DOI: 10.1111/jols.12550

ORIGINAL ARTICLE

Legal pluralism, decolonisation and socio-legal studies

BHARAT MALKANI

School of Law and Politics, Cardiff University, Cardiff, UK

Correspondence
Bharat Malkani, School of Law and Politics, Cardiff University, Cardiff, CF10 3AX UK.
Email: malkanib@cardiff.ac.uk

Abstract

Studies of legal pluralism and decolonisation are both concerned with the relationship between law and power, and with understanding how people experience law in practice. Legal pluralists are concerned with decentring the powerful from the study of law, and with centring the voices of those traditionally excluded from conversations about what law is. Decolonialists are likewise concerned with empowering those subjugated by colonial rule, and with understanding how those populations have experienced law in practice. In this paper, I use publications from previous issues of the *Journal of Law and Society* to tease out these commonalities and to highlight what these fields of studies can teach us about the ways in which the legacies of colonialism shape the plurality of ways in which people experience law in society today.

1 | INTRODUCTION

Socio-legal scholars have long been concerned with the ideas of legal pluralism, and with the imperatives of decolonisation. Although in some respects both topics are distinct fields of study, they share commonalities and overlaps. Both are concerned with the operation of law in their social context, and both are concerned with the relationship between law and power. In this paper, I set out how the literature on legal pluralism contributes to our understanding of decolonisation, and I set out the ways in which the literature on decolonisation can likewise sharpen our understanding of legal pluralism. My focus is primarily, but not exclusively, on research that has been

published in the *Journal of Law and Society* (JLS). This is partly because this paper has been written to celebrate 50 years of the JLS, and partly because, as a member of the journal's Editorial Board, I find it interesting that without design or planning, we have published many articles over a period of several decades which appear to address disparate issues, but which nonetheless speak to an overarching theme.

The paper begins with an outline of legal pluralism. This outline is then used to explain and understand the term decolonisation. In particular, it is shown that pluralism and decolonisation are both concerned with the use of a bottom-up methodology, and both deploy this methodology in order to shed light on perspectives on law that are often overlooked. I then use some examples from England and Wales to illustrate what a bottom-up methodology tells us about the ways in which the legacies of colonialism shape the plurality of ways in which people experience law in society today.

2 | LEGAL PLURALISM

We can start with a couple of articles published in 2000 in the JLS. In one of them, Brian Tamanaha offers a succinct definition of legal pluralism: 'The core credo of legal pluralists is that there are all sorts of normative orders not attached to the state which nevertheless are "law."'[1] In other words, legal pluralists argue that, when defining law, we should not restrict ourselves to normative orders that emanate from state institutions such as the legislature and judiciary. We should also look at other normative orders in society which have the quality of 'law'. This chimes with the account given by Ambreena Manji in the same journal, in an issue published just 6 months later. On the face of it, Manji is addressing a very different topic, since her article is about the representation of law and colonialism in literature. However, she nonetheless addresses a similar issue to that addressed by Tamanaha, namely, the question of whether 'law' is something that is inherently 'attached to the state'. Drawing on the novel *Arrow of God*, by Chinua Achebe, she argues that we ought to resist the temptation to adopt a singular approach to understanding law, since the '"legal world" cannot be understood by standing in one place'.[2] To understand law, Manji writes, we need to constantly shift our position of inquiry and take in a range of perspectives, not just the state-centric perspective. In this sense, legal pluralism can be contrasted with legal centralism, which Manji defines as: 'the insistence that the label "law" should be confined to the law of the state, that there is a distinction between law and positive morality, and that there is an ultimate unifying source of norms in a legal system'.[3]

These accounts beg the question: 'Which normative orders that do not emanate from the state are "law"'? Universities, sporting associations and corporations all issue various rules and codes of conduct that people treat as law to all intents and purposes, but not all normative orders in society can be called "law"'.[4] A sign in a supermarket that instructs people to queue when waiting to pay for their purchases might be followed by all and sundry, as though it were a legal diktat, but such an instruction would not normally be viewed as a "legal order" as such. This is perhaps because it was not issued by an officially recognised lawmaker, or perhaps because there are no

[1] B. Tamanaha, 'A non-essentialist version of legal pluralism' (2000) 27 *JOLS* 296, 298.

[2] A. Manji, "Like a Mask Dancing": Law and Colonialism in Chinua Achebe's *Arrow of God*' (2000) 27 *JOLS* 626.

[3] id. 631.

[4] B. Tamanaha, 'A non-essentialist version of legal pluralism' (2000) 27 *JOLS* 296, 298.

penalties for non-compliance. These would be the reasons offered by the likes of Hart and Austin as to why legal norms are only those norms that emanate from state authorities. Tamanaha suggests that legal theorists have struggled with the question 'what is law' because they tend to adopt an 'essentialist conception' of law; that is, they tend to assert that law is either 'institutionalised norm enforcement', or law is 'institutionalised dispute resolution', or law is 'a means of coordinating socially acceptable behaviour', and so on.[5] This becomes a problem because some norms fit into some of those definitions, but not in others. Thus, some norms are 'law' for some theorists, but not for others, depending on what they have chosen to reduce the definition of 'law' to. In Tamanaha's view, we ought to reject such essentialist conceptions of law. In his words, '[t]here is no 'law is …'; there are these kinds of law and those kinds of law; there are these phenomena called law and those phenomena called law; there are these manifestations of law and those manifestations of law'.[6] This is the crux of legal pluralism: law takes on a plurality of forms and serves a plurality of purposes. Some legal norms will be focused on dispute resolution, some will be focused on coordinating socially acceptable behaviour and so on. To determine which of the manifold social normative orders have the quality of 'law', he suggests a bottom-up and iterative approach. '[W]hat law is', Tamanaha writes, 'is determined by the people in the social arena through their own common usages, not in advance by the social scientist or theorist'.[7] Thus, the sign in the supermarket would not qualify as law, even though it is a norm that coordinates socially acceptable behaviour, because most people would not commonly understand the instruction to be 'law'.

In his later book, Tamanaha describes this as 'folk legal pluralism'.[8] Reviewing this book for the JLS, Cormac Mac Amhlaigh expresses at least two concerns with 'folk legal pluralism'. First, he states that, on reading the book, 'one is left with an impression of a particularly Western perspective on the subject'. Second, he notes that it might be problematic to rely on 'common usages' because there are many common figurative uses of the term 'law' by social actors, such as the idioms 'Murphy's law' and the 'law of averages', which those actors would themselves not consider to be 'law' in the context that we are concerned with.[9] A rejoinder to this criticism would be that most people would appreciate that the word 'law' takes on different meanings when used in the disciplines of science or mathematics. Indeed, this reflects Tamanaha's point: that we ought to listen to what people on the ground say about 'law' in everyday social interactions.

These issues are also addressed in *Law Unlimited*, by Margaret Davies. She writes that 'legal theory has traditionally been limited by several factors: it looks mainly at the *law of the nation-state*…, it constructs its theory from the perspective of an *insider to this law*…, and it takes a decidedly *Western philosophical approach* to the analysis of law'.[10] She uses the term 'methodological statism' to describe (Western) legal theorists' assumptions that 'law is tied to the nation-state (as modelled on the states of Western Europe'.[11] In a review of the book published in the JLS,

[5] id. 312.

[6] id. 313.

[7] id. 314.

[8] B. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (OUP 2021).

[9] C. Mac Amhlaigh, 'Book Review: Brian Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (OUP 2021)' (2022) 49 *JOLS* 430, 432.

[10] M. Davies, *Law Unlimited* (Routledge 2017) p. 23 (italics in original).

[11] id. p. 27. With thanks to Margaret Davies for explaining this point to me.

Jen Hendry describes 'methodological statism' as the corollary of 'legal centralism',[12] and we can certainly hear echoes in this term of Manji's instruction to adopt a less static and more fluid approach to understanding the legal world. To 'unlimit' law, Davies urges readers to adopt a more pluralistic approach to understanding law, one which does not seek to define or limit law, but instead seeks to 'reimagine[] law in part from the *bottom up*, as a practice engaged in by human societies, rather than as a mere determinative limit to action or externalised set of rules of principles'.[13]

There are other accounts of legal pluralism in the JLS and beyond, but some key features can be identified from the texts discussed above: that we ought to move away from a Western-centric approach to theorising and understanding law; that we ought to include normative orders that do not emanate from the state within our understanding of 'law'; and that we ought to adopt a 'bottom-up' approach to understanding what law is and how it operates in society. Put another way, we ought to disentangle definitions and theories of law from the views of those who traditionally assert legal and political power over a legal and political community. As explained below, we can use these principles to better understand the separate but related idea of 'decolonisation'.

3 | DECOLONISATION

'Decolonisation' has become something of a buzzword in recent years, particularly since the murder of George Floyd in the USA in June 2020 and the subsequent Black Lives Matter protests that took place in cities across the world, including throughout the United Kingdom. We now regularly read or hear about 'decolonising universities' or 'decolonising museums' or 'decolonising the school curriculum' and so on. But it is not entirely clear what people mean when they speak of 'decolonising' a practice or institution. Looking through the articles in the JLS that address decolonisation, and adopting the ethos of pluralism from the discussion above, we can identify a plurality of meanings.

The first type of decolonisation refers to attempts to identify and tackle the legacies of colonial rule in former colonies. This involves a distinctly bottom-up methodology, as we look to those 'othered' and disempowered by colonial rule to understand the impact of colonial rule. In *The Wretched of the Earth*, Frantz Fanon addressed the cultural and psychological effects of colonialism, highlighting how newly independent states remained in the cultural, psychological, political and legal grip of colonialism.[14] In 2013, the JLS published an article by Robert Home which grappled with this aspect of decolonisation. Home explores the difficulties of land tenure reform in several African countries and argues that these difficulties can be traced to the systems of land tenure that were introduced during British colonial rule. As Homes writes, in the pre-colonial era, Indigenous Africans treated land as 'an intrinsic part of [their] social, economic, political, and spiritual being',[15] and as something that belonged to communities, rather than individuals. This was in stark contrast to the British approach, which treated land as individual possessions which were primarily economic assets. Colonial authorities thus developed a dual system of land

[12] J. Hendy, 'Book Review: Margaret Davies, *Law Unlimited* (Routledge 2017)' (2019) 46 *JOLS* 169, 170.

[13] Davies, op. cit. n. 10, p. 34 (emphasis added).

[14] F. Fanon, *The Wretched of the Earth*, C. Farrington (tr) (first published in 1961, Penguin Classics 2001).

[15] R. Home, '"Culturally Unsuited to Property Rights"?: Colonial Land Laws and African Societies' (2013) 40 *JOLS* 403, 405.

tenure. There was one system for colonisers and one for 'natives', and these were governed by separate administrative procedures. Home takes the reader on a journey through the archives to illustrate how these systems benefited colonisers over and above Indigenous populations, and the consequences of this for post-colonial land law. Although Homes does not write of decolonisation expressly, his article identifies a legacy of colonial rule and addresses the attempts to tackle that legacy. Moreover, in outlining the dual system of land tenure, Homes draws links between pluralism and decolonisation. As he writes, '[t]he pluralistic system of property rights established in the colonial period still exists, and indeed communal tenure may operate for the welfare of the poor'.[16]

Homes also highlights the role of international law and international institutions in current land reform efforts in several African states. As he writes: 'In the years since independence most African countries have reviewed and attempted to reform their complex land laws, with the direction of reform influenced by the priorities of foreign aid programmes'.[17] In this sense, he also highlights a second type of decolonisation, which is the identification and tackling of the legacies of colonial rule on global or supranational institutions and processes.[18]

A third type of decolonisation is the identification and tackling of the legacy of colonialism within the (former) colonial power itself. Historians and writers such as David Olusoga and Sathnam Sanghera have recently brought the legacy of the British Empire on British social, cultural and political life to a wide audience,[19] but socio-legal scholars have been addressing these issues for several years. In 1987, the JLS published Peter Fitzpatrick's 'Racism and the Innocence of Law', in which he astutely identified the subtle but pernicious ways in which the legal system of England and Wales reproduced and entrenched the sorts of racial injustices that were associated with the British Empire, despite the growing body of statutory law that seemed to condemn racism, and despite public statements from legal officials which proclaimed that racism is not compatible with a legal order in a liberal democracy.[20] Fitzpatrick used the Race Relations (Amendment) Act 1976 to make this point. This measure, which outlawed racial discrimination in a range of social settings, appeared to be supportive of racial justice. However, as he showed, the subsequent caselaw to 1987 revealed profound limits to law when it comes to tackling racial discrimination, with employers routinely able to defend racially discriminatory practices. To explain why the law is able to both present itself as anti-racist while also allowing racism to thrive, Fitzpatrick addressed the role of law in the imperialist mission of the British Empire. He explained that imperialists portrayed (British) law as a 'gift we gave' to so-called backwards and uncivilised cultures. Law, then, was 'captured as an expression of national superiority', crucially, though that very same 'national superiority' also 'incorporate[d] racism'.[21] In other words, law and racism were two sides of the same coin in the imperialist mission, and this symbiotic relationship between law and racism has survived the demise of the Empire.

[16] id. 405.

[17] id. 416.

[18] R. Sutherland, 'Unlearning the "Master's Tools": Can International Development Be Decolonized?' (2023) 18(2) YJIA (25 June 2025) <https://www.yalejournal.org/publications/unlearning-the-masters-tools-can-international-development-be-decolonized>

[19] D. Olusoga, *Black and British: A Forgotten History* (MacMillan 2016); S. Sanghera, *Empireland: How Imperialism Has Shaped Modern Britain* (Viking 2021).

[20] P. Fitzpatrick, 'Racism and the Innocence of Law' (1987) 14 *JOLS* 119.

[21] id. 129.

Fitzpatrick's article was an illustration of what Hannah Arendt called 'the boomerang effect' of imperialism, referring to the tendency of colonial laws and practices to find their way back to the metropole.[22] Brenna Bhandar addresses a similar topic in her 2015 article, in which she surmises that colonial-era racism may have played a part in the development of property law in England and Wales. She begins by telling the story of how Robert Torrens urged administrators in the colony of South Australia to implement a then-novel form of title by registration. Such a system could not be implemented in England because of the landed English aristocracy, who would not accept reforms to contemporary arrangements of land ownership. In South Australia, though, colonialists felt unencumbered by existing relationships of persons to land, notwithstanding the presence of Indigenous peoples who had lived there for thousands of years prior to the arrival of European settlers. Colonialists invoked the idea of the 'savage native' to justify the doctrine of *terra nullius*. As Bhandar writes, this was all rooted in racism: 'The concept of terra nullius, or vacant land, was based on a racist discourse of the civilized and non-civilized, with civilization being signified by private property ownership, the cultivation of land, modes of governance, and social organization'.[23] In other words, beliefs in the inferiority of some races justified and enabled the system of land ownership that colonialists imposed in South Australia. Bhandar addresses the implications of this for the first type of decolonisation when she writes: 'The devastating consequences of the transposition of English property law to settler colonies for indigenous communities continue today, as English property norms remain the central referents in defining what can be recognized as aboriginal title'.[24] But she also identifies the third type of decolonisation when she states that there is some evidence, albeit not conclusive evidence, to suggest that the system of title by registration that was developed in South Australia influenced the development of property law in England. She notes that Torrens travelled back to England in 1863 and made several speeches and representations to the various commissions that were looking at the question of title registration, and that the system that was implemented in England by legislation in 1925 bears many similarities to the Torrens system.[25] This is not to say that the current system of title by registration generates racial injustices in England and Wales, but her argument is compatible with Fitzpatrick's observation that the law here has historically been bound up with racial injustices associated with colonialism.

In these papers on decolonisation, we can see why it is important to heed the call of legal pluralists to de-centre and 'unlimit' law. The socio-legal literature on decolonisation intertwines with the literature on pluralism in other important ways. Elena Marchetti's 2006 article in the JLS, for example sheds light on the 'bottom-up' methodology that is favoured by both pluralists and decolonialists. Her focal point is the inquiry and final report of the 1991 Royal Commission into Aboriginal Deaths in Custody in Australia, which was intended as an effort to redress the racial injustices suffered by Indigenous people as a result of colonial rule. In this sense, the Commission could be described as a 'decolonising' institution, and the inquiry could be seen as an effort to decolonise, at least in part, the legal order. However, Marchetti argues that the process ended up entrenching the very problems it had sought to address. Rather than being a 'decolonising' practice, it ended up being a 'deep colonising' practice. In her words: 'the processes used [by the

[22] H. Arendt, *The Origins of Totalitarianism* (first published 1951, Penguin Classics 2017), p. 10.

[23] B. Bhandar, 'Title by Registration: Instituting Modern Property Law and Creating Racial Value in the Settler Colony' (2015) 42 *JOLS* 253, 275.

[24] id. 280.

[25] id. 281.

Commission] were often inappropriate. As a quasi-judicial and legalistic process,… the inquiry continued the colonization of Indigenous people by its inability to understand and incorporate Indigenous views and values'.[26] Although the Commission included Indigenous people and the inquiry sought to take their views seriously, Marchetti shows that the processes used to gather these views, and the ways in which these views were interpreted and used were still dominated by 'Western' views and values, and thus had the effect of shaping and limiting Indigenous views, values and knowledge. The shortcomings in the Commission that Marchetti identifies can be understood with reference to Tamanaha and Davies's work on legal pluralism, discussed above. Marchetti is to all intents and purposes criticising the way in which the Commission implemented the 'bottom-up' methodology that legal pluralists champion. In other words, her research adds depth to the idea of a 'bottom-up methodology', elucidating what such an approach should entail and what pitfalls it should avoid; that is, her work on decolonisation helps sharpen our understanding of pluralism, comparable to how the literature on pluralism helps us explain and understand the imperatives of pluralism and decolonisation.

With this outline of the overlapping themes of pluralism and decolonisation in mind, we can turn attention to two contemporary legal issues in England and Wales, and consider how our understanding of these issues can benefit from weaving the literature on pluralism and decolonisation together. There are lots of issues that could be addressed, but I have chosen to focus on the doctrine of joint enterprise and the law on citizenship-stripping. The aim is to show that although these laws are facially race-neutral, the operation of these laws is indelibly shaped by the law and practice of the British Empire (and thus linked to studies of decolonisation), and leads to a plurality of ways in which people experience law in England and Wales (and thus linked to studies of pluralism).

4 | EXPERIENCING LAW: PLURALISM AND DECOLONISATION

It is hardly controversial or novel to assert that people in any given political society have different experiences of the application of law, and that these experiences shape their understanding and opinions about law. This is a central component of many studies of legal consciousness.[27] But the literature on pluralism and decolonisation sheds light on *why* people experience the law in the ways that they do, and what legal professionals can do to ensure that these experiences do not threaten respect for the rule of law.

This discussion focuses on how Britain's legacy of colonial rule creates a plurality of ways in which a person experiences law in the United Kingdom today. Adopting the 'bottom-up' methodology of pluralists and decolonialists, I argue that the views of people racialised as something other than 'White British' must be taken more seriously by legal professionals. This argument is made using the examples of the doctrine of joint enterprise and the law on citizenship-stripping.

[26] E. Marchetti, 'The Deep Colonizing Practices of the Australian Royal Commission into Aboriginal Deaths in Custody' (2006) 33 *JOLS* 451, 454.

[27] The literature on legal consciousness is vast. A key publication in this field is P. Ewick and S. Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press, 1998). In the *Journal of Law and Society*, see D. Cooper, 'Local Government Legal Consciousness in the Shadow of Juridification' (1995) 22 *JOLS* 506. More generally, see L. Chua and D. Engel, 'Legal Consciousness Reconsidered' (2019) 15 *Ann Rev Law Soc Sci* 335.

4.1 | Joint enterprise

The doctrine of 'joint enterprise' refers to situations where two or more people are prosecuted for the same criminal offence. In some situations, it is hardly controversial. For example, when two people jointly commit the act of murder, and both have the intent to murder, it would be uncontroversial to prosecute them both for that crime. However, in other situations, the doctrine of 'joint enterprise' has attracted controversy. An example would be when two or more people engage in a criminal offence, but then one of those persons departs from that offence and commits a second criminal offence. In some circumstances, the other individuals can be prosecuted and convicted for the second crime, even if they were not present and had no knowledge that the crime had been committed. If there is evidence that they foresaw that the other person might commit the second crime, then a jury is permitted to conclude that they intended to assist or encourage the principal offender, and intended for the principal offender to commit the second crime. In such cases, those individuals can be criminally liable for the offence committed by the principal offender.

The rationales and objections to this doctrine have been rehearsed elsewhere,[28] but for present purposes, we need only to summarise the research into the racially discriminatory use and effect of this doctrine. Put simply, there is evidence that Black people and those of mixed ethnicities are disproportionately charged and convicted under the law on joint enterprise, and that prosecutors tend to invoke the narrative of 'gangs' when prosecuting groups of Black people, but not when prosecuting groups of White people. Patrick Williams and Betty Clarke found that 'gang narratives' were used in 78.9% of trials involving Black and Brown defendants ($n = 123$), but in just 38.5% of trials involving White defendants ($n = 109$). Although Black and Black British people make up 12.8% of the general prison population, they make up 37.2% of those convicted under the doctrine of joint enterprise.[29]

The tendency to view 'Brown' and 'Black' skinned people as more prone to criminality and as part of 'criminal gangs' has its roots in the rationales and justifications for colonialism and colonial rule. To justify colonialism, Indigenous populations were characterised as barbaric and uncivilised on account of their 'race', and to maintain colonial rule these populations were subject to criminal law measures in ways that settlers and colonisers were not. For example, in 1871, the Criminal Tribes Act was passed in British-ruled India to enable greater monitoring and heightened punitive measures against certain groups of Indians on the basis that they were biologically and socially prone to criminality. As Jasbinder Nijjar has argued elsewhere, the logics and rationales of the Criminal Tribes Act have filtered their way down the years and informed current approaches to tackling 'gangs' and knife crime, as illustrated by the racialised application of joint enterprise. Not only is the doctrine of joint enterprise more generally invoked when suspects and defendants are identified as 'Black', but the databases used by police forces to monitor people suspected of being part of criminal gangs are also known to focus on Black people.[30] This is discussed, further below, but for now we can see the interplay of pluralism and decolonisation. We can see a plurality of ways in which people in the same jurisdiction experience the same law, and we can see how this plurality of ways is shaped by the legacy of colonial rule and perceptions of race.

[28] See S. Hulley, B. Crewe, S. Wright, 'Making Sense of 'Joint Enterprise' for Murder: Legal Legitimacy or Instrumental Acquiescence?' (2019) 59 *Br J Criminol* 1328.

[29] P. Williams and B. Clarke, *Dangerous Associations: Joint Enterprise, Gangs and Racism* (Centre for Crime and Justice Studies 2016).

[30] J. Nijjar, 'Echoes of Empire: Excavating the Colonial Roots of Britain's "War on Gangs"' (2018) 45 *SJ* 147.

4.2 | Citizenship-stripping

Section 40 of the British Nationality Act 1981 (BNA) permits the Home Secretary to revoke someone of their British citizenship in certain circumstances. For example, citizenship can be revoked if such a measure is considered conducive to the public good because the person concerned is believed to be a threat to national security. However, as international and domestic courts and political philosophers have argued, the right to citizenship is of vital importance because it is the precursor to the enjoyment of all other political and legal rights, and thus a person must not be left stateless.[31] As such, the BNA stipulates that a person can only be stripped of citizenship if such a measure does not leave the person concerned stateless.

In recent years, Home Secretaries have increasingly invoked this provision in relation to persons involved with terrorist groups such as ISIS. One such example is the case of Shamima Begum who was 15 years old when she travelled to Syria in 2015 to join ISIS. She was subsequently stripped of her British citizenship in 2019 when she was found in a refugee camp. Crucially, the Home Secretary was only able to do this because Begum qualified for Bangladeshi citizenship on account of her parents' nationality, and would therefore not be left stateless. The case highlighted the impact of Britain's colonial past on the operation of the law today. Only those with dual nationality can be stripped of their citizenship, and people racialised as Brown or Black are more likely to have dual nationality on account of Britain's imperialist past. Begum had been born and brought up in the United Kingdom, yet felt the law differently from someone who could have lived an identical life to her, but who was racialised as 'White British' and therefore not susceptible to citizenship-stripping.

A key feature of Begum's case is that she wanted to return to the United Kingdom in order to challenge the legality of the Home Secretary's decision to deprive her of citizenship, but the courts upheld the Home Secretary's ruling that she could not enter the United Kingdom because she was classed as a threat to national security.[32] Put another way, the political and legal systems excluded her from the proceedings that would determine her political and legal fate.

This ties back to the discussion on the use of 'gang' narratives in joint enterprise cases. As part of its efforts to tackle so-called gangs, the Metropolitan Police constructed a database of individuals known or suspected to be part of gangs. The database, known as the Gangs Violence Matrix, was criticised in some quarters because it was known to include a disproportionate number of people racialised as Black. When a musician named Awate Suleiman asked the police whether he was included in the database, it took 2 years before the force told him that it 'could neither confirm nor deny' his status.[33] In other words, both Begum and Suleiman were excluded from the very processes that were being used to monitor and regulate them, in a manner comparable to that described by Marchetti with respect to deaths in custody of Aboriginal people in Australia; that is, the law on joint enterprise and citizenship-stripping in the United Kingdom are examples of 'deep colonising' practices, taking people whose ancestors were victims of colonisation, and subjecting them to similar processes of monitoring and exclusion.

[31] See *Pham v Secretary of State for the Home Department* [2018] EWCA Civ 2064 [30] and [49]; *Trop v Dulles* 356 US 86 (1958) (101); H. Arendt, *The Origins of Totalitarianism* (first published 1951, Penguin Classics 2017).

[32] *R (Begum) v Special Immigration Appeals Commission & Anor* [2021] UKSC 7.

[33] See 'Gang Violence Matrix: Met Police to Overhaul Controversial Database' *BBC News* (12 November 2022) <https://www.bbc.co.uk/news/uk-england-london-63568880>

These observations are important because they shed light on why people might lose respect for the legal order and the rule of law generally. To explain this, it is helpful to turn to the literature on legal consciousness.

5 | FROM PLURALISM AND DECOLONISATION TO LEGAL CONSCIOUSNESS

The symbiosis between the literature on pluralism and decolonisation is interesting because each discipline helps us sharpen our understanding of the other. In particular, I have sought to tease out what the literature on both tells us about how histories of colonialism, and discourses of 'race', come to shape people's experiences of law. This is important because people's experiences of law shape their beliefs and attitudes towards legitimacy, and towards the imperative of abiding by legal norms and processes.

This issue – how experiences shape understandings and attitudes – is addressed by Kathryne Young in a study of a community of people who engage in cockfighting on an unnamed Hawaiian island.[34] Although cockfighting is illegal, these fights occur on a weekly basis. The police will routinely interrupt fights and arrest one or two people, but they never completely shut down fights or arrest everyone involved, even though they would have grounds to do so. Young's focus is on how these interactions shape people's understanding about law, their relationship with law and their understanding of legitimacy. She focuses on second-order legal consciousness, highlighting how '[a] person's beliefs about, and attitude toward, a particular law or set of laws is influenced not only by his own experience, but by his understanding of others' experiences with, and beliefs about, the law'.[35] As she writes, the police's decision to make nominal arrests but to otherwise largely turn a blind eye shapes cockfighters' understandings of themselves and the police: 'The fighters know that their actions are illegal, and that theoretically, they could all be arrested in one fell swoop. But since this doesn't happen, and since police officers continue the tradition of enforcement every week, the fighters make assumptions and deductions about the officers' motives and beliefs'.[36] They assume that the police understand that cockfighting is part of their local tradition that should be respected, and that the events are largely harmless. This in turn helps the cockfighters reassure themselves that as long as they conduct the fights in an orderly manner, they are acting legitimately.

We can take this analysis and apply it to the issues discussed in this paper. Just as the cockfighters know that their actions are illegal but largely tolerated by law enforcement, so people racialised as Black or Brown in England and Wales know that they might live and behave comparably to those classed as 'White British', but be treated very differently by law enforcement. So, just as cockfighters use their experience to rationalise their behaviour, we can surmise that racialised minorities in England and Wales might use their experience (or the experiences of people comparable to them) to rationalise their scepticism and antipathy towards law. Therefore, we can see how plural experiences of law, coupled with legacies of colonialism, can lead racialised people to question to legitimacy of the rule of law. This is, unfortunately, not the place to engage in a discussion of how to rebuild trust in law and legal processes, but suffice to say that the socio-legal literature sheds much light on the reasons why there might be distrust with law.

[34] K. M. Young, 'Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight' (2014) 48 L&SR 499.

[35] id. 500.

[36] id. 516.

6 | CONCLUSIONS

I have tried to highlight the contributions that the literature on legal pluralism can make to our understandings of decolonisation, and vice versa. In particular, we have seen that both pluralists and decolonialists are concerned with the relationship between law and power. Just as pluralists seek to de-centre the (powerful) state from our understandings of law, so decolonialists seek to centre the disempowered in our understandings of law. In both cases, a 'bottom-up' methodology is essential to ensuring that the voices of those traditionally excluded from power are heard.

This review of the socio-legal literature raises some further questions. The discussion above has generally treated decolonisation and the struggle for racial justice as two sides of the same coin, but conflating the two can come at the cost of marginalising certain groups. While socio-legal scholars have filled journals will research on anti-Black and anti-Brown racism, there is a paucity of research on the relationship between law and the racial harms suffered by those who present as 'White-skinned', such as Jewish people and those of a Gypsy, Roma, or Traveller heritage. An admittedly cursory search of articles in the JLS reveals just a few articles on antisemitism and the treatment of Jewish people in the legal system, and similarly just a couple of articles on the plight of Gypsy, Roma, and Traveller communities.[37] As a member of the Editorial Board, I would certainly encourage more submissions on these issues, especially ones which link race and law with pluralism and legal consciousness.

How to cite this article: Malkani, B. Legal pluralism, decolonisation and socio-legal studies *Journal of Law and Society*. 2025;1–11. https://doi.org/10.1111/jols.12550

[37] On Jews, antisemitism and the law, see D. Herman, "An Unfortunate Coincidence": Jews and Jewishness in Twentieth-century English Judicial Discourse' (2006) 33 JOLS 277, and M. Riedel, 'Law and the Construction of Jewish Difference' (2021) 48 JOLS 158. On law and people of a Gypsy, Roma, and Traveller heritage, see D. Cowan and D. Lomax, 'Policing Unauthorized Camping' (2003) 30 JOLS 283, and R. Sandland, 'The Real, the Simulcram, and the Construction of "Gypsy" in Law' (1996) 23 JOLS 383.