Decolonising Legal Theory: The Rule of Law and the Legalisation of Legal Pluralism

César Bazán Seminario

Para citar este artículo: Bazán, C. (2024). Decolonising legal theory: The rule of law and the legalisation of legal pluralism *Via Iuris*, (36), 37 – 67. DOI: https://doi.org/10.37511/viaiuris.n36a2

Decolonising Legal Theory: The Rule of Law and the Legalisation of Legal Pluralism*

César Bazán Seminario**

Fecha de recepción: 09 de octubre de 2023

Fecha de evaluación: 09 de noviembre de 2023

Fecha de aprobación: 30 de noviembre de 2023

Para citar este artículo:

Bazán, C. (2024). Decolonising Legal Theory: The Rule of Law and the Legalisation of Legal Pluralism. *Via Iuris*, (36), 37 – 67. DOI: https://doi.org/10.37511/viaiuris.n36a2

*This paper was made possible by funding from the Centro de Investigación, Capacitación y Asesoría Jurídica (CICAJ) of the Faculty of Law of the Pontificia Universidad Católica del Perú.

**Law Department, Pontificia Universidad Católica del Perú, Lima, Peru. Part-time Professor of Law at the Pontificia Universidad Católica del Perú (PUCP); Ph.D. (des.) at the Institute of Sociology of the University of Freiburg; Master in Latin American Studies at the Freie Universität Berlin; Lawyer at the PUCP. ORCID: https://orcid.org/0000-0002-6039-0165. Google Scholar: https://scholar.google.com/citations?user=lTCyQpEAAAAJ&hl=es&authuser=2&sortby=pubdate. Email: cesar.bazan@pucp.edu.pe.

Decolonising legal theory: The rule of law and the legalization of legal pluralism

Abstract

This paper aims to show the theoretical limits of the rule of law concept when contrasted with legal pluralism, showing that it belongs to the modern/colonial matrix of laws, which creates an official law to the detriment of other illegalised and persecuted legal knowledge. This is a theoretical, qualitative, and decolonial research that gathers quantitative normative data, such as the expansion of the legalisation of legal pluralism to almost 40% of the world's countries. The originality consists of showing the links between law and coloniality and highlighting the theoretical crisis of the rule of law concept. In this scenario, the concept of the plural rule of law is put forward to continue the quest for epistemological justice.

Keywords: rule of law, epistemology, customary law, legal systems, indigenous peoples, constitutional law

Decolonizar la teoría jurídica: el Estado de Derecho y la legalización del pluralismo jurídico

Resumen

El objetivo de este trabajo es mostrar los límites teóricos del concepto Estado de Derecho cuando, contrastado con el pluralismo jurídico, muestra su pertenencia a la matriz moderna/colonial del Derecho, que crea un Derecho oficial en desmedro de otros saberes jurídicos ilegalizados y perseguidos. Esta es una investigación teórica, cualitativa y decolonial que recoge datos normativos cuantitativos, como la expansión de la legalización del pluralismo jurídico a casi el 40% de países del mundo. La originalidad del trabajo consiste en mostrar los nexos entre derecho y colonialidad y poner en evidencia la crisis teórica del concepto Estado de Derecho. En ese escenario, se plantea el concepto Estado plural de Derecho, que tiene como trasfondo avanzar en la búsqueda de justicia epistemológica.

Palabras clave: estado de Derecho, epistemología, derecho consuetudinario, sistemas legales, pueblos indígenas, derecho constitucional

Descolonizar a teoria jurídica: o Estado de direito e a legalização do pluralismo jurídico

Resumo

O objetivo deste trabalho é mostrar os limites teóricos do conceito de Estado de Direito quando, em contraste com o pluralismo jurídico, mostra que este pertence à matriz moderna/colonial do Direito, que cria um Direito oficial em detrimento de outros saberes jurídicos ilegalizados e perseguidos. Trata-se de uma pesquisa teórica, qualitativa e decolonial que reúne dados normativos quantitativos, como a expansão da legalização do pluralismo jurídico para quase 40% dos países do mundo. A originalidade do trabalho consiste em mostrar os vínculos entre direito e colonialidade e evidenciar a crise teórica do conceito de Estado de Direito. Neste cenário, propõe-se o conceito de Estado de Direito plural, com o objetivo de avançar na procura de uma justiça epistemológica.

Palavras-chave: estado de direito, epistemologia, direito consuetudinário, sistemas jurídicos, povos indígenas, direito constitucional

Décoloniser la théorie du droit : l'État de droit et la légalisation du pluralisme juridique

Résumé

L'objectif de cet article est de montrer les limites théoriques du concept d'État de droit lorsque, par contraste avec le pluralisme juridique, il montre qu'il appartient à la matrice moderne/coloniale du droit, qui crée un droit officiel au détriment d'autres connaissances juridiques illégalisées et persécutées. Il s'agit d'une recherche théorique, qualitative et décoloniale qui rassemble des données normatives quantitatives, telles que l'extension de la légalisation du pluralisme juridique à près de 40 % des pays du monde. L'originalité du travail consiste à montrer les liens entre le droit et la colonialité et à mettre en évidence la crise théorique du concept d'État de droit. Dans ce contexte, le concept d'État de droit pluriel est mis en avant, dans le but d'avancer dans la recherche d'une justice épistémologique.

Mots clés : etat de droit, épistémologie, droit coutumier, systèmes juridiques, peuples indigènes, droit constitutionnel

Introduction

In the Global South, local community laws and orders have been relegated by official state law at different times and places. For example, in Peru, in the 1990s, a rustler tried by the Rondero justice system retaliated by denouncing the Rondero justice system chiefs for the crime of kidnapping. The police then arrested the Ronderos. In the community's emergency assembly, a Rondero formulated a powerful critique of colonial/modern law and justice. This critique condensed the violence of the rule of law concept, which criminalizes and invalidates legal knowledge different from the official one. A community member said: "[Our minutes are not considered valid]. Only their documents [of the official justice system] are valid, only their minutes are valid" (translations by author) (De la Torre, 1997, p. 625).

In Nigeria and other African territories, local legal systems came to be considered repugnant by the colonisers. I refer specifically to the repugnancy clause introduced in the 19th century. Using the repugnancy doctrine, the coloniser established himself as the ultimate sense of justice and gave himself the power to invalidate so-called customary law when it violated principles of natural law under colonial standards (Taiwo, 2005). In India, indigenous practices “have either been pushed out of sight, or have been derecognised, illegalised, or simply ignored earlier as a result of colonisation and now in the post-colonial era in order to realise ‘modernisation’” (Eberhará and Gupta, 2005, p. 3).

This paper aims to show the theoretical limits of the rule of law concept when contrasted with legal pluralism, showing that it belongs to the modern/colonial matrix of laws, which creates an official law to the detriment of other illegalised and persecuted legal knowledge. In this paper, I argue that the disregard of non-state legal knowledge is part of the modern/colonial project and the coloniality of power (Quijano, 1992). In this context, the concept of the rule of law is part of this project, as it contributes to the theoretical framework, which concentrates in the hands of the State the power to give norms, legalise a certain legal order, and outlaw other legal orders. Consequently, the jurisdiction and legal enforcement were taken away from non-state collectives; other forms and ways of legal knowledge were, in turn, silenced and excluded by Modernity.

From a theoretical perspective, this paper will address the following research

question: How does the legalisation of legal pluralism theoretically change the concept of the rule of law? However, at the theoretical level, the rule of law is currently in crisis. Many territories in which the coloniality of power rules have modified their regulations to incorporate legal pluralism. The legalisation of legal pluralism openly challenges the colonial/modern conception of the rule of law as well as the hegemony of the State to say what law is, and it opens several possibilities for indigenous, tribal, and other collectives to escape criminalisation, invalidation, and repugnance.

Following this argumentation, it is necessary to globally leave behind the modern/colonial concept of the (universal) rule of law and replace it with one related to epistemic justice. The proposal that I will argue in this paper is what I would call the Rule of Plural Law.

In this paper, I will not analyse specific cases of legal plurality. I will not describe ethnographically the way justice is delivered by the "Rondas Campesinas" in Peru or by other collectives around the globe, nor will I judge the legal practices of the communities and collectives authorized to exercise their legal order.

Usually, the legalisation, both in the International Labor Organization Convention 169 and in the respective national constitutions, has limits for legal pluralism, such as the concern to respect human rights. I warn that, even for decolonial views, some juridical practices and legal knowledge could be incompatible with the values of the human being. Rejecting the epistemic violence promoted by modernity/colonialism does not mean accepting the violence exercised in subaltern communities by the actors belonging to those communities. However, making progress in dismantling epistemic violence is a step towards better observing and addressing other forms of human rights violence.

I am aware that thinking about the rule of law from the legalisation of legal pluralism may have a trap: accepting that the valid rules of the game are those of the State legal system. However, even if positioned from the colonial matrix, the concept of the Rule of Plural Law opens the possibility of legal practices that this same matrix rejects.

I consider that at the end of this paper, the reader will conclude that the objectives have been achieved and the research question answered. Detailed discussions can be found in each section, each of which will serve to work specific parts of the argument. Section 1 shows the methodology used. Section 2 discusses how the coloniality of power manifests in law and how the modern/colonial concept of the rule of law silences other legal knowledge. Section 3 shows the limits of the concept of the rule of law in the face

of legal pluralism, which has been legalised around the Globe. Finally, conclusions and suggestions for future research are presented.

Methodological Notes

This is a theoretical and decolonial investigation. It is theoretical because it aims to reflect on a specific concept, the rule of law, and how this concept is incoherent when contrasted with another concept from the same modern/colonial theoretical framework: legal pluralism; this second concept opens up the possibility for decolonial critique.

This decolonial gaze welcomes the invitation to think from the epistemologies of the South to blur abyssal lines of domination (Meneses and Bidaseca 2018). The ecology of legal knowledge, or ecology of justice, seeks to notice the absences produced by hegemonic social and legal sciences and to validate legal knowledge from the South (Araújo 2014, p. 85-93). To do so, I distance myself from an extractivist methodology that does not participate in the transformation of situations of domination.

The metaphor of extractivism methodology is used to criticise the academic praxis of approaching the South to extract information as if extracting raw materials and then transforming them into valid knowledge; in this way, relations of epistemic domination are reproduced.

The methodology used in this research distances itself from epistemic extractivism, and it validates non-official knowledge while participating in the transformation of situations of domination, such as those described at the beginning of this paper. I intend to build knowledge from the demand of social movements for the recognition of their legal system: the right to have laws.

The proposal for the Rule of Plural Law concept began when I spent time with Rondas Campesinas in Southern Peru in 2008. Furthermore, when I studied the Rondas of Northern Peru in 2011, I learned of more peasant and Indigenous justice initiatives in Peru, Bolivia, and Ecuador in the following years; such experiences have led me to learn and reflect on the spread of legal pluralism in other parts of the world.

Although the research is qualitative, quantitative information was also used. Specifically, to identify the widespread constitutionalisation of legal pluralism, the paper by Holzinger et al. (2019) was consulted; these authors reviewed all constitutions of UN countries and, without considering legal pluralism based on religion, identified the

acceptance of what they call customary law:

> Customary law includes provisions on one or more of the following types of provisions: the acknowledgement of its existence, its application through customary courts and dispute resolution, the specification of the jurisdiction, and the relationship to state law through collision rules (Holzinger, et al, 2019, p. 1791).

The other instrument to officially recognise legal pluralism is Convention 169, Indigenous and Tribal Peoples, Convention of the International Labour Organization, 1989. Articles 8 and 9 of this convention mention the authorization for indigenous and tribal peoples to exercise their own Law in a territory:

> Article 8
>
> 1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
>
> 2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
>
> 3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.
>
> Article 9
>
> 1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.
>
> 2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases. (ILO, 1989).

Consequently, states that have ratified ILO Convention 169, without reserving Articles 8 and 9, have chosen to legalise legal pluralism in their territory. The official website was consulted to obtain quantitative information on how many states have ratified Convention 169.

Finally, I have listed four states that have ratified legal pluralism through other means. In the United States, an important statute is the 1934 Indian Reorganization Act.

In Canada, s. 35 of the Constitution Act. 1982 allowed case law to develop Aboriginal jurisdiction. In Australia, there is the Native Title Act of 1993. In New Zealand there is, for example, the Treaty of Waitangi.

Law, Coloniality of Power, and Rule of Law

Law and Coloniality of Power

Research on the link between law and coloniality has been minimal. Nevertheless, works such as those about decolonising Human Rights (Barreto, 2018) or the decolonial feminist critique of the teaching of constitutional law (Garay, 2016) are inspiring, even though they receive less attention in the legal academy than they deserve; moreover, this global legal academy pays little attention to the relationship between coloniality and law; even local academic circles in the Global North and South also seem to disregard the link between coloniality and law. For instance, in Germany in 2012, a special issue of Kritische Justiz and Verfassung und Recht in Übersee was published, in whose editorial Dann and Hanschmann claimed postcolonial theories have received little attention in the German legal academy (Dann and Hanschmann, 2012). This view has been reiterated by Theurer and Kaleck (2020), who edited a volume named Dekoloniale Rechtskritik und Rechtspraxis and by interviews done by decolonial activists in the Global South.

From a decolonial perspective, it would be argued that modern law is, at the same time, a colonial law. At the end of the Middle Ages and during liberalism, according to the State's framework, European imperial powers were forging the other face of modernity: coloniality.

> Modernity originated in the medieval European cities, free centres of enormous creativity. But it was "born" when Europe could confront itself with "the Other" and control it, defeat it, violate it; when it could define itself as an "ego" discoverer, conqueror, colonizer of the Alterity constitutive of Modernity itself. (Dussel, 1994, p. 8).

When understanding modernity and coloniality as two sides of the same coin, is it only possible to consider the political conceptual framework of modernity by considering the context of colonization?

Epistemic injustice is generated by modernity's logic of exclusions. Modernity – or modern Western thought– is an abysmal thought that generates exclusions and non-

existence (Araújo, 2014). Therefore, knowledge is not produced through the different validation parameters of modern/colonial sciences, e.g., the law is considered non-existent and invalid. The worldwide colonial expansion brought with it the disappearance and invalidation of non-Western forms of knowledge. Subaltern voices and their socio-political, aesthetic, and religious values were deemed illegitimate in the face of modernity/coloniality.

Law and law enforcement institutions are usually the result of negotiations and impositions according to each society's context and conditions. Law is not an aseptic, impartial product or one that is alien to political debate. There is no purity in law, as Warat (1981) has suggested, or following Boaventura de Sousa (2018): “Law is not autonomous in relation to prevailing power relations in society in any relevant sense.” Besides, according to Quijano (1992, 2000), in the daily life of social relations, patterns of the coloniality of power are reproduced; following this idea, such patterns of power would also reflect on law and law enforcement.

From a post-colonial perspective, Darian-Smith (2013) suggested that European law was, in different ways, the formal and institutional mechanism employed by colonial governments to oppress and control colonies for centuries. In a decolonial way, Wolkmer and Henning argued that the law was, as a potent cultural artefact, central to the colonial enterprise and its patriarchalism Wolkmer & Heanning (2017). Dussel (2005) described Francisco de Vitoria as ‘the “father” of juridical Modernity in the question of European overseas expansion, that is, in the justification of the colonial world of the World-System’ since his juridical postulates in favour of the "duty of hospitality" and "society and natural communication" gave a juridical framework to the violent entry and transit of the European conquerors through the subalterns territories and, also, to the commercial exchanges that were beginning to operate within the centre-periphery logic (Dussel, 2005, pp. 50-52). Moreover, within the framework of *ius comune*, legal theories were applied to attribute the conquered territories to the Catholic Monarchs and to determine that the law in force in those lands was the Law of the king who carried out the occupation (Barrientos Grandón, 1999).

This is also the argument of Anghie (2004), who suggested that colonialism is central to the constitution of international law and its doctrine of sovereignty. Both arise from a distinction they have reinforced throughout their history: the difference between Europeans and non-Europeans, the civilised and the uncivilised. International law

maintains imperial structures, whose techniques and methods of domination continue and coexist in the present. In Anghie's view, exclusion and imperialism are partly at the heart and core of international law; his thought-provoking question then is: is it possible to create an international law that is not imperial? (Anghie, 2004).

The end of colonial rule in the Americas and Africa did not mark the end of the coloniality of power. On the contrary, the colonial matrix of power persists in many forms and variations. Although the colonial era ceased to exist, the forms of power and domination continue through different means. In other words, following Walter Mignolo (2009) metaphor, "the contents of the conversation would have changed, but not the terms of the conversation" (p. 259), or to quote a legal author, we refer to "the implantation of the basic structure that has continued to the present" (Tamanaha, 2021, p. 3).

Analysing the law from a decolonial approach means exploring the patterns of the coloniality of power within the law. By looking at the law through a decolonial lens, it becomes evident that it reproduces patterns of domination that persist even though the colonial stage has formally ended. The legal expression of the colonial matrix of power manifests itself through legal practices that create and reinforce differences through the world system. While the Global South remained on the periphery, the West maintained its privileged position in the centre through a hierarchy of domination based on ethno-racial differences.

Likewise, law and its practice would reaffirm the dominant discourse that places the human being, especially the healthy white heterosexual adult male, whose relations with the environment are based on the instrumentalisation of nature.

The decolonial option criticises modernity, which has as its counterpart the logic of domination of coloniality (Dussel, 1994). Mignolo (2009), following Grovogui, in a text on human rights, highlighted the complementarity and simultaneity between modernity and coloniality that inhabits the juridical through, for example, the control of undesirables or the military reinforcement of law to ensure salvation through the imposition of the interests of the capitalist economy.

The practice of law was highly complex, and the use of law experimented with several changes during the long colonial period. However, it can be said that lawyers were (and are) legal guardians of the coloniality of power (Bazán Seminario, 2019). At the same time, counter-hegemonic historical figures also existed, such as the lawyer Francisco de Falcón or the priest and jurist Bartolomé de las Casas. They used the

Western colonial matrix's philosophical, legal, and political strategies to defend indigenous peoples.

A decolonial view of law should be kept from understanding it simply as a mechanism of imposition by the dominant class, for which the state is consequently the guarantor of that domination. Instead, a decolonial perspective, focusing on the main themes of the coloniality of power, must pay attention to the complexities and contradictions with which power operates in law. This idea implies looking at the patterns of coloniality and other patterns of power constructed through the creation and implementation of the law and the contradictions in exercising power.

Against epistemic violence, considered as coloniality of knowledge (Lander, 2000), scholars recommended, on the one hand, to critically reread the "classics" of political theory to notice the colonial logic that was reproduced in their works (Garay Montañez, 2016). Boatcă (2015) worked this out for two authors of the catalogued canon of sociological theory, namely Marx and Weber. On the other hand, Escobar (2005) suggests that debates in social science, specifically in anthropology, have not raised an epistemological critique, which evidences the *locus of enunciation* from which they arise. In this sense, anthropological knowledge other than that which is produced in the Global North has been ignored or silenced. Because of this, Escobar proposes the emergence of anthropologies of the world. Furthermore, he suggests paying attention to the anthropological knowledge produced in the Global South, which does not necessarily follow the rules of knowledge production of hegemonic anthropology.

In the process of legal knowledge formation from a particular locus of enunciation as universal knowledge –which also implies the silencing of non-modern knowledge– the concept of the rule of law became fundamental to understanding democratic States because it was the main criterion of evaluation.

Modern/colonial Rule of Law and the Disregard of Different Legal Orders

Like many of the concepts of Western social sciences, the concept of the rule of law was developed in Europe and found a parallel development in the terms rule of law, *Rechsstaat,* and *État de Droit*. Although these terms differ, they are not really that far apart. “The Anglo-Saxon usage, connected with the expression rule of law, is not so different from the previous one [Rechtsstaat], although it may vary in the idea of the system and in the special attention to the so-called natural justice (the result of its judicial

projection)" (De Asis Roig, 2006, p. 325). The substratum common to all is legality as a mechanism for limiting power under the normative premise of the nation-state.

The emergence of the concept of the rule of law has three sources that are part of the process of modern state formation in Western Europe: the controversy between kings and popes over supremacy, the coexistence with Germanic common law, and the promulgation of the Magna Carta (Tamanaha, 2004). Tamanaha (2004) agreed that the supremacy of law was the principal foundation of political theory in the Middle Ages, while the emphasis on the preservation of individual liberty was the characteristic feature of the rule of law during liberalism, which emerged in the late sixteenth and seventeenth century.

This modern/colonial concept of the rule of law can basically be defined as follows:

> To put it simply, the rule of law is the principle that the State is bound to uphold its laws effectively and to act according to clearly defined prerogatives. The rule of law, therefore, is understood as containment and limitation of the exercise of state power. (Merkel, 2004, p. 39).

The problem is that the Global North model of the rule of law is stripped of its locality and becomes a universal benchmark, excluding other ways of legally organising power.

Merkel, Puhle, Aurel, Eicher, & Thiery (2003) developed a theoretical framework that works to qualify democracies at the global level. The criticism of this work is that the model to be followed is the ideal of modern/colonial democracy, which is proposed as a universal model. A democracy in the Global South is a "defekte Demokratie" if it does not meet a number of parameters of the democracies of the Western countries that are dominant in global geopolitics. Similarly, the World Justice Project (2020) developed the Rule of Law Index based on parameters it considers validly universal to be applied to any political regime worldwide. Both investigations work with the concept of the modern/colonial rule of law.

The legal epistemic violence is also reproduced in United Nations legal documents, specifically in the 2012 Declaration on the Rule of Law (United Nations, General Assembly, 2012). This resolution begins by affirming "commitment to the Rule of Law and its fundamental importance for political dialogue and cooperation among all States" and, for the further development of international peace and security, human rights,

and development. What concept of the rule of law is assumed in this declaration? One that places the state legal system in a higher rank than the law of peoples and collectives, accepted and legalised by the legal pluralism of these states. Even in the UN Declaration, other legal systems are not called laws. On item 15, the UN timidly mentioned "informal justice mechanisms," omitting to call by name the non-state legal knowledge, specifically the production of law and the administration of justice throughout the world, that is generically called community, indigenous, or tribal justice.

The “universal” concept of the rule of law is mainstream but contested. On the one hand, critical voices analyse how the rule of law has been used to legitimise destructive projects in the periphery. Based on analysis rich in casuistry, Mattei and Nader (2008) argued that the rule of law had been a tool that has historically legitimized plunder. In contrast, they argued that we must move to the people’s rule of law framework, characterized by greater protection for those who have been victims of plunder.

On the other hand, a geopolitically strong actor seeks to give the rule of law content that serves its imperial project: the Plan on Building the Rule of Law in China (2020-2025). Chinese practices in the Global South do not contradict the coloniality of power but configure a form of “para-coloniality.” Their extractivist practices in the Global South are underpinned by the colonial exercise of power. (Rodriguez & Bazán Seminario, 2023).

In the discussion on the mainstream concept of the rule of law, the legalisation of legal pluralism generates a theoretical crisis, which leads to a dead end. The way out is to modify the content of the concept of the rule of law; on the expansion of legal pluralism and the theoretical crisis, I argue below.

The Conceptual Crisis of the Rule of Law and the Spread of Legal Pluralism

Legal pluralism is quite widespread across the globe. I refer, mainly because my argumentation is theoretical, to the framework of the official recognition of legal pluralism into the normative order of a state. Theoretically, the official recognition of legal pluralism puts the modern/colonial understanding of the rule of law in crisis.

Legal Pluralism and the Conceptual Crisis of the Rule of Law

There has been an interesting debate on legal pluralism for several years in the Global North; understood as the coexistence of more than one legal system in the same

socio-political space, the contributions of legal anthropologists have nourished the concept of legal pluralism. Pospíšil's notion of law and legal levels (1971), Moore's (1978) semi-autonomous spaces (1978), Griffiths' strong and weak legal pluralism (1986, or Anne Griffiths 2002), Boaventura de Sousa Santos' interlegality (1987) are milestones in the Global North's debates on the concept of legal pluralism (Guevara Gil & Thome 1992), which seems to be a watershed concept that generates great adhesions and strong rejections (Benda-Beckmann, 2002).

For their part, scholars on the Global South have also participated extensively in these discussions (Guevara Gil & Thome 1992; Taiwo 2005; Eberhará & Gupta 2005; Sánchez Botero 2014; Wolkmer 2017; Gebeye 2017; Zenker y Hoehne 2018; Lazarev 2019, among others). The explanatory power of legal pluralism has made it possible to generate interpretations that embrace the cultural and, in particular, the legal diversity of the societies of the Global South. It has also exposed the limitation of states established under the violent foundation of the nation-state and the state monopoly on legitimate violence.

The official incorporation of legal pluralism directly challenges at least two elements of the rule of law concept into the normative order of a state: the state hegemony to produce legal norms and the state monopoly to exercise legitimate violence.

Regarding the first element, the concept of the rule of law is linked to the Western ways defined by the state for producing legal norms, i.e., the sources of law. The two most widespread legal traditions originating in the Global North are Civil Law and Common Law. In both systems, state agents are the most important actors in the production of law: parliament by passing laws, judges by issuing jurisprudence, the executive and parliament by agreeing on international treaties, and the executive by issuing decrees, among others.

The official incorporation of legal pluralism calls into question the current models of sources of law in which the state plays a hegemonic role. Due to legal pluralism, non-state actors are more prominent as official sources of law.

The acceptance of legal pluralism also has an impact on the hierarchy of sources of law. In the civil system, customs are a source of law devised within the matrix of Western thinking. It gives legal value to practices repeated and continued over time, with a sense of obligation, carried out by individuals of a human group. In the normative hierarchy of the Kelsenian pyramid are the norms with constitutional rank. In second

place are rules with legal rank. Custom has no particular place in the normative pyramid. In fact, "custom does not fit readily into Kelsen's picture" (Stewart, 1990, p. 286), which emphasises state norms. If customs contradict a state act, the state justice system will opt for the state act. The low rank of custom as a source of law undermines the concept of legal pluralism, which legalises the coexistence of two or more legal systems in the same territory.

Regarding the second aspect, the incorporation of legal pluralism collides with the state monopoly on legitimate violence because, according to this rule, violence exercised by private persons cannot be justified except in exceptional cases (Grimm, 2006, p. 20). Moreover, recognizing legal plurality implies that specific communities, when exercising their law, can use coercive measures to put their law into practice. In other words, theoretically, legitimate violence is not a monopoly of the state anymore; instead, private communities are legally authorized to use this violence. However, it is not just any private person appointed to exercise legitimate violence but those authorized by normative systems, which are authorized by the rules of legal pluralism.

As we can see, the official incorporation of legal pluralism puts the concept of the rule of law in crisis. However, this crisis is not confined to a specific locality; the shock wave of the crisis is reaching further and further afield.

The Spread of Legal Pluralism Over the Globe

In the following lines, I will show the extension of legal pluralism worldwide through constitutions and the ratification of Convention 169 of the International Labour Organisation. I will use textual quotations from norms so the reader can appreciate the wording used for legalizing legal pluralism.

The constitutions are the most used instruments for the wider official recognition of legal pluralism. The constitutionalization of customary law provisions is higher than one might think. Taking as a universe the 193 countries member of the United Nations, "94 recognize the existence of indigenous communities and their traditional or customary institutions" (Holzinger, et al., 2019, p. 1776).

It should be clarified that the acceptance of customary law does not mean that the country adhered to full recognition of legal pluralism; in many countries, it is a matter of partial recognition, with clauses limiting it.

The result was that 53 UN states recognized customary law in their constitutions, meaning that 27.5% of the world's UN countries are committed to the recognized forms of legal pluralism in their constitutions[3].

Regarding Africa, Gebeye (2017) argues that although every African state contains a supremacy clause in favour of the constitution, several constitutions recognize legal pluralism. This recognition occurs in various African constitutions, especially in the first, third, and fourth waves of them.

In particular, Namibia's case is considered paradigmatic regarding the resurgence of traditional political institutions (TPI) in that country's constitution. To describe the incorporation of legal pluralism in the Namibian constitution, Holzinger, Kern and Komrey (2020) note:

> Today, TPI in Namibia are strongly integrated into state structures on the constitutional and legal level. The Namibian constitution of 1990 acknowledges TPI in regard to two aspects: First, article 66(1) recognizes customary law as one of Namibia's sources of law. Traditional authorities, who feature in customary law, are thus implicitly acknowledged by the constitution. Second, article 102(5) presupposes the existence of traditional authorities, as it allows for the establishment of a Council of Traditional Leaders that advises the president on all matters of interest to traditional authorities. Beyond constitutional recognition, there are a number of laws and statutes which regulate the relationship of traditional and state institutions. (Holzinger, Kern & Komrey, 2020, pp. 975-976).

In Latin America, to take the Andean countries as examples, the Colombian Constitution (1991) and the Peruvian Constitution (1993) are part of a generation of constitutions that deal similarly with legal pluralism.

Table 1. Legalisation of legal pluralism in the constitutions of Colombia and Peru

Constitution of Colombia (1991)	**Constitution of Peru (1993)**

[3] Afghanistan, Angola, Bangladesh, Benin, Bolivia, Botswana, Chad, Colombia, Democratic Republic of the Congo, Ecuador, Ethiopia, Fiji, Gambia, Ghana, India, Indonesia, Kenya, Kyrgyzstan, Lesotho, Liberia, Malawi, Malaysia, Marshall Islands, Mexico, Federated States of Micronesia, Mozambique, Namibia, Nigeria, Pakistan, Palau, Papua New Guinea, Paraguay, Peru, Philippines, Rwanda, Saint Kitts and Nevis, Samoa, San Marino, Sierra Leone, Solomon Islands, Somalia, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Swaziland, Timor-Leste (East Timor), Tuvalu, Uganda, Vanuatu, Zambia, and Zimbabwe.

Article 246. The authorities of the indigenous [Indian peoples] may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures as long as these are not contrary to the Constitution and the laws of the Republic. An Act shall establish the forms of coordination of this special jurisdiction with the national judicial system.[4]	Article 149. Authorities of peasant and native communities, in conjunction with the peasant patrols, shall exercise jurisdictional functions at territorial level in accordance with customary law, provided they do not violate the fundamental rights of the individual. The law provides for the way of coordination of such jurisdiction with justice-of-the-peace court and other instances of the Judiciary.[5]

Note: Table elaborated by author

The constitutions of Ecuador (2008) and Bolivia (2009) share more extensive cultural and legal plurality developments as part of the so-called 'Nuevo Constitucionalismo Latinoamericano'. Although the 'Nuevo Constitucionalismo Latinoamericano' may be criticized for continuing undemocratic practices (Gargarella, 2018), its constitutions openly accept legal pluralism. Such is the case of the Bolivian constitution, which recognizes the state as plurinational. Article 30.II.14 states that the indigenous native peasant nations and peoples enjoy the right to have political, legal, and economic systems following their worldviews. Between articles 190 and 192, there is a chapter in the constitution dedicated to the native indigenous and peasant jurisdiction. I quote the first and part of the second of these articles:

> Article 190
>
> I. The nations and native indigenous rural peoples shall exercise their jurisdictional functions and competency through their authorities, and shall apply their own principles, cultural values, norms and procedures.
>
> II. The rural native indigenous jurisdiction respects the right to life, the right to defence and other rights and guarantees established in this Constitution.
>
> Article 191

[4] Translation by Constitute Project: https://www.constituteproject.org/constitution/Colombia_2015.pdf?lang=en (last visit on 24.10.2022)
[5] Translation by Ace Project: https://aceproject.org/ero-en/regions/americas/PE/peru-constitution-as-amended-to-1993-english/view (last visited on 24.11.2022)

The rural native indigenous jurisdiction is based on the specific connection between the persons who are members of the respective nation or rural native indigenous people.[6]

As stated in the methodological notes, the second source for accounting for the legalisation of legal pluralism is ILO Convention 169. In 2023 ILO convention 169 was ratified by approximately 12,4% world's countries (recognized as members of the United Nations). Its date of entry into force was 5 September 1991.

Expressly, 42,8% of the countries of the Americas have ratified the ILO Convention 169, which is more than in any other continent. In second place is Europe, with six ratifications. Finally, at the end of the list are Africa, Asia, and Oceania, each with only one ratification per continent.[7]

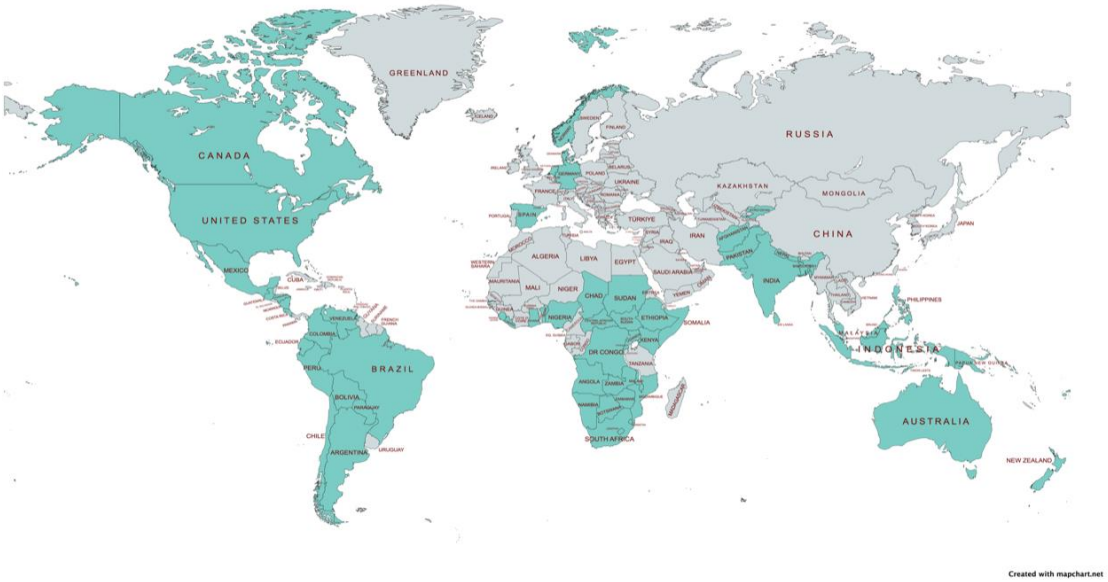
Countries such as the United States of America, Canada, Australia, and New Zealand have not ratified Convention 169, and they are not included in the list made by Holzinger, et al. (2019) because their constitutions do not expressly recognise what is known as customary law. However, it has been demonstrated that legal pluralism is also legalised in these countries.

Legal pluralism is legalised in the Americas and Africa, as well as in certain countries of Europe, Asia, and Oceania. The map below shows that the legalisation of legal pluralism extends to approximately 40% of the world's countries. This gives us an idea of the extent of the rule of law's conceptual crisis.

[6] Translation by Constitute Project: https://www.constituteproject.org/constitution/Bolivia_2009.pdf (last visited on 24.11.2022)

[7] Countries and ratifications date: Argentina (03 Jul 2000), Bolivia (11 Dec 1991), Brazil (25 Jul 2002), Central African Republic (30 Aug 2010), Chile (15 Sep 2008), Colombia (07 Aug 1991), Costa Rica (02 Apr 1993), Denmark (22 Feb 1996), Dominica (25 Jun 2002), Ecuador (15 May 1998), Fiji (03 Mar 1998), Germany (23 Jun 2021), Guatemala (05 Jun 1996), Honduras (28 Mar 1995), Luxembourg (05 Jun 2018), Mexico (05 Sep 1990), Nepal (14 Sep 2007), Netherlands (02 Feb 1998), Nicaragua (25 Aug 2010), Norway (19 Jun 1990), Paraguay (10 Aug 1993), Peru (02 Feb 1994), Spain (15 Feb 2007), Venezuela (22 May 2002). Source: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314 (last visited on 24.11.2022).

Legalising Legal Pluralism Over the Globe



Note: In green, countries in which legal pluralism has been legalised.

Sources: Holzinger, et al. 2019; ILO 169; case law and standards from the United States of America, Canada, Australia, and New Zealand.

I suggest that the consequence of adopting legal pluralism in all these countries is that the concept of the rule of law faces a theoretical crisis because at least two components of the concept are under question: state hegemony of law and the state monopoly of force. The official acceptance of legal pluralism makes it necessary to rethink the coherence of continuing to use the concept of the rule of law. Using insights provided by the decolonial option, I propose overcoming this crisis by using the Rule of Plural Law concept.

Conclusions

From Crisis to Theoretical Reformulation - The Rule of Plural Law

The legal and theoretical frameworks that underpin the political project of modernity/coloniality are deeply shaped by the coloniality of power. Concepts that overshadowed, criminalised and rejected other legal knowledge were created in law –as a contested space–. In its ideological and historical development, the concept of the rule of law constructed the entelechy that only the law from the sources of law is in force. In

this way, populations and communities were eliminated from the official legal landscape. However, although this was theoretically possible, it was practically unfeasible.

Through the cracks in colonial/modern law, legal pluralism was legalised in countries worldwide. This development opens up the possibility that the law of communities and collectives can be considered valid. However, this does not mean that law has ceased to be colonial/modern. In legal theory, there is still resistance to accepting what the norms of pluralism already legalise. In this sense, generating proposals is necessary to reformulate/decolonise the conceptual framework of law.

Nourished by a critical reading of the rule of law, close to Mattei and Nader (2008), my proposal for a Plural Rule of Law has its locus of enunciation in the Global South, and it moves towards what Dussel (2004) calls "transmodernity". Transmodernity is an upcoming moment in history in which the construction of knowledge is no longer Eurocentric. Civilizations excluded by the myth of Modernity now assume the challenges of Modernity but respond from another place of enunciation, i.e., from their own cultural experiences; from this position, they have a greater capacity to provide answers unimaginable from a Eurocentric viewpoint (Dussel, 2004, p. 18).

The Rule of Plural Law is not restricted to the Andean Region as the expansion of legal pluralism has meant that its theoretical validity crosses continental borders; it is verified in 39% of the countries in the world that have ratified ILO Convention 169, modified their constitutions or others legal documents to legalise the implementation of other normative orders in the same geopolitical space. The crisis is palpable in America and Africa, so it is expected that proposals will emerge from these externalities, providing answers to problems that are not perceived as urgent in the Global North.

The Rule of Plural Law concept is part of a project of epistemological justice. In opposition to the rule of law, this concept reflects the official recognition of legal pluralism, which rescues non-state legal knowledge from exclusion and facilitates the questioning of relations of coloniality that give more importance to knowledge produced in the Global North than in the Global South.

In contrast to the rule of law, the Plural Rule of Law emphasises that other law systems are legally legitimate in a geopolitical space. Consequently, on the one hand, the legally accepted sources of law are not only those traditionally accepted in Western Europe but also ones that show how the peoples and communities create and put laws into practice. Although legitimising many sources of law can open the door to a diversity

of legal ideas, it also presents several challenges, especially for lawyers and law schools, as they will have to try to learn and know all the sources of law used in their territories. On the other hand, the monopoly of legitimate violence disappears, but not completely. There is still state hegemony for the use of violence. The challenge is how to redesign and articulate law enforcement systems.

Another avenue of research relates to human rights in the Rule of Plural Law. Just as the state, the law has its limits, and so does the law of the peoples and communities; respect for human rights would, therefore, be one of the limits, nevertheless, understanding human rights from a critical and decolonial perspective and not as created and reproduced from a modern/colonial matrix. From a decolonial perspective, Mignolo (2012) argued that the 'Human' of Human Rights has a locus of enunciation: The Modernity of Occident. Barreto (2018) proposes decolonising human rights as part of a broader epistemological decolonisation project that displaces Eurocentrism and re-contextualizes legal knowledge based on dialogue and the affective relationship between modern reason and emotions. However, the challenge is to re-create human rights decolonially and interculturally so they can serve as a guideline for observing the performance of justice systems.

The Rule of Plural Law is an open concept under construction; its virtue is that it is theoretically consistent with the choice of states to legalise legal pluralism, and it respects non-state legal knowledge. However, the content of the concept will be nurtured in each state by legally accepted legal systems.

This proposal for a decolonial interpretation of law is not only restricted to the concept of the rule of law nor to a theoretical discussion. On the one hand, along with disputing the meaning of the rule of law, it is necessary to question other concepts commonplace in law, such as judicial and fiscal independence and the right to property, among others. Judicial and fiscal independence is difficult to conceive of if the law itself is not independent but dependent on modernity/coloniality. Property law is one of the linchpins of liberal/colonial law that –despite its violent imposition– does not respond to the legal practices of a large part of the world's population. On the other hand, the theoretical proposal of a Rule of Plural Law has practical applications. Acceptance of this concept by public officials would positively impact reducing the criminalisation and punishment of members of collectives and communities. People should not be imprisoned for exercising their own law order, authorised by the constitution or ILO Convention 169

References

Anghie, A. (2004). *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press.

Araújo, S. (2014). *Ecologia de justiças a Sul e a Norte. Cartografias comparadas das justiças comunitárias em Maputo e Lisboa*. (Unpublished PhD thesis) Coimbra University.

Barreto, J. (2018). Decolonial Thinking and the Quest for Decolonising Human Rights. *Asian Journal of Social Science, 46*(4-5), 484 - 502.

Barrientos Grandón, J. (1999). Un canonista peruano del siglo XVII: Feliciano de Vega (1580-1640). *Revista Chilena de Historia del Derecho,* 18, 101-118.

Bazán Seminario, C. (2019). Lawyers as Legal Guardians of the Coloniality of Power. *RCSL Newsletter. International Sociological Association. Research Committe on Sociology of Law,* 2, 26-28.

Benda-Beckmann, F. (2002). Who´s afraid of Legal Pluralism? *Journal of Legal Pluralism and Unofficial Law, 34*(47), 37 - 82.

Boatcă, M. (2015). *Global Inequalities Beyond Occidentalism.* Ashgate Publishing Limited.

Constitución Política del Estado de Bolivia [CPE]. (2009).

Constitución Política de Colombia [C.P.]. (1991).

Constitución de la República de Ecuador [C.P]. (2008).

Congreso de la República de Perú. (1993). Constitución Política de Perú [C.P.].

Dann, P., y Hanschmann, F. (2012). Postkoloniale Theorien, Recht und Rechtswissenschaft. Einleitung in den Schwerpunkt. *Kritische Justiz, 45*(2), 127-130.

Darian-Smith, E. (2013). Postcolonial Theories of Law. In R. Banakar, & M. Travers(Ed.), *Law and Social Theory* (pp. 247-264). Hart Publishing.

De Asis Roig, R. (2006). Sobre el concepto de Estado de Derecho. *Ius et Veritas, 16*(33), 324-331.

De la Torre, A. (1997). Caminos sin reciprocidad: el proceso de las rondas campesinas en la provincia de Cajamarca (1985-1993). In E. Gonzáles de Olarte, B. Revesz, & M. Tapia (Ed.), *Perú: El problema agrario en debate - SEPIA VI- Cajamarca* (pp. 617 - 639). Seminario Permanente de Investigación Agraria.

Dussel, E. (1994). *1492. El encubrimiento del Otro. Hacia el origen del "mito de la Modernidad".* Plural Editores.

Dussel, E. (2004). Transmodernidad e interculturalidad. Interpretación desde la Filosofía de la Liberación. *Erasmus: Revista para el diálogo intercultural, 5*(1-2), 1-28.

Dussel, E. (2005). Origen de la filosofía política moderna: Las Casas, Vitoria y Suárez. *Caribbean Studies, 33*(2), 35-80.

Eberhará, C., y Gupta, N. (2005). Legal pluralism in India: An Introduction. *Indian Socio-Legal Journal,* 31, 1-10.

Escobar, A. (2005). *Más allá del Tercer Mundo. Globalización y diferencia.* Instituto Colombiano de Antropología e Historia.

Garay, N. (2016). Reflexiones sobre las contribuciones del pensamiento «decolonial» en la enseñanza del derecho constitucional. *Pensamiento Constitucional, 21*(21), 81 - 105.

Gargarella, R. (2018). Sobre el "Nuevo constitucionalismo latinoamericano". *Revista Uruguaya de Ciencia Política, 27*(1), 109 - 128.

Gebeye, B. A. (2017). Decoding legal pluralism in Africa. *The Journal of Legal Pluralism and Unofficial Law, 49*(2), 228 - 249.

Griffiths, J. (1986). What is Legal Pluralism? *Journal of Legal Pluralism and Unofficial Law, 18*(24), 1-55.

Griffiths, A. (2002). Legal Pluralism. In Banakar, R. & Travers, M. (Ed.), *An Introduction to Law and Social Theory* (pp. 289 – 310). Hart Publishing,

Grimm, D. (2006). Das staatliche Gewaltmonopol. In F. Anders, & I. Glicher-Holtey (Ed.), *Herausforderungen des staatlichen Gewaltmonopol. Recht und politisch motivierte Gewalt am Ende des 20. Jahrhunderts* (pp. 18 - 38). Campus Verlag.

Guevara, A., y Thome, J. (1992). Notes on Legal Pluralism. *Beyond Law, 2*(5), 75 - 102.

Holzinger, K., Haer, R., Bayer, A., Behr, D., y Neupert-Wenz, C. (2019). The Constitutionalization of Indigenous Group Rights, Traditional Political Institutions, and Customary Law. *Comparative Political Studies, 52*(12), 1775-1809.

Holzinger, K., Kern, G., y Komrey, D. (2020). Explaining the Constitucional Integration and Resurgence of Traditional Political Institutions in Sub-Saharan Africa. *Political Studies, 68*(4), 973 - 995.

International Labour Organization [ILO]. (1989). Indigenous and Tribal Peoples Convention, 1989. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169,/Document

Lander, E. (2000). *La colonialidad del saber: eurocentrismo y ciencias sociales. Perspectivas latinoamericanas.* Consejo Latinoamericano de Ciencias Sociales.

Lazarev, E. (2019). Laws in Conflict: Legacies of War, Gender, and Legal Pluralism in Chechnya. *World Politics, 71*(4), 667-709.

Mattei, U., & Nader, L. (2008). *Plunder. When the rule of law is Illegal.* Blackwell Publishing.

Meneses, M. y Bidaseca, K. (2018) Introdução: As Epistemologias do Sul como expressão de lutas epistemológicas e ontológicas. In Meneses, M. y K. Bidaseca (Coord.) *Epistemologías del Sur*. (pp. 11-21). Consejo Latinoamericano de Ciencias Sociales.

Merkel, W., Puhle, H., Aurel, C., Eicher, C., y Thiery, P. (2003). *Defekte Demokratie*. VS Verlag für Sozialwissenschaften Wiesbaden.

Merkel, W. (2004). Embedded and Defective Democracies. *Democratization, 11*(5), 33-58.

Mignolo, W. (2009). La idea de América Latina (la derecha, la izquierda y la opción decolonial). *Crítica y Emancipación*, 2, 251-276.

Mignolo, W. (2012). Who Speaks for the "Human" in Human Rights? In J.-M. B. (Ed.), *Human Rights from a Third World Perspective: Critique, History and International Law* (pp. 44-64). Cambridge Scholars.

Moore, S. (1978). *Law as Process: An Anthropological Approach.* Routledge and Kegan Paual.

Pospíšil, L. (1971). *Anthropology of Law: A comparative theory.* Harper & Row.

Quijano, A. (1992). Colonialidad y Modernidad/Racionalidad. *Perú Indígena, 13*(29), 11 - 20.

Quijano, A. (2000). Colonialidad del poder, eurocentrismo y América Latina. In E. Lander (Comp.), *La colonialidad del saber: eurocentrismo y ciencias sociales. Perspectivas latinoamericanas* (pp. 122-151). Consejo Latinoamericano de Ciencias Sociales.

Rodriguez, F., y Bazán Seminario, C. (2023). Authoritarian practices between 'para-coloniality' and 'cheap security': when Chinese state capital meets neoliberal copper mining (and protests) in Las Bambas, Peru. *Globalizations*, 20, 1-19. DOI: 10.1080/14747731.2023.2179813.

Sánchez Botero, E. (2014). Algunos presupuestos epistemológicos y metodológicos de la antropología jurídica. In M. Castro Lucic (Ed.), *Los puentes entre la antropología y el derecho. Orientaciones desde la antropología jurídica* (pp. 143 - 188). Universidad de Chile.

Sousa, B. (1987). Law: A Map of Misreading. Toward a Postmodern Conception of Law. *Journal of Law and Society*, 13, 299-336.

Sousa, B. (2002). Toward a Multicultural Conception of Human Rights. In B. Hernández-Truyol (Ed.), *Moral Imperialism. A Critical Anthology* (pp. 39 - 60). University Press.

Sousa, B. (2018). Para una teoría sociojurídica de la indignación: ¿es posible ocupar el derecho? In B. S. Santos, *Bifurcaciones del orden. Revolución, ciudad, campo e indignación* (pp. 243-266). Trotta, Siglo del Hombre editores.

Stewart, I. (1990). The Critical Legal Science of Hans Kelsen. *Journal of Law and Society*, *17*(3), 273 - 308.

Taiwo, E. (2005). Repugnancy clause and its impact on customary law: Comparing the South African and Nigerian positions-Some lessons for Nigeria. *Journal for Juridical Science, 34*(1), 89-115.

Tamanaha, B. (2004). *On the rule of Law. History, Politics, Theory.* Cambridge University Press.

Tamanaha, B. (2021). Legal Pluralism across the Global South: Colonial Origins and Contemporary Consequences. *Journal of Legal Pluralism and Unofficial Law*, 21, 1-64. DOI: 10.1080/07329113.2021.1942606

Theurer, K., & Kaleck, W. (2020). Dekolonialisierung des Rechts - Ambivalenzen und Potezial. In K. Theurer, & W, Kaleck, (Ed.), *Dekoloniale Rechtskritik und Rechtspraxis* (pp. 11-58). Nomos.

United Nations, General Assembly. (2012). Declaration of the High-level Meeting of the General Assembly on the rule of law at the National and International Levels. *Resolution adopted by the General Assembly*.

Warat, L. A. (1981). *A purezo do poder. Uma análise crítica da teoria jurídica.* Universidad Federal de Santa Catarina.

Wolkmer, A. C. (2017). *Teoría crítica del derecho desde América Latina.* Akal/Interpares.

Wolkmer, A. C., & Heanning, A. C. (2017). Aportes saidiano para um Direito (Des)Colonial: sobre iconologia de revoluções e odaliscas. *Seqüência*, 77, 51-88.

World Justice Project. (2020). *rule of law Index 2020.* World Justices Project.

Zenker, O., & Hoehne, M. V. (2018). *The State and the Paradox of Customary Law in Africa.* Routledge.