Global Legal Pluralism

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This Article grapples with the complexities of law in a world of hybrid legal spaces, where a single act or actor is potentially regulated by multiple legal or quasi-legal regimes. In order to conceptualize this world, I introduce literature on legal pluralism, and I suggest that, following its insights, we need to realize that normative conflict among multiple, overlapping legal systems is unavoidable and might even sometimes be desirable, both as a source of alternative ideas and as a site for discourse among multiple community affiliations. Thus, instead of trying to stifle conflict either through an imposition of sovereigntist, territorially-based prerogative or through universalist harmonization schemes, communities might sometimes seek (and increasingly are creating) a wide variety of procedural mechanisms, institutions, and practices for managing, without eliminating, hybridity. Such mechanisms, institutions, and practices can help mediate conflicts by recognizing that multiple communities may legitimately wish to assert their norms over a given act or actor, by seeking ways of reconciling competing norms, and by deferring to other approaches if possible. Moreover, when deference is impossible (because some instances of legal pluralism are repressive, violent, and/or profoundly illiberal), procedures for managing hybridity can at least require an explanation of why a decision maker cannot defer. In sum, pluralism offers not only a more comprehensive descriptive account of the world we live in, but also suggests a potentially useful alternative approach to the design of procedural mechanisms, institutions, and practices.

The Article proceeds in three parts. First, I summarize the literature on legal pluralism and suggest ways in which this literature helps us understand the global legal environment. Second, drawing on pluralist insights, I offer an analytical framework for addressing normative conflicts, one that provides an alternative both to territorially-based sovereigntism and to universalism, and instead opens space for the "jurisgenerative" interplay of multiple normative communities and commitments. This framework generates a series of values and principles that can be used to evaluate the efficacy of procedural mechanisms, institutional designs, and discursive practices for managing hybridity. Third, I survey a series of such mechanisms, institutions, and practices already in use in a wide variety of doctrinal contexts, and I discuss how they work (or sometimes fail to work) in actual practice. And though each of these mechanisms, institutions, and practices has been discussed individually in the scholarly literature, they have not generally been considered together through a pluralist lens, nor have they been evaluated based on their ability to manage and preserve hybridity. Thus, my analysis offers a significantly different approach, one that injects a distinct set of concerns into debates

about global legal interactions. Indeed, although many of these mechanisms, institutions, and practices are often viewed as "second-best" accommodations between hard-line sovereigntist and universalist positions, I argue that they might at least sometimes be preferable to either. In the Conclusion, I suggest implications of this approach for more general thinking about the potential role of law in identifying and negotiating social and cultural difference.