Other Phases of Legal Pluralism in the Contemporary World

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Abstract. Since the discovery of the dual structure of state law and minor law in non-Western countries, the scope of the inquiry into legal pluralism has been expanding gradually. This article attempts to prompt this inquiry by identifying hitherto neglected phases of legal pluralism working in the contemporary world. After discussing various kinds of legal pluralism, other types of legal pluralism are suggested for verification by interested scholars, such as legal pluralism in conflict, legal pluralism in subjectivity, a conceptual scheme and an operational definition of legal pluralism.

1. Questions about Discussions on Legal Pluralism

The term “legal pluralism” has been used for many years in various ways without a widely accepted definition. For instance, legal philosophers have used it to describe the law’s relation to ethics or philosophical ideas,1 legal historians to describe the overlapping transplanted systems of law in European countries, and constitutionalists to describe the confederation of certain states. In contrast with these usages, a specific definition of legal pluralism has prevailed over the last few decades among legal scholars with a sociological/anthropological orientation, who found a vital problem in the post-colonial circumstances of law in non-Western countries. The development of the discussion on this topic may well be informed by such works as Gilissen 1972, Vanderlinden 1972, Hooker 1975, and Friedman 1975 in the 1970s, followed by Marasinghe and Conklin 1984, Allott and Woodman 1985, Sack and Minchin 1986, Griffiths 1986, Merry 1988, Rouland 1988, Greenhouse 1989, and Chiba 1989 in the 1980s. Reviewing these achievements, I have noted the following reservations/questions about their discussions as a result of my non-Western perspective.

1) Many of the discussants appear manifestly or latently to have their own definitions of legal pluralism. However, a clear and distinct definition is still

1 Legal philosophers have tended to discuss legal pluralism without using the word “legal pluralism.” Jørgensen (1982) is one of the rare exceptions I know.
lacking. Is such a definition unnecessary? 2) Most legal pluralists have focused their discussions mainly on the search for customary law, tribal law, social law, and the like, in short minor law, as I call it, working with state law in a dual structure in non-Western countries. Do we not need to search for other structures as well? 3) Among the other structures, there is one working in European/Western countries, which legal pluralists tend to disregard in contrast to some specialists from comparative law, legal philosophy or legal history. Is European/Western legal pluralism of no significance? 4) Another topic called “legal culture” has been discussed more frequently among some other specialists from various disciplines. However, they appear, together with legal pluralists, not to have been interested in examining the relationship between legal culture and legal pluralism. Is such a lack of interest reasonable? 5) The discussion among legal pluralists seems to have disappeared from the forefront of scholarship after the prolific 1980s. Does this suggest a shift of their interest or a change in the existing legal pluralism? 6) Each system of law in a plural structure has been treated as if it is working in harmonious coexistence with another system or others in the structure. In practice, there are numerous conflicts between coexisting plural systems, however irregular they may be. Why is the conflicting coexistence excluded from the whole phase of legal pluralism? 7) Most scholars have treated legal pluralism as an objective construct from the viewpoint of a third party, that is, the objective perspective, seldom paying attention to the attitudes of the recipients towards legal pluralism, which I call the subjective perspective. Is this reasonable enough to grasp the true significance of legal pluralism?

The first question concerns the scientific validity of the inquiry into legal pluralism, for it is a basic requisite of scientific inquiry to formulate the operational definition of its objective in order both to delineate its extension distinctly and to analyze its intension clearly. The various definitions of legal pluralism presented by discussants (for a review, see Griffiths 1986, 9–37; Merry 1988, 870–74) showed that they have indeed succeeded in the initial attempt to delineate their own objectives, thereby establishing a new scientific inquiry of a legal phenomenon called legal pluralism. However, their attempts seem to have stopped short of succeeding in making the definition operational, or even attempting to do so, as is similar to the situation of the inquiry into legal culture (cf. Nelken 1995). Any attempt may be made to attain the goal, provided the inquiry remains a science. Thus, the definition of legal pluralism will be my basic issue here. I shall deal with this in the last section, as it may be better formulated after examining the issues suggested by the other questions.

The second question suggests that we should search for all phases of legal pluralism in addition to the said dual structure of state law and minor law. The dual structure is truly an important phase of legal pluralism to have provoked such important scientific interest in legal pluralism. Its two
constituent parts and their working mechanisms have, however, not yet been satisfactorily investigated. In addition, the literal meaning of the word “pluralism” suggests even more phases of legal pluralism not limited to the dual structure.\(^2\) Furthermore, some of the various functions of legal pluralism attract our attention due to their major influence upon recipients together with or apart from the structures. If we do not search for them, the discussion will fail to grasp legal pluralism as a whole. Legal pluralists should therefore identify all the various phases of legal pluralism at work in the contemporary world.

The fourth question is found to be closely connected with this. The interest in legal culture, aiming to identify cultural differences among existing legal systems, has formed a different scientific inquiry from ours. It has, nevertheless, provided valuable data which are useful for our inquiry as well and which gave me answers to the two questions above. In fact, many studies on legal culture were not only published individually before and after 1990 (Macaulay 1989; Blankenburg and Bruinsma 1991; and many others), but also done collectively in the 1990s (Varga 1992; Gessner et al. 1996; Nelken 1996; Feest and Blankenburg 1997; Blanpain 1997). Their focus is mainly on the coexistence of different legal cultures in European/Western countries, though including those in some non-Western countries. They present in substance another phase of legal pluralism in the world since the 1980s and, accordingly known to have given negative answers to my third and fifth questions and encouraging us to advance our inquiry referring to their works as well, which answers my fourth question.

The exclusion of conflicting coexistence from the scope of legal pluralism, as suspected by my sixth question, implies a basic problem on the concept of law. I know of no legal pluralists who have argued manifestly for the exclusion. They seem to have simply assumed it on the ground that the expression “law in conflict” is theoretically a conceptual contradiction, in so far as peace or stability is one of the essential features of law, and that it is in practice no more than an irregular phenomenon to be corrected even when found. I will not outright reject such a view of the nature of law, but I cannot help admitting frequent cases of the conflicting coexistence of plural legal systems. The legal pluralism in conflict thus forms another issue of mine.

The seventh question might sound strange to those who are convinced of the established methodology of legal science, which presupposes that we observe law as an objective normative system without needing to pay attention to the subjective psychology and/or situation of its recipient. Such an

\(^2\) For instance, Alice E. S. Tay and Poh-Ling Tan distinguish six forms of legal pluralism as follows: 1. The global perspective: many legal cultures; 2. the national perspective: legal pluralism within each society; 3. legal pluralism recognized by, and within, a legal system; 4. legal pluralism through recognition of personal law; 5. plurality of individuals, institutions and interests; 6. legal pluralism of open-ended concepts (Tan 1997, 396–403). I hope other attempts may be made to further our inquiry.
objective perspective may be justified by those who concentrate on the legal monism of state law. It must fail to catch the essential nature of legal pluralism. As far as legal pluralism prevails in a society, people living under it may formally be allowed to choose one of different, or even competing, legal rules authorized by the plural systems of law. This may appear from the perspective of legal monists to be a peculiar, neglectable circumstance of law, but is rather an ordinary circumstance of legal pluralism, though often causing conflicts in the whole structure as a result of people’s differing choices. Such a circumstance is not only found in non-Western societies, but also in Western societies, as evidenced by some of the above-mentioned recent studies of Western legal cultures. It forms my last issue to examine the subjective perspective of legal pluralism.

The answers I shall give to the questions raised are thus summarized here into four, while some other problems will be explored to advance the inquiry into legal pluralism further: to explore the various structures of legal pluralism, the significance of legal pluralism in conflict, the subjective perspective of legal pluralism, and the definition of legal pluralism.

2. Various Structures of Legal Pluralism

The said dual structure of state law and minor law have aroused the main concern of legal pluralism. However, some legal pluralists have caught sight of other structures of legal pluralism apart from the dual structure. For instance, Jacques Vanderlinden earlier hypothesized legal pluralism broadly as the “existence in a certain society of different legal mechanisms to be applicable to an identical situation” (Vanderlinden 1972, 19). Peter Sack later defined legal pluralism as “a plurality of law […] of an ideological commitment,” which is “never integrated in a systematic fashion […] but a conglomerate of (more or less diverse) phenomena” (Sack and Minchin 1986, 1–2). Those conceptions of legal pluralism await elaboration by accurately identifying all the other structures of legal pluralism working in the contemporary world in addition to the dual structure.

The coexistence of modern law with traditional law in a national legal system must be another remarkable structure of legal pluralism from the modernist viewpoint. This phase of coexistence seems to have in fact been known among legal scientists but disregarded based on their assumption of state law monism. The assumption produced two outcomes. One was the apparent disregard of the coexistence in European/Western countries on the ground that, as I see it, there was no traditional law contrary to state law there. However, the recent trend of the above-mentioned discussions on European/Western legal cultures revealed that the disregard has been amended and thus that new data concerning European/Western legal pluralism have been presented as a phase of the various structures of legal pluralism.
The other outcome was the tendency of Western legal pluralists to be indifferent to the coexistence of modern and traditional law in individual non-Western countries. Non-Western legal pluralism may be seen in theory as one form of the dual structure of state law and minor law or coexistence of modern law with traditional law. Its reality is, however, never reduced to the simple structure or coexistence, but is built up with other systems of law. The different systems include, first, Christian law, Islamic law, Hindu law, Buddhist law, or other forms of religious law, each of which is administered mainly by its own authority but partially by the state authority; second, unofficially working various kinds of indigenous law among each people, often officially authorized by the state law, such as kinship law, tribal law, community law, local law, and many others including cosmological postulate; and third, transplanted foreign laws other than Western modern law including socialist law. As a result, the actual legal pluralism of a non-Western country is structured as a unique conglomeration of those various systems of law, which the people concerned have chosen among many possibilities, mostly on their own initiative, but not uncommonly by the manifest or latent imposition of foreign countries. A glance at a few countries such as Egypt, India, Thailand, and China will clearly suggest the outcome of such a conglomeration. Non-Western legal pluralism has developed in individual countries in a manner too complex and unique to be grasped by the simple coexistence of state law with minor law or modern law with traditional law. Without basing the discussion on legal pluralism on the empirical data of those unique conglomerations of plural, or rather multiple, systems of law, it would end up being an empty theory. In short, our task is to investigate complex structures of legal pluralism in each non-Western country, another phase of the various structures of legal pluralism.

I have a good example of such a complex structure with regard to Asian Islamic law. The name and principles of Islamic law are well known, but its actual circumstances are surprisingly little known among legal scholars. According to my recent collective study on Islamic law in Asian countries (Chiba 1997c), Islamic law has formed a characteristic legal pluralism in individual Asian countries coexisting with modern state law and other indigenous and transplanted laws. Many Islamic countries have maintained their unique structures of legal pluralism built up mainly of modern law and Islamic law, with the superiority of the latter in reality (cf. Nezami Talesh 1986 for example), supplemented by other indigenous and transplanted laws. It is clearly seen in Afghanistan, Pakistan, Bangladesh, Malaysia, and Indonesia, as well as the home countries of Islam in the Near and Middle East. In other countries such as India, Sri Lanka, Thailand, the Philippines, and China, Islamic law is, though perhaps classified into minor law, found

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3 Note, however, Saudi Arabia and Sultanate Oman form two exceptions upholding Quran as their fundamental law without transplanting the modern constitution.
not only unofficially prevailing among people in different percentages in each country, but also often authorized by the state law as a minor but working official law, while there are still some countries left unmentioned like Japan and Korea on account of their small Muslim populations. These results demonstrate that the countries mentioned have each maintained their own legal pluralism uniquely constructed by modern law and Islamic law plus other indigenous and transplanted laws. Such a complex structure may also be found in other non-Western countries.

My arguments above urge us, at the same time, to re-investigate the validity of the said dual structure in both its internal mechanism and external circumstances. As to the internal mechanism, its two constituent parts, state law and minor law, are each usually used as if distinctive with no further examination needed, often in different callings from mine. I have some doubts about the usage. Because the concept of state law includes, in addition to the law of a sovereign state, some other forms such as the hierarchial systems of a confederation in two or more levels (Williams 1997) on the one hand, and the officially authorized laws of local governments and such autonomous bodies as army and navy, imperial court, or the like, though usually neglected, on the other, many of which may be classified into minor law, too. The concept of minor law is simple but its reality is thus multiple, ranging from the above-mentioned law of local governments and autonomous bodies, through the “indigenous law” of modern organizations such as churches, universities, and trade unions (Galanter 1981), to the law of alleged “semi-autonomous social fields” such as kinship groups, tribes, localities, and the like (Moore 1978). In addition, there are other situations whose relevance to legal pluralism may be examined: for instance, the “informal symbiosis of Islam and the Law” in a non-Western society (Boudahrain 1997), the Hindu “caste system as practised in India” prevailing across believers of “even Islam, Christianity, and other religious denominations” (Verma 1997, 133), “litigiousness [differing between] insiders [and] outsiders in an American community” (Engel 1884), and so on. If the dual structure is to be fully disclosed, all of the above cases may be systematically arranged into a whole legal pluralism. In brief, state law and minor law, each being plural or rather multiple, urge us to re-investigate the multiple mechanism of the said dual structure.

The external circumstances also need to be reinvestigated since the dual structure survives not in isolation from the surrounding circumstances, but rather are influenced usually to some extent and often vitally by various kinds of trans-state law. Presupposing the doctrine of the inviolable sovereign state, modern jurisprudence tends to be disinterested in the actual influence of trans-state law upon state law. In fact, no state legal system can escape from the overt or covert influence of related trans-state law, whether by official treaty or unofficial agreements. There are three examples at hand.

4 The word “trans-state law” is used here in place of “international law” or “world law” in my preceding works.

The most conspicuous are regional treaties as represented by EU law across European countries. Another is the indigenous law of minority peoples officially authorized by state law in response to international developments in protecting the proper rights of indigenous peoples. Last, albeit unofficially, is the change in sport rules administered by a domestic sport organization in response to the revision of the rules by an international organization (cf. Nafziger 1988). I realize my suggestion of both trans-state law and the examples are not satisfactory, but I hope it will suffice for interested scholars to validate them. In sum, the triple structure of minor law, state law, and trans-state law may be added instead of the dual structure among the various structures of legal pluralism.

The problems suggested above are primarily of an empirical nature which legal philosophers might not be interested in. Secondarily, but essentially, two theoretical problems may be found underlying these empirical problems. They are the concepts of law and legal pluralism. As my concepts might appear confused as a result of my mentioning various kinds of law besides typical state law, such as unofficial law, religious law, indigenous law, or even custom, morality and cosmology, I shall answer the problem in a later section before defining legal pluralism.

3. Legal Pluralism in Conflict

Most discussants appear to assume that legal pluralism will never be in conflict. For instance, Sack limits legal pluralism to “the coexistence of different forms of law” with their “alternative” function in a “not integrated” but “organized” way (Sack and Minchin 1986, 1–2, my emphasis), which may imply the exclusion of legal pluralism in conflict. Arnaud admits some “contradictions between several legal orders” but asserts that they “must be solved in a mutually satisfactory way” (Arnaud 1995, 152). I admit them, for their concept of legal pluralism is based on some justifiable reasons. However, I suspect another concept including conflicts is necessary in order to grasp the whole working structure of legal pluralism in practice. I shall demonstrate their existence and importance by some representative cases in Asian countries.

First, my country, Japan. Japanese law has featured a wide variation of legal pluralism throughout its history (for details, see Chiba 1997b), apparently in peace but characterized by frequent conflicts. A first critical conflict took place between the Court law of Tenno5 and clan law, when the leader

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5 Court law, or Tenno law, formed a legal system based on the authority of Emperor to rule the whole country through Court nobles, but, after the warriors assumed real power in medieval times, was largely disguised in the law of nominal authority to give official ranks to ruling warriors, including the highest Shogun, with the Emperor retaining the limited jurisdiction to administer Court affairs. Such a nature of Court law basically continues in the present Tenno system.

of a powerful clan attempted to usurp the throne. It was finally pacified through a new transplanted official legal system in the seventh to eighth centuries modelled on the Chinese system, exiling indigenous law into the unofficial world. However, the Chinese-modelled law soon encountered the tenacious resistance of indigenous law and was almost replaced by a new indigenous system in a few centuries, the structure of which basically survived from the twelfth to the nineteenth century. The indigenous system was a coexistence of two national systems. Court law on the nominal authority of Tenno and Shogunate law on the real power of the Shogun, with various forms of official or unofficial minor law such as local land law, warriors’ discipline, kinship system, communal law, shrine and temple law, iemoto law, and the like. Its whole structure could not be maintained, however, without conflicts within. Let me give some examples. First, the authority of Shogunate law was defied for nearly a century around 1500 in incessant civil wars between local lords struggling on their land law for the hegemony of the time. Second, against the new legal pluralism created by the Tokugawa Shogun after the civil wars, which included the Shogunate’s policy for the eradication of transplanted Christianity, the tenacious resistance of the minor law was provoked by a few local lords for the protection of Christians until the lords were finally conquered in 1638. Third, the Tokugawa Shogunate law struggled for several decades against the allied power of the resistance relying on local land law and Court law, until it was finally replaced by the modern legal system transplanted from Western countries in the late nineteenth century, which was in fact indigenized into the unique Japanese system. In sum, Japanese legal pluralism has truly formed a dual structure of state law and minor law. Nevertheless, it has been a unique development centering on the ups and downs of Court law and the systematic transplantation but indigenization of foreign law twice, involving many conflicts in the process. I am led to accept an interim proposition on those facts that

6 The Shogunate, Baku-fu in Japanese, was the office of the Shogun, supreme commander of the warriors appointed by Tenno, thus meaning the real government over the whole of Japan with the Shogunate law.

7 The iemoto system, one called the “heart of Japan” (Hsu 1975), formed and still forms a particular type of social organization for those who want to learn such traditional arts as the tea ceremony, flower arrangement, No play, martial arts, and the like. Its structure and function are characterized by the communal tie between the highest leader with the hereditary authority to monopolize the administration of both the art and organization and the members voluntarily joining but faithfully obedient to the leader in learning the art and maintaining the organization.Remarkably, the iemoto structure has been fictitiously extended to other social organizations, ranging from conservative political parties or conglomerates of companies to boryokudan, organized gangs.

8 The two Japanese experiences of transplantation of foreign law from ancient China and the modern West are often said to be one of the best examples of the systematic and successful transplantation of foreign law. In fact, such an appearance is possible only from the formal perspective of official law, for a variety of indigenous law were not only adopted in the transplanted official systems, but also unofficially working outside the official law, too often undermining the latter. (See Chiba 1997b for details).
legal pluralism is never a stable phenomenon solely in peace, but rather functions dynamically punctuated with a variety of conflicts.

Next, the neighbouring Korean peninsula. Today, according to modern jurisprudence, two sovereign states, that is to say, two independent legal systems exist there in antagonism rather than in friendship: the Republic of Korea (South Korea) and the People’s Democratic Republic of Korea (North Korea). Throughout Korean history, the people have fostered a single Korean nation with all its divisions into three countries in ancient times and two countries today. I have two grounds for making this assertion. First, the Korean people have sought enthusiastically to maintain a single nation in opposition to surrounding enemies. The three countries before were, unlike the modern sovereign states, in fact sub-structures struggling for the unification of the whole nation, which was realized later by Icho Korea from 1392 to 1910. Both North and South Korea today hold unification of the nation up as their supreme political goal. Also in ideology, the whole Korean people have cherished the myth that the Creator named Hanunim sent their legitimate King of the entire nation to the Peninsula. This myth enabled them to have a unified nation represented by Icho Korea, but at the same time caused frequent struggles for national legitimacy between ambitious rulers, the extreme example of which is the divided countries previously and today. Recently, the myth seems to have lost former prominent manifestation, but is latently alive in socio/cultural ideologies in South Korea and in a political ideology in North Korea as seen by the late Kim Il-Sung’s erection of the magnificent Hanunim Shrine. The two Korean states today must form an unusual structure of legal pluralism in conflict with their stated aim to be an integrated nation. Of course, Korean law has shown us, apart from this extraordinary phase, the usual phases of legal pluralism structured by official national and local law and unofficial minor laws of kinship groups, local groups, personal alliances and others as well as the conspicuous legal postulate of “traditional aversion” to official law or “alegalness” (Hahm 1969, 19). Korea also represents another phase of legal pluralism in conflict. While Korea was under the Japanese rule from 1910 to 1945, the Korean Interim Government worked in Shanghai from 1919 until independence after World War II. The Government must have been founded on its own legal system, however primitive it may have been, to resist the ruling Japanese law. In sum, Korean legal pluralism is featured, in addition to the common character, by a unique structure coloured by the Korean traditional way, including conflicts that may reinforce the former interim proposition.

Then, the huge country, China. The term, Chinese law, is simple, but in fact exhibits, together with Indian law (see Baxi 1986), the most complex legal pluralism. The first reason for this complexity is that its official law is structured in multiplicity rather than plurality by those of the central government and different levels of multiple autonomous regions and minorities, including large frontier nations such as Tibet, Mongolia, Muslim
Hsinchiang and two others. The second is that the official law has coexisted
with a variety of unofficial laws of diverse social organizations such as
patrilineal kinship groups, local communities, guilds, and many others. The
third is the unrivalled flexible coexistence of indigenous law with
transplanted law as demonstrated by the fact that the present socialist
government has systematically adopted capitalist law in recent years (for
details, see Ji 1993). Among these seemingly peaceful structures of legal
pluralism, some phases of conflict have occurred throughout. One such
contemporary conflict is the confrontation between Mainland law and
Taiwanese law, which has been divided from the former single Chinese law
in a manner similar to the Korean case. Another is the struggle of Tibetan
law against the law of the central government, in which indigenous Tibetan
law of Buddhist heritage is working for its own government led by the Dalai
Lama, who has been exiled to an Indian city by the central government since
1959 (cf. French 1995, 50–2), while the central government supports the
Panchen Lama in Beijing as the religious leader of the whole Tibet in his
place. Yet another conflict is found in the new Chinese official policy of
preserving “one country, two systems” in Hong Kong, which was returned
to China in 1997 after more than a century of British rule. The last case
appears to be a phase of legal pluralism in peace, but the new policy could
not be devised without preceding conflicts between both parties; and the
nature of the conflict is nothing other than the clash between human rights
and government control as represented by the Tienanmen Case in 1989. In
consideration of these and other conflicts in Chinese law, another proposi-
tion may be accepted that the more complex a legal pluralism is, the more
dynamic the interactions will be, including the conflicts it contains between con-
stituent multiple systems, be they manifest or latent.

My emphasis on conflict is never to encourage it, but rather to discourage
it by deising a way to manage it wisely. According to the established socio-
logical theory, social conflict functions negatively against social order, but it
also works positively by revealing the defect of the existing order for im-
provement. The same applies to the case of conflict in law. We hope law will
prevail without conflict, but in reality we cannot do without any conflict
in law. What is expected of us living under law is never to try to simply
disregard or hate conflicts, but to manage them wisely in response to their
nature and our social ideals. Accurate observation of conflicts in law is
indispensable to manage them wisely, without which legal pluralism could
not survive in peace. Some individual cases of legal pluralism in conflict will
be added below with a request that attempts be made to devise ways of
managing them wisely.

In India, a Brahman gave his infidel daughter a “merciful” death contrary
to penal law but approved by his community under Hindu law (Freed 1994).
In Papua New Guinea, four murderers of an alleged sorceress were ordered
to pay damages based on their tribal law by a trial judge, but that outcome
was reversed to criminal punishment by the Supreme Court (Narokobi 1986). In Kenya, the tribal burial right of a deceased lawyer was approved by the Court against the widow’s invocation of official law (Howell 1994). And finally in the United States, a refugee Hmong youth who had followed the traditional procedure of marriage by capture was accused by the fiancée of abduction and rape and finally deported by a sentence (Renteln 1992, 488–9). Spurred by these examples, legal pluralists may feel obliged to investigate “the dynamics of change and transformation” as a result of “the interaction between legal orders, particularly between state law and non-state law” (Merry 1988, 879), which naturally contain legal pluralism in conflict.

4. Legal Pluralism in Subjectivity

The problem which I would raise here is one relevant to the dynamics of legal pluralism in peace and conflict, for it relates to the motive of the recipient of law which prompts the dynamics. It is to inquire into law in subjectivity through the subjective perspective, which has been excluded from the world of law. The reason for the exclusion is that modern jurisprudence aiming to observe law in objectivity through the objective perspective is furnished with no room to consider such a personal factor. On the other hand, the problem of legal pluralism in subjectivity has been suggested by some legal pluralists since the 1980s. Inga Markovits warned in 1986 that EU law and the transplantation of Western law in Central and Eastern Europe will be “largely ineffective” without due consideration of different legal cultures on “the actor’s levels” (as cited in Gessner et al. 1996, 251, my emphasis). Merry counted “the micro-level processes of legal action,” which may cause “forms of resistance to the penetration” of state law among various phases of dynamic legal pluralism (Merry 1988, 882, my emphasis). More pointedly, Vanderlinden stated in 1989 that he would abandon his former “rule-oriented approach (in 1972)” to re-define legal pluralism as follows:

[…] from the standpoint of the individual […] It is the condition of the person who, in his daily life, is confronted in his behavior with various, possibly conflicting, regulatory orders, be they legal or non-legal, emanating from the various social networks of which he is, voluntarily or not, a member. “Legal pluralism” is pluralism limited to the legal regulatory orders with which the “sujet de droits” can be confronted. (Vanderlinden 1989, 153–4, my emphasis)

The article was brief but important in manifestly turning the perspective of our topic from the prevailing objective one to the neglected subjective one, focusing on the will and decision of the recipient under legal pluralism, which I call law in subjectivity.

Since 1990, legal pluralists have begun to clarify the subjective perspective. The most remarkable is Hanne Petersen’s attempt with collaborators to elaborate the concept of legal pluralism into “legal polycentricity” based on
the nature of “law as being engendered in many centres” and to understand “law from inside” (Petersen and Zahle 1995, 8, my emphasis). The former point requires no further explanation since the new term, polycentricity, may in substance be another among the various structures of legal pluralism I identified in the preceding two sections, while she has her own reason for this new concept as seen from the latter point, which needs to be examined for its relevance to my topic. First, Petersen herself appears to find the essential factors of the “law from inside” in three phases: “everyday practices” instead of legal rules, “experiences of women” labouring with their “values of work (and) equality in different spheres of life,” and particular “home-knitted law” in place of the general term, informal law (Petersen 1996, 13–8). The everyday perspective has been adopted by others including “popular legal culture” (Arnaud, ed. 1989, Macaulay 1989; Friedman 1989). The women’s perspective may be a variation of the “subject of right” (Vanderlinden 1989) or “actor’s perspectives” (See Gessner et al. 1996, quoting Markovits) to regard people as “agents of change” rather than as victims of particular legal structures” by making their “choice of action” (Hellum 1995, 18–9, my emphasis). The particular law perspective may uncover a normative ground to enable an actor to choose a particular legal standard among plural, often competing ones in his/her everyday life. In other words, an actor is motivated by “individual drives which can express themselves in productive and creative, but also in highly destructive ways,” that is, “deviant behaviour and criminality” (Gessner et al. 1996, 408, 269, my emphasis).

The above arguments suggest the essential importance of the subjective perspective that a person under legal pluralism is not only a passive recipient of legal regulation but also an active agent for the law by his/her choice of an alternative legal rule among the plural. The choice is made to support one of the plural standards, i.e., to reject the others. The supporting choice may need no special mention, for it signifies the “productive and creative” function of the law. The rejective choice, on the contrary, needs special attention, for it may cause minor or major conflicts in the whole legal order, whether passively by evasive behaviour (see, e.g., Rosen 1992) or positively by “destructive” behaviour of personal criminality (Gessner et al. 1996). When those rejective choices are accumulated, they may result in collective resistance to or even revolution of the legal order in force.

I wish to add some comments on the above findings concerning the nature of a person’s subjective cognition of legal pluralism from among my data on non-Western peoples. First, a person under legal pluralism may stand in the position of legal ambivalence between conflicting legal rules. Thus, he/she is aware of being legally entitled to choose one of them and reject the others. Further, he/she is encouraged to make that choice on the ground that it is culturally justified. Finally, he/she may be proud of the choice as a cultural privilege for its traditional value (cf. Chiba 1995, 79). In sum, being accompanied by the cognition of cultural pride, the recipient’s choice may
produce a considerable effect upon the working legal pluralism, whether positive or negative and manifestly or latently.

5. Systematic Arrangement of Various Concepts of Law

Having explored various phases of legal pluralism, I believe I should arrange the various concepts of law, which I used in my preceding argument in a possibly bewildering way, systematically before finally defining legal pluralism. The key point to justify my position must be to devise a set of concepts sufficient to furnish my various concepts of law with a systematic arrangement of the whole. For such a conceptual scheme will, if adequately conceptualized and systematized, not only overcome any bewilderment, but also afford a conceptual apparatus for the demanded definition of legal pluralism.

As mentioned earlier, some leading legal pluralists have attempted to arrange the concept of legal pluralism. However, most of them focussed their attention on the kind of law which should be paired with state law in the pluralism, as abridged by Griffiths (1986) and Merry (1988), while others like Vanderlinden (1989) and Sack had broader perspectives. No one has yet tried any systematic conceptual scheme of law in general nor legal pluralism in particular, while Marasinghe and Conklin (1984, vi) appealed for adequate concepts. Hoping it may be helpful, I summarize my scheme below.

At the outset, law may be delineated distinctly from other social norms by its definition as a particular type of social norms supported by a set of values/ideas under the legitimate authority/power of a certain social organization. The social organization may be called the socio-legal entity as far as it maintains its own system of law, ranging from a kinship group, tribe, locality, and other minor societies in a national society, through the sovereign state or a nation, to an international organization across national boundaries. The smallest socio-legal entity, such as kinship group or village community, must, to ensure its survival, maintain a close connection with its neighbours and overlapping larger organizations, and will eventually form a conglomerate structure of certain multiple laws that may be called legal pluralism, as typically seen in the dual system of state law and minor law. All the different kinds and levels of law related to legal pluralism may be classified into a systematic conceptual scheme of law as follows.

State law forms the standard concept to characterize the others as non-state law. In consideration, however, that the problem here lies in the re-classification of such diverse non-state laws, a more useful dichotomic classification may be formulated between official law, including state law and those officially authorized by state law, and unofficial law, not officially authorized but valid.

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9 Refer to Chiba 1989, 177–80, and 1997a, 96–101, for the definitions and explanation of my terms introduced below.
outside the official law. It must be noted that unofficial law may be adopted in official law like religious law or minority law but largely maintains its original nature outside official law, albeit with some possible transformation of its character in history. Then, in respect of the cultural identity of each socio-legal entity, another dichotomy may be divided between *indigenous law*, which originated from the indigenous culture, and *transplanted law*, which was received from foreign cultures or imposed by foreign countries. The two types of law encountered in a plural structure may be harmonized or conflict with each other, thus resulting in mutual assimilation, transformation or rejection. Yet another dichotomy may be useful between *legal rules*, clearly formulated legal standards, and *legal postulates* in the form of ideas or ideology, which base, orient and revise the legal rules. Legal postulates may be less useful in state law, which is furnished with clear and distinct legal rules under the principle of the rule of law, but more useful in other kinds and levels of law, such as religious law under God’s omnipotence or customary law so often lacking in clearly formulated legal rules.

With the above six concepts in three dichotomies, the complex structure of any legal pluralism will be analyzed into its constituents. However, further questions may reasonably be raised. In theory, how can those individualized constituents be built up into a workable, arranged structure called legal pluralism? And in practice, how can a socio-legal entity choose its own structure among many other possibilities? Obviously we need to postulate an integrating principle to re-organize individualized constituents into a truly workable legal pluralism. Here appears the *identity postulate of a legal culture*. It guides a socio-legal entity to choose the particular combinations of three dichotomies of different laws and the conglomeration of them into a workable coexisting structure like legal pluralism.

The above conceptual scheme is called *three dichotomies of law under the identity postulate of a legal culture*. As the first attempt of its kind, it may leave much room for improvement. Still, I am convinced of its basic validity on two grounds. On the one hand, I believe it has been verified by my attempts to apply it to Japan (Chiba 1997b), Sri Lanka (Chiba 1993), and some other countries. On the other hand, legal scholars do not doubt that each of the existing state law and legal family features a postulate to guide its whole system constituted of so many factors of different origin. Such a postulate may, I expect, be elaborated into an identity postulate working for the legal system or legal culture.

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10 Tan 1997, 6–7, 392–93, demonstrates the usefulness of my scheme in observing and analyzing the complex legal pluralism of East Asian countries more accurately. I hope non-Western law and legal culture, which are full of “diversity” (Chiba forthcoming), apparently with the “non state, unbounded, unsystematic” nature (Woodman 1993) and, for this reason, too often done with the concept of a “black box” (Kidder 1993), may be more clearly conceptualized by devising better concepts.
Assuring the validity of the conceptual scheme for legal pluralism, the scheme may be applied to law in general, for law in society always exists and works in pluralism discernible by this conceptual scheme. The three dichotomies of law under the identity postulate are accordingly found not only to be the conceptual scheme for legal pluralism, but also for law itself. However, it is too big a problem to treat here. I think it wise to close my argument by answering my final issue raised.

6. Definition of Legal Pluralism

By using my conceptual scheme, I define legal pluralism as “the coexisting structure of different legal systems under the identity postulate of a legal culture in which three combinations of official law and unofficial law, indigenous law and transplanted law, and legal rules and legal postulates are conglomerated into a whole by the choice of a socio-legal entity.” I am convinced of its merits in two respects. One is its nature as an operational definition. The reason is that it enables us to discern distinctly and analyze clearly any existing legal pluralism by six operational concepts, whereas previous definitions by other legal pluralists are not so well operationalized as to be used as a scientific tool by every scholar with all their utility as a first step definition to delineate the objective. The other is its utility to make comparison between existing legal pluralisms because the feature of each legal pluralism is sufficiently represented to enable analytical comparison between them as the different combinations of six dichotomic laws and their resulting conglomerate based on the identity postulate.

To add a comment, I believe it may be possible to use this definition to operationally define legal culture. This may be defined in another way, I know, when the purpose of inquiry differs from mine. However, according to my conceptual scheme, legal culture may be the “cultural feature of each existing legal pluralism.” Hence, a legal pluralism featuring a unique combination and conglomerate is found to be the core of legal culture. This finding will positively support my treatment of legal culture in close connection with legal pluralism, leaving a request that interested scholars may elaborate this further.

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