IS LEGAL PLURALISM REQUIRED IN HUMAN RIGHTS LAW?*

Hukuki Çoğulculuk İnsan Hakları Hukuku için Gerekli midir?

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Abstract

This paper critically examines the nature and extent of legal pluralism, its role in fostering inclusiveness, and perceptions of justice administration within international human rights law. Arguing that legal pluralism is not merely a descriptive concept but a normative requirement, the study explores its complex and nuanced relationship with international human rights standards. Through a detailed analysis of various forms of legal pluralism, the paper evaluates their alignment with international human rights legislation. Case law from the European Court of Human Rights (ECtHR) illustrates how pluralism is fundamental to democratic society, affecting the scope and definition of freedoms such as speech and association. The study ultimately questions how pluralism is interpreted within ECtHR jurisprudence, revealing it as both a marker of societal diversity and an essential element of political and legal frameworks.

Key words: Legal pluralism, human rights, case-law, European legal pluralism.

Özet

Bu makale, hukuki çoğulculuğun doğasını ve kapsamını, kapsayıcılığı teşvik etmedeki rolünü ve uluslararası insan hakları hukuku çerçevesinde adaletin sağlanmasına dair algıları eleştirel bir şekilde incelemektedir. Hukuki çoğulculuğun yalnızca tanımlayıcı bir kavram değil, aynı zamanda normatif bir gereklilik olduğunu ileri süren çalışma, bu kavramın uluslararası insan hakları standartlarıyla olan karmaşık ve çok yönlü ilişkisini araştırmaktadır. Çeşitli

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hukuki çoğulculuk biçimlerinin ayrıntılı bir analizini sunan makale, bunların uluslararası insan hakları mevzuatıyla uyumunu değerlendirmektedir. Avrupa İnsan Hakları Mahkemesi'nin (AİHM) içtihatları, çoğulculuğun demokratik toplum için temel bir unsur olduğunu, ifade ve örgütlenme özgürlüğü gibi hakların kapsam ve tanımlarını etkilediğini göstermektedir. Çalışma, çoğulculuğun AİHM içtihatlarında nasıl yorumlandığını sorgulamakta ve bunu hem toplumsal çeşitliliğin bir göstergesi hem de siyasi ve hukuki çerçevelerin vazgeçilmez bir unsuru olarak ortaya koymaktadır.

Anahtar Kelimeler: Hukuki çoğulculuk, insan hakları, içtihat, Avrupa hukuki çoğulculuğu.

INTRODUCTION

This paper critically examines legal pluralism's role in supporting human rights frameworks. In particular, it questions how pluralist approaches can reconcile state sovereignty with the unique legal needs of culturally diverse communities, thus positioning legal pluralism as a pivotal concept in human rights law. Today's biggest challenge is participation in global trade while honouring our local traditions and multicultural identity. The time has come to create a different social change model that redefines how states and their people interact and respect both universal values and local traditions1. A renewed lifestyle focuses on cultural elements through new ways of learning, connecting with others, and arranging new and existing practices, prioritising society's community network to build strong democratic principles through acceptance of different people and cultures. Community strength builds the systems needed for national structure, cultural development, political diversity, and fair legal access. Social actors use their power to create rights standards based on human dignity and accept human differences.

Today's global financial system, governed by neoliberal rules, creates social inequalities, so we must study how communities remain effective within this landscape. We need to support both new rights and protect minority groups while developing legal methods that consider different interpretation sources[2]. Legal systems move away from personal protective measures to support community power, which naturally enhances social acceptance and cultural connections. Social groups need recognition of their fundamental needs, autonomy claims, diversity, and distinct identities to build an effective rights protection system. This method shows why building an independent rights system is essential to make rights valid. The democratisation of Latin American political structures

1 *Brannigan and Mcbride v the United Kingdom* [1993] ECtHR 14553/89, 14554/89.

2 Karl Loewenstein, 'Militant Democracy and Fundamental Rights, I' (1937) 31 American Political Science Review 417.

and laws requires different democratic approaches to developing knowledge. These practices should defend diversity and safeguard group identity rights while providing equal access to rights for everyone. Given today's needs, we must ensure pluralism becomes an organic part of our political and cultural foundation rather than just an open option. This analysis shows how financial capital drives liberal neo-colonialism while promoting ethnic-cultural genocide yet proposes democratic pluralism as a solution to address globalisation's harmful effects. This method shows how pluralism works against current power structures and supports upcoming human rights.

The conversation focuses on developing solutions supporting human diversity to build a more respectful community with substantial personal rights. The changes taking place in local multicultural communities create better connections between citizens and the state government while setting the stage for new community development. These communities act as hybrid bodies that mix state functions and community power within an open space where people shape decisions beyond state limits[3]. Pluralism that allows different cultural backgrounds helps us fight against dominant systems. It connects new community leaders with emerging forces to develop stronger participation methods in society. Our strategy offers various ways to participate in democracy plus helps ensure people's rights get recognised and supported[4].

I. HUMAN RIGHTS AND LEGAL PLURALISM

Legal pluralism refers to the coexistence of multiple legal systems within a single state or jurisdiction. Under legal pluralism, the state is not the sole authority for laws, as many norms and rules come from customary law, religious rules, and community-based traditions. Human rights benefit from this method because it unites global rights standards with local legal traditions. Indigenous rights movements in Latin America have asserted alternative legal frameworks that challenge state-centric views on property and cultural rights, demonstrating pluralism's practical applications. Likewise, European cases emphasise the complex interactions between national and supranational legal norms that address individual and collective rights. The law stems from what makes human beings social creatures who live with others. A law system follows personal rights that allow someone to seek their legal property. These rights reflect the need to deliver what someone rightfully deserves. All basic legal foundations begin with human rights efforts to achieve justice through laws, institutions, and standards[5].

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3 ibid.

4 *Brannigan and Mcbride v. the United Kingdom* (n 2).

5 Henry J Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals : Text and Materials* (Oxford University Press 2008).

Member states create human rights protection by writing them into their constitutions and by joining international treaty agreements. States define these rules to make human rights legally valid. Under present legal systems, human rights receive official protection through official legal hearings that judges oversee. The legal system protects rights that are admitted under state-created laws. Without formal state law acceptance, human rights remain theoretical and cannot be applied by authorities[6]. Actual human rights practice does not always match legal requirements because the formal rules do not always produce effective results. Formal human rights laws set down in paperwork often remain unfulfilled when put into practice across real-world situations[7].

The modern conception of law is often described as univocal, meaning it is understood to have one clear definition: A state-controlled set of rules forms the system by which society is managed. The state creates laws from scratch and positions them within a defined structure to manage social relationships. Under this new system, the modern state gained total control over all forms of law, shifting from historical pluralistic systems. Through state governance, law absorbed many different legal traditions, which produced the modern world's "drama." Traditional state law becomes the dominant authority because these new frameworks suppress other types of justice practices from recognition. People understand law as a system of rules, but its meaning extends far beyond that. In addition to formal rules, the law gives specific rights to people and social groups, including ownership of their property and enhanced protections.

The power to define legal standards exists outside of state authority. Law develops out of fundamental principles and takes form from social customs alongside community practices and relationships. It forms from everyday interactions, nature, and society, including customs, history, and legal standards. Different groups use their expectations and activism to create new laws when their demands exceed conventional norms[8]. Legal pluralism moves beyond modernity's simple understanding of law through a new way of knowing. The system accepts systems side by side without ranking them according to worth or accuracy. The model uses comparison and analogy to balance law variations while protecting its fundamental core. In reality, justice defines the law's purpose and enhances its authority[9]. Under this view, legal pluralism is an essential part of justice. When a conservative approach to legal pluralism controls unjust behaviour, the theory loses its genuine role.

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6 McDougal MS, Lasswell HD, Chen LC. Human rights and world public order: the basic policies of an international law of human dignity. Oxford University Press; 2018 Nov 16.

7 John Rawls, 'THE DOMAIN OF THE POLITICAL AND OVERLAPPING CONSENSUS', *Debates in Contemporary Political Philosophy* (Routledge 2002) 474.

8 *Gunduz v Turkey* [2003] ECtHR 35071/97 para 72.

9 Steiner, Alston and Goodman (n 6).

Legal pluralism implies an emancipatory project, a praxis of liberation. That is, "a legal project resulting from the process of insurgent social practices motivated to satisfy essential needs." But before characterising this legal pluralism and how legalities are produced, human beings are the root of all laws and the primordial source of all legalities; somehow, human rights are legalised needs. One of the prominent examples of legal pluralism is in the Canadian province of Quebec, which operates under a civil law system influenced by French culture, in contrast to the standard law system predominant in the other provinces. Cultural rights laws show that mixed legal systems protect minority customs while letting everyone access fundamental human rights[10]. Lebanon has legal pluralism structures because different religious groups run their family laws[11]. Our legal framework gives every community proper representation yet threatens human rights by limiting fairness in family matters like marriage rules, inheritance distribution, and child guardianship. When we look at these examples, legal pluralism faces both positive and negative impacts on human rights.

A. European Legal Pluralism

Contemporary cases, such as refugee rights and freedom of religion, reveal how the European Court of Human Rights applies pluralism to navigate diverse legal expectations within the EU. These cases underscore the persistent relevance of pluralist jurisprudence in mediating between diverse value systems. Legal pluralism has been widely accepted in European law systems in recent decades. Lawyers developed this view to match the rising connection between different European legal systems. The approach fills significant gaps in monist and dualist frameworks because these systems struggle with multiple overlapping values across European Union laws and rule sources in complex legal settings. The region continues to experience changes in its legal framework. For example, the ECtHR shows how different cultural and legal systems work together by looking at Quebec cases where French and Anglo-Saxon laws exist as examples of internal and external pluralism[12]. Legal pluralism keeps a vague or 'fuzzy' perception[13]. To study pluralism, we must split the elements that make up meaning into two

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10 Fyson D. Legal pluralism, hybridization and the uses of everyday criminal law in Quebec, 1760–1867. InThe Uses of Justice in Global Perspective, 1600–1900 2019 Jan 15 (pp. 210-230). Routledge.

11 Gharios G. Legal pluralism and unofficial law in Lebanon: evolution and sustainable development of water. Water Policy. 2020 Jun 1;22(3):348-64.

12 Pirola F. *Between Deference and Activism: The ECtHR as a Court on States or a Court on Rights? Exploring the ECtHR interpretative tools* (Doctoral dissertation, Université Côte d›Azur; Università degli studi di Milano-Bicocca).

13 *Refah Partisi (the Welfare Party) and Others v Turkey* [2003] ECtHR [GC] 60936/12 para 123.

parts. In a legal context, internal pluralism means multiple legal systems operate as part of a single system. This theory accepts many legal systems operate under one law system as separate norms. People often connect this type of pluralism with international law theories[14]. A second interpretation of legal pluralism shows that multiple legal systems work apart yet influence domestic law. The legal values nations follow today come from outside sources, such as international law, even though they must follow a domestic framework to implement them. When external laws enter domestic systems, they blend with multiple existing legal systems, creating different forms of internal legal plurality[15].

In 1976, the European Court of Human Rights launched two ground-breaking decisions using pluralism to translate the core Human Rights stipulated in the European Convention of Human Rights (ECHR) and its extensions. These first rulings set human rights precedents by allowing multiple standards to function across different societies. Handyside generated a new framework for protecting human rights in Europe during its leading role in shaping European law[16]. The European Court of Human Rights (ECtHR) bases its defence of freedom of expression on its ideals for democratic governance. Our democratic way of life depends on free speech as its basic foundation and source of social diversity. The ECtHR established another key case decision for democratic values on the same day, as it confirmed its dedication to protecting fundamental rights in Kjeldsen, Busk Madsen & Pedersen, which manages freedom of education[17]. These two cases show that the view of pluralism has a relatively broad scope. Through the margin of appreciation doctrine, the ECtHR in the Welfare Party v. Turkey case allowed states to take some liberties under human rights conditions. The ECtHR uses a margin of appreciation to let states apply pluralism freely while maintaining their ECHR commitments[18]. In democratic settings, pluralism functions as a community feature and a requirement, with "democratic society" broadly defined. This expanded interpretation allows us to connect many rights to pluralism values that honour all perspectives[19].

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14 Vasiliki Kosta, Nikos Skoutaris and Vassilis P Tzevelekos (eds), *The EU Accession to the ECHR* (Hart Publishing 2014) <https://libproxy.berkeley.edu/login?qurl=http%3A%2F%2Fdx.doi.org%2F10.5040%2F9781474202046%3Flocatt%3Dlabel%3Asecondary_bloomsburyCollections> accessed 27 October 2024.

15 Sciolino (n 11).

16 *Handyside v the United Kingdom* [1976] ECtHR 57499/17, 74536/17, 80215/17, 9323/18, 16128/18, 25920/18.

17 Mireille Delmas-Marty, (2002), Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism, Publisher Cambridge University Press

18 Alves AI. *The margin of appreciation doctrine and the right to life: the article 2 of the ECHR* (Doctoral dissertation).

19 Mireille Delmas-Marty, *Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism* (Paperback re-issue, digitally print version, Cambridge Univ Press 2007).

B. Legal Pluralism and Realisation of Human Rights

Recent scholarship critiques pluralism's potential to reinforce local power dynamics that may conflict with universal human rights. This paper addresses these critiques by highlighting mechanisms within pluralist legal systems that safeguard against the exclusion or oppression of marginalised groups, thereby promoting a balanced view of pluralism's role in advancing justice. Quebec has established provincial legal frameworks to defend French-speaking traditions and culture under federal human rights guidelines[20]. Lebanon's laws support multiple religious traditions by letting each faith follow its family rules yet struggle to ensure equal rights between men and women[21]. These examples illustrate how cultures defend their traditions against global human rights requirements.

National laws created by the state do not adequately meet the basic requirements of people, which leads to unfair treatment across the country. Human societies need legal frameworks to operate between people, even though anyone needs law to thrive. If the official state laws are ineffective or unfair, certain social groups develop their legal systems, leading to multiple legal systems existing at once. Sworn laws emerge when government law falls short of meeting human rights needs needed for quality living. Alternative law comprehends three fundamental uses of the law. National law faces its battle to give legal rights to all citizens, including poor workers and lower-income individuals. Groups advocating for their human rights push the state to make more equitable laws that benefit everyone. People consider this first meaning of Alternative Law as one of the spaces of the alternative use of law[22]. The second approach lets legal interpreters use legal provisions to safeguard vulnerable populations by selecting specific interpretive methods. Indigenous peoples in Canada, the USA, and Australia blend their traditional legal traditions with national law but experience disagreements about their traditional rights to resources and cultural freedom[23].

The alternative use of law is the second kind of "alternative law" according to this classification and is directly related to legal hermeneutics. Thus, it is argued that the alternative use of the law "is the hermeneutic process by which the interpreter gives the legal norm a meaning different from that intended by the right-wing legislator or the ruling social class[24]." Law systems mainly

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20 Bosset P. Cultural human rights as new foundations for interculturalist policies: a rights-based approach from Québec. The International Journal of Human Rights. 2024 Dec 3:1-25.

21 Kachar S. The Challenges of Pluralism in Lebanon and the Culture of Change in the Lebanese Political Thought. J Poli Sci Publi Opin. 2023;1(1):105.

22 Steiner, Alston and Goodman (n 6).

23 Ahmed, B. I. What are the Underlying Factors for the Poor Implementation of the Free, Prior, and Informed Consent Principle in Australia, Canada, and the United States? A Qualitative Comparative Study.

24 Kosta, Skoutaris and Tzevelekos (n 13).

support familiar people with limitations placed on rules that benefit powerful social groups. Within their specific social groups, individuals develop their legal standards and frameworks under the law, known as "legal pluralism" and "alternative law." When communities take charge, they create new forms of justice representing their visions and demands for a better society. Society obtains economic, social and cultural rights mainly through government programs and official departments. Even though states give rights material support, sometimes traditional legal principles do not effectively explain how these rights should be achieved. Social movements press for legislation to defend human rights when government rules lack effectiveness or oppose basic human needs. Alternative laws serve both to shield and fight for equal treatment for minority and emerging societal groups in building a fairer community[25].Throughout Mexico's recent history, several indigenous groups have fought legal battles to protect their cultures and land ownership[26].

The community's development project needs the Community Police force and all elements of security and justice to function correctly. Our system protects fundamental human rights, including safety from harm, alongside access to all economic, social, and cultural opportunities for our entire society[27]. Regarding the political importance of this project, it is "one of the most important experiences in the whole country of Indigenous creativity in the construction of its democratic forms of community regulation." It emphasises the process of producing this project, the liberation of indigenism to build an independent Indigenous movement and the "reception among priests of Indigenous or popular origin of the desacralising and liberating influence of Liberation Theology[28]. It is essential to say that the community assemblies mentioned did not begin to be created to create a security system but rather that they had been carried out for economic and social reasons before.

II. LEGAL PLURALISM IN THE PERSPECTIVE OF OTHERNESS AND PARTICIPATION

The recognition of pluralism in the perspective of otherness and emancipation reveals the locus of coexistence for a growing understanding of creative, differentiated, and participatory multicultural elements. In a society composed

[25] Schmid, S. P. (2023). Individual or collective rights? Consequences for the satisfaction with democracy among Indigenous peoples in Latin America. *Democratization*, *30*(6), 1113-1134.

[26] Rachel Sieder, *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy* (Palgrave Macmillan 2002) 1–19.

[27] Linden-Retek, P. (2024). A Postnational Bearing: On the Legal Form of European Constitutionalism.

[28] Nico Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press 2011).

of diverse communities and cultures, pluralism based on a democracy expresses the recognition of collective values materialised in the cultural dimension of each group and community. Such an attempt to conceive the plurality of cultures in society, to stimulate the participation of minority cultural groups and ethnic communities approach the theme of "multiculturalism." Multiculturalism, which takes on different meanings (conservative, progressive, critical, etc.), expresses the coexistence of cultural forms or groups characterised by other cultures within a 'modern' society[29]. This is a Eurocentric concept designed to describe cultural diversity within the framework of the nation-states of the northern hemisphere and to deal with the situation resulting from the influx of immigrants from the South to a European space without internal borders, ethnic diversity, and identity affirmation of minorities in the United States, and the specific problems of countries such as Canada with territorially differentiated linguistic or ethnic communities. A concept that the North tries to impose on the nations of the South a way of defining their historical condition and identity. There are different notions of multiculturalism; in the case of the emancipatory version, it centres on recognising the right to difference and the coexistence or construction of a life in common besides differences of various kinds. It may become imperative as a requirement and affirmation of dialogue.

Certainly, legal pluralism has the merit of revealing the rich informal legal production engendered by material conditions, social struggles, and pluriclassist contradictions. This explains why legal pluralism in Latin American peripheral capitalism goes "through the redefinition of relations between the centralising power of state regulation and the challenging effort of self-regulation of social movements and multiple excluded voluntary entities." Recognition of another juridical culture, marked by communitarian-participatory pluralism and legitimacy built through the internalised practices of social subjects, allows us to advance in the redefinition and affirmation of human rights from an intercultural perspective. Interculturality is understood as a critical cultural philosophy, a horizon of equitable dialogue, and a recognition of cultural pluralism in which no culture is an absolute but a possibility constitutively open to the possible fertilisation by other cultures. Although it is sometimes associated with multiculturalism (or a form or variant thereof), interculturality has its specificity since given cultural pluralism and new philosophical hermeneutics. Interculturality refers to an emerging society in which ethnic communities, social groups, and classes recognise themselves in their differences and seek their mutual understanding and appreciation, "which is effected through" dialogical instances[30]. In the hermeneutic perspective of philosophy, interculturality" has its central theme,

29 ibid.

30 ibid.

the problem of identity, the way of being, and the peculiar way of thinking. "It is a discourse on cultures as a "synthesis of innovative, transported elements assimilated into a historical process." Consequently, interculturality has a dialogic, hermeneutic, and interdisciplinary character in its pluralistic dimension. As part of intercultural dialogue, the new approach works to build better human rights systems through cultural change. The basic methods used by diverse community groups encourage active participation to serve these groups' essential requirements. People primarily seek meaningful lives and want others to accept and respect their differences[31].

The concept of a "subject" in historical-cultural settings traces back to experiences of revolutionary movements fighting for resistance. When public systems deny rights and persistently fail to work effectively, emerging groups start new, legitimate ways for people to participate in politics. These enterprises lead and develop standards in multiple ways throughout society. Traditional, modern law struggles under its capitalist liberal and formalist rules, which push society toward non-state normative practices and alternative justice methods. Social groups engaged in these unofficial normative practices are generally seen as outsiders by main system authorities yet build alternative legitimate forms of governance. The classic authorities who create law now extend beyond official institutions and national government organisations. Today, the law is developing across multiple centres of social practice where it started. Our society now needs to acknowledge how social change movements from unequal regions develop legal solutions that bring freedom to everybody. These movements lead the human rights conversation while creating opposition against current community rights threats.

In legal pluralism, which focuses on freedom, the core legitimacy depends on what people require to live. Our human needs expand in all directions from life-shared backgrounds, including personal yearnings and life approaches that remain unmet or impossible to reach. Humans never stop developing critical needs, adapting them to different times and locations. People need advanced social training from one cultural group to another to understand and fulfil their particular needs. Identifying which needs to qualify as a justice challenge remains the primary obstacle to achieving fair treatment. According to Agnes Heller's approach, a need becomes proper when meeting its requirements and won't harm other individuals. When goals are met, people should not reduce others to aid them. Each citizen should fight self-imposed oppression by noticing everyone's needs to ensure outcomes that benefit all communities without harming others.

A better-enlightened approach to the law requires collaboration across subjects and cultures during transformation. Through new historical subjects' practices,

31 ibid.

this perspective strengthens legal pluralism for social change and creates a powerful resistance against current norms. The perspective fights the system that shuts people out of daily life and slowly weakens essential fundamental rights protection. This perspective first recognises human needs that belong to all people and works to establish legal systems that serve every community effectively. These movements reframe law while showing why state-centred law structures need change to end repeated distributions of injustice"[32].

III. HUMAN RIGHTS: ITS INTERCULTURAL AND EMANCIPATORY DIMENSION

The current political system tied to capitalism produces individuals who want new ways beyond capitalist globalisation. The strategy of emphasising human rights in political talks includes its visionary nature for freedom and cultural equality. As human rights doctrine adjusted to cultural changes throughout history, it evolved from different societal needs each time. These early human rights principles' unique features and practical implementation need clear distinction from contemporary rights standards shaped by 20th-century neoliberal global trade dynamics. During past debates, human rights served as a belief system to fight against unfair rulers and protect fundamental personal freedoms. People generally regarded human rights as official state-backed rules without practical connection to real life and society. Under this single system, Every legal system today submits to official power and market rules within the state framework. Although human rights remain influential today, their practical application remains restricted.

Limitations that linked human rights with state laws made it hard for them to promote democracy because they did not directly protect non-government rights. The formal approach to legal procedures for rights creation failed to examine their practical implementation. By focusing only on legal standards, the system could not make rights work for people, which limited their benefits. The present financial capital dominance and neoliberal globalisation require us to establish new historical periods and analytical concepts for human rights. The moment calls for a complete departure from state-centred and market-focused human rights systems to develop action-based rights that meet today's global needs.

Legal pluralism plays a significant role in addressing these limitations. Through legal pluralism, we accept that several legal systems operate together in one territory. Quebec shows how legal pluralism works by using French civil law as an alternative to standard law practices in other Canadian provinces. Quebec shows how French culture roots in their legal system combine different legal systems to preserve human rights. In contrast, Anglo-Saxon cultural practices

32 ibid.

spread throughout provinces and guide those regions to adopt similar laws, which can be compared to highlight the benefits and challenges of legal pluralism[33]. In addition to Canada, Lebanon demonstrates legal pluralism by letting religious groups set rules for marriage, divorce, and inheritance[34]. Different religious communities in Lebanon can run their legal matters cheers to these laws. This method leads to questions about how equally and fairly human rights protections apply to everyone.

IV. LEGAL PLURALISM AND THE EUROPEAN COURT OF HUMAN RIGHTS (ECHR'S) MARGIN OF APPRECIATION

ECHR exists to create shared human rights principles for states, but legal pluralism limits how member nations can use their rulings. Legal pluralism blocks a state's ability to fulfil the responsibilities stated in the Convention agreement. States can exercise judgment in following Convention rights because the ECHR accepts a flexible application of these rules despite different legal frameworks. In the Welfare Party case, the ECtHR found that states have limited freedom to fulfil their Convention responsibilities when they allow legal pluralism based on religious grounds. The European Court of Human Rights expects nations to adopt the same legal rules, while Europe has many distinct legal systems[35]. The ECtHR usually follows a pluralistic approach to policy implementation. The ECtHR uses this approach to evaluate free speech matters, educational freedom cases, personal relationships, and religious freedoms. Pluralism defends the freedom of groups and individuals while keeping central cultural values open to public debate. Public institutions cannot prevent emerging religious groups and cultural minorities from constructing organisational centres. The rights of groups and individuals connect naturally with the concept of pluralism. Our freedoms to express ourselves and practice our faith heavily rely on and help build pluralistic social environments.

CONCLUSION

This study reaffirms that legal pluralism is essential for a holistic and inclusive approach to human rights. The interplay between state and non-state legal systems enriches human rights law by acknowledging and addressing the legal needs of diverse cultural groups, offering a path toward more equitable and just societies. A multicultural understanding of today's world helps us learn new ways to think about human rights as changing standards of being a citizen. Our

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33 Salih AL. The Anglo-Saxon the Basis for a Universal Language. Journal of Al-Ma'moon College. 2023;2(40).

34 Ibid

35 Mégret F. International Criminal Justice, Legal Pluralism, and the Margin of Appreciation Lessons from the European Convention on Human Rights. Harv. Hum. Rts. J.. 2020;33:57.

larger approach shows that social policies should fix unfairness while spreading resources evenly and making social groups feel more part of society. The roots of human rights emerged from bourgeois-liberal traditions, yet their expansion now includes social, economic, and cultural rights beyond basic personal freedom protection. Modern society has produced new knowledge that helps us meet minority rights goals beyond traditional individual petitioner countries. Nations worldwide make their democracies more welcoming to diverse populations by combining multiculturalism as a foundation and growth process. To protect individual cultural rights and freedoms, governments must support the cultural group rights of their citizens. Thus, it must be maintained that "the struggle for human rights is a collective task that requires the state to recognise the group identities of traditionally marginalised and excluded minority populations." In any case, it is urgent "to overcome the individualistic, mono-cultural and positivist concept of human rights, based on the equal dignity of cultures, to open the way for an intercultural definition and interpretation of human rights."

The European Court of Human Rights stands firmly for pluralism by defending free speech and religious and group rights. The principle upholds personal speech rights for all individuals while stopping the majority influence from erasing minority values. The state has to let new faith groups and cultural minority institutions establish themselves and run their activities. The pluralistic system allows freedom of religious and association rights while providing the environment for these activities to function together.

BIBLIOGRAPHY

Ahmed, B. I. What are the Underlying Factors for the Poor Implementation of the Free, Prior, and Informed Consent Principle in Australia, Canada, and the United States? A Qualitative Comparative Study.

Alves AI. *The margin of appreciation doctrine and the Right to life: the article 2 of the ECHR* (Doctoral dissertation).

Bosset P. Cultural human rights as new foundations for interculturalist policies: a rights-based approach from Québec. The International Journal of Human Rights. 2024 Dec 3:1-25.

Delmas-Marty M, *Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism* (Paperback re-issue, digitally print version, Cambridge Univ Press 2007)

Fyson D. Legal pluralism, hybridisation and the uses of everyday criminal Law in Quebec, 1760–1867. InThe Uses of Justice in Global Perspective, 1600–1900 2019 Jan 15 (pp. 210-230). Routledge.

Gharios G. Legal pluralism and unofficial law in Lebanon: evolution and sustainable development of water. Water Policy. 2020 Jun 1;22(3):348-64.

Kachar S. The Challenges of Pluralism in Lebanon and the Culture of Change in the Lebanese Political Thought. J Poli Sci Publi Opin. 2023;1(1):105.

Kosta V, Skoutaris N and Tzevelekos VP (eds), *The EU Accession to the ECHR* (Hart Publishing 2014)<https://libproxy.berkeley.edu/login?qurl=http%3A%2F%2Fdx.doi.org%2F10.5040%2F9781474202046%3Flocatt%3Dlabel%3Asecondary_bloomsburyCollections> accessed 27 October 2024

Krisch N, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press 2011)

Linden-Retek, P. (2024). A Postnational Bearing: On the Legal Form of European Constitutionalism.

Loewenstein K, 'Militant Democracy and Fundamental Rights, I' (1937) 31 American Political Science Review 417

McDougal MS, Lasswell HD, Chen LC. Human rights and world public order: the basic policies of an international law of human dignity. Oxford University Press; 2018 Nov 16.

Mégret F. International Criminal Justice, Legal Pluralism, and the Margin of Appreciation Lessons from the European Convention on Human Rights. Harv. Hum. Rts. J.. 2020;33:57.

Pirola F. *Between Deference and Activism: The ECtHR as a Court on States or a Court on Rights? Exploring the ECtHR interpretative tools* (Doctoral dissertation, Université Côte d›Azur; Università degli studi di Milano-Bicocca).

Rawls J, 'THE DOMAIN OF THE POLITICAL AND OVERLAPPING CONSENSUS,' *Debates in Contemporary Political Philosophy* (Routledge 2002)

Salih AL. The Anglo-Saxon the Basis for a Universal Language. Journal of Al-Ma'moon College. 2023;2(40).

Schmid, S. P. (2023). Individual or collective rights? Consequences for the satisfaction with democracy among Indigenous peoples in Latin America. *Democratisation*, *30*(6), 1113-1134.

Sciolino E, 'Lawyers Protest Across France at Sweeping Anticrime Law' *The New York Times* (12 February 2004) <https://www.nytimes.com/2004/02/12/world/lawyers-protest-across-france-at-sweeping-anticrime-law.html> accessed 27 October 2024

Sieder R, *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy* (Palgrave Macmillan 2002)

Steiner HJ, Alston P and Goodman R, *International Human Rights in Context: Law, Politics, Morals : Text and Materials* (Oxford University Press 2008)

Brannigan and Mcbride v the United Kingdom [1993] ECtHR 14553/89, 14554/89

Gunduz v Turkey [2003] ECtHR 35071/97

Handyside v the United Kingdom [1976] ECtHR 57499/17, 74536/17, 80215/17, 9323/18, 16128/18, 25920/18

Kjeldsen, Busk Madsen and Pedersen v Denmark [1976] ECtHR 57509/11

Refah Partisi (the Welfare Party) and Others v Turkey [2003] ECtHR [GC] 60936/12

Thlimmenos v Greece [2000] ECtHR [GC] 58561/00