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## Law as a global entity through Italian eyes and minds

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### ABSTRACT

This contribution discusses, from the perspective of global comparative law, how Mariano Croce's English translation of a major book by an important early-Italian scholar, Santi Romano, allows helpful insights into early twentieth-century Italian thinking about the intrinsically plural nature of law. This debate connects directly to current worldwide discourses about legal pluralism, showing how Romano's exciting project forms an early precursor of the gradual movement towards obtaining a better grasp of the inner nature of the deeply plural concept of law. Romano's work, as a remarkably pertinent early contribution, of lasting relevance to global legal theorizing, indicates that a reductionist, positivistic conceptualization of law that ignores the legal agency of common citizens could easily lead to disastrous outcomes through abuses of state-centric powers. Connecting Romano's early theorizing to many currently ongoing debates in different jurisdictions and legal orders about the plurality of laws, this article seeks to demonstrate the powerful impact that such kind of pioneering work can have even today. It strengthens, above all, the currently growing realization that law is certainly much more than state law, and that people's laws and their diverse values and ethics should be treated with more respect by legal orders.

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## Introduction

A century ago, the Italian scholar Santi Romano (21 January 1875–3 November 1947) thought innovatively about the concept of law, the state and the relationship of law and society. Romano's *The Legal Order* made an epistemic intervention through the 'institutional theory of law', the claim that various forms of institutions, and not just positivist state law, constitute the basic building blocks of law. This challenged state-centricity to devise better methods of securing legal protection for different groups of people. Mariano Croce has provided a sterling service to legal history and legal philosophy by finally making this important work accessible in English. This exciting project, especially when read within a global context, forms part of the inch-by-inch movement towards obtaining a better grasp of the real nature of the deeply plural concept of 'law' that legal scholars everywhere, in the Global North as well as the Global South, still struggle to understand, let alone agree on (see, e.g. Menski, 2006: 32; Tamanaha, 2009: 17).

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The polemic climate surrounding this issue, even in those early times, is almost immediately identified when Romano refers to Kant's mocking comment that '[j]urists are still searching for a definition of their concept of law' (p. 2. n. 4). Romano's 'institutional theory of law' (p. 49) challenged what Griffiths (1986: 4) much later came to call legal centralism and Chiba (1986: 1–2), in the same year, critiqued as 'Western model jurisprudence'. These legal scholars clearly identified the myopic monism of positivist legal science as faulty, probably hiding its own hunger for power by deliberately obscuring the various impacts and inputs of anthropology, sociology, philosophy, morality and ethics in relation to law.

This article first assesses Romano's contribution and problematizes some of its limitations. It then examines the deeper relevance of Santi Romano's project, before turning to several contested practical implications, especially regarding recognition of various forms of 'people's law' as the legal 'other'. The strategic silence of Romano about ethical dimensions of the law is then identified and put into the wider context of plurality-conscious global legal theorizing. It is argued that this deliberate silence should not be seen as dismissal of the value of ethics and morality in legal theorizing and the practical management of welfare structures today, particularly in the massive countries of the Global South. Romano can be read as endorsing holistic legal theorizing and this should not be underrated in the worldwide reception of his English text that we now fortunately have.

### Romano's contribution

A less than careful reading of Romano's Italian-based, Eurocentric theorizing in *The Legal Order* risks imposing some significant limitations on realizing the vast relevance of his work within a wider global context. I stress this upfront, since Romano specifically and deliberately kept values and ethics outside his legal analysis. This does not mean that he dismissed ethics, values and even 'religion' as irrelevant for legal theorizing. It seems he was simply making a specific limited point, which is, however, of major global relevance even today.

A trained lawyer, Romano was involved in important research projects from the start of his professional career. Though exposed to state-centric indoctrination, he managed to retain his own critical thinking power, Croce's insightful 'Afterword' explains the young man's freedom of spirit by noting that 'Romano had no penchant for the limelight of politics', adding that fortunately for legal scholarship, he 'developed a new seminal approach to the legal phenomenon' (p. 112). This was, it seems, new for Italy at that time, while probably the ancient Romans had their own, maybe not radically different, thoughts on this topic. Anyway, Romano then devoted the next 30 years of his life (1897–1928) to legal studies and teaching, until Mussolini appointed him as President of the Council of State, Italy's highest administrative court, a position he held from 1929 to 1944. Despite reservations about the benefit of scrutinizing biographical details to understand an author's theorizing, Croce admits that consideration of the socio-historical setting of Romano's life and times is inevitable. I wondered if we have learnt enough about this.

Croce's carefully annotated translation now offers an anglocentric readership access to a hitherto hidden gem of legal scholarship. Globally, there are many such hidden

treasures, while we struggle in a polyphonic, multilingual world to make sense of each other's words and thoughts, even when expressed in familiar languages. There is much writing and talking past each other, with valuable messages being lost in translation and intercultural communication, but also in personal pettiness. While heuristic progress remains painfully slow, positivist backlashes remain vocal, sometimes cloaked in 'religious' authority or dressed up in public interest arguments, nowadays often around terrorism and security.

The arduous task of translation, which is well known, is particularly tricky regarding legal concepts. Nobody could really hope to get away nowadays by insisting that 'law' just means 'law', given the many nuances and variations in context and meaning in different historical, cultural and linguistic contexts. An early, simple yet thought-provoking attempt to highlight this was the distinction of 'LAW, Law and law' made by Allott (1980: 2). Recently, a sophisticated effort to understand Islamic law from within is presented in a massive study (Shahab, 2016), using sources from a variety of Islam-related languages and cultures to produce an amazingly rich picture of Islamic institutions and actions in the wide space between the Balkans and Bengal. After some work on ancient concepts of Hindu law (Menski, 2003), and venturing deeper into comparative law and legal pluralism studies (Menski, 2006), I can find no reason to disagree with Romano's above-cited reference to Kant's mocking statement, which more than a 100 years later remains completely true. But have we obtained sufficient explanations why Romano, as a positivist, state-centric lawyer, polluted the positivist nest by accepting various forms of non-state law as law? If one possible answer is that Sicily actually belongs to the Global South, what would be the implication for global legal theorizing? After reading this book, including Croce's excellent 'Afterword', I admit having not yet understood fully why Romano's theorizing appears to sideline ethics and values, as this cannot be appropriate for a viable globally valid legal theory. My own studies, relying initially primarily on Chiba (1986), and more recently on further research with Japanese colleagues, which is only published in Japanese, suggest that 'law' cannot reasonably be conceptualized merely as a state-centric entity. Its basic building blocks of rules, processes and values all have legal, social, as well as ethical components. Romano at least identified the first two, but kept quiet about the third element.

I noticed that Croce as translator skilfully uses the word 'entity' (pp. 14, 46, 123), setting my mind ablaze with memories,<sup>1</sup> offering fresh challenges for comparative law theorizing. Is our collective inability to unambiguously identify 'law' not remarkably akin to similar troubles regarding the concept of 'religion'? While 'law' is largely dependent on certain entities and human constructs, marked by partiality and subjective perspectives, including belief, 'religion' also involves various entities, including gods, created by human imagination and/or action, and belief, too. Both sets of entities, related human agencies and the resulting visions of orders, dynamically develop their own specifics and momentum over time. Both law and religion also seem to pre-exist or go beyond such human interventions and their direct reach. Ancient Indic traditions sagely distinguished religious-cum-secular macrocosmic notions of Order (*rta and satya* in Sanskrit) and more microcosmic concepts of order like dharma (Menski,

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<sup>1</sup>Without claiming any special credit here, I point to Menski (2006: 184), where the term 'entity', here specifically as creator of a body of rules, is used. It may be useful to know that Croce and I worked together at SOAS for some time, finding that we were broadly on the same wavelength, despite access to very different registers of legal writing.

2003, 2006: 205–209). One does not need to be religious to perceive this; it may be plain common sense. Whatever it is, acceptance of the existence of some kind of higher LAW, however named, could also be treated as a secular form of religion, as found in the ancient non-theistic minority tradition (not to say institution!) of Jainism (see now Rankin, 2018), while belief in RELIGION will surely have various legal implications. If readers are beginning to suspect that I am raising these points here to suggest that maybe all these entities are somehow holistically connected and overlap, they are completely on the right track.

Romano, however, was not centrally interested in these holistic dimensions. His Hegelian debate explicitly mentions microcosm and macrocosm (p. 52), confirming that he does not totally deny the potential relevance of religion, ethics or morality. But as an early modern scholar, Romano perceived that the state has taken control of the steering wheel, allowing his well-focused analytical searchlight to fall only on ‘institutions’, while avoiding the messiness of a holistic project of legal analysis that would involve competing forms of ethics, as shown now in a four-cornered kite model of law (Menski, 2013). Romano deliberately sidelined the inevitable connectedness of law, while talking rather much about the highly plural relations of state law and international law. This confirms that he was peering inside the phenomenon of law, rather than scrutinizing its deeper interdisciplinary relatedness to other entities. Hence, although Romano comments effectively on the relatedness of law, not its separation, his socio-legal analysis remains too specific and narrow, inevitably fails to produce an outcome recognizable as global legal theorizing. Though he challenges monist legal positivism and his focus remains partly state-centric, overall, this approach is not just pertinent for Italians in his time. It also forms, almost by default, a hugely important foundation for wider, globally valid legal theorizing. Here is a sharp legal mind at work, placed in a particular time and space, deeply concerned that the basic object of his study remains so messily contested, and yet Romano decided to tackle only one small aspect of the whole scenario. One could see a positivist or monist project here, seeking to improve certainty in the application of the law. Probably, though, that was not his main aim.

My observations about this brilliant yet limited project of an administrative lawyer in early twentieth-century Italy are thus twofold. First, this is a consciously secular analysis of law, which deliberately elides the presence and power of religion and the role of ethics and morality. This reflects the secular, modernist spirit of the time, probably still suffering from theocratic phobias, indeed physically quite close to the Vatican, arguably the most potent seat of religious power ever. Given that this feared legal ‘other’ is right in front of one’s eyes and mind, while one seeks to understand the nature and power of law, any Italian theorist of law must be forgiven for this stance. There is no need for penitence here, *mea culpa* lamentations, or any payment to atone for sins of omission.

Secondly, this secular analysis of law is also completely Eurocentric. Its geographical reach ends basically at the Bosphorus, which is problematic (Menski, 1997). Thus, closely related to the first observation, I argue that Romano’s approach constitutes merely a strongly partial, also geographically restrained analysis, which seems to give it limited relevance for a sustainable and credibly global theory of law today. Today we know, for example, through the *Oxford International Encyclopedia of Legal History* (Katz, 2009), which took a truly global team 10 years to produce, that there is much more to consider than common law and civil law, and a few other minor members of an extended family.

## The deeper relevance of Romano's project

The above comments, however, do not mean that Romano's book is useless, or his theory is defective or redundant. By insisting that the key term 'institution' is internally plural and does not merely comprise various state-made institutions, the epistemic breakthrough and hallmark of Romano's theorizing is pinpointed as explicit recognition of the socio-legal sphere. This domain is not just capable of having legal effects; it becomes an alternative form of law. Europeans should not be surprised, for even today, virtually the entire Global South remains familiar with the concept of so-called personal law systems, which evidently treat social institutions as a form of law. Romano observed in his time that of all kinds of institutions made by people as social actors exist in lived experience. There was no question for him about whether custom is law! For an Italian, this may be a daring step, as positivist opposition will wait at every corner to assail such heresy. However, Romano seems to be a fine early embodiment of a phrase I have begun to use more often recently, namely that a good monist is of necessity a pluralist.<sup>2</sup> Notably, Lorenzo Zucca (2018) has recently suggested that plurality-conscious legal positivism should seek to avoid the emergence of a 'black market' in the law.

Despite Croce's reservations about the relevance of biographical details, I sense further that Romano's locatedness as a Sicilian enabled him, in a somewhat subversive way, to take a perspective not untypical of non-majoritarian Italians. The constitutional history of Italy as a composite nation is well known and need not be explained here. People living in a locality far from the centre of national power, whether ancient Rome or its more recent position as the Italian Republic's capital, will benefit from being equipped with locally coloured lenses. Working with many Italian scholars over the years, I have learnt a lot about different local perspectives, which impact on attitudes to law.<sup>3</sup>

Local claims to freedom to be different, whether in a federal sense or simply in terms that would come close to Ehrlich's notion of 'living law', are thus clearly reflected in Romano's theorizing. He refers to the lived experience of the law, but nowhere calls this 'living law', for obvious reasons. His sophisticated terminology of 'institution' indicates full awareness of the power, agency and discretion of local social actors, claiming recognition as legal agents. His points of difference with Ehrlich's theory seem minor. More important is the realization that claims for recognition by social institutions for official legal recognition would create conflicts. These might be more or less symbolic, but could potentially lead to exaggerated counter-reactions, even revolt. How does a control-freakish state then find the right approach to social institutions? Importantly, Romano observes that 'the laws of the state would do well to take them into consideration' (p. 37). His Chapter 2 pertinently discusses a range of practical issues. The onus is now prominently on the state, but the state is never the only legal actor. Beyond that, *The Legal Order* seems neither specifically interested in various kinds of conflicts, nor their resolution. Though unaware of Romano's inputs, a forthcoming edited volume of essays (Kyriaki, 2018) focuses on conflict management in scenarios of hybrid social normativities and will thus fill a gap in Romano's work.

<sup>2</sup>I explicitly thank here Professor Matthias Rohe, who first alerted me to this issue, insisting that post-War Germans were simply good positivists, having learnt from history.

<sup>3</sup>I thank in this regard especially Silvia Bagni, Pierluigi Consorti, Roberto Scarciglia, Federica Sona, Roberto Toniatti, Marco Ventura and above all Domenico Amirante, whose insights are discussed further below.

This, too, confirms that Romano's limited ambition was simply to demonstrate that a variety of 'institutions', including international law, qualify as 'law', itself an audacious project for a state-centric positivist. Notably, careful reading of Romano's partly polemical responses to his various critics confirms his sense of frustration and considerable irritation about objections to his stance (p. 49). In Indian contexts, one finds the popular image of a blind man describing an elephant. The blind or myopic analyst, touching only one part of the whole body, cannot really be blamed for partial analysis. But Italian and other European legal scholars of the nineteenth and early twentieth century were not blind. They were simply blinded by legal positivism and mesmerized by its superiority claims. So I sympathize with Romano and share his frustrations about scholarly petulance (Menski, 2006).

It was probably too early for Romano to claim postmodern methodological insights. His anguished wording discloses irritation that whatever one describes through certain words may still not capture all dimensions of the entity examined, and may be misunderstood. This approximates anxieties over a postmodern gaze that still risks unwittingly privileging some dominant perspective. I shall return to this below, related to current fears of revivalism. Romano's repeated response to critical observations about holes in his argument is, notably, a promise of more future studies.

### Contested practical implications

Reading this book confirmed my conviction that it remains pointless to press the phenomenon of law into any specific form of words to achieve a better understanding of the whole concept. If it is so evident that plurality is ubiquitous also with regard to law, then why is legal pluralism still a dirty word or a kind of plague for so many academic lawyers? It remains less fruitful to ask what law is, while reflecting what kind of law one may find or imagine in any particular context seems more productive. Romano argued that what people do in interaction with each other becomes thereby an 'institution', resulting in something legal. That this is not unusual transpires from Croce's brilliant Afterword, including examples from Sally Falk Moore's well-known anthropological approaches.

Romano insisted that various social 'institutions' he perceived are already a form of law. They do not merely become law when a state, in whatever form, recognizes them. This fine distinction concerns the boundary between what Chiba (1986) helpfully distinguished as 'official law' and 'unofficial law', insisting that these always coexist in contested interaction. There was never, as Moore had identified earlier, too, total domination by official law. Romano said basically the same. One may phrase such realizations and resulting forms of recognition in terms of Allott's (1980) limits of law, or problematize terminological conflicts over hybrid normativities (Kyriaki, 2018). The point is simply, for me today as much as for Romano long ago, that both these two different forms of law are part of the same internally plural legal order, operating at various levels. This could then, as I call it now, be characterized as a potentially messy law-related 'plurality of pluralities' (POP).

Significantly, Romano accepted social agency as a legitimate form of law, but was avidly opposed to suggestions that individuals could make their own law. Individual action did not, in his understanding, result in an institution. Yet in a slightly different

context, Romano admits that ‘an isolated human being in the state of nature is purely metaphysical and a-historical’ (p. 28). I thus reject Romano’s dismissal of individuals as legal agents, given that one often sees specific individuals acting behind the smokescreen of various ‘institutions’. This could be more dangerous than we realize. US President Trump is only the most prominent present example.

Romano was, as noted, also unwilling to address, for his specific project, the connections of his ‘institution’ with natural law, morality and ethics. Taking this rigid stance, he perhaps asserted his position as a positivist, declining to explore natural law as another form of law. I identified this above as problematic, but it could be merely a strategic device to retain analytical focus for *The Legal Order*. From a Eurocentric modernist perspective, too, it makes sense. However, as a result, Romano’s explicitly secular theorizing, another manifestation of his Eurocentrism, prevents his institutional theory from being directly applicable globally. Assuming that Romano is concerned mainly about the balance between political and social agency in relation to ‘institutions’ because he lived and worked in Italy and in an age where the nation-state, as Loughlin’s introduction concludes, had become ‘the primary form of institutional world-building’ (p. xxix), one could endorse this as a matter of fact. However, being the primary form is not the same as being in sole control, or owning the only possible form of legal authority!

Romano seems deeply concerned to understand how a modern state-centric structure may function appropriately. His main argument appears to be that a good state system, in other words, a good institution of public law and administrative law, must account for the constant presence of its own social other, various manifestations of institutions generated by people as interlinked individuals. While he readily accepts international law as law, as noted, Romano rejects suggestions that a single individual could form or claim to be an institution. That label, according to him, is only available as a result of the interaction, in whatever form, of various social actors. In this context, he distinguishes ‘relationship’ from ‘institution’ (p. 34), highlighting another crucial, yet fuzzy boundary. How does one determine the precise nature of relations between a married couple, for example, regarding their most intimate and private understandings of rights and duties to each other on a day-to-day basis? Evidently, state legal systems have created formal institutions of marriage, putting relevant Hartian primary rules into statutory form that now demands compliance. Yet, can one presume that all nuances of this interpersonal relationship can be regulated, to the last dot, by state institutions? Here, Romano risks self-contradiction.

The next question would then immediately be to what extent any other form of less formal social ‘institution’ would or should be recognized, or entitled to recognition by state institutions. Here, I spot a huge silence in the entire book. Surely, in today’s democratically structured state orders, state-dominated institutions must be sensitive to, perhaps even account for, various socially driven institutions to retain viable links of trust and mutual support between those who govern and those who now hold the right to vote? An evident risk following failure to cultivate this symbiotic relationship, which itself assumes the nature of a hybrid institution, means that common people, as voters, could deny coveted political legitimacy and thus power, to those in charge of state institutions. Interdisciplinary work on South Asia has recently brought out this important realization (Kumar, 2017), an aspect overlooked by Romano, probably because voters’ right 100 years ago were not so strong.

Actually, one does not need to go to South Asia for such evidence. Brilliantly instructive examples of how current Italian law handles pluralist challenges exist. Immensely powerful, just visually, is a book comprising almost entirely of pictures (Degiorgis, 2014). The author, a photographer, conveys an obvious legal message, directly pertinent to Romano's theorizing. He illustrates how Italian state law operates sophisticated processes and institutions to manage the substantial presence of huge Muslim communities in Northern Italy through deliberate silence. While state institutions appear reluctant to grant public recognition and official status to Muslim places of worship, this forces perfectly legal citizens as practising believers to gather quietly behind certain walls that look from the outside like warehouses, shopfronts or garages. As long as these Muslim communities do not make aggressive claims to official recognition, such places of worship, manifestly institutions or associations, as Romano would call this, are tolerated, in the shadow of the law (p. 59).<sup>4</sup> In German law, a fitting technical term for 'toleration', *Duldung*, exists as an institutional form of acknowledging the physical presence, for example, of asylum seekers in some sort of legal limbo, within the nation's territory, yet without granting full legal status.

Other examples could be found of such skilful balancing of coexisting manifestations of institutions. The large presence of South Asians in Italy, some now reportedly moving to Britain after spending many years in *Bella Italia*, points to creative Eurozone spaces for rebalancing potential conflicts between institutions of the state and social entities. Europe's Somalis, evidently in their thousands, have been doing the same. Skilful patterns of mutual toleration have long been known to exist also in the UK (Ballard, 1994). My own writing on British Muslim law, without the benefit of Romano's theorizing, went as far as identifying British Muslim law (*angrezi shariat*) as an institution of multicultural Britain (Pearl and Menski, 1998), to the dismay of many positivists. This hybrid form of Muslim law, constructed by British Muslims, deeply upsets proponents of 'one law for all'. Current British debates about 'parallel societies', regulation of Shariat Councils, and new forms of policing registration of marriages reflect exactly such ongoing confused jurisprudential struggles in English law, especially in the current BREXIT-infected climate. Notably, despite raging debates about values and 'religion', English courts have at times, rather meekly and quietly, agreed to accept that certain ethnic minority institutions are entitled to explicit legal recognition by English law.<sup>5</sup> Romano's theory, albeit in contested practice, is thus amply verified all over Europe.

## Ethical dimensions and impacts for global legal theory

The undeniable presence of such cases raises important questions about practical implications of plural manifestation of 'law' for human progress, development and

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<sup>4</sup>The richly documented ethnographic work of another emerging Italian socio-legal scholar, Federica Sona, has many such examples.

<sup>5</sup>As an expert before courts, I am aware of many highly instructive cases of this kind, which tend to remain unreported, as publicity would show how easily, as one might say in idiomatic English, the law looks like an ass. The remarkable face-saving exercise by the Court of Appeal, in *Chief Adjudication Officer v. Kirpal Kaur Bath* [2000] 1 FLR 8 CA, clearly avoided blatant injustice to a Sikh widow, by applying a presumption of marriage, unwittingly verifying Romano's stance that social arrangements are a reasonable and legitimate form of law. Unfortunately, this strategy is not followed in many other 'hard' cases in Britain, which never gain publicity.

protection of basic rights. Here, whether something is law or not should be less important than whether it is good or bad law. Given multiple abuses, also in highly developed legal systems, much alert scrutiny of the legitimacy of state actions and institutions is unfortunately still required, engaging what Upendra Baxi has called 'demosprudence', a sub-category of human rights argumentation, acknowledging that it is too simple to blame 'religion' and 'tradition', and to glorify state law and human rights. While space constraints do not permit elaboration here, my argument is that for global considerations of justice and protection of basic rights, Romano's pluralization of institutions is not robust enough. There will never be complete agreement on diffuse value judgements involved in scrutinizing various institutions as basic building blocks of law. The result, as I know from legal practice in England, continue to be terrible miscarriages of justice in individual cases that simply vanish in files. As already shown, Romano simply did not address this thorny issue.

However, such ethical or moral concerns need to be raised here, as this relates centrally to dominant perceptions of the nature of the state. To positivists, these may appear clear-cut and global, but they are ethically plural and intensely situation-specific. We know that plurality is simply a fact of life, in relation to both law and religion. It is also a fact that all humans, as humans, should theoretically, or even in some express form, be deemed to be equal. States, as legal institutions, through formulating fundamental rights principles in Constitutions, can simply decree equality and promise guarantees of fundamental rights protection. International norms, known today in abundance, seek to reinforce such commitments. But all of this does not make equality and complete justice a lived reality, as not only Indian law confirms on a daily basis. Asking for or constructing perfect laws is never enough and constant efforts are needed to safeguard and implement better justice and equality (Sen, 2009). In that context, avoiding morality and ethics, rather than including the two competing major value-based forms of law, namely traditional natural laws and 'new' natural laws such as human rights principles, is plainly myopic. Romano's work, as noted, risks being misread, for social norms as well as ethics must be accounted for on conversations designed to resolve conflicts (Kyriaki, 2018).

There is simply no space here to consider related major legal management problems that humanity is left with, namely what to do with all other forms of living entities and creations, in short animal rights (see now Rankin, 2018), and also climate change debates (Saryal, 2018), given the urgent need to aim for holistic global sustainability. Where and how should states as primary legal agents make distinctions or exceptions and draw reasonable lines within the pluralist fields of such battles? The current troubles that Hindu nationalist India faces with cow slaughter issues and beef consumption are only one dramatic, major manifestation of turbulences in this respect. Since, contrary to many 'fake' news, beef is also consumed by many Hindus, and not just Muslims, Christians and tribals, the institution of beef consumption, applying Romano's argument, should qualify for legal recognition by the Indian state. One quickly realizes, thus, how brutally contentious such argumentations can become in the deeply plural Indian state, which claims publicly to uphold 'Hindu values', assuming that this is what the majoritarian electorate wants to hear.

Significantly, recent Italian research on the Indian state as a *sui generis* case (Amirante, 2015) shows that perceptive Italian legal academics continue to make

important contributions to global debates about the nature of law. Given the predicaments of massive states like India that simply cannot follow European blueprints, new solutions have to be found. The respective institutions involved in India are very different, as 1.3 billion people are involved, and their diverse values and ethics appear much more powerful than Western, presumably secular, models suggest. In such precarious scenarios, concerns about the risks of a 'revival' of some theocratic monster, or simply 'tradition', seem overplayed, evidently for demagogic reasons. The wisdom of Romano to respect 'institutions' would appear to help also in such deeply contested contexts to shape a better world in the twenty-first century.

The ease with which questions about the extent of human connectedness to each other and to Nature (or whatever one may call it) are being brushed aside by the intellectual domination of modernity and state-centricity remains amazing to me. Notably, its self-interested and therefore precariously dangerous *leitmotif*, that the state and its agents, as sole makers and regulators of law, link directly to isolated individuals as citizens, is rightly picked up by Romano as highly dubious (p. 28). While nobody would dispute that today, also in India, the state is of major importance, one could reasonably demand, following Romano's theorizing, that a reasonable state should accept people's institutions as legitimate legal stakeholders. But the postmodern state of the Global South also faces expectations to be a somewhat selfless power, not oriented only towards formal state law structures and state control, but preservation of a larger holistic system, even an Order akin to ancient models. This is not about dreaming of a glorious past, it is a hopeful gaze into a safer future. Ruling can be perceived as an act of public service, rather than a self-righteously claimed right of certain privileged or simply power-hungry people.

As noted, in the more plurality-conscious Global South remarkably strong personal laws as institutions are included in the taxonomy of law, obviously recognizing groups of individuals as legal actors. A reasonable postmodern state may go much further, however, relying also on certain culture-specific ethical notions of a larger Order, whether indigenous or not, to call its own citizens to order, individually and collectively. Indian law today shows that without speaking about dharma, it is possible to include provisions on fundamental duties, found in Article 51-A of the Indian Constitution of 1950, as amended in 1976. A state may then demand people's adherence to such duties, rather than insisting on the language of fundamental rights. Co-opting citizens in this manner, educating them to become a responsible 'institution', gives away how the massive states of the Global South today envisage implementing social welfare. The realization that state law actually needs society, and can legitimately rely on its ethical foundations and social and economic support mechanisms, to operate a good law is gradually growing. While the global North largely presumes that maintenance of human rights is its hallmark and new *Grundnorm*, various nations of the Global South are found to incorporate institutions that also concern the environment, and hence Nature and its ethical values, as well as people's contributions and expectations, into holistic equations and expectations of sustainable development. This happens, apparently, to maintain culture-specific visions of Order/order in which states, or rather certain ruler figures, seem to be perceiving themselves, at least partly, as support mechanisms of a higher Order, rather than the ultimate legal authority. The state here simply has a different kind of vision, of course often heavily contested. Unless

one appreciates the basics of the various ethical traditions of the Global South and their relations to governance, one will fail to spot this.

So, while the nation-state is today visibly a dominant entity, Loughlin's final advice, that 'we might more sensibly follow Romano and examine carefully the empirical evidence' (p. xxix, n. 63), sounds good. But I know from bitter experience how terribly difficult it is to assess any empirical evidence from India, as much is rhetorically morphed, rather than plainly presented cultural, social or even legal fact. Hence, we are currently often not even beginning to understand what games the Indian state is playing to balance its ferociously dancing kite of law, tormented by massive pluralities that no European state has ever had to face (see Menski, 2016b). Before we sit in judgement over whatever nationalist strategies one may perceive in obnoxious operation, it would be advisable to reflect on what academic ancestors like Romano taught us about the need for plurality-consciousness in law. Incorporating the social sphere, as Romano so clearly advised, is one crucial element. Respecting various ethical elements attached to these laws is evidently quite another, and even if Romano did not include these components, we need to remember that he did not dismiss them as irrelevant.

## Conclusions

When administrative lawyers engage in legal theorizing, it is almost inevitable that they privilege formal rules, positive/public law, the state and its various processes of decision-making. Such lawyers, not trained as anthropologists or philosophers of law, will then struggle to appreciate the ethics of various legal traditions. Close study of Romano's work facilitates the transcending of such disciplinary boundaries and mental blocks, fertilizing global legal scholarship. Even though Romano's book basically addressed only one narrow aspect, the concept of 'institution', bridging the gap between state law and non-state law, it contributes in my view enormously to ethically responsible, pluralist theorizing. I hope to have shown that Romano, too, actually appreciated the various ethical and psychological dimensions within the wide field of law. He did not debate this at length, being simply pragmatic, writing a short book. His study and the present discussion confirm, in my submission, that global legal scholarship, supported by philosophers, historians, anthropologists/sociologists and also natural lawyers, who contrary to some myths have not died out also in the Global North, cannot afford the luxury of focusing only on positive law and social institutions, ignoring the rest. Romano in English translation, if read carefully, constitutes an important source of lifeblood to inspire new vigour in global plural legal theorizing.

I suggested recently (Menski, 2016a) that a major globally present logical and rational foundation for attempts to generate identifiable legal orders may be a lurking latent fear of chaos. This goes much deeper than positivist aversion to legal uncertainty. It may not even be clearly expressed in many cultures. Notably, quite graphic images of this chaos scenario exist in ancient Indic terror visions, using the image of 'shark-rule'. When administrative lawyers become sharks, as we know, we are all doomed, and the state is likely to fail. While the self-serving claim of administrative lawyers and other guardians of legal order, all over the world, remains that they are the state's legitimate army of protectors of avoidance of chaos, hence also entitled to good pay and

eneration by the public, Romano's theorizing, I believe, somehow sought to challenge that myth, too. Mussolini evidently did not notice this. Giving voice and agency to 'the people', even in a pre-democratic age, Romano also anticipated, at least in my reading, the growing current realization that understanding the nature of law and applying it properly remains, everywhere, a highly plural balancing act, almost a sacred duty. That such an intelligent man then remained in such a high office in Fascist times intrigues me, raising yet more questions about his biography.

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