reproduce its credibility as the center. The aim is to experiment with the frontiers of sociability as a form of sociability. (de Sousa Santos, 1995: 481)

Point taken, but in order to keep that grip on reality, which heterotopia still allows, we must have an idea as to *who* it is that turns from the centre to the periphery and *how*! As long as such suggestions are not made, it remains utopian.

Despite those shortcomings, Santos's account of legal pluralism is inspired to the extent that he reconstructs a continuum of *intertwined* legalities and replaces the regulatory inflexible certainty of modern law with a form of regulation, which is responsive to knowledge and the material conditions of our existence. The focal point is shifted from the recognition of *legal systems* reducible to certain criteria to the *relations developing between dispersed legalities, discourses of a legal quality* and the way they can be fruitfully combined. Cover does the same by speaking of the materiality of the law and by drawing the strong connection between law and commitment.

Teubner addresses some of the problems that disable positivism and utopian legal pluralism. He takes both on board and formulates a theory of legal pluralism that is informed by and based on the management of the difference between observation and participation. Consistent with his systems-theoretical background he sees the value in the coexistence of those two distinct levels. His point of departure is that justice can only be done, when descriptive and normative claims derive from the same source, namely from within the system.

The shift of focus from moral value of the law to its coding underpins the second point of significance in Teubner's legal pluralism. Since coding is promoted as the decisive criterion and the search for diffused legalities is guided by the binary code of legal/illegal, i.e. allowed/forbidden, it is other *social discourses* and the way state law can make sense of them that become the centre of attention. The vocabulary of positivism changes radically; *legal discourse* replaces *law as institution* and *social processes* replace *legal orders*. Thus there is no need to look for legalities underpinned by a shared identity or morality any longer. By becoming simultaneously theoretical and meta-theoretical, the law opens up its boundaries, it becomes conscious not only of itself but also of other legal discourses. The combination of these two points of Teubner's analysis is what makes the communication of legal discourses possible, which is a problem neither positivism nor post-modernism offer a solution to.

LEGAL PLURALISM AS THE RADICALIZATION OF THEORIZING THE LEGAL

I have so far shown that neither positivism nor theories of legal pluralism as the study of the diversification of legality strike the right balance between all the aspects of legal pluralism. The former remains descriptive and is exhausted in sociological observations of no evaluative force without at the same time justifying the axiological selections that it inevitably, albeit inadvertently, makes. The latter do exactly the opposite by focusing on value to such an extent that they lose sight of the need for legal pluralism to be legal as well as pluralistic.

However, all is not lost. Those different approaches are useful to a certain degree and in a mutually complementary way. What I shall try and do is combine their most instructive features in the light of the inherent diversity of the notion of legal pluralism.

Empirical-positivistic approaches to legal pluralism are valuable in that they follow the intuition that one of the things that makes the law a distinct normative order is its institutionalization. However, they err firstly in basing the legality of a normative order on its institutionalization and, secondly, in that they go on to look for institutional structures similar to the legal system that they are participants in. Therefore, they never escape the boundaries of the specific legal system, in which they are embedded. I propose that both

legality and institutionalization should be understood in a much looser way. There is no need to look for whole systems of rules and the one unifying element they owe their coherence to. Nor is it necessary for these rules to be enforced by institutions in the sense of clearly identifiable structures. Following Teubner's approach to legal pluralism from the point of view of autopoiesis, I argue that the study of the legal can turn from structures to *discourses* that are reduced to the basic binary schema of legal/illegal or allowed/prohibited. By paying attention to the coding it will be possible to draw the line between *legal* discourses and other discourses that use a different codification to programme their regulatory operations. Admittedly, it is not a very clear line and it can easily regress to a debate on the semantics of the legal and other kinds of norms, most notably moral ones. In order for the circularity of this discussion to be avoided and especially if one does not want to buy into the whole of systems theory, some further qualifying factors must be introduced.

The legal discourses I refer to are institutionalized in that they create generalized expectations that are confirmed by a third party by being either enforced or confirmed and re-established in cases of their having been disappointed.[8] With this shift of focus from *legal orders* to legal *discourses* there is no reason why one should not be attentive to phenomena of regulation, which one would never imagine calling legal from a positivistic point of view or in the light of a persistent and rigid adherence to semantics and definitions of the law.[9] The list of such discourses can be endless. It would include instances of legality ranging from the rules set by nightclubs and applied by their bouncers to the more intricate rules of associations or corporations. However, it must be emphasized that forming an exhaustive list would already be defeating the purpose, as it would amount to creating a *numerus clausus* of legal phenomena with the implicit aspiration to form a universal definition of law from that list.

Implicit in this understanding of institutionalization is the notion of commitment that Cover draws our attention to. Indeed, for a law to exist,[10] for the decision of a third party to be respected and followed, whether that third party be a bouncer or a disciplinary committee or indeed a court, it needs to be accompanied by a certain degree of commitment from all the parties. This means that the parties must be participants in those legal discourses so that the latter are genuine cases of communication. How participation is to be explained is immaterial at this stage. It might be a psychological process of internalization of the rules. It might be the outcome of practical reasoning each and every time such discourses are entered. It might even have to do with emotive reactions, which are so often and so lightheartedly rejected over rational reasons as explanations and justifications of rule following. What is crucial is that those legal discourses must be part of the participants' lives or, to allude to Cover, of their world- and jurisgenerative narratives. But I beg to differ from Cover in one important respect. Those narratives do not have to be shared by whole communities, whether they be insular or not. We all have personal narratives, our personal mythology explaining the world and our

place in it. Social coexistence and the formation of generalized narratives can be explained from the bottom up as the overlapping, intertwining, and mutual acceptance or rejection of these personal narratives or narratives that constitute the common grounds of groups of much looser bonds than the Amish or the Mennonites that Cover uses as examples. Kleinhans and MacDonald broaden the concept of legal pluralism in that way:

> A *critical* legal pluralism presumes that legal subjects hold each of their multiple narrating selves up to the scrutiny of their other narrating selves, and up to the scrutiny of all the other narrated selves projected upon them by others. (1998: 46)

Only when the legal commitment of clubbers who queue patiently at a bouncer's orders is treated as seriously as the legal commitment of communities with religious or other moral bonds will the pluralistic study of the law be able to move away from the essentially positivistic external study of groups to the study of legal discourses.

But how are we ever to achieve the internal point of view, if we do not share that commitment, so that we can diagnose and take these legal discourses seriously as such? The answer is that we cannot and this is what brings us to Santos's insights contained in his metaphor of giving voice to the South. It is also here that lies the value of Teubner's systems-theoretical thesis about collapsing the levels of participation and observation in order to do justice to the true content of a discourse. In order for the legal discourses not to be colonized by the observer, they have to be given their own voice. Legal pluralism will remain disabled for as long as it is believed that one can experience, understand and report the way a legal discourse operates in identical ways irrespective of whether one is a participant in the discourse or not. The only way of approaching a legal discourse and doing justice to it is by having an account of the participants themselves as to what it is that they do when entering that discourse and why. In that way of getting information, it might even turn out that, despite its normative aspect, this was not a legal discourse at all and that the *prima facie* indications were misread. Or it might be proven that the content of the commitment of the participants was very different to what an external observer would have imagined at first. A question arises here concerning how it is possible to form a *prima facie* impression about the legal character of a discourse so that the study can proceed from the point of view of legal pluralism. The *prima facie* criterion I have put forth is by and large a functional one. The reason is that any other measure that would be accompanied by the claim that normativity can make sense from outwith would already compromise the inherent diversity of the notion of legal pluralism by denying legal discourses the ability to be self-reflexive and autonomously theoretical.

However, sooner or later we must move from this *prima facie* functional criterion and the dispersed legal discourses must be evaluated. Otherwise, the meta-jurisprudential task of legal pluralism would remain silenced and the fallacy of positivism would be committed anew. I have shown that the

pluralistic knowledge of the legal cannot be acquired by or integrated in an institutionalized legal system.[11] Such an attempt would inevitably distort the informational input and misconstrue the plurality of legal discourses as a plurality of interpretations. Where, then, is all this meta-theoretical and meta-jurisprudential discourse to take place? I propose that the only available topos, at least at this stage, is legal scholarship.[12]

The research programme of academic legal studies seems to have become an extension of the law sanctioned by the state. At best, it occasionally expands into new areas of legal regulation, such as alternative dispute resolution mechanisms, but only because and to the extent that the latter are endorsed by or co-ordinated with state law. However, this current situation is nothing but a historical contingency[13] that needs to be critically reexamined. Academic legal theory is in the uniquely advantageous position of being placed in a very loose institutional framework that can provide a forum, in which all those legal discourses that are not yet acknowledged as such and are therefore hastily deemed irrelevant for our understanding of the legal can reveal themselves, communicate with each other and establish the possibility of self-reflexive and mutual critique. Legal pluralism does not mean externally and clumsily trying to make state law more responsive by forcefully opening its eyes to other legal orders but *a radical rethinking of the way we perceive the legal*. To borrow an image from Santos, this radicalization can happen *if legal theory begins to live on the frontier*. Thinking in legal pluralistic terms, by being attentive to all the structural topoi that Santos draws our attention to, the study of law, and not only its critical strand[14] but of all kinds of theorizing the legal, will cancel its colonizing, patronizing self and become more attentive to the ways social discourses regulate themselves by examining all the instances of emergence of the legal phenomenon. Since it is impossible for an institutionalized law to be pluralistic, it is the institutionalized study of law that must become it. But first it must be relieved from the asphyxiating embrace of state law and all its agencies and also emancipate itself from the, so widely revered, monological legal theory of judges. If that is achieved, then academic legal studies will also suspend its own monopoly on legal theory, focus on the legal phenomenon in all its manifestations[15] and will be able to host all the available legal discourses and theories. Only with such a radical, emancipated broadening of the conception of the legal and legal theory, will all the aspects of legal pluralism will be given an environment, in which to flourish. It cannot be overemphasized that this shift of research focus should not take place in the manner of positivism or legal anthropology by applying pre-given criteria to *prima facie* legal orders. The study of the legal must be directed towards the discovery of alternative perceptions of the world and justice and of different practices of solving practical problems by accommodating competing interests as well as meeting the prerequisites of substantive justice. The question of law and justice then becomes one concerning our whole way of life, how we perceive and place ourselves in our surroundings.

NOTES

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1. The most prevalent distinction of theories of legal pluralism is that introduced by J. Griffiths (1986) between weak, juristic or classic legal pluralism on one hand and strong or new legal pluralism on the other. The former approaches legal pluralism always in the light of state law whereas the latter focus on social groups developing their own legal systems within the boundaries of a state. This distinction is often referred to as more or less authoritative both by authors who want to argue with it (see for instance the very recent and comprehensive account of theories of legal pluralism by A. Griffiths, 2002) and against it (Tamanaha, 1993). I choose not to follow that model for the simple reason that I do not think it really *is* a distinction. Many of the presumably 'strong' theories of legal pluralism are as weak as their classical counterparts in that they seek to discover and describe legal orders. This shared empirical approach is a much stronger criterion to go by than the rather contingent association with state law.
2. See Allott and Woodman (1985) and Griffiths (1986) regarding Galanter's (1981) notion concerning the decentred application of norms.
3. For the groundworks of a systems theory of law, see Luhmann (1985, 1988a and b, 1995a and b).
4. *Toward a New Common Sense* (de Sousa Santos, 1995) is a very complex work and it is not without great difficulty that one can put a finger on what exactly it is about. As Twining puts it: 'The result is rather like a gigantic sandwich containing a variety of succulent ingredients held together by a less appealing outer casing' (2000: 197). Although the analogy to a sandwich is not entirely convincing, Twining does have a point about the internal coherence of Santos's book.
5. Tamanaha puts forward such a conventialist (and non-essentialist, as he maintains) concept of law: 'Law is whatever people identify and treat through their social practices as law (or *Recht*, or *droit* and so on)' (2000: 313).
6. Another theory of legal pluralism that focuses on epistemology and the law as the integrative medium of different perceptions of reality is that offered by Warwick Tie (1999).
7. Tamanaha (1993) offers a critique of legal pluralism precisely on grounds of the question what it is that makes it so 'legal'. However, there are two fundamental problems with his argument. First of all, he relies too much on Griffiths' distinction between weak and strong legal pluralism, thus not noticing that, seen from a point of view other than their connection to state law, it becomes clear that their differences are contingent and insignificant. Subsequently, he disregards non-empirical approaches. Secondly, Tamanaha puts forth arguments from legal semantics, reaching the conclusion that what legal pluralism describes as legal is a different category to state law and not merely a different kind of law. But the target of his critique does exactly the same. It starts off from state-legal categories and applies them to other 'legal' orders.
8. This functional approach of institutionalization is drawn from Luhmann's legal sociology. However, this does not mean that I necessarily endorse the whole understanding of the law as a congruent system of expectations, nor does it

mean that the latter is a package deal, the parts of which cannot be detached from it.

9. Masaji Chiba attempts to address the problems of theories of legal pluralism, which he attributes to the lack of an operational definition of legal pluralism. He defines legal pluralism as 'the coexisting structure of different legal systems under the identity postulate of legal culture in which three combinations of official law and unofficial law, indigenous and transplanted law, and legal rules and legal postulates are conglomerated into a whole by the choice of a socio-legal entity' (Chiba, 1998: 242). He sees the value of that definition in that it combines all the central features of most theories of legal pluralism, thus making them comparable and in that it provides an operational framework. In the light of my analysis, this definition does not go far enough, firstly precisely because it is a definition, which introduces rigid criteria of recognition, thus narrowing down the scope of legal pluralism, and, secondly, because it still relies heavily on categories such as 'legal structures', 'official' and 'unofficial' law and so on, that are neither descriptively not normatively useful.
10. It should be noted that although I mean commitment as a prerequisite of law, I do not put forth a strong metaphysical claim.
11. This is what Eberhard (2001) seems to suggest, drawing on Le Roy's notion on multilegalism.
12. André-Jean Arnaud (1998) emphasizes the need for legal education to take a legal pluralistic turn and points to such directions. MacDonald (2002) takes up this project in an autobiographical way.
13. There is obviously great scope for research in this field. Legal research, and especially doctrinal legal scholarship, must become more self-reflexive and answer questions concerning its connection with the state, its law and the legal profession, its role in the expansion of state law and the juridification of social relations, the character of law as an academic discipline, and so on.
14. For example see A. S. Manji (1999), who tries to urge legal feminism to a more legal pluralistic direction.
15. I should clarify here that my take on legal pluralism and the suggestion that legal theory must be the topos of celebration of the plurality of legal discourses might sound a utopian ideal only because they are developed on a rather high level of abstraction and I have offered no suggestions concerning the necessary middle theory that will determine the direction that the methodology of legal research must take.

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