Multinormativity, conviviality, and legal pluralism

An introduction

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Introduction

The intricate conceptual interweaving in which many of the current debates in legal and social sciences are immersed resembles a labyrinth of normative multiplicity, constructed by its own inhabitants. This labyrinth of normative multiplicity mirrors the complexity of the inhabited social world, past and present, which the concepts of legal pluralism, conviviality, and multinormativity set out to address. All three address the heterogeneous co-constitution of the social world and, in their interplay, offer a unique refocusing on the conceptual debate regarding the normative multiplicities that accompany personal and institutional realities. Within an interdisciplinary field concerned with the historical and present constitution of normative and legal foundations of societies in Latin America, the contributions to this book tackle at least a twofold challenge: one,

the relationship of multinormativity to its more widespread conceptual counterpart of legal pluralism, and two, the possibilities of the conceptual interplay of multinormativity and conviviality. Does multinormativity genuinely contribute something new compared to the more widespread concept of legal pluralism? How does multinormativity intervene in the debate of conviviality, the living with difference and inequality, or does conviviality offer means to deepen the understanding of multinormativity? If multinormativity is more than identifying a plurality of normative formats and forms, it demands an awareness for the judicial practices and the frameworks within which such practices take place. At the same time, conviviality on one level addresses the cohabitation of people in peaceful and conflictive ways demanding to address the structuring forces and influences that shape an unequal and disquieting playing field. Multinormativity allows us to address the normative dimensions of such conviviality. On another level, though, conviviality also describes the relations among different normative orders hereby providing a tool to understand the dynamic of multinormativity. With so far little related conceptual origins, legal pluralism, multinormativity, and conviviality each afford conceptual inspirations in other areas of the legal and social sciences in which they hitherto had not been sufficiently considered.

Parting from Thomas Duve's (this volume) conceptual proposal of multinormativity, the first part of the book *Theories and Perspectives* envisions a potential and innovative theoretical horizon to address and understand the normative dynamics of historically grown unequal and heterogeneous societies. A second part provides a series of historical cases in which the authors employ multinormativity to attain a renewed understanding of the normative dimensions, legal complexities, and challenging configurations and regimes of conviviality. Living *with* difference, the simplest definition of the concept of conviviality, furthermore, can be perceived as a place (or, more accurately, places) where the connection between multinormativity and

legal pluralism on the level of materialities, histories, practices, and experiences can be established.

To set the tone, we continue to sketch some of the key aspects to keep in mind when thinking through the three concepts. Far from trying to be conclusive, we wish to provide a shared baseline that offers the points of connection and dissociation between the three concepts. We then move to briefly presenting the potential conceptual synergies, hypotheses, and new challenges of each chapter as they inform the overall framing of the book.

Legal pluralism

The meaning of each of these concepts is not univocal (Tamanaha, 2021). For example, there is a plurality of legal pluralisms, as warned by Armando Guevara Gil in his chapter, where he refers to over a dozen approaches that emphasise distinct aspects of the concept. In contemporary debate, the concept has shown versatility in referring to different themes such as minority rights (Hoekema, 2005), Brexit and the crisis of democracy (Darian-Smith, 2022), women's rights (Sieder and Barrera, 2017), indigenous peoples' rights (Gómez Isa, 2014; Velasco, 2018; Pimentel, 2010; Yrigoyen Fajardo, 2004), among other applications.

For an initial approach, legal pluralism expresses the coexistence of legal orders in the same social field (Griffiths, 1986; Wolkmer, 2015). The term gained prominence since the 1970s in anthropological research in colonial and post-colonial societies addressing the complex relationships between native and colonial law (Duve, 2018; Benda-Beckmann, 2002; Guevara Gil, 2009). Earlier foundational works in anthropology, such as Malinowski's *Crime and Custom in Savage Society* (1926), were reread within the framework of legal pluralism. The same happened with the works of early 20th century jurists, such as the research of Eugen Ehrlich and the concept of "living-law" (Seinecke, 2015).

Since then, the concept has informed research on European countries, the United States, and Latin America. These studies questioned the equation of law and statehood (Schuppert, 2017; Twining, 2010). A state's legal order is not exclusive but coexists with other legal orders recognized or not by the State. As Sally Merry (1988) pointedly puts it:

> Legal pluralism has expanded from a concept that refers to the relations between colonized and colonizer to relations between dominant groups and subordinate groups, such as religious, ethnic, or cultural minorities, immigrant groups, and unofficial forms of ordering located in social networks or institutions. (Merry, 1988, p. 872)

This was not the last expansion of the concept. From the 1990s onwards, legal pluralism also started to embrace transnational (Teubner, 1996) and global law (Berman, 2012), that is, normative orders created outside the framework of the State, as well as international law, such as the legal regime of the internet, sports regulation, the financial system, and others globally active fields.

Historians, attentive to the debates in the anthropology and sociology of law, started to apply the concept to past societies from the 1980s onwards (Hespanha, 2016; Pihlajamäki, 2017), which gained prominence in the history of the law of Empires (Benton, 2002; Benton and Ross, 2013; for criticism of this literature, see Herzog, 2021). Legal pluralism thus has had a significant impact in a vast range of interests, from native to late capitalism societies, and from empires of the past to contemporary transnational constellations.

A landmark result of this varied literature on legal pluralism was to question the presentist and Eurocentric constriction of law to state law. Legal pluralism better describes the law of societies prior to the era of revolutions, codifications, and the massive production of legislation. Understanding law from a "statist" perspective distorts it greatly: on the one hand, canon of law, natural law, municipal law, feudal law, commercial law, corporate law, and imperial law are not state laws (Hespanha, 2012). On the other hand, in a context

of statehood, codification, and positivization of legal norms, the exclusive claim to the validity of state law is challenged by other native, informal, and formal legal orders independent of the State. The territorialization and nationalisation of law does not eliminate the internal diversity of legal orders. The claim to a monopoly on legitimate violence, the centralization of governing bodies to create and enforce laws, does not effectively suppress other legal orders, recognized or not by the State, created by social practices and guaranteed by different means (tradition, interest, negotiation, or violence). The coexistence of these different normative orders becomes one that can be conceptually addressed as one of conviviality, as it unfolds in the normative sphere.

Multinormativity

The concept of multinormativity was introduced quite recently from the field of legal history. It was coined by Vec (2009) to delineate a blind spot in legal history. He presented two types of normative orders, one for the period of the *Ancien Régime* and another for the emerging industrial society of the 19th century, which cannot be subsumed under the concepts of law or morality employed by historiography. In the *Ancien Régime*, a set of ceremonial norms regulated public performance in a hierarchical society, defining social distinctions. In emerging industrial societies, a heterogeneous set of technical rules regulated the standardisation of processes and products, such as screw design. The coexistence of legal norms with norms of, for example, courtesy and technical standards became evident, as well as the absence of meta-rules that could resolve conflicts between these normative sets. Vec proposes the term "multinormativity" to focus on the relationships of law with other normative orders.

In the rendering of Thomas Duve (this volume), multinormativity takes on more ambitious contours, integrating some earlier impulses of the debate of legal pluralism. The concept addresses different

modalities of normative orders and the challenges of classification, legitimation, and collision. Multinormativity does not require a previous definition of law. The starting point of analysis is no longer different legal orders but a sensitivity of normativities that may or may not claim the quality of law. Another advantage is that multinormativity does not assume the premise of discrete normative orders or the unity of law, opening a space of opportunity for fuzzy normative phenomena. In fact, Duve postulates, the unity of state law in large part has remained an assumption in legal pluralism against which other legal orders are compared.

By far the most promising observation introduced by Duve is the praxeological spin of multinormativity (this volume). Practical assumptions render the production of legal norms intelligible: their authors' and users' structures of thought and action, their explicit and implicit knowledge, as well as the contestations and resistances which co-produce their formation. Multinormativity offers a key to reconstructing the different epistemic communities and communities of practice involved in the production of normative knowledge. Norms condense knowledge, depend on knowledge to be formulated, need to be known; following (the making of) norms is a practice rooted in explicit and implicit knowledge, as is their application. Multinormativity serves to problematize the usual focus on the sources of law (legislation, doctrine, and judicial decisions) in legal historiography and facilitates the mapping of other implicit and explicit normativities and associated knowledges that emerge from localised social practices (Dantas and Barbosa, 2021; Barreneche, this volume).

Multinormativity provides the conceptual space to address normative multiplicity at all stages of the production, application, contestation, and modification of laws, rules, customs, or even habitual behaviours. This openness applies to the narrower reading of a community of practice involved in the production of norms, yet it also connects to the normative dimension of any social processes, including the potentials and challenges of conviviality.

Conviviality

An awareness for the encounter of distinct epistemic communities, the making and unmaking of norms and their application, as well as an interest in implicit and explicit knowledges that become intertwined directly connects to the conceptual debate on conviviality. Concerned with the living *with* difference of a multitude of human (non, and more-than human) actors and groups, the concept has emerged from various distinct research endeavours. In one of its earliest renderings, Ivan Illich devised *Tools of conviviality* (1973) as a critique of capitalist logic. Rather than creating a different utopia or homogenising community project, he was concerned with describing tools that enable the living together. Rodriguez (this volume) shows how such tools are prior to more advanced systems with objectifying tendencies. Tools on a practical level can facilitate the interchange, the participation of all to define the contents of normative orders Illich's programmatic stance lives on in the current-day debates regarding degrowth (Gertenbach, Lamla and Laser, 2021; Samerski, 2018; Vetter, 2018) and the concern of public intellectuals with convivialism (Alphandéry, 2013; Caillé and Adloff, 2022).

In postcolonial Europe, characterised by global migration and racism, changing global power dynamics and postcolonial melancholia in the metropoles, Gilroy (2005) uses conviviality to create a more likeable postcolonial future. It is juxtaposed to the racist atrocities that are still hegemonic given the postcolonial melancholia that European societies such as the United Kingdom indulge in. For the author, conviviality describes a situation of urban multiculture in which (cultural) difference will have become commonplace. Conviviality itself becomes a normative project of a future to which to aspire. Others followed up to explore the potential of conviviality as an alternative to failed multiculturalism and the coercive tendencies of social cohesion (Neal et al., 2017; Back and Sinha, 2016). In this effort, conviviality has been discussed in relation to a vast array of

terms that focused on identity and difference, such as multiculturalism or inclusion, (everyday) ways of getting along, such as civility or collaboration, or imaginaries or fantasies of living together, such as cosmopolitanism or community (e.g. Nowicka and Vertovec, 2014; Wise and Noble, 2016; Hemer, Povrzanović Frykman and Ristilammi, 2020).

In the Global South, conviviality has seen at least two quite distinct renderings (Nyamnjoh, 2017; Mbembe, 2001), both concerned with postcolonial conditions. Nyamnjoh characterises the figure of the frontier African that is apt to encounter complexity and multiplicity. In contrast to aspiring to wholeness, frontier subjects never get tired of embracing aspects from their endless encounters, always growing in knowledge and attitude as well as being aware and content to never complete themselves. Such an attitude to multiplicity, change, and personal growth can be perceived as a mode to embrace multinormativity. On the other hand, Mbembe (2001) describes the grim reality of the postcolonial state in which the sharp power discrepancies inherited from colonial times have become caricatured, vulgarised, and deeply violent, all the while also being convivial. Mutual mimicry, symbolic appropriations, and continuous contestation describe the conviviality of postcolonial societies, understood in a shared *episteme* rather than resisting/dominating opposites.

Without necessarily employing the same terminology, both strands also find their equivalences in Latin American societies. By conceptually tying conviviality to inequality, Nobre and Costa (2019) point out the historical co-constitution of both throughout the continent. This holds true for the history of violent miscegenation and supposed racial democracy in Brazil (Costa, 2006; Schwarcz, 1999), the violent whitening projects across the continent (Conceição, 2020; Orsi, 2022), different regimes of inequalities (Góngora Mera; Vera Santos and Costa, 2019), or the more recent examples of acknowledging indigenous cosmologies in multinational nations, such as in Ecuador (Inuca Lechón, 2018; Tanasescu, 2022), Bolivia (Lazarte, 2009; Bonilla Maldonado, 2018), or Mexico (Abreu y Abreu, 2020;

Miranda Torres, 2020; Stavenhagen, 2013) in which, at times, an altogether different form of interspecies, human and non-human, conviviality is recognised. However, the deep traces of the history of capitalist extraction, and the *plantationocene* more broadly, remain (Wolford, 2021). All contributions to this volume debate specific examples within the historically grown sphere and stress the specific contestations that take place in relation to co-existing, both peaceful or conflictive normativities.

Doubtlessly, the Latin American histories can be told as those of violent and damaging, but also curious and empowering encounters with difference. The past centuries are ripe with the most dreadful and inspiring examples, ranging from continuous resistance and reinventions to necropolitical extraction and abuse. Connecting the insights from multinormativity to the studies of social and cultural conviviality in Latin America bears the potential to better understand the contestation of normative frameworks at play in any one of these convivial configurations. A deeper understanding of the normative dimension of conviviality can emerge that highlights what normatively is at stake and demands translation or negotiation, given that the co-presence and encounter has been a matter of fact for centuries.

On the other hand, the different approaches to conviviality are replete of methodological insights of how to study encounters with difference and multiplicity. Engaging with southern knowledge of otherwise silenced or overheard subjects from the Global South (Heil, 2020), conviviality emerges as a set of social practices that explicitly deals with the challenges and potentials of cultural and religious heterogeneities. Negotiation and translation practices take centre stage in a complex world, whose daily and institutional realities have little to do with modern imaginaries of neat separation and internal homogeneity of states, or indeed, normative orders. As seen above, the limitations of these imaginaries have already transpired in the debate on legal pluralism but become even more pronounced in the specific focus afforded by multinormativity. Seen through the

multiple conceptual propositions of conviviality, however, does normative multiplicity appear in a more refined light if, for example, the potential of incompleteness (Nyamnjoh, 2017), the creativity of mimicry (Mbembe, 2001), or the willingness to live with partial equivalences in translation (Barbosa, this volume) are better understood? As conviviality increasingly also focuses on human/non-human entanglements (Costa, 2019), it seems utterly legitimate to address multinormativity and legal pluralism through the idiom and conceptual potentiality of a conviviality of normative multiplicities.

Two processes come intertwined: on the one hand, there is a mutual cross-fertilization between multinormativity, conviviality, and legal pluralism that is productive in both ways. On the other hand, all three concepts share a critique of monolithic and hegemonic conceptions, typical of a colonial, positivist, and modern project. The interdisciplinary and thematically broad literatures, which we here put into conversation, share this critique, and take off from insights derived from realities and subjects that were dismissed or forcefully silenced.

Chapter outline

The first part, *Theories and Perspectives,* introduces us to four complementary conceptual debates regarding legal pluralism, conviviality, and multinormativity. The translation of Thomas Duve's (this volume) programmatic article on multinormativity into Portuguese is followed by three distinctly nuanced appreciations of legal pluralism, multinormativity, and conviviality.

Samuel Barbosa, a historian of law, takes issue with the limitations of legal pluralism to understand the normative dimensions of the everyday, especially when it concerns the mode of conviviality. He argues that multinormativity, which he understands as a sensitivity for normative multiplicity, is the necessary conceptual device to study the normative dimension of conviviality, living with

difference. Drawing from three research projects on multinormativity, Barbosa aptly shows how the concept illuminates the oftentimes implicit normative foundations in which the collaborative and tense relations of conviviality are built. To this end, he elaborates on the translations between normativities that he observes in the *longue durée* of historical developments as well as in contemporary struggles regarding the consideration of indigenous peoples' rights in the Brazilian Constitution. More than merely offering an important corrective to the focus of the debate of plural normative frameworks and their production, he offers a concrete way of studying these multiplicities and their entanglements through the translation of normativities.

The anthropologist Armando Guevara Gil, a significant voice on legal pluralism (Guevara Gil, 2009), develops a close dialogue with Duve's criticisms of the concept of legal pluralism and reconstructs the proposal implied by multinormativity. More than their juxtaposition, Guevara Gil aptly shows the relative familiarity and the possible entanglements between the two conceptual proposals. To this end, he highlights a wide range of approaches summoned under the common label of legal pluralism, stating that it is a "family of concepts", some more fruitful than others for establishing a productive alliance. Finally, the author raises a potential blind spot in analyses guided by either concept. Ethnographic research encounters societies oriented towards negotiating agreements, without possessing a discrete normative corpus. The logic of relationship predominates over the logic of regulation. It will be important for both multinormativity and legal pluralism to "engage with perspectives that nuanced the importance of normativity in social praxis" (Guevara Gil, this volume, p. 152).

From the perspective of legal philosophy, José Rodrigo Rodriguez offers a normative reflection on the analytical and practical tasks of conceiving the multinormativity of law in an unequal and violent society. A guiding question is how to conceptualise law, including institutional design and interpretative practices. Debating

multinormativity, both conceptually and in detailed examples, Rodriguez stresses the importance of memory and people's creative openness to the future, all of which are suitable for democratic coexistence. In an in-depth engagement with Illich's (1973) seminal proposal regarding convivial tools, the author assembles elements to contemplate the nexus between law, democracy, and conviviality.

The second part, *[Hi]Stories,* places us in multiple Latin American historical contexts. Here, we present several case studies that allow for a concrete analysis of the historical embodiment of the entanglements and cross-fertilizations of multinormativity, legal pluralism, and conviviality. The journey through these cases takes us from the end of the colonial period to the contemporary context, thereby providing concrete examples, diachronic comparisons, and conceptual insights.

Elisa Speckman Guerra's chapter offers a historical panorama, presenting four instances of multinormativity spanning three significant stages in the history of Mexico. In the first instance, drawn from the late colonial New Hispanic order, Speckman Guerra characterises the legal system as one of normative plurality in response to the plural conception of society overall. Normative plurality persists, with certain nuances that she calls a legislative pluralism, in the early independence period, accompanied by multinormative practices, drawing from not rarely conflicting and contingent norms. At the height of codification towards the late 19th century, multinormativity manifests itself mostly outside the created legal order, whose logic does not allow for the preceding plasticity. However, as the author demonstrates with two specific issues, Mexico enters the 20th century with a regulatory framework that allows for a comparison between multinormativity, on the one hand, and normative monism and legislative pluralism, on the other. Speckman Guerra analytically distinguishes between these empirically entangled concepts to support the two presented cases. The first case analyses the code of honour that intervenes in legal provisions regarding the question of duels, opening up a multinormative range for its understanding. The

second case is linked to the control, treatment, and punishment of so-called criminals and suspects. Once again, the norms behind the practices regulating conviviality offer various interpretative possibilities. Finally, Speckman Guerra enriches the mutual inspiration of the key concepts of multinormativity and conviviality by making their interventions in questions of in/equality and in/equity explicit.

The following three chapters have a clearer temporal focus. In revolutionary Buenos Aires at the beginning of the 19th century, Osvaldo Barreneche addresses the formation of the criminal justice administration and policing in the city of Buenos Aires. In the context of the first decades of independence, eventually leading to the consolidation of the Argentine Republic, Barreneche studies the "experimental" circumstances in the formation of criminal justice, analysing how certain normative presuppositions derived from both the colonial and republican legal order materialised into legal practices. These practices eventually provided the substance of the structure and profiles of courts and magistrates. Delving into the question of social order and the role of the police in its maintenance, Barreneche examines preliminary investigations, the initial judicial stage of the criminal justice administration. He scrutinises how executive authorities, such as police commissioners, at the time retained functions of the developing judiciary, thereby exercising major influence over judicial matters. The interplay between actors of the executive and judiciary exemplifies the concretization of norms discussed by Duve (this volume). Finally, the author explores the pursuit of social and political order to explain the historical formation of a new legal order during this key period leading to independent Argentina.

Raquel Sirotti's chapter analyses the intense political conflicts of the First Brazilian Republic: Through a series of specific cases, the author introduces the issue of control and repression of political dissent. To understand how these (state and non-state) repressive mechanisms are infused with multinormativity, she strategically employs conceptual dichotomies such as rule and exception or law and politics. Asking which sources most comprehensively document

multinormativity, Sirotti pursues a close analysis focused on Brazilian federal courts. Her analysis evidences the continuity of a multinormative universe that takes shape during the 19th century and extends throughout Latin America to the present day. While Barreneche (this volume) equally shows such continuity in the durability of contingent police norms that allow for discretionary action by security forces in the current democracies of the region, Sirotti ends her analysis with a portrayal of the occupation of federal buildings during the attempted *coup d'état* in Brasilia on January 8, 2023. A legal historian's attention to multinormativity reveals not only such continuities, but also the actors, spaces, and dynamics that, over time, shape and consolidate a certain legal as well as social order.

Closing this second part of the book, Tilmann Heil offers a contemporary analysis of the formation of normative frameworks in unequal urban environments in Rio de Janeiro, embedded in the transnational lives of migrant newcomers. To enrich the debate on multinormativity as a dimension of people's everyday lives, Heil suggests to relate it to the ongoing conversation on ordinary ethics in anthropology. Understanding everyday lives as relational and transnationally embedded, he shows how newcomers have to navigate normative contexts imposed by the state, which not rarely stand in opposition to their own ethical self-perception, grounded in their transnational lives, their religion, or perceived worldliness as global citizens. The challenges encountered derive from new normative entanglements. At the same time, for those struggling the most, the normative dimension in convivial configurations bare the potential to challenge social hierarchies to the point of their (temporary) inversion. Here, normative frictions and juxtapositions can generate a sense of empowerment. In a final twist, the chapter gives a sense of how it is to live within a contradictory and fractured normative terrain for those not in power to impose the norm. It highlights, once more, how in situations of tense conviviality, multinormativity is inherently unstable.

The last chapter by Agustín Casagrande revisits the foregone parts of the book to suggest inspiring lines of enquiry that propel the conceptual and empirical scope of the studies included in the volume. If the intention of this collection is to obtain refreshing conceptual insights of the cross-fertilization between conviviality, multinormativity, and legal pluralism, Casagrande gives further examples of how productive this project is. Acknowledging the difficulty to address law beyond the State as a main driving force behind multinormativity, Casagrande highlights the different stakes at play: while the overarching question regards the heuristic advantages afforded by multinormativity over legal pluralism to enlighten questions of conviviality, some scholars will focus on the disquiet caused by the practical and political consequences of acknowledging the existence of multiple, entangled normativities, alongside and in contestation of state law. This clearly will impact the terms of living together. The search for the traces of foregone normativities, subjected to silencing efforts, becomes a central concern. Competing and complementary normativities have remained active in the everyday life understood through its multiplicity. A key challenge is, however, as Casagrande warns, that some of the norms that guide social practice and set the terms of conviviality consciously or inadvertently live an "occult" life, resistant to elicitation. Herein lies their efficacy and trying to understand them thus devices a "strong" concept of multinormativity. Such a strong multinormativity is apt to enquire into the most disquieting historical processes. It can decipher the institutional practices designed to leave holes in the hegemonic symbolic order. Beyond the silencing efforts geared towards other normativities, practices of disavowal and non-admission even cover up the foundational violence of modern law.

In conclusion, the contributions to this book together reveal the vast multiplicity of intriguing and disquieting normative practices that form part of the historical and contemporary regimes of conviviality. A wealth of knowledge regarding the normative dimensions of living together as well as unspoken violences of the institutions

and their representatives co-constitute these regimes. It is from the mutual cross-fertilizations between conviviality and multinormativity that a critique of legal pluralism emerges, which invokes a more comprehensive, future-making understanding of normative multiplicity.

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