BOOK NOTE


*Global Legal Pluralism* analyzes the interactions between and among legal and quasi-legal regimes, and offers a framework for legal decision makers to use in responding to different sources of law. Drawing on a variety of disciplines including anthropology, sociology, philosophy, and political science, Paul Schiff Berman argues that overlapping assertions of normative authority should be managed and preserved through a “cosmopolitan pluralist jurisprudence,” which seeks neither the reification of territorially based rules nor the elimination of legal diversity through universal harmonization.

After describing several examples of the ways in which legal and quasi-legal norms may come into conflict in Chapter 2, Berman identifies and rejects two possible responses to legal pluralism: sovereigntist territorialism and universalism.

Sovereigntist territorialism, which views the territorially defined nation-state as the only legally relevant normative community, is considered at length in Chapter 3. Citing a variety of scholars in the social sciences, Berman argues that the psychological bonds that allow the people of a nation-state to view themselves as part of a community are “constructed.” Because a nation-state is only one way of imagining a community, Berman argues, “in many instances there is no intrinsic reason to privilege nation-state communities over others.” Furthermore, because people may feel greater loyalty to non-state communities, including religious and ethnic communities, legal decision makers should consider the normative assertions of communities other than the nation-state. Similarly, the extraterritorial effects increasingly engendered by globalization render territorially based rules difficult or impossible to apply, and necessitate assertions of jurisdiction which transcend the territorial limits of the nation-state. After responding to concerns that only the norms of a territorially defined nation-state can be democratically legitimate, Berman concludes the chapter by arguing that sovereigntist territorialism does a poor job of describing the reality of the international stage, in which a variety of international, trans-
national, and non-state norms have a constraining effect on state behavior.

Chapter 4 deals with a second possible response to legal pluralism: universalism, which seeks to create a universal set of governing norms. After acknowledging the existence and benefit of some kinds of global harmonization, Berman goes on to argue that universalism is neither desirable nor feasible. Universalism tends to erase diversity, silencing and overriding the values of less powerful groups. Further, Berman argues, universal rules facilitate rent-seeking by interest groups and forfeit the potential for creating laboratories of legal innovation. Finally, Berman contends that universalism is not feasible because universal legal regimes will often fail to develop genuine consensus rapidly enough to respond to changing economic and social realities.

After explaining and critiquing sovereigntist territorialism and universalism in the first four chapters, Berman lays out his own approach, cosmopolitan pluralism, in Chapter 5, which draws heavily on social and political philosophy. Recognizing that normative conflict is unavoidable, but wishing to avoid assimilation or ostracism, Berman advocates the creation of “shared social space,” in which legal decision makers “wrestle explicitly with questions of multiple community affiliation and the effects of activities across territorial borders, rather than shunting aside normative difference.” An important part of this vision is the deference owed to the decisions of other normative communities. Thus, Berman calls for broad application of a principle of deference similar to that embodied in the U.S. Constitution’s Full Faith and Credit Clause. Although he consistently argues that legal decision makers should consider the norms of a variety of communities, Berman makes clear that any given normative commitment may be overridden, provided that a legal decision maker can justify such a “jurispathic” act on the basis of an incompatible, equally strong normative commitment.

In Chapter 6, Berman surveys existing practices that manage legal diversity. Among the numerous examples Berman describes are the “margin of appreciation” doctrine employed by the European Court of Human Rights, the U.S. Supreme Court decisions prohibiting peremptory challenges to jurors based on race or gender, and the principle of subsidiarity first developed by the Catholic Church. Although his analysis is brief, Berman contends that thinking about these examples through a cosmopolitan pluralist lens sheds light on the importance of managing and preserving
legal diversity and suggests ways that existing practices can be improved.

In the last part of the book, Chapters 7–9, Berman applies cosmopolitan pluralism to the three legal doctrines that make up conflict of laws: jurisdiction, choice of law, and judgment recognition. In Chapter 7, dealing with the question of jurisdiction, Berman argues that “the assertion of jurisdiction is always an assertion of community dominion.” Accordingly, Berman calls for courts to apply a “community-based jurisdictional analysis” which focuses on both the plaintiff’s and defendant’s links to the forum community. Berman ends Chapter 7 by discussing the power of non-state assertions of jurisdiction and the necessity and value of jurisdictional redundancy.

In Chapter 8, Berman considers three different choice-of-law approaches: territorialism, parochialism, and substantivism, before laying out his own cosmopolitan pluralist approach. Combining elements of the three other approaches, his approach focuses on community definition and affiliation to determine which law to apply, permitting courts to develop hybrid rules to negotiate the differences in substantive law. Berman ends the chapter by applying his framework to two transnational trademark cases: *GlobalSantaFe Corp. v. Globalsantafe.com* and *Barcelona.com, Inc. v. Excelentisimo Ayuntamiento de Barcelona*, and two cases involving normative conflicts between a religious community and a nation-state: *Bob Jones Univ. v. United States* and *Employment Div., Dept. of Human Resources of Oregon v. Smith*.

In Chapter 9, dealing with recognition of judgments, Berman advocates an analysis that balances the community affiliations of the parties, the local policies of the forum community, and the “overall systemic interest in creating an interlocking system of adjudication.” Berman applies this approach to two disputes involving the enforcement of a foreign judgment in U.S. courts—*Telnikoff v. Matusievitch* and *Yahoo! Inc. v. LICRA*—as well as the disputes involving the U.S. recognition of the International Court of Justice’s judgment in the *Avena* decision. Berman ends Chapter 9 by considering the possibility of applying ethnic group norms instead of state-based norms.

*Global Legal Pluralism* presents a compelling framework for approaching some of the most intractable legal problems presented by overlapping normative authorities. In addition to offering solutions, Berman explains why overlapping legal and quasi-legal regimes are valuable. Rather than seeking to extinguish
normative conflict, the book offers a vision that preserves and manages legal diversity.

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