BOOK REVIEW

LEGAL PLURALISM EXPLAINED: HISTORY, THEORY, CONSEQUENCES BY BRIAN Z. TAMANAHA OXFORD UNIVERSITY PRESS, 2021 PP. X, 217. ₹ 850 (PAPERBACK)

Dr. Mohammad Umar*

* Assistant Professor of Law, Bennett University, Greater Noida, & Founder Advisor, Weeramantry Centre for Peace, Justice and International Law.

In the times when there is a natural or manufactured tension between heterogeneous structures and homogenous conception of socio-legal life, Brian's *Legal Pluralism Explained* serves as a delightful read for those interested in the intersectionality of diverse imaginations of law. If I can take calculated liberty to share the crux of his conclusion first, he sees the 'assumptions of the monist law state' as normatively questionable, theoretically unjustified and descriptively inaccurate.

The route that Brian takes in reaching this finding is concise yet wide-ranging in its import. His position is clear: monistic state law is not overarching, but one of the major strands of law that coexist and inform each other in complementing or conflicting ways. Admitting that legal pluralism is a 'conceptual mess', Brian quotes Swenson for whom understanding legal pluralism is important for 'legal or policy intervention, including but by no means limited to state building'. The two axes of community and state law overlap, and their interaction is inevitable if one objectively ventures into the history of legal pluralism.

In Chapter 1, Brian explores the broad historical arc touching the Roman, Ottomans and the British East India Company (EIC) as case studies. It is fascinating to see how the large ruling projects understood the value of community laws and people's association with them- be it the bifurcation of the Roman and Gothic law in the times of Visigoth, the *millet* system of the Ottomans or the assimilation of *mofussil* or *kadi* courts during EIC rule. Through historical evidence, he establishes how the coming of Bodin's or Hobbe's supreme state sovereign in fact laid the foundations for colonisers to arbitrarily expand by dismissing all other forms of social realities. Regions (in Asia, Africa etc.) that did not meet the 'standards of the monist law state' were seen as 'calling for takeover' by the ones who had supposedly discovered the code of a civilised legal dispensation.

Next, while discussing the postcolonial manifestation of legal pluralism in Chapter 2, Brian highlights the resilience of the 'unofficial tribunals' primarily involving religious, traditional or customary adjudication. Even when colonialism rolled back, these institutions (through examples quoted from India and Indonesia) survived. Today, when state law, customary law, religious law, international law, and human rights interact there is often an expectation that non-formalist norms have to follow the 'due process' if at all they have to qualify as laws. However, Brian looks opposed to the idea of abolishing '' the informal and defends them by offering certain advantages. One of them is the rooted acquaintance of the adjudicators at customary tribunals who 'generally know not only the disputants but also the history to the dispute and other matters that may be regarded as important to its resolution, such as a transgressor's capacity to pay damages'. While the arguments for defence are robust, it would have been better if the book engaged with the cited criticisms coming from formal domestic and international regimes; more so, from what Brian himself calls- a 'Western state law model'.

Chapter 3 titled *Legal Pluralism in the West* digs into the realities in the epicentres of positivism themselves. State's monopoly over laws seems diluted even in the original source of the monistic law state. Romani law applying to the Roma community, for instance, has survived despite jurisprudential and official dismissal. The same is the case with other indigenous communities (Maori community of New Zealand, Native Americans etc.) and Rabbinical or Sharia courts in different Western jurisdictions. At the end of the chapter, particularly interesting is the argument that these 'laws' have survived not by the 'leave' of the state. Rather, they 'have existed in one form or another for a thousand years or more prior to and alongside state law'. Most likely, Brian notes, it will continue this way. As an Indian reader, I was intrigued in reading this observation in the context of the simmering Uniform Civil Code (UCC) debate. Despite aggressive politics associated with the issue, the Law Commission of India in 2016 did end up observing that the idea of UCC is 'neither necessary nor desirable'. It seems correct when Brian argues that there is more to the resilience of traditional or community forums than mere *state*-ist recognition.

In the fourth chapter, the book proceeds with the analysis of legal pluralism vis-à-vis the national and transnational. The author extensively analyses 'a thickening profusion of international and transnational law' in the domestic realm. The discussion on America's dualism and the constitutional pluralism of Europe finds backing of MacCormick's abstract legal pluralism – 'wherever there is normative order institutionalized, there is law'. Further, with specific reference to transnational legal pluralism, Brian endorses Teubner's application of autopoiesis to the situation at hand. With a range of legal cases in India

and nations across the globe, one cannot deny the argument that both subsystems (national and transnational) do incorporate inputs from each other, albeit on their own terms.

Finally, Brian creates an interesting distinction between legal pluralism in terms of a concept or definition of law (what he calls 'abstract legal pluralism') and folk legal pluralism. While he rightly keeps the latter at a higher pedestal it would have been a joy to see if he arrived at this conclusion without entirely basing his 'theoretical mapping' on the Western scholars. Maybe that would have given more depth to the author's attempt of developing a lasting theory on legal pluralism. Nevertheless, given the rigour that he demonstrates in his research, it can be conveniently said that the book did substantially achieve the target that it set out for itself in the first place.