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Paper Proposal

Comparative Constitutional Law, Normative Pluralism and Diversity Management: Towards a Right to Difference

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Law is never apolitical. Law is never neutral or at least value-free. Law is often part of conflicts that oppose communities, actors within those same communities or entire ideologies and approaches to diversity management. Given the ongoing debates about how to manage difference, the paper will show how a broader perception of law can be used as a conceptual device to affect legal and social stability within democracies of multi-ethnic societies.

The main conceptual tool to establish this connection will be normative pluralism understood as “ the state of affairs in which a category of social relations is within the fields of two or more bodies of norms”. These two (or more) sets of normative orderings are usually an official one (i.e. state law) and an unofficial one (e.g. religious law).

Mapping the legal universe of discrimination in the real world requires therefore the consideration of the possibilities for co-existence of state with non-state legal systems, despite the conceptual difficulty to comprehensively define *law*. So just like comparative constitutional law, normative pluralism, will be argued, allows the study of similarities, differences and conflicts. Based on abundant theoretical and empirical argumentation that modern state governance can no longer ignore non-state normative commitments and community affiliations, especially within a social justice and equality agenda, and drawing from evidence in the area of religious freedom, the paper will explore the relationship of comparative law with multiple normative orderings as a tool for the appreciation and protection of difference.

The analysis is premised on the inevitability of normative conflict but extends to the consideration of the use of state law as a comparative criterion to analyze religious diversity frameworks. It aims to show how a legal pluralist lens of state law influences the content and balancing of rights in the conflicts that arise. The degree and type of accommodations that State law makes to other normative orders are the background for this inquiry.

The ‘hermeneutic circle of law’ akin to a normatively pluralist analysis, combined with the linear ‘ruler’ of law, used under classic comparative constitutional law, are brought together to give a fuller picture on both the substance of law but also the use that its subjects are making of it, when travelling the circle and crossing the lines. The experience of the law is, in that respect, neither the hegemonic “myth of rights”, nor autonomous, apolitical and neutral.

The discussion will (un)-cover the connection of law with identity (and inherent difference), the value of difference in the comparative law and human rights, as well as the limits of the right to be different, using the example of the protection of religious diversity in scenarios of legal plurality. Ultimately, the paper will conclude by explaining how the main challenge at present in our modern, complex, multicultural world is not accepting diversity in the form of difference; but rather according to Gray, it consists in dealing with a different starting point where difference is outlawed, hated, disliked and ought to be managed in a liberal manner. In other words, the right to difference is threatened by our tendency to impose on each other the ‘right’ order of things. Absolute sameness appears to be a strategic default, in times where legal authority is shared and diffused on so many levels (national, supranational, transnational).