

Legal Pluralism as Opposed to Ronald Dworkin's 'One Right Answer'

A Legal Appraisal

Md. Shoaib Bin Habib*

Abstract

Legal Pluralism and One Right Answer are two prominent theories within jurisprudence. The former proposition is a theoretical construct primarily posited by John Griffiths, while the latter is an outstanding thesis advanced by Ronald Dworkin. Nevertheless, a comparative analysis of these two theories has been limited to determine the optimal approach. This article compares two ideas in their efficacy in resolving challenging cases. The premise posits that Legal Pluralism is a suitable counterpoint to Ronald Dworkin's One Right Answer and is a superior method for addressing intricate matters. The article additionally illustrates the domains in which the two theories have undergone legal evaluation.

Keywords: Legal Pluralism, One Right Answer, Ronald Dworkin, John Griffiths, Jurisprudence

Introduction

Two theories of jurisprudence are Legal Pluralism and One Right Answer. Legal pluralism is a situation wherein multiple legal systems exist concurrently within a given social sphere.¹ The recognition of Legal Pluralism has provided a productive area for cooperative efforts between legal philosophy and legal sociology disciplines.² Conversely, Ronald Dworkin's One Right Answer doctrine posits that judges can offer the best solution to legal problems despite challenging circumstances.³ Dworkin's legal philosophy and One Right Answer thesis have arisen in response to three major trends in modern jurisprudence: legal positivism, legal realism (including its offshoots of critical legal studies and postmodernism), and law and economics.⁴

* Student, LL.M., Law Discipline, Khulna University

¹ 'Legal Pluralism | Office of Justice Programs' (*Ojp.gov*, 2021) <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/legal-pluralism>> accessed 27 November 2021.

² Margaret Davies, 'Legal Pluralism' (2021).

³ Yingnan Zhao, *Do We Really Know Dworkin's 'One-Right-Answer' Thesis?* (SSRN 2021) <Zhao, Yingnan, Do We Really Know Dworkin's 'One-Right-Answer' Thesis? (March 20, 2018). Available at SSRN: <https://ssrn.com/abstract=3144793> or <http://dx.doi.org/10.2139/ssrn.3144793>> accessed 27 November 2021.

⁴ Stanislovas Tomas, 'Philosophy of Law as Advertising of Legal Arguments: Dworkin, Hart, Finnis, Durex, Coca Cola, IKEA, etc.' [2011] Philosophy of law as advertising of legal arguments:

On the other hand, Legal Pluralism is a theoretical framework that posits the existence of multiple legal systems within a given geographical area, which are not necessarily confined by the boundaries of a nation-state. The recognition of Legal Pluralism has provided a productive space for cooperation between legal philosophy and socio-legal disciplines. Dworkin posits in his thesis on the One Right Answer theory that legal arguments are essentially evaluative arguments about political morality. Consequently, his legal doctrine is based on the concept that most evaluative matters possess a singular correct solution. The rationale behind morally evaluative language reveals that it embodies the idea of objective truth or the possibility of error.⁵

The aim of this article is to ascertain whether Legal Pluralism theory can be utilized to challenge Ronald Dworkin's One Right Answer thesis via a legal evaluation. The present study employs a doctrinal methodology to differentiate between the two theories. This approach constitutes a vital aspect of the article's method. The research primarily relies on secondary sources, including pertinent books, articles, and journals, to gather data on the subject matter.

Legal Pluralism

Definition

Legal pluralism pertains to situations where multiple legal systems operate concurrently within a given social domain. Legal pluralism originated in colonial settings where the European legal system was superimposed on pre-existing indigenous techniques and is now widely acknowledged as an essential component of all legal processes. The present article in legal anthropology and sociology posits that a significant portion of social interaction is regulated by norms that are distinct from legal statutes and that it is possible for multiple "legal orders" to coexist within a given nation.

A legal system can grant the privilege of appeal to another system or for a litigant to select from various competing legal systems. Previous elucidations of plural legal systems centred solely on individual designs, whereas contemporary scholarship underscores the interplay among multiple systems. In general, plural legal systems exhibit differences in power dynamics, wherein the entities with greater authority can override the actions of those with a lesser charge. In colonial contexts, it was typical for the ruling powers to devise two distinct legal frameworks: one for the subjugated population and another for colonial officials.⁶

<https://www.academia.edu/42741815/Philosophy_of_law_as_advertising_of_legal_arguments_Dworkin_Hart_Finnis_Durex_Coca_Cola_IKEA_etc> accessed 11 January 2023.

⁵ 'Dworkin's 'One-Right-Answer' Thesis' (*Redalyc.org*, 2021)

<<https://www.redalyc.org/jatsRepo/4219/421943648001/html/index.html>> accessed 27 November 2021.

⁶ Ibid.

Various social organizations at the local level, including educational institutions, communities, corporations, and even criminal groups, possess their legal systems, albeit functioning within the confines of the national legal framework. Inter legality has been employed to denote the interaction among multiple legal systems.

Furthermore, legal plurality pertains to the coexistence of multiple legal systems that govern separate groups within a country. In certain regions, such as India and Tanzania, designated Islamic courts address matters about the Muslim community following Islamic law principles.

Scope

The concept of legal pluralism holds significant implications for policy and governance. In certain developing countries, non-state legal entities frequently assume responsibility for resolving most disputes, thereby maintaining considerable independence and authority. Legal pluralism is common in Bangladesh and other Asian countries formerly under British colonial rules, such as India, Pakistan, and Malaysia. The comprehension of legal pluralism is fundamental in comprehending the nature of arguments, the emergence of disputes in social interactions, the decision-making process regarding their resolution, their progression, their outcomes, and the interdependence between the resolution of one dispute and others.⁷

The concept of legal pluralism is ubiquitous and extends to all domains of human existence. There appears to be a vast array of legal frameworks across all social disciplines, ranging from the most localized to the most expansive global contexts. Many laws exist at various levels of governance, including those at the village, town, and municipal levels and the state, district, and regional levels. Additionally, numerous laws operate at the national, transnational, and international levels. In addition to the widely recognized legal systems, innumerable societies have distinct forms of law, including but not limited to customary law, indigenous law, religious law, and law that pertains to specific ethnic or cultural factions within a nation.

Furthermore, there has been an increase in quasi-legal practices, encompassing private law enforcement and dispute resolution, privately operated correctional facilities, and the ongoing evolution of the *lex mercatoria*, a set of international commercial laws predominantly established through private law-making endeavours. The validity of this argument is challenged by the existence of legal diversity, despite the law's frequent assertion of its authority over all pertinent matters.

Comprehending the origins of conflicts among individuals, the emergence and progression of disagreements in social contexts, the ultimate outcomes of such matches,

⁷ 'Legal Pluralism - an Overview | ScienceDirect Topics' <<https://www.sciencedirect.com/topics/computer-science/legal-pluralism>> accessed 7 April 2023.

and the impact of resolving a particular dispute on the coping mechanisms of individuals facing similar challenges necessitate an appreciation of legal pluralism.

The influence of non-legal norms, practices, and institutions significantly affects the outcome of legal matters at all levels. Utilizing these strategies permits the differentiation of legal standards without resorting to an objective or subjective methodology or solely concentrating on norms produced by the state.⁸

What is the One Right Answer thesis?

Dworkin's legal theory is founded on the premise that legal arguments are deliberations on political morality. Consequently, he posits that there exists a singular appropriate reaction to the majority of ethical inquiries. The moral evaluation discourse can either demonstrate its inherent objective truth or its potential for fallibility. Based on this concept, judges are expected to render a consistent verdict, regardless of the intricacy of the case.⁹ The novel aspects of his thesis include Hard Cases and Hercules Judge. Hercules, the individual possessing extraordinary physical and mental abilities, has elucidated and rationalised the present legal framework by developing a political and ethical ideology. This idea may serve as a valuable framework for Hercules to ascertain the law's applicability to a given scenario and assess his conclusion's accuracy.¹⁰

Dworkin's 'one-right-answer' thesis is a highly debated concept that holds significant importance in comprehending his overall political and legal theory. This thesis is grounded in value, particularly moral value, and is a fundamental pillar of Dworkin's framework. Dworkin posits that law constitutes a facet of political morality, which is a derivative of individual integrity, itself an extension of personal ethics. According to his perspective, utilising institutionalized communal or state authority to control its citizens is a morally defensible approach to legal reasoning.¹¹

Dworkin is widely regarded as a highly eloquent adversary of positivism, and his arguments effectively dismantle its tenets. Dworkin critiques positivism's exclusive focus on institutions and repudiates any overarching theory about the essence and presence of law.

The author also dismisses the notion that regional viewpoints of particular legal frameworks should dictate direction without regard for their ethical merits.¹² The primary

⁸ Russell Sandberg, 'The Failure of Legal Pluralism' (2016) 18 Ecclesiastical Law Journal 137.

⁹ Stephen Guest, *DWORKIN'S 'ONE-RIGHT-ANSWER' THESIS* (2014).

¹⁰ David Pannick, 'A Note on Dworkin and Precedent' (1980) 43 The Modern Law Review 36.

¹¹ Ibid.

¹² 'Legal Positivism (Stanford Encyclopedia of Philosophy)' (*Plato.stanford.edu*, 2003) <<https://plato.stanford.edu/entries/legal-positivism/>> accessed 27 November 2021.

idea is that specific individuals believe that Legal Pluralism typically offers a variety of solutions to a particular issue, none of which can be definitively deemed entirely precise.

Legal Pluralism vs One Right Answer

Critique of the One Right Answer

Undoubtedly, Ronald Dworkin's One Right Answer thesis represents a pivotal moment in the evolution of legal theory. The issue is a subject of debate, yet it has catalyzed legal scholars to engage in deep contemplation and generate novel ideas throughout history. Nonetheless, in contemporary society, Dworkin's theory is deficient in providing diverse solutions for various circumstances that require different remedies.

The resolution of complex problems, especially those involving difficult circumstances, is often not straightforward and may not have a singular correct solution. Moreover, the notion of the Hercules Judge appears to be an improbable conjecture. It is not feasible for a judge to embody the strength and abilities of the mythological figure Hercules in the actual world. Judges are discrete entities. It is universally acknowledged that no individual is impervious to making mistakes. A judge can't possess comprehensive knowledge of all matters simultaneously. Therefore, it is not feasible for a judge to have the qualities of Hercules Judge to resolve a complex case, let alone one with a definitive solution.

Although Dworkin's assertion regarding an unparalleled solution to nearly every ethical predicament is not entirely implausible, it may be excessively forceful. Notwithstanding the arguments in support of his position, persuasive rationales exist for avoiding a stance as extreme as that advocated by Dworkin. The author's assertion that there are no definitive and accurate solutions to moral dilemmas is being challenged by the individual in question. However, the challenge presented by the individual is deemed insufficient. In specific intricate scenarios, is it possible that there may not exist a singular correct solution? If a singularly correct response is absent, what action should be taken?

Undoubtedly, there are specific ethical scenarios where opposing justifications are equally weighted or incomparable.¹³ The inherent ambiguity of numerous moral concepts poses significant challenges.

In contrast to the claims made by certain detractors of moral realism, proponents of this philosophical position, who emphasize the objectivity of morality, can easily acknowledge the presence of a certain level of uncertainty within the realm of ethics. The degree of determinacy or indeterminacy within character constitutes a moral concern in its own right. When considering Dworkin's broad claims about the precise determinacy of that particular domain, it is necessary to pose ethical inquiries. In the face of complex moral difficulties, it is imperative to ascertain whether the presence of a conclusive and precise

¹³ Mathew H. Kramer, *WHEN IS THERE NOT ONE RIGHT ANSWER?*

method of resolving the matter is morally superior to its non-existence. Dworkin posits an affirmative response to the question mentioned above. However, there exist persuasive rationales for adopting an alternative perspective.¹⁴

Promising Aspects of Legal Pluralism

The legal system is established to serve the welfare of the populace. Nevertheless, there exists a diversity of individuals across the globe. Diverse cultures, traditions, rituals, and practices are shaped by an individual's geographic and territorial origins, as well as their race and gender. Consequently, it can be argued that relying on general rules may not be feasible for long-term sustainability. The potential outcome of such an occurrence could be detrimental to the community, as it may lead to perplexity and unpredictability among the populace. The resolution to this predicament lies in the concept of legal pluralism. As discussed in this article, legal pluralism refers to multiple legal systems within a particular population and geographical area.

Legal pluralism is a fundamental aspect of the legal systems of both developed and developing nations worldwide in contemporary times. It is erroneous to solely discuss legal pluralism in the context of non-Western legal systems, as current Western legal systems also exhibit pluralistic characteristics. The prevalence of plural legal systems is particularly notable in formerly colonized regions, where traditional colonial law operates alongside customary legal systems. In certain areas, such as India and Tanzania, designated Islamic courts address matters about the Muslim community following Islamic law principles. Courts not affiliated with religious organisations are responsible for resolving legal disputes involving individuals from different communities.¹⁵ Courthouses in the United States are characterized by the coexistence of two distinct legal ideologies: the formal ideology of law as codified in written form and the informal doctrine of law as practised. The basis of Islamic jurisprudence is rooted in the Quran, Sunnah, and Ijma. The elevation of moral rules in the Bible to the status of laws can be attributed to their grounding in legal history, which satisfies the priorities of positivists and naturalists.

The legal procedures of most contemporary Western nation-states can be traced back to the Christian superpowers of the past, such as Britain and France.¹⁶ Furthermore, there has been recognition of traditional elements of criminal law within Aboriginal communities, specifically concerning the imposition of penalties. Consequently, two different systems for imposing sentences have been instituted in parallel.¹⁷ The Philippines serves as another instance where the government acknowledges the customary practices of

¹⁴ Supra Note 13.

¹⁵ John Griffiths, "What is Legal Pluralism" in *Journal of Legal Pluralism* (1986).

¹⁶ Supra Note 15.

¹⁷ 'Two Systems of Law Side by Side' on JSTOR' <<https://www.jstor.org/stable/26423317>> accessed 11 January 2023.

indigenous communities in the Cordilleras. In Kalinga, the Bodong system is utilized by the locals to settle conflicts, and its continued prevalence is attributed to its perceived efficacy.¹⁸ A significant body of critique exists regarding the insufficient support for women's rights within conventional and Muslim legal frameworks. The Committee on the Elimination of Discrimination Against Women (CEDAW) has recommended that countries align their legal systems with the modern theory of Legal Pluralism, which has shown great promise.¹⁹

Refuting the Critics of Legal Pluralism

The existence of legal pluralism can pose challenges to the efficiency and financial aspects of a legal system. In the event of an acute situation, the presence of problematic legal pluralism may render the enforcement activities of one or both legal systems ineffective. This phenomenon can reduce efficiency or increase the expenses associated with enforcement measures.²⁰

There exist three criticisms of legal pluralism. The initial matter pertains to circumstances where erroneous conduct, under the either legal system, is unavoidable - denoted as competitive conformity. The second plausible factor relates to the possibility wherein another legal system perceives a legal system's punitive measures for inappropriate conduct as erroneous. The third pertains to the unsynchronized imposition of penalties for shared transgressions.²¹

The initial two categories, rivalrous compliance and criminal sanctions are problematic due to their inherent tendency to result in escalated enforcement expenses and decreased productivity levels for the concerned legal systems. These two categories have the potential to result in one or both legal systems imposing adverse externalities on each other.

The third category, the uncoordinated imposition of penalties for shared transgressions, is difficult because the collective punishment for a particular offence exceeds what both legal systems consider equitable. It will be shown that any of the three problematic legal pluralism types might cause injustice. Individual injustices do not cause production externalities or disparities. Hence, they are not a problem. Many peaceful societies have different breaches under various non-state legal systems, which may emerge from religious, social, sports, commercial, or other relationships and are penalized by non-state wrongdoings.

¹⁸ Ibid.

¹⁹ 'Convention On the Elimination of All Forms of Discrimination Against Women' (*Un.org*, 1979) <<https://www.un.org/womenwatch/daw/cedaw/>> accessed 27 November 2021.

²⁰ Shaun Larcom, 'Problematic Legal Pluralism: Causes and Some Potential "Cures"' (2014) 46 *The Journal of Legal Pluralism and Unofficial Law* 193 <<http://www.tandfonline.com/doi/abs/10.1080/07329113.2014.892335>> accessed 22 May 2023.

²¹ Ibid.

A potential solution to address these challenging interactions is for a community to adopt a legal monism approach. Notwithstanding the problematic interactions, non-state legal orders have the potential to yield significant advantages. It is possible for the state to undertake a heightened level of enforcement, exceeding what may be considered statically optimal, in order to eradicate the nonstate legal system or its problematic components. Notwithstanding concerted efforts to eliminate them, non-state legal orders can exhibit remarkable persistence. An alternative resolution could involve the complete withdrawal of the state or the cessation of enforcement based on demographic or geographic factors.

Differences

The article's primary aim has been to separate the two theories through a legal examination. Furthermore, the objective was to showcase the feasibility of legal pluralism as a potential substitute for Ronald Dworkin's theory of One Right Answer—the present work endeavours to examine various facets of the subjects above. The author has endeavoured to elucidate certain critical theoretical boundaries and lucidly communicate their significance to the audience. I have attempted to highlight some significant distinctions between them:

One Right Answer	Legal Pluralism
The theory is highly ambiguous.	The theory is pretty precise.
Utopian.	Realistic.
Complex theory to deal with every hard case.	Simplistic theory to deal with any hard case.
Extremely rigid and assaults positivists' approach to positivism.	Satisfactorily flexible.
Hercules Judge is a mere hypothesis whose existence in the real world is impossible.	No such unreal hypothesis.
Realist approach.	Pluralist approach.

Outcome

The Following are the primary outcomes of my article:

- Legal Pluralism theory is more realistic than Ronald Dworkin's One Right Answer.
- Legal Pluralism is better for a litigation system than the One Right Answer.
- The One Right Answer theory is primarily hypothetical, vague, ambiguous and utopian.
- Legal pluralism is the perfect opposite theory of Ronald Dworkin's One Right Answer.

Conclusion

In a society characterized by pluralism and governed by a written constitution that typically outlines fundamental principles of liberty, equality, and privacy, the question arises as to whether a statute that criminalizes abortion contravenes women's constitutional rights. This determination falls within the purview of constitutional courts. Upon initial examination, it appears feasible to challenge the notion of a singularly correct answer thesis, as demonstrated by the subsequent illustration. Assuming a deeply divided polity, opposing viewpoints exist regarding the morality of abortion, with some individuals considering it an act of murder. In contrast, others view it as essential to a woman's constitutional liberties, privacy, and equality rights. Given the current situation, it is possible to argue that both the prohibition of abortion (except for cases where it is necessary to preserve the mother's life or health) and the extension of protection to a woman's decision to have an abortion are equally viable responses to the constitutional issue at hand. Furthermore, it is worth noting that the law prohibiting abortion was enacted with minimal support from the parliamentary majority. This suggests that Dworkin's assertion of a singular correct answer is unfounded, particularly in complex cases that require the application of legal pluralism theory for prompt resolution.

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