Monismus oder Pluralismus der Rechtsskulturen?
Anthropologische und ethnologische Grundlagen traditioneller und moderner Rechtssysteme

Monistic or Pluralistic Legal Culture?
Anthropological and Ethnological Foundations of Traditional and Modern Legal Systems

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THE CONFLICTING CONCEPTIONS OF LEGAL CULTURES
AND THE CONFLICT OF LEGAL CULTURES

By Upendra Baxi, New Delhi

I. Towards a Jurisprudence of Contradictory Worlds

Anticipating the denouncement, Prince Hamlet observes at one stage: “The air is promise-crammed.” So it is today with legal theory and jurisprudence. There is a growing concern about the obsolete, irritating, isolationist and insular ways of doing jurisprudence.

To be sure, old habits die hard. The colonial, imperial ways of doing jurisprudence are still very much with us, even when they manifest themselves unbeknown to jurisprudents. Thus, for example, the claim that there ought to be a universal or universalizable theory of judicial process, no matter how overwhelmingly based on a single variant of Western law tradition it may be, continues to evoke not too innocent jurisprudential excitement. Such an acultural endeavour is being pressed as a serious contribution to legal thought even in the late twentieth century.

Likewise, most theories of justice wear a universal mask. The conscientious ones remain aware both of civilizational and cultural diversities in approaches to justice as a property or attribute of societal arrangements. But the awareness is not productive of engagement with the “non-western” people or worlds. Thus, even a profound thinker of our times who ordains a lexical priority for liberty is able to say without a frown on his face towards the end of his magnum opus that it may, after all, not extend to societies where basic wants are not satisfied.

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2 The very word ‘judge’ brings to our mind certain historical and cultural contexts. There cannot be institutions called ‘courts’ without there being “categories which are common to politics … and without agreement to submit to court’s jurisdiction”. M. Foucault, Power/Knowledge, 27 (1969; C. Howard ed.); U. Baxi, Courage, Craft and Contention: The Indian Supreme in Mid-Eighties, 4 - 9, 1985; M. Shapiro, Courts: A Comparative and Political Analysis, 1981.

One more example of this tendency is to be found amongst those who uneasily speak of attributes of 'modern' law or the 'modernization' of the law, identified with reference to a whole cluster of attributes. Unearily, because one wishes to save the 'ideal type' of the modern law from degenerating into a stereotype. No matter how hedged, modernization of law theories rest on the premise that "the modern legal experience in most of the world began only a short time after the European." Indeed, the assumption is the "more modern the law, that is, the more it conforms European models the better it must work for social and economic development." Amen!

Somehow the impact of a radically transformed world on the received narrative of legal theory and jurisprudence that dominant first world thinkers were continually forced to look in the "global mirroring" and to sell out what he called Chilean author Ariel Dorfman's phrase, "contradictory worlds which are not realities."

The first thing that immediately comes to mind is the notion that if this struggle to be born - a jurisprudence that would seek to understand the power in the historic production and overture, underdeveloped" human beings and has been doing jurisprudence, the nature of which is to reflect and consider the subject, is the subject of explaining and knowing us to solve problems.

H. Gough

The period of contradiction still be

the inauguration of

11. See e.g. Ansari etc.
12. See e.g. Ansari etc.
13. See e.g. Ansari etc.
14. See e.g. Ansari etc.

9. See B. Burman, E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
10. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
11. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
12. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
13. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
14. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
15. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
16. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.
17. E. Havell-Bond (eds.), The Imposition of Law, 1979, G.

from "the inclusion of pre-capitalist social formations within the framework of the modern state." The new discourse bristles with questions concerning the role of law and lawyers in the colonial mode of production. Above all, it affirms the lawlessness of people's or non-state law, thus capturing a domain of multi-legalism in social orders.

At the same time, it also seeks to decipher the nature of state power, in part, through an understanding of the dialectic between consent and coercion. Put another way, it explores the ideology of power and power of ideology.

Undoubtedly, these are scattered and small emergences. But they raise a new hope for jurisprudence, a new hope for the first step of juristic learning. Possibly, they herald the birth of a new book, where the thinking humanity in a colonial mode of production. For long, such a sensibility was not available to the thinking people. Since then, we have, at long last, new, new gateways, and a new world, to take us to solve problems.
that period, the ‘Western’ legal tradition had accomplished its emergence from folk law and canon law into royal, state, law. The contact with new cultures and civilizations was, however, accompanied then by some sort of genesis amnesia.

If we telescope the early phase of colonial seizure and consolidation, we begin to perceive the nature of this amnesia. For example, the proud boast of the British was that they found India bereft of law; the gift of ‘law’ to India was one of their proudest achievements. What was meant broadly by law was, of course, secular, state law with formal adjudication of disputes through legal professionals backed by a distinctive structure of sociological coercion. Colonies everywhere lacked such a ‘law’; its imposition was regarded a civilizational contribution of the colonizers.

It would then have been outrageously seditionous for a contemporary subject to have suggested that all that they were encountering in the colonies was a splendid reenactment of the pre-history of the so-called western legal tradition. From sixth to tenth century the folk law of the people of Europe was "merged with religion and morality; and yet it was law, a legal order, a legal dimension of social life".

As in many non-Western cultures, the basic law of the peoples of Europe from the sixth to tenth centuries was not a body of rules imposed from on high but was rather an integral part of the common consciousness, the “common conscience”, of the community. The people themselves, in their public assemblies, legislated and judged; and when kings asserted their authority over the law it was chiefly to guide the custom and legal consciousness of the people, not to remake it. Beyond the question of right and wrong was the question of reconciliation of the warring factions ... Rights and duties were not bound to the letter of the legal texts but instead were a reflection of community values which sprung “out of the creative wells of the sub-conscious" ... the customary law of this early period of European history was often "vague, confused and impractical, technically clumsy" but ... it was also "creative, sublime and suited to human needs."

Moreover, the Western Law tradition in its prehistory and later day evolution was suffused with religion. Western legal systems “have their sources in religious rituals, liturgies and doctrines of the eleventh and twelfth centuries reflecting new attitudes towards death, sin, punishment, forgiveness, salvation, as well as new assumptions concerning the relationship of the divine to the human and of faith to reason”. Despite the sea-change in the Western world now, “drying up” the “theological sources”, the legal “institutions, concepts and values that have derived from them still survive, often unchanged.”

Even though that commonplace of thought since 1122 which regarded the law as a “way of fulfilling the mission of Western Christendom to begin to achieve the kingdom of God on earth”, may not hold so vividly in the late capitalist societies of Europe and North America, the notion still resonates with equal theological intensity in secular guises.

Secular law, under the regulation of canon law, emerged as a body, primarily of royal and feudal law. The theological conviction that the “universe was subject to law” (so close to non-Western cultures) was the basis of the emergence of both rule by law and the rule of law. Political pluralism of secular authorities, as well as the division between the religious and temporal, sustained the emergence of this notion. Popular participation in the administration of justice assisted both the “establishment of a system of royal law and in the maintenance of its supremacy over the arbitrary exercise of power by the king himself.”

Undoubtedly, even in the absence of genesis amnesia on the eve of colonization, we would locate distinct aspects of the Western legal tradition not compatible with the traditions of the subjugated peoples. In many a non-Western society there was no counterpart to the first emergence of the ‘state’ as the “church in the form of state”. Nor perhaps can what has been described as the “dialectical tensions ... in theology, science and law, corresponding to the dialectical tension between the ecclesiastical and secular authorities” marking the prehistory of the Western legal tradition be found, if at all, in the same mix in the non-Western traditions. Finally, if the “experience of a dialectical interaction between revolution and evolution, taking place over centuries” is a “unique feature of Western history”, we may find in non-Western societies different forms of social habitus.

Despite these significant distinctions, the commonalities in legal experience are many and striking. If we had a corpus of knowledge for the “non-Western” traditions as rigorous as that concerning the prehistory of the Western legal tradition, we would be in a more fortunate position to substantiate the commonalities more comprehensively. But even at the present state of knowledge the live traditions of law, symbiotically co-existing with the modern state law in many a Third World society, do indicate these commonalities.
Undoubtedly, a decisive break occurred in the Western legal tradition with the rise of capitalism and, its Siamese twin, colonialism. This break did not contribute to but rather in itself constituted genesis amnesia. The growth of productive forces and revolutionary transformations of both relations of production and relations in production\(^{29}\) entailed a necessary negation of folk law, a creeping secularization of modes of production and reproduction of state and class power, and a historically sustained incomprehension of the legal tradition of non-Western people.

The forms of this incomprehension in the early phases of colonialism have yet to excite theoretical labours of comparative jurists and legal historians.\(^{31}\) But we do find, at least in the nineteenth century, in the efflorescence of the so-called historical "school" of jurisprudence some attempt to overcome it. The corpus here is rich and varied. But this much is clear: the attempt at historical comprehension of the law did (and perhaps could) not result in any erasure of the genus amnesia. Nor did it result (and some would rightly say could not) in changing the colonial face of power. This is clear if we ask the question: did the discourse of Savigny, Maine and Weber have any benign impact on the progress of imposition of colonial law in the colonial societies? Insofar as jurisprudential thought can be attributed a radiation of political impact, indeed, this question is capable of invoking some uncharitable, negative responses.

For example, Savigny's seminal insights in the people's law, a celebration of custom, remained confined within the origins of discourse on the codification of German law.\(^{29}\) The great work of Sir Henry Maine, in the ultimate result, only provided a key to the unlocking of the doors of the "hitherto progressive societies".\(^{32}\) Max Weber's triumphant work, with a rich harvest of insights in the modes of evolution of law and state, in the net result, only contributed to the awareness that the rationalization of the law, with all its antinomies,\(^{33}\) was the summum bonum of human jural achievement; and that model did support, one way or the other, the onward march of the Western legal tradition through the subjugated world. Josef Kohler's notion of

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30 See e.g., G. Borri (note 7), at 46 - 52, 62 - 99. For the distinction between relation of and relations in production, see M. Hart, The Politics of Production, 1965; see also Baxi (note 12).

31 By the same token, an examination of the impact of legal traditions of the colonized societies on the colonial law is an area demanding urgent, widening studies, unless it is to be assumed that the traffic in jural ideas was only one way, an assumption which is itself palpably colonial.


33 See Stone (note 32), at 133 - 141; and the materials there cited.


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civilization and human potential as a mastery of human nature and unfolding of human powers carried, ultimately, a similar message.\(^35\)

These cryptic summations in no way intend to do injustice to their scientific achievements which have provided the necessary impetus to the recovery of continuing understanding of the pre-contact and post-contact evolutionary dynamic of non-Western legal traditions.\(^36\) But they also reinforce a truth which must not be lost (even if made trite by the sociology of knowledge) that the inauguration and development of comparative jurisprudence, all said and done, was "an internal affair of the West European world" which has "left its mark upon comparative science in the West".\(^37\) And as an "internal affair" it could hardly transcend the episteme (to distort Foucault's notion somewhat) of capitalism/colonialism and the genesis amnesia that it entailed. The discovery of "legal pluralism" occurred in the zodiac of capitalism/colonialism and was controlled and confined by it.

III. The Conflicting Conceptions of Legal Culture

Neither in the discovery nor in the rediscovery of legal pluralism nor in analysis of legal change and complexity do we find a fully-fledged discourse on culture. And yet central to comprehension remain some operative notions of 'culture' and 'legal culture'. To unravel whole theories of culture nesting within these discourses is an intimidating enterprise. But one must begin somewhere. And the beginning can only offer some preliminary suggestions on ways in which such a task could, perhaps, be approached.

The most striking aspect of these discourses is, of course, the oscillation between two complex meanings of culture. First, culture becomes a "noun of 'inner' process, specialized to its presumed agencies in intellectual life"; second, it becomes a "noun of general process, specialized to its presumed configurations in the 'whole way of life'".\(^38\)

Perhaps, it is this distinction between the two complex senses of culture which is operative in the commonplace of contemporary sociological jurisprudence which distinguishes between the culture of the law and the law as culture. The 'inner' processes which the notion of culture of law directs us to grasp are the processes of producing meanings which produces practices and of practices which produce meanings\(^39\) within the presumed agencies of

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36 For example, the lamented Max Gluckman movingly declared that his Ideas in Barotse Jurisprudence, 1965, might well have been entitled "Footnotes to Sir Henry Maine's Ancient Law" (at p. xii).

37 Borri (note 7), at 38.

38 P. Williams, Marxism and Literature, 17, 1977.


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'legal' life. The 'general processes' which the notion of law as culture directs us to is the law as social configuration providing 'whole ways of life'.

These two senses then direct us to different realms of analysis. The conception of the law as culture, typically lends itself to an epochal analysis of culture. In this mode of analysis, a "cultural process is seized as a cultural system, with determinate dominant process". The "epochal" definition of culture "can exert its pressures as a static type against which all real cultural processes are measured, either at best to show 'stages' or 'variations' of the type", or, at worst, to "select supporting and exclude marginal or 'incidental' or 'secondary' evidence". The epochal mode of analysis entailing both the processes of typification and homology was made known most comprehensively to social sciences by Karl Marx through his modes of production analysis and by Max Weber to jurisprudence through the ideal types of charismatic, traditional and legal-rational domination. The more responsible amidst the spawning ideal type formulations, since Weber, are to be found in the typologies of Simpson and Stone and more recently in the works of Roberto Unger (who elaborates the typification of customary, bureaucratic/regulatory and relatively autonomous legal order), Niklas Luhmann with his ideal types of archaic law, the law of the pre-modern high cultures and the postmodernization of law and Masaji Chiba in his articulation of a three-level structure of law.

By contrast, legal culture viewed as a culture of law is particularistic. It focusses on the lived relationships between societal values, beliefs and attitudes articulated through the law and law-related social behaviour. The distance we travel is truly vast: from Max Weber's sociology of law to Franz Kafka's The Trial, from theories of surplus exploitation through overproduction of meanings to Albert Camus' The Outsider, or from the weight of historical jurisprudence to Milan Kundera's Unbearable Lightness of Being. From the overpoweringly abstract to the myriad real; from the determining forces to the determined; from the abstraction of history without subjects to individuals who through praxis make the world, its limits and its future. In this area, literary works, more than the sociology of law genre, illuminate our understanding of the culture of law as legal culture.

48 See, for example, the readings in Friedman/Macaulay (note 4), at 577 - 828.
51 Ibid.
over the definitional questions: can there be law outside the auspices of the State? The definitional question was designed to do away with a co-equal status for the category of ‘people’s’ or non-state law and to confine pluralism within the realm of state-law processes. The second phase arises out of the appreciation of the interminability of definitional discourse. It is here that the epochal analysis, both of the liberal and marxist genre, makes some singular contribution.

It is, indeed, unfair (and at points misleading) to collapse rich bodies of theories into single paragraphs of a few sentences. But both liberal and marxian variants of epochal analysis will, despite this, be here presented starkly, vivifying their overall Gestalt.

Broadly, then, the liberal variant would suggest that the forms of non-state law are relics of the past destined to disappear in the Great March to Progress, whether this is conceived in terms of the movement towards autonomous legal order (Unger), positivization of law (Luhmann) or legal-rational domination (Weber). In an encounter with the ‘modern’ law these forms of law-as-culture are marginalized and will altogether vanish.

The marxian and marxist variants of the epochal tradition analysis do, after designating the folk law formations as distinctive to precapitalist modes, direct our attention to the reality of the exhaustion of these formations in the wake of the emergence of bourgeois or socialist law. The existence of folk law will, of course, be conceded. But only as a ‘remnant’, an archaic survival which must vanish in course of time. Some marxist thinkers pour scorn on scientific adventurism urging revival (in the sense of theoretical praxis) of folk law. And they would tend to see resistance on the ground by ‘traditional’ legal cultures as foredoomed to failure but in the process capable of creating a ‘mystification’ of the nature of the operative class factors, forces and interests.

The available responses to epochal analyses seem simply to consist in the reiteration of the social reality of multilegalism in every society and a general acknowledgement that while the law can express class domination and struggle, and is basically affected by economic structures, it also constitutes a relatively autonomous cultural process. Such a view, while exceedingly tolerant of sharp divergence, does not resort to any underlying cultural theory at all.

It is here that one recalls sensitive marxian analyses of culture for they have help to offer. Raymond Williams offers us three valuable distinctions in cultural analysis. He offers the categories of “residual” cultures, the “emergent” cultures and the “dominant” cultures. Of course, it is from the standpoint of dominant cultures that one speaks of the other categories.

56 See Callegari (note 39).
Even so, the other two categories interpenetrate the dominant culture as the latter does the residual and the emergent. Residual culture has by definition ... been effectively formed in the past, but it is still active in the cultural process, not only and often not at all as an element of the past, but as an effective element of the present. Thus, certain experiences, meanings and values which cannot be expressed or substantially verified in terms of the dominant culture, are nevertheless lived and practiced on the basis of the residue – cultural as well as social – of some previous cultural and social formation.65

The residual in this sense is the active having oppositional or alternative relationship with the dominant culture.66 At the same time, the residual may also be absorbed in the dominant. It is this interaction with the dominant culture, at any conjuncture, which imparts precision to the notion of the 'residual', "It is", says Williams, "in the incorporation of the actively residual - by reinterpretation, dilution, projection, discriminating inclusion or exclusion - that the work of the selective tradition is especially evident."67 And the "struggle against selective traditions is understandably a major part of all contemporary activity".68

Emergent culture has its source almost always in emergent classes; but such cultural emergence is subordinate, slow and incomplete.69 The incorporation of the emergent "looks like recognition, acknowledgement, and thus a form of acceptance", a complex process which causes "regular confusion between locally residual (as form of resistance to incorporation) and the generally emergent".70

These insights from the domain of marxist literary theory should also assist us through their enabling distinctions of cultural analysis of law. It suggests that the dismissive attitude of non-state or people's law formations on the one hand and the celebrative attitude affirming its multifarious existence and potent future on the other must be both avoided. Not all legal cultural survivals are archaic; nor do they all hold potential as emergent or dominant cultures. They are best regarded as active residual cultures of past social and cultural formations acting as an "effective element of the present". Their residuality should not make us think of them in terms of irrelevance or obsolescence. On the contrary, residual legal cultures are those which cannot be articulated in the diction of the dominant legal cultures but they are fixed as "experience, meaning and values".

65 Id., at 122.
66 Id., at 122 - 123.
67 Id., at 173.
68 Id., at 117. I now understand better my own notions as "hegemonic" and "antagonistic" relations between state legal systems and non-state legal systems elaborated in a paper presented to the Research Committee on Sociology of Law of the International Sociology Association (Japan, 1978) and elaborated in my "Crisis of the Indian Legal System", 352 - 47, 1982.
69 Id., at 124.
70 Id., at 124 - 125.

We also learn that what is crucial, after this reconceptualization, is the process of the preservation of the nature of residual cultures in their oppositional and alternative forms and the struggle against their incorporation through the construction of "selective tradition". It is this dynamic that studies of legal pluralism ought to self-consciously address.

Equally important is the interaction between the actively residual legal culture and the emergent legal culture. How the subaltern classes generate new emergent cultures, how these in turn relate to the actively residual cultures and how the dominant culture responds to these conjunctures will become intensely relevant concerns for the study of legal cultures. If the process of construction and reconstruction of "selective traditions" is the response of dominant culture to actively residual ones, so is cooptation by way of recognition and acceptance its response to the emergent cultures. And the determinate dominance of the dominant legal culture, we should recall again, is not complete. As Williams states:

*no mode of production and therefore no dominant social order and therefore no dominant culture ever in reality includes or exhausts all human practice, human energy and human intention.*71

And, indeed, determination by the dominant "is never only a setting of limits: it is also the exertion of pressures".72 Hence, both the crucial features of determinate domination allow for active presence and power, despite historic limits, for the actively residual and emergent legal cultures. Such an understanding removes, among other things, the picturesque, but poignantly uninformed, metaphoric analysis of people's law as being under the shadow of state law.73

The enabling distinctions also now empower us to approach the conflict of legal cultures. For example, we are now in a better position to grasp the key to the famous Weberian puzzle concerning the inadequate rationalization of law in England which made it, in his eyes, a deviant case of capitalist development.74 Certainly, the common law's waywardness was far from the ideal legal calculus that Weber thought existed in ample measure in the continental legal cultures. We should now be able to suggest that the active residual culture of the common law which initially stood in opposition and as an alternative relation to the transformations of relations of and in production was gradually adapted by the construction of "selective tradition" by the judges and jurists.

71 Id., at 125 (emphasis in original).
72 Id., at 87.
Similarly, the famous hypothesis of cultural lag, formulated by Ogburn, now acquires a deeper cultural meaning than controversial sociological analyses would disclose.\textsuperscript{70} Ogburn’s characterization of the English common law as merely “adaptive culture” which reacted slowly to changes in the productive forces and in relations of and in production was really an aspect of how the dominant culture managed to hold back an alternative emergent culture arising from values, beliefs, meanings and experiences of the emergent working classes and subalterns.

To take yet another example (and again in a summary fashion) the ‘rejection of right’ and the cultural undervaluation of courts in Korea and Japan, for example, may be understood as a part of the dialectics of the actively residual, emergent and dominant cultures.

\textbf{IV. The Juridical World Outlook: \textit{Juristische Weltanschauung}}

In understanding law as culture, and the culture of the law, we ought not to overlook the possibility that the dominant culture may, indeed, be global and seek to encompass the world in hegemonic spheres of influence. Engels identified for us in 1887 the key conception of juridical world outlook: the law now replaces the “theological outlook”, — the “place of\textit{ dogma} and of divine law” — is now occupied by the “law of man, the place of the Church by the State.”\textsuperscript{74} Juridical world outlook celebrates a creationist role of the law. Economic relationships mediated by law, assume a \textit{universality}; the \textit{forms} of law help to convert the particular interest of the ruling classes into a general societal interest. Thus, in early capitalist production competition assumes the “basic \textit{form} of contract between free commodity producers” and is the “great equalizer, equality before the law becomes a grand rallying cry of the bourgeoisie”.\textsuperscript{77} The \textit{form} of law mediates not just domination but also struggles against it: any class struggle is essentially a political struggle, a “struggle for state power and for legal demands” — a fact which has “helped in consolidating world juridical outlook”.\textsuperscript{78} Juridical world outlook celebrates two major demands: maximum freedom of the individual within the community and the subjection of state power to the principles and procedures of law. These two notions — rights to freedom and the rule of law together form the matrix of the politico-juridical conception of the \textit{Rechtsstaat}.\textsuperscript{79}

\textsuperscript{70} Tumanov (note 76), at 46; see also Baxi (note 12), for a more elaborate presentation.

\textsuperscript{71} Tumanov (note 76), at 46; see also Baxi (note 12), for a more elaborate presentation.

\textsuperscript{72} See Eorsi (note 7), at 71 – 99.

\textsuperscript{73} Id., at 7.

\textsuperscript{74} Id., at 77 - 81.

\textsuperscript{75} Id., at 82 - 84.

\textsuperscript{76} Id., at 71.

\textsuperscript{77} Id., at 396 - 412; see also Baxi (note 12).
emphasis on Rechtsstaat and the emergent cultures of new human rights (especially the feminization of human rights models). The contemporary discourse on ‘revivalism’ and ‘fundamentalism’ overlooks through the processes of genesis amnesia the formative era of the western legal tradition. In this, it institutes its own notions of hegemonic temporality,\textsuperscript{69} on the jurisprudence of the infinitely contradictory worlds. Clearly, a far more sensitive analysis of the cultural composition of the law is needed than is now available to us.

V. Towards a Conclusion

One must end somewhere, even if an end suggests only the possibilities of a new beginning. The central theme of this paper is the need to develop a more articulate notion of legal cultures both as cultures of law and law as culture. In this endeavour, jurists have a lot to learn not just from social sciences but also from the humanities. More so, because conveniently arts, literature and law have been lumped together in the superstructural realms as “culture”. It has been shown with remarkable lucidity, that the concept of ‘superstructure’ represents not a “reduction but an evasion”\textsuperscript{88} in that it ignores that the arts, literature and the law, as well as politics, constitute the “necessary material production within which an apparently self-sufficient mode of production can alone be carried on”.\textsuperscript{88}

Indeed, it is nothing but ethnocentrism which prepares the ground for the “unconscious acceptance of a restricted definition of economic interest, which in its explicit form, is the historic product of capitalism”.\textsuperscript{89} It is time that even jurisprudents learn from (Bourdieu’s) Kabyle the secret of “symbolic capital”, perhaps another name for culture, and thus disturb their doxa by an assertion of heretical powers.

\textsuperscript{69} See U. Baxi, “Marginal Notes on Hegemonic Elements in Human Rights Discourse” being a paper presented to the colloquium on the Rights of Subordinated Peoples at La Trobe University, November 1988 (mimeo).

\textsuperscript{87} Williams (note 58), at 93.

\textsuperscript{88} Ibid.

\textsuperscript{89} Note 59 at 177.