



The Scout Law: a catalyst for proactive understanding of larger-scale legal systems

Melissa Martins Casagrande
McGill University, Canada
(Scout contribution)

This paper seeks to offer a novel and perhaps unusual insight relating to non-formal education and more specifically, towards a relevant part of the Scout Movement's educational methodology. The Fundamental Principles of Scouting and the Scout Law and Promise are widely acknowledged as a legitimate individual and collective value system of social cohesion. This paper aims to complement this widely accepted and generic social conception by demonstrating the relevance of the study of the Fundamental Principles of Scouting and the Scout Law and Promise from a legal perspective. In other words, through the use of critical legal pluralism theoretical approaches, the analysis proposes the capitalization of the letter 'L' in Scout Law and the consequent identification of an educational relationship between the commitment of a young person to the Fundamental Principles and the Scout Law and Promise and the proactive and critical understanding of larger-scale legal systems.

Conceptual framework: critical legal pluralism

Overall, legal pluralism is a fairly new field of study in the juridical sciences, despite the fact that it might pre-date in origin most, if not all, other self-contained legal disciplines and systems worldwide. It was in the early 1990s, however, that theoretical studies on legal pluralism and the concept per se emerged. Legal pluralism challenges the assumption that there is only one modality of Law, which can only emanate from the government or State.

This State-centric notion of law originated in the separation of state from society, with its concomitant division of public and private spheres. The acknowledgement of the predominant power of the State or official law has relegated all other forms of existence of norms to an informal, non-official, semi- or proto-legal status.

This widespread understanding of the law as official law started to be challenged by what is now known as traditional legal pluralism. This theoretical perspective is advanced by interdisciplinary studies involving experts from anthropology, sociology and law and usually tackles the legal and judicial practices of oppressed societies and communities, such as shanty-town normativities, or ethnic and religious minorities' societal norms, amongst others. Such legal orders are analyzed as the unofficial law, in contraposition and as de

facto substitutes of the official law in socio-temporal spaces where the official law does not respond sufficiently or is disrespectful to community values and aspirations. In theory, the official law is inclusive and offers guidance to all citizens of the State. Nevertheless, the plural composition of States has proven that national spaces have the official as well as many parallel legal systems operating within their territories. The acknowledgement of this plurality is what became to be known as legal pluralism or traditional legal pluralism.

The usual image of the Law is in the shape of State law or in opposition to it. Thus, differentiation between traditional legal pluralism and critical legal pluralism approaches is of high importance to the purpose of this study. Critical legal pluralism surpasses the notion of a sole official source of truly legal norms. It also surpasses the traditional legal pluralism notion that only autonomous systems regulating self-contained communities may exist in parallel to the official source of law.

According to Kleinhans and Macdonald, critical legal pluralism challenges the traditional social-scientific legal pluralism of reified cultures and communities; it focuses instead upon the citizen-subjects and calls attention to the role of these subjects in generating normativities. Within this context, citizens are legal subjects who are granted access to and responsibility toward law. Moreover, critical legal pluralism invites legal subjects to perceive themselves as legal agents and to discover the normative potential of their own actions, regardless of and within the many spaces in which they interact.

The critical legal pluralism theoretical approach proves to be the ideal methodological framework for the construction of the first premise of this study, which is the conceptualization of the Fundamental Principles and the Scout Law and Promise as a truly legal phenomenon, as opposed to mere socio- or proto-legal organizational entities. The relevance of this choice is even more evident when aligned with the understanding by critical legal pluralists that legal knowledge is the project of creating and maintaining self-understandings, seeking neither a separation, nor an eventual hierarchical reconciliation, of multiple legal orders. Critical legal pluralism, hence, “endows legal subjects with responsibility to participate in the multiple normative communities by which they recognize and create their own legal subjectivity”.

The presumption that people are subject to and separate from the law is challenged by critical legal pluralism. This challenge fosters an engaged and proactive understanding of legal norms in its broad understanding – for instance, from family interactions to official State law. This engaged and proactive understanding of the law, regardless of the age of the citizen, could be argued to be part and parcel of Santos’ utopian legal subjectivity, which corresponds to the paradigmatic transformation from the law-abiding citizen to the law-inventing citizen.

Capitalizing the 'L' in Scout Law: value system guidelines and the dynamics of the Method

Critical legal pluralism studies have been instrumental in expanding the conceptualization and practice of law. Macdonald precisely enounces that “to understand why people act as they do, what standards and notions of justice guide their actions, we need set our sights not so much on the rules as on people themselves”. Contrary to the mainstream notion of law or even some of the traditional legal pluralist approaches, critical legal pluralism focuses on the legal subject and not the place where legal subjectivity is exercised. As a result, normative orders would not be able to exist outside the creative capacity of their subjects.

When focusing on legal knowledge inception, development and exercise and when considering the multiple environments or places where legal subjectivity can be invented and practiced, it is absolutely necessary to place distance from the State law conception of the law-maker. State law has historically labeled citizens with law-making abilities, those who are fully entitled to civil and political rights according to pre-established criteria enumerated in State law statutes. These normally include discerning intellectual abilities and age.

The concept of the citizen in this study surpasses this conception. The citizen is a law-inventing agent who holds multiple legal roles in society, regardless of age. This study focuses on the promotion of a global, informed and responsible notion of citizenship to young citizens who are not yet entitled to all civil and political rights under State law, but who are, nonetheless, active agents in social and everyday legal life. This perspective of analysis enables non-formal education, and more specifically, the socio-interactional spaces created within the Scout Movement, to be perceived as a privileged, interactive, and dynamic law-inventing environment.

This perspective of analysis, however, must be seen through the legal pluralist lens, surpassing the concept of law as written regulation of social conduct. In this sense, Macdonald proposes the following principle: most people act responsibly most of the time, hence, society needs to establish only a general framework of rules. Under this premise, law, in its broad inception, is most successful when it gives people guidelines about appropriate conduct towards others and gives others a structure within which they can pursue their own goals while still respecting these guidelines. Most of the legal rules governing our daily relationships and acts are informal, unwritten, and grounded in common experience. Nevertheless, some legal rules, the guidelines, have to be described, formalized and agreed upon for the sake of clarity, stability and transparency to ourselves and others. Within this analysis, it is possible to observe that the young people's interactional spaces facilitated by Scouting foster law-inventing environments and that the Fundamental Principles and the Scout Law and Promise can be identified as the fundamental guidelines to which each young person commits to voluntarily.

Non-formal education is an “organized educational activity outside the established formal system that is intended to serve an identifiable learning clientele with identifiable learning objectives”. It provides for the acquisition of life skills and development of attitudes based on an integrated value system; and its relevance results from specific and common characteristics intrinsic to the organizations and movements that practice it, which are not usually found in formal and informal education initiatives. Some of those unique elements are volunteerism, experiential learning, progressive programmes, peer groups, leadership development and the development of a value system.

It is mostly due to the Fundamental Principles and the Scout Law and Promise that the Scout Movement can be identified as a privileged interactive and dynamic law-inventing environment. The Fundamental Principles represent a code of conduct, which characterizes all members of the Movement. They refer to a person's relationship with the spiritual values of life; a person's relationship with society in the broadest sense of the term; and the responsibility for the development of oneself. Furthermore, the Scout Law is proposed, not imposed. It is a wholly positive and non-arbitrary proposal, expressed in a language that is approachable for young people and founded on reasons that are an enticing invitation in themselves. Through the Scout Promise, each young person makes a commitment to the values proposed in the Law and pledges to make them part of his or her life. In other words, a young person makes a personal commitment to a code of behaviour and accepts, before a group of peers, the responsibility to be faithful to the given word. The permanent identification with these ethical values and the sustained effort to live up to those ideals to the best of each young person's ability, are, therefore, a most powerful instrument in the development of young people.

The Fundamental Principles and the Scout Law and Promise represent the fundamental guidelines that legitimate processes of norm production and application and are given ongoing life through the Scout Method and programme. These dynamics also enable the law-inventing possibilities, legal commitment exercise and interactional agency to have a constant forum of exercise. This assumption is demonstrated by the description of the Scout Method in itself.

The Scout Method is a system of progressive self-education through the following points: a) the adherence to the Promise and Law; b) a concept of active education, more popularly known as learning by doing; c) membership in small groups involving – under adult supervision – the progressive discovery and acceptance of responsibility and training for self-government directed towards each individual's development as a self-reliant, supportive, responsible and committed person, and the development of character and abilities both to cooperate and to lead; and, d) progressive and stimulating programmes of varied activities based on the interests of the participants, including games, useful skills, and service to the community, taking place largely in an outdoor setting in contact with nature.

Within this scenario, young people adhere to the Fundamental Principles and the Scout Law and Promise. This adherence is naturally validated by the commitment to such values, or guidelines, before their peers. They actively participate in their non-formal educational process by cruising the programme proposed in the constant company of the small group to which they belong. The quintessence of the small group is the Patrol. The Patrol is defined as “a means of organization and learning based on the Scout Method, in which young friends voluntarily form a small group with its own identity and with the intention that it should be long term, in order to enjoy friendship, support each other in their personal development, commit themselves to shared projects and interact with similar groups”.

The Patrol and the constant interactions among its members is a key law-inventing environment. The balance between the Patrol's informal and formal nature is in perfect synchronization with the ideal law-inventing environment proposed by critical legal pluralists. On the one hand, the informal aspect is the spontaneous organization with its own identity of a group of friends, and, on the other hand, it is a formal group of mutual support and commitment to shared projects.

It is understood that "the more we protect the group's informal objective the better its formal objective is achieved". In fact, as a recommendation for Scout leaders attests, informally "the Patrol attains its highest level of loyalty, commitment and energy to the benefit of organizational purposes, much more than could be achieved if we were to burden the group with externally imposed rules, instructions and regulations in an attempt to make it play its formal role as the learning community".

Critical legal pluralism theorists argue that interactional norms are not simply a type of proto-law contingent on State law nor are they parasitic on formalized associational activities than can be functionally assimilated to the institutional process comprising the legal regime of the State. The second premise of this study can thus be established on the basis of this understanding and other perspectives outlined above. The recognition of lively and contextualized interactional norms coupled with the voluntary moral commitment to fundamental values' guidelines could indeed foster the proactive and critical understanding of larger-scale legal systems. This understanding is arguably embedded in the commitment to fundamental values, which, due to its educational life-long moral character, springs from the peer-oriented small group to a constant in any legal interaction in which a given legal subject takes part, both as a young person or as an adult.

The legal subjectivity of the Scout: building democratic attitudes

The interaction between the life-long commitment to the Fundamental Principles and the Scout Law and Promise, which works together with the constant and dynamic law-inventing and voluntarily abiding practice that exists in Scouting solidifies the educational relationship that results in a natural democratic and tolerant attitude and discerning respect to universal values, such as justice, reciprocity, equality and dignity.

The age at which the Scout Method and programme is experienced is also crucial in the establishment of this educational relationship. As children cruise through adolescence and young adulthood they move gradually and naturally towards moral autonomy. They begin to judge for themselves their actions and those of others. The development of moral autonomy associated with social ideals and a democratic attitude can be nurtured and reinforced through the law-inventing and mutually abiding experience Scouting can offer.

The role of adults in the educational methodology offered in Scouting is also a relevant point to be observed in this process of moral development and law-making experiences. Adult leaders are willing men and women of different ages who are mature and balanced, and responsible for an educational task that benefits young people and helps the adults themselves to grow as people. In this context, it has been observed that adults may expect adolescents at this stage of their lives to exhibit capacity for reflection and pondered decision-making abilities - whereas adolescents can expect adults to listen to, believe in, interact with, guide, and offer them respect, rather than to doubt or ridicule their perspectives.

It is often noted that much educational practice is dissociated from an explicit articulation with larger social goals and that it should include clear moral purposes aligned with universally accepted values and standards. If educational initiatives took these perspectives into account, it is believed they could potentially assist in the development of capabilities that help expand a person's options in life and demonstrate how they can contribute to the development of global civility and the promotion of human rights and tolerance.

Within a legal pluralist understanding “equal citizenship and political democracy are meant to legitimate processes of norm production and application, whatever the site of law”. Non-formal education, and the privileged space Scouting offers to develop skills that encourage equal citizenship and political democracy in norm invention and its critical application, have all the potential to be a transferable asset into their lives as young citizens and later on as adult citizens. Naturally, this transferable asset is available only to the young people who decide to take such learning experiences to heart and incorporate these values and skills into their life project. This transferable asset results in the increased familiarity, and a critical and proactive understanding towards the implementation of legal systems, whatever the site of law.

An additional connection can be established between the Scout Law and Promise and universal human rights principles. The Scout Law and Promise include, foremost, values that are objective, ethical and universal. Without pretending to be the exclusive promoters of such rights, the right to life, integrity and dignity, for instance, are usually appreciated as the hallmarks of the Movement’s ideals. The promotion of these fundamental rights is considered one of the Movement’s great legacies in its first century of existence. After all, the educational proposal of the Scout Movement has praised trustworthiness, life in harmony with the natural environment and solidarity, since its origins in 1907 to the present time.

The relevance of the educational outcome for the commitment of a young person to the Fundamental Principles of Scouting and the Scout Law and Promise as a social phenomenon is magnified by the legal perspective demonstrated in this analysis. The social, legal and socio-political consequences of this finding, as demonstrated in this study, have the potential to catalyze an increased familiarity and a critical and proactive understanding of larger-scale legal systems; namely universal human rights principles.

Bibliography

- Alliance of Youth CEOs. *The Education of Young People: A statement at the dawn of the 21st Century* (Geneva & London: Alliance of Youth CEOs, 1997).
- National Youth Policies: a working document from the point of view of 'non-formal education' youth organizations (Geneva & London: Alliance of Youth CEOs, 1999).
- Children and Young People: Participating in Decision-Making (New York: United Nations Children's Fund, 2003).
- Cover, Robert M. "Nomos and Narrative" (1983-1984) 97 *Harv. L. Rev.* 4.
- Delors, Jacques. *Learning: the Treasure Within – Report to UNESCO of the International Commission on Education for the Twenty-First Century* (Paris: UNESCO Publishing, 1996).
- Kleinmans, Martha-Marie & Roderick A. Macdonald. "What is Critical Legal Pluralism?" (1997) 12 *Can. J. L. & Soc.* 25.
- Macdonald, Roderick A. "Metaphors of Multiplicity: Civil Society, Regimes and Legal Pluralism" (1998) 15 *Ariz. J. Int'l & Comp. L.* 69.
- Lessons of Everyday Law* (Montreal: McGill-Queen's University Press, 2002).
- "Against Nomopolies" (2006) 57:4 *N. Ir. Legal Q.* 610.
- Manderson, Desmond. "Beyond the Provincial: Space, Aesthetics, and Modernist Legal Theory" (1995-1996) 20 *Melb. U. L. Rev.* 1048.
- Reimers, Fernando. "War, Education and Peace" (2003) 33:1 *Prospects* 3.
- "Citizenship, Identity and Education: Examining the Public Purposes of Schools in an Age of Globalization" (2006) 36:3 *Prospects* 275.
- Santos, Boaventura de Sousa. "Three Metaphors for a New Conception of Law: The Frontier, the Baroque and the South" (1995) 29:4 *Law & Soc'y Rev.* 569.
- Tamanaha, Brian Z. "The Folly of the 'Social Scientific' Concept of Legal Pluralism" (1993) 20:2 *J. L. & Soc'y* 192.
- "An Analytical Map of Social Scientific Approaches to the Concept of Law" (1995) 15:4 *Oxford J. Legal Stud.* 501.
- Van Praagh, Shauna. "Adolescence, autonomy and Harry Potter: the child as a decision-maker" (2005) 1:4 *Int. J.L.C.* 335.
- Webber, Jeremy. "Legal Pluralism and Human Agency" (2006) 44:1 *Osgoode Hall L. J.* 167.
- World Organization of the Scout Movement. *Fundamental Principles* (Geneva: World Scout Bureau, 1992).
- Handbook for Cub Scout Leaders: a method of non-formal education for boys and girls from 7 to 11* (Santiago: World Scout Bureau – Interamerica Office, 1998).
- Handbook for Leaders of the Scout Section: a method of non-formal education for young people from 11 to 15* (Santiago: World Scout Bureau - Interamerica Office, 2002).

Guía para dirigentes de la Rama Caminantes: un método de educación no formal para jóvenes de 14 a 18 años (Santiago: World Scout Bureau – Interamerica Office, 2007).

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The terms 'Fundamental Principles, Scout Law and Promise' and 'Scout Law' are used interchangeably throughout the text, including the paper's title and a sub-section title. A reference to Scout Law as such is meant to include 'Fundamental Principles, Scout Law and Promise' as a self-contained entity.

Brian Z. Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism" (1993) 20:2 J. L. & Soc'y 192 at 201.

Martha M. Kleinhans & Roderick A. Macdonald "What is a Critical Legal Pluralism?" (1997) 12 Can. J. L. & Soc. 25 at 30-37.

Ibid. at 38-39.

Roderick A. Macdonald, "Against Nomopolies" (2006) 57:4 N. Ir. Legal Q. 610 at 610.

Kleinhans & Macdonald, *supra* note 5 at 39.

Ibid. at 38.

Macdonald, "Against Nomopolies" *supra* note 7 at 611.

Part of the terminology proposed by Boaventura de Sousa Santos - the law-abiding and law-inventing citizen - has been previously related to the critical legal pluralism framework by Kleinhans and Macdonald, *supra* note 5 at 39. The co-relation between Santos' utopian legal subjectivity and paradigmatic transformation to an engaging and proactive understanding of legal systems regardless of the age of the citizen is original to this study. Boaventura de Sousa Santos, "Three Metaphors for a New Conception of Law: The Frontier, the Baroque and the South" (1995) 29:4 Law & Soc'y Rev. 569.

Macdonald, "Against Nomopolies" *supra* note 7 at 614.

Kleinhans and Macdonald, *supra* note 5 at 40.

Roderick Macdonald proposes a very similar perspective in reference to youth participation in the enactment of local legislation in *Lessons of Everyday Law* (Montreal: McGill-Queen's University Press, 2002) at 23-27. See also Shauna Van Praagh's positioning in relation to the role of young people before courts and the expectations they have of adults and adults have of them in "Adolescence, autonomy and Harry Potter: the child as a decision-maker" (2005) 1:4 Int. J.L.C. 335 at 365.

Macdonald, *Lessons of Everyday Law*, *supra* note 14 at 28.

Ibid. at 33-37.

Alliance of Youth CEOs, *The Education of Young People: A statement at the dawn of the 21st Century* (Geneva & London: Alliance of Youth CEOs, 1997) at 6.

Ibid. at 7-8.

World Organization of the Scout Movement, *Fundamental Principles* (Geneva: World Scout Bureau, 1992) at 5-6.

World Organization of the Scout Movement, Handbook for Leaders of the Scout Section: a method of non-formal education for young people from 11 to 15 (Santiago: World Scout Bureau - Interamerica Office, 2002) at 126.

World Organization of the Scout Movement, Fundamental Principles, *supra* note 19 at 8.

Ibid. at 8-11; World Organization of the Scout Movement, Handbook for Leaders of the Scout Section, *supra* note 20 at 119.

World Organization of the Scout Movement, Handbook for Leaders of the Scout Section, *supra* note 20 at 60.

Ibid. at 61.

Ibid.

Macdonald, "Against Nomopolies" *supra* note 7 at 614.

World Organization of the Scout Movement, Handbook for Leaders of the Scout Section, *supra* note 20 at 123.

Ibid. at 148.

Shauna Van Praagh, *supra* note 14 at 365.

Fernando Reimers, "Citizenship, Identity and Education: Examining the Public Purposes of Schools in an Age of Globalization" (2006) 36:3 *Prospects* 275 at 277-281.

Macdonald, "Against Nomopolies" *supra* note 7 at 612.

World Organization of the Scout Movement, Guía para dirigentes de la Rama Caminantes: un método de educación no formal para jóvenes de 14 a 18 años (Santiago: World Scout Bureau - Interamerica Office, 2007) at 60-61.