WHAT IS LEGAL PLURALISM?

We can distinguish classical and new legal pluralism.

Legal pluralism was confined in three ways:

Classical: geographically, it concerned only the interplay of Western and non-Western laws in colonial and postcolonial settings; conceptually, it treated the indigenous non state law as subordinate to the official law of the state as introduced by the colonizing power.

The new legal pluralism extends the concept to Western societies and the interplay between official and unofficial law more generally.

The third stage has an even broader focus beyond the individual localized state or community (whether colonial or Western) and toward the transnational sphere.

As a term, legal pluralism has been used widely only since the 1970s; the colonizers never used it. As an empirical fact, by contrast, legal pluralism existed in the West long before the colonial engagement of Western and non-Western norms.

In particular, medieval European law and the *ius commune* are now sometimes invoked as alternative precursors of contemporary global pluralism.

Similarly, the English common law had experience with pluralism before and beyond colonialism.

By "**legal pluralism**" Griffiths refers to

"**the presence of a social field of more than one legal order**" (Griffiths,1986).

Different forms and visions of legal pluralism could characterise a cultural tradition and different ways in which existing nations with a pluralistic legal system.

Some countries could accept that ethnic or religious communities may operate their rule systems with official legal effects on family law. "Marriage, divorce inheritance and other matters dealing with personal status may be regulated by the rules of that particular community on the basis of the sanction of the state" (Edge, 2013).

However, they may also be oblivious of, or consciously seek to counteract state sanction. In the United Kingdom, e.g. "Muslims are relating to something more than the norms of the English legal system alone.

Issues then arise over how the different systems of norms interact and might coexist." From this point of

view, we could have at least two forms of legal pluralism:

"where, within a state, enclaves with separate legal rules may operate; and legal systems which sanction or enforce different systems of legal rules in state-wide but separate and parallel court systems" (Edge, 2013).

Different sources of law

The coexistence of different sources of law represents a significant problem for the lawyer accustomed to the principle of hierarchy coined within the constitutional law of national states.

This problem does not only concern the issue of legal pluralism, but also that of globalization that can create uniformity in some places and integration in others (Riles, 2006).

Legal rules such as, e.g. statutes, acts, cases, customs can coexist and circulate in the global arena. It is normal to wonder what happens in cases of collision between different norms that the courts could apply to the case at hand.

It is evident that a key element, in such debates and processes, is the power to determine what the law is and what is not, or what is legal and what something else is.

By the way, if the role of the state is necessary to allow the entry of rules coming from other

geographical areas, there are mechanisms by which the opposite could happen. For example, the rules and norms of Muslim communities in England could form a new system of law (called *angrezishari'at*) (Menski, 2014).

Muslims living in the UK transmit the requirements of English law into the Islamic law.

The opinion of some comparative lawyers on legal pluralism has led to the conclusion that "legal pluralism is a limited, exceptional and disappearing phenomenon" (Griffiths, 1986).

According to Michaels, "the irreducible plurality of legal orders in the world, the coexistence of domestic state law with other legal orders, the absence of a hierarchically superior position transcending the differences, all of these topics of legal pluralism reappear on the global sphere" (Michaels, 2009).

All legal systems, Western or non-Western, are plural and then it is necessary to consider legal pluralism as a global phenomenon.

Global legal Pluralism

Although the term global legal pluralism is becoming more frequent the focus here is broader and covers the interplay between legal pluralism and legal globalization more generally.

Neither political pluralism nor general normative pluralism, by contrast, is discussed as such.

The term "**global legal pluralism**" suggests a unified concept, but such a concept does not actually exist (Michaels).

We can observe two converging developments, which lead to two different concepts of global legal pluralism:

a) the **first** of these developments originates in the concept of legal pluralism as developed in anthropology and sociology and adds globalization as an element.

b) the **second** development, situated in legal theory and doctrine, starts from globalized law and adds legal pluralism. Both combine pluralism and globalization, but both still display their different origins.