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and the Liberal Rule of Law

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Think Piece:

Moving beyond and towards Liberal Legalism:
Legal Anthropology and the Liberal Rule of Law

Jonas Bens and Larissa Vettters

Abstract:

Liberal legalism is under attack from authoritarian movements worldwide. Legal anthropology must respond by studying both: alternative legal orders and how liberal law itself is being transformed and weaponised.

Key words: liberal legalism, authoritarian governance, ethnographic legal studies, legal anthropology

In recent years, the liberal rule of law in Europe and elsewhere has come under sustained and multifaceted pressure. Democratically elected leaders in countries like Poland, Hungary, and India employ legal techniques in the service of an illiberal agenda, for example by packing constitutional courts, curtailing judicial independence, subordinating legal institutions to executive power, or amending campaign finance laws (Scheppelle 2018; Acevedo 2022). Right-wing authoritarian movements make use of core protections of liberal legalism and human rights frameworks in their campaigns against abortion or gender equality to subvert this very same liberal order (Gal 2018: 19–20; Blokker 2024: 415). Migration governance has grown increasingly exclusionary, with policies that criminalise asylum seekers, externalise borders, and erode protections under international law – visible in the European Union’s deals with third countries and in national regimes of detention and deportation (Greenberg 2021; De Genova 2020). At the same time, we witness a loss of faith in liberal legalism as the implicit ideological baseline amongst scholars and practitioners. These developments point to a deepening crisis in liberal legalism¹ – not merely its erosion but its transformation – and compel us to rethink how we study law and what we understand law to be.

In this short piece, we argue that ethnographic legal studies (see Bens and Vettters 2018) are uniquely positioned to respond to this moment by helping us understand what is going on right now and by providing alternative social imaginaries to this rise of a new kind of authoritarian governance. To do that, it is necessary to begin with a fundamental reflection on the role of liberal legalism in anthropological approaches to law and the plurality of normative orders.

1 Whilst the term ‘liberal legalism’ has diverse genealogies, we gesture both to the specific legal principles of political liberalism (including capitalist property, legal individualism, and nation state sovereignty) and to political liberalism’s peculiar prioritisation of the legal form over other mechanisms of government and social organisation.

Legal anthropology's relation to liberal legalism

Since its inception, legal anthropology has interrogated law as a social and cultural phenomenon – far beyond the narrow confines of the written law of the liberal state. However, this has often been done with liberal legalism as an explicit or implicit point of reference – a kind of normative background against which other legal and normative orders were made legible: traditional law, informal justice mechanisms, religious codes, moral orders. Liberal legality was the unmarked constant category.

Today, that background is crumbling. The rule of law, once taken as the *sine qua non* of democratic governance, is no longer a given but a contested, fractured, and politically volatile terrain. This rupture calls for a renewed commitment to ethnographic legal studies – not as a simple reaffirmation of liberal values but as a mode of inquiry that moves dialectically between different sites, actors, and regimes of normativity.

The discipline of legal anthropology has long grappled with internal dualities. Classic dichotomies such as 'non-state law' versus 'state law' (Griffiths 1986), 'studying up' versus 'studying down' (Nader 1969), or 'anthropology abroad' versus 'anthropology at home' (Conley and O'Barr 1993) have structured methodological and theoretical debates. Whilst often presented as binaries, each of these moves aimed to decentre – from a particular perspective – what anthropologists perceived to be the globally hegemonic normative order: the law of the liberal nation state.

But what happens, we now must ask, when liberal legalism becomes actually decentred, though not by anthropologists but by authoritarian movements and governments? We argue that this calls for a dialectical movement: a reflexive oscillation between studying law in and beyond the state, engaging with hierarchies from both above and below, and situating our work across different spatial and institutional contexts.

Moving beyond and towards liberal legalism

The first direction this movement takes is outward – beyond liberal legalism. Ethnographers of law are well-equipped to document and analyse the rise of non-liberal and illiberal normativities. This goes beyond right-wing legal imaginaries (Bens 2017) to include alternative legalities and informal systems of justice that operate outside, or alongside, state law (Bens 2020). That also means an in-depth ethnographic investigation of how different kinds of communities, all over the world, generate normative orders, drawing on customary, moral, relational, and affective logics that do not map neatly on to liberal legality.

What kinds of law become imaginable – and indeed liveable – when liberalism loses its hegemony? Legal anthropology can help answer this question by uncovering the conditions under which alternative legalities are

forged, contested, and sustained. These may be emancipatory, regressive, or deeply ambivalent. But they all challenge the supposed universality of liberal legalism and open up a comparative horizon of legal possibility.

Paradoxically, the second movement we propose is towards liberal legalism – but this does not mean simply studying liberal legal frameworks as they currently exist, nor defending them in their present form. Legal anthropology has already established that liberal legalism can empower marginalised actors to resist rights violations, albeit always within the limits of the liberal state and its capitalist economy (Povinelli 2002; Eckert et al. 2012). Our anthropological knowledge of liberal legalism's contradictions and limitations indicates that simple restoration or defence cannot be the solution to the current crisis.

What we propose instead is a critical investigation of the current transformations of liberal legalism itself. This involves detailed ethnographic analysis of how liberal legality is being reconfigured, hollowed out, or weaponised in contemporary governance. As legal anthropologists show, mundane administrative practices – such as the issuance of immigration guidelines (Vettters 2019) or competing administrative and judicial interpretations of statutory law (Bernstein 2023; Bernstein and Staszewski 2023) – can reflect broader shifts in legal authority and political contestation. Moreover, mobilisations of legal forms are both taking place 'at the heart of the state' and are leveraged by activists as a 'radically legal' expression of politics (Kusiak 2024).

This approach demands that we take liberal legality seriously as an object of study. We must attend to its internal contradictions, its technocratic mutations, and its vulnerabilities to authoritarian capture. At the same time, we should explore how actors resist, reinterpret, or subvert the legal frameworks imposed on them.

In this sense, legal anthropology can become a site for critical diagnostics: uncovering the micro processes by which formal legal norms are bent, stretched, or recalibrated under political pressure. This requires moving 'up' into elite institutions and legal bureaucracies as much as 'down' into grassroots mobilisations and everyday encounters with the law.

Both movements – beyond and towards liberal legalism – can be seen as grounded in the long-standing tradition of legal pluralism (Benda-Beckmann and Turner 2018): a tradition both of us have been academically socialised in. Far from being merely a catalogue of normative diversity, legal pluralism insists on the co-presence of multiple legal orders within a single social field. It recognises law's fragmentation, its layered sovereignties, and its embeddedness in power relations.

Yet today, legal pluralism must be recalibrated to account for a more radical instability. The question is no longer just how state and non-state laws interact but how the very authority of liberal law is being contested and re-

negotiated. In this context, insisting on investigating ‘the law’ always as a plurality of normative orders is not only an analytical tool but also a critical stance: a refusal to naturalise any single legal form, including the liberal one and its contemporary authoritarian transformations.

Ethnography as an entangled political practice

Lastly, we must recognise the political conditions under which we conduct ethnographic legal studies. This is a matter of acknowledging our own normative positions and entails a deeper reflection on how our research is implicated in the legal transformations we study.

Ethnographic studies of law should become a meeting ground: a site where methodological experimentation, political engagement, and theoretical innovation intersect. This means fostering a wide variety of ethnographies that illuminate the granular details of legal life across different regimes and contexts whilst remaining sensitive to the entangled and multi-vectoral nature of such ethnographic projects (Vettters and Margaria 2025). By moving both beyond and towards liberal legalism we can capture the contradictions and possibilities of law in the present conjuncture.

Declaration of conflicting interests

The authors declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

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