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Review of Legal Polycentricity and International Law

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LEGAL POLYCENTRICITY AND INTERNATIONAL LAW. By Surya P. Sinha. Chapel Hill, North Carolina: Carolina Academic Press (1996). 217 pp.

Reviewed by FRANK J. GARCIA*

International law's problematic claim to "universality" in a world of diverse cultures and legal systems has been the subject of increasing attention from a variety of perspectives, as international legal theorists generally,¹ and human rights advocates in particular,² have had to confront the undeniable twin facts of modern international law's European origins³ and global regulatory impact.⁴ In *Legal Polycentricity and International Law*, Surya P. Sinha analyzes this problem from the viewpoint of legal polycentricity, a movement or theory in international jurisprudence of

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1. See, e.g., Antonio Cassese, *International Law in a Divided World* (1986); V.S. Vereshchetin and G.M. Danilenko, *Cultural and Ideological Pluralism and International Law*, 29 *German Y.B. Int'l L.* 56 (1986).

2. See, e.g., Jack Donnelly, *Universal Human Rights in Theory and Practice* (1989); Pieter van Dijk, *A Common Standard of Achievement: About Universal Validity and Uniform Interpretation of International Human Rights Norms*, 2 *Neth. Hum. Rts. Q.* 105 (1995).

3. This characterization has been advanced by scholars from a broad range of perspectives. See, e.g., R.P. Anand, *International Law and the Developing Countries* 4 (1987) ([Despite antecedents in earlier civilizations], "it is generally believed and widely asserted that modern international law is a product of the European or Western Christian civilization."); Justice Mohammed Bedjaoui, *Poverty of the International Order*, in *International Law: A Contemporary Perspective* 153 (Falk et al. eds., 1985) ("[C]lassic international law thus consisted of a set of rules with a geographical basis (it was a European law), a religious-ethical inspiration (it was a Christian law), an economic motivation (it was a mercantilist law) and political aims (it was an imperialist law)."); Malcolm N. Shaw, *International Law* 26 (3d ed. 1991) (noting that the nineteenth century saw international law become more reflective of European values).

4. See, e.g., Jonathan I. Charney, *Universal International Law*, 87 *Am. J. Int'l L.* 529 (1993) (finding that the international community of states is increasingly interdependent and increasingly manages itself through law).

which Sinha is, if not the founder, a foremost exponent.⁵ Sinha concludes that the “civilizational pluralism and diversity” of the world—the fact that world “society” consists of several distinct, tenacious and divergent civilizations with ancient roots and incompatible value systems—have significant normative implications for the substantive rules of international law, especially as that law attempts to regulate intrastate activity through the international human rights system. Despite its occasionally daunting style, the resulting book (in particular its final chapter) is a useful contribution to serious reflection on the implications of pluralism for international legal theory and modern human rights law.

This book grows out of much of Sinha’s earlier work, particularly his chapter contribution to *Legal Polycentricity: Consequences of Pluralism in Law*,⁶ in which Sinha sketches out the main tenets of legal polycentricity in the context of his general work on the “non-universality” of law as a principle of social organization. The present volume also draws extensively on his 1989 treatise *What Is Law?*,⁷ in which Sinha undertakes a breathtaking survey of the numerous unsuccessful attempts by the world’s major legal and cultural traditions to definitively answer this question. This treatise foreshadows *Legal Polycentricity* in two ways: (1) it takes a global, “civilizational pluralist” approach to the question of law’s nature, concluding that the question is incapable of a single answer principally due to civilizational pluralism; and (2) it reveals two aspects of Sinha’s style which are the principal shortcomings of *Legal Polycentricity*, namely, the pace of Sinha’s canvass of centuries of intellectual endeavor across numerous civilizations, and a tendency to report his conclusions in summary fashion.

As the title suggests, the present volume is itself a work of the legal polycentricity school, a movement in legal thought formally inaugurated at a 1992 conference of the same name sponsored by

5. Sinha writes that the organizers of the founding conference of this movement credited his work as one source of inspiration for the conference and, presumably, the movement. S.P. Sinha, *Legal Polycentricity and International Law* 1 (1996). However, Sinha disavows responsibility for the name, giving Professor Henrik Zahle that honor. *Id.* at n.1.

6. *Legal Polycentricity: Consequences of Pluralism in Law* (Hanne Petersen et al. eds., 1995). Much of the material in Sinha’s book is an elaboration on this chapter.

7. S.P. Sinha, *What Is Law?* (1989), is briefly reviewed at 4 Pace Y.B. Int’l L. 429 (1992). This book was later reissued in substantially similar form as *Jurisprudence: Legal Philosophy in a Nutshell* (1993).

the Institute of Legal Science of the University of Copenhagen.⁸ Sinha summarizes the essential tenets of this school in his first chapter. Legal polycentricity is at heart a dialectical movement, attempting to transcend both the prevalent “thesis” of the possibility of a universal moral ideal⁹ and its antithesis, radical relativism,¹⁰ through an effort to embrace moral pluralism on a structural level.¹¹ Such an embrace involves reconceiving legal systems as relations among various normative orders or “centers,” and seeking recognition of these multiple normative centers within their relevant legal systems.¹²

In so doing, legal polycentricity attempts not merely to describe the “normative competition” or pluralism of values that exists within any social system, but to characterize that pluralism as the fundamental constitutive element, and normative ideal, of any social system, as well as the legal system that may¹³ order it. Rather than serving simply as a vehicle through which to establish a social order built according to a single universal ideal, legal systems in this view are quintessentially systems for recognizing, relating, and promoting various normative orders.¹⁴ Thus legal polycentricity has both a descriptive component and an “activist”

8. Sinha, *supra* note 5, at 1. This conference was convened under the direction of Professors Hanne Petersen, Kirstin Ketscher and Henrik Zahle. *Id.* at n.1. See generally Petersen et al., *supra* note 6.

9. Legal Polycentricity rejects the view that all true values are compatible and can be expressed through a single set of moral principles as both misleading and dangerous. See Sinha, *supra* note 5, at 1-4. “[L]egal polycentricity insists that best values are many, that they are conflicting, and that they are incapable of being harmonized into one unitary vision.” *Id.* at 10.

10. While acknowledging that rejection of the possibility of universal moral ideals courts a radical relativism, Sinha nevertheless maintains that some intermediate position is possible, though he does not develop this fully. Rather, he cites numerous works from the literature of anthropology, sociology, and psychology which suggest that some form of standard to judge moral choices may be possible if founded on common elements in human biology, psychology, society, and culture rather than on philosophic claims to universal validity. Sinha, *supra* note 5, at 4-5. For other views critical of relativism and its legal claims, see, e.g., Christopher C. Joyner and John C. Dettling, *Bridging the Cultural Chasm: Cultural Relativism and the Future of International Law*, 20 *Cal. W. Int'l L.J.* 275 (1990) (cultural relativism theoretically flawed and practically misguided); Fernando Teson, *International Human Rights and Cultural Relativism*, 25 *Va. J. Int'l L.* 869 (1985) (universal international human rights standards possible despite cultural relativism critique).

11. Sinha, *supra* note 5, at 1-6.

12. *Id.* at 6.

13. Use of the conditional is deliberate, in that one of the primary tenets of the Legal Polycentricity movement is that a legal system is but one of several alternative systems of social ordering. Sinha, *supra* note 5, at 69-131.

14. *Id.* at 7-8.

component, the latter consisting of attempts to reform the target legal system to give adequate recognition to pluralism.¹⁵

Sinha characterizes “[t]he challenge of legal polycentricity, therefore, [a]s, firstly, to identify the pluralistic values within a legal system, and, secondly, to devise modes for their realization.”¹⁶ Sinha’s project in this book is to take up this challenge in connection with the international legal system.

Before proceeding to identify the pluralistic values within the international legal system, however, Sinha begins by sketching out the character of the existing international legal system as that of flawed genius. Sinha follows the widely-held view that, despite its roots and antecedents in many cultures,¹⁷ modern international law is uniquely the product of the sixteenth and seventeenth century European state system.¹⁸ The genius of modern international law lies in its ability, through its twin constitutive principles of the juridical equality and sovereignty of states, to govern a system comprised of all the civilizations, ideologies, and forms of organization of the world.¹⁹ Its flaw lies in its imperfect recognition of the pluralism and diversity to be found within the world it seeks to order.

Legal polycentricity therefore questions whether, given its local origins, the present system is adequate to the challenge of ordering international society.²⁰ In other words, given the diversity of world civilizations, can the European system of international law governing relations among the states representing these diverse civilizations claim validity and normative universality?

15. It is this active reformist dimension which in Sinha’s view distinguishes legal polycentricity from the anthropological and sociological analyses of pluralism it draws upon heavily. *Id.* at 9.

16. *Id.* at 14.

17. Although he accepts to a degree what he terms the “universalist” argument that international law is rooted in the collective history of all attempts by distinct political entities to manage their sustained relationships, Sinha nevertheless maintains that modern international law is less the product of these universalist origins and precedents than it is the child of a particular system that evolved to manage relations among the emerging states of Western Europe in the sixteenth and seventeenth centuries. *Id.* at 31.

18. *Id.* at 35.

19. *Id.* at 133-34; see also Shaw, *supra* note 3, at 37 (noting that despite the Eurocentric imperialist origins of international law, emerging states have eagerly embraced its core doctrines of sovereignty and equality).

20. Legal polycentricity is not alone in posing this question, which is at the heart of many recent critiques of international law, especially from the “law and culture” school. See, e.g., Antony Anghie, *Francisco De Vitoria and the Colonial Origins of International Law*, 5 *Soc. & Legal Stud.* 321 (1996); Note, *Aspiration and Control: International Legal Rhetoric and the Essentialization of Culture*, 106 *Harv. L. Rev.* 723 (1993).

Sinha's answer is a qualified "yes." He rejects the view that the inclusion of non-European states categorically diminishes the validity of this system of law, at least as Sinha will reconstruct it.²¹ His qualification lies in the system's failure to adequately address the pluralist nature of the realm it seeks to order. Sinha devotes the final chapter of the book to exploring modern international law's inadequate response to pluralism, or as he puts it, "[t]he Consequences of Legal Polycentricity upon International Law."²²

Before Sinha can perform this analysis, however, he must explain exactly what he means by "civilizational pluralism and diversity," and why this pluralism and this diversity ought to exert a normative influence on the structure of international legal relationships. He attempts to do so in Chapters 3 and 4, in a two-part argument that first sets out the plurality of civilizations, and then demonstrates how this plurality of civilizations has developed a diversity of principles of value and social organization. The result, according to Sinha, is that "the culture of law" is but one of a set of competing ordering principles, and the values of Western liberalism but one set of axiological commitments.

It is in this portion of Sinha's analysis that the reader encounters one of the two chief difficulties with the book, namely, the speed at which Sinha surveys broad areas of human activity and world history in order to demonstrate the requisite pluralism and diversity, and the effects of this approach on the book's style and readability. At its best, this approach can situate Sinha's thesis very effectively in a broad multicultural context.²³ At its worst, it results in passages such as the first six pages of Chapter 3, which span 450,000 years, five continents, and four major civilizations, followed by a single footnote citing generally seventy-three books.²⁴

21. Sinha, *supra* note 5, at 16; see also Vereshchetin and Danilenko, *supra* note 1, at 58 (negating possibility of international law due to ideological and cultural divergence amounts to denial of the possibility of interstate cooperation, and is not supported by theory or practice). In so concluding, Sinha is distancing himself from the more pessimistic of the modern law and culture critics of international law who question the possibility of a reconstructed international law responsive to other cultures. See Note, *supra* note 20, at 740 (international law's role in constructing a "European" cultural identity renders its capacity to authoritatively order a multicultural world problematic).

22. Sinha, *supra* note 5, at 133-47.

23. For example, readers of the book will come away with at least passing familiarity with the broad outlines of several major civilizations, important principles within those civilizations, and a sense of how such civilizations might begin to approach questions posed by modern international relations through those principles.

24. Sinha, *supra* note 5, at 37-42.

Nevertheless, these chapters do succeed in establishing one of their basic points—that there have been numerous civilizations at play in the world, and that they have produced several competing principles of life and social organization, law being only one of them.²⁵ It is less clear that these chapters succeed in their normative point, as Sinha does not make the case as to why this pluralism and diversity *ought* to be taken into account in the formation of rules of international law.²⁶

In the fifth and final chapter, Sinha returns to his fundamental inquiry into the implications of this diversity for modern international law. From the analysis of the preceding two chapters, Sinha distills two propositions: (1) the non-universality of the legal order; and (2) the axiological diversity among various civilizations.²⁷ By the first, Sinha means that the “culture of law,” or *nomos*, is specific to the “Western” ethos, and other civilizations have developed alternative ordering principles, such as the “culture of *li*” in Chinese civilization, or the “culture of *dharma*” in Hindu civilization.²⁸ By the second, Sinha means that the various civilizations have developed different and incompatible value systems as a result of their unique historical development. Despite the near-global popularity of Western industrialism, other civilizations continue to maintain their distinct value systems and modes of social organization.²⁹

These two propositions are transformed into three basic questions which pluralism, as analyzed by legal polycentricity, poses for international law: (1) Does the non-universality of the legal order render an international legal order impossible? (2) Does the non-universality of the legal order invalidate the normative content of international law? and (3) Does the axiological diversity of the world affect international law? In order to answer these questions, Sinha first reclassifies international law into three categories, addressing his three questions principally by reference to each category:

(1) interstate international law (consisting of traditional interstate matters such as state recognition, treaty-making, and diplomatic immunities); (2) transnational law (consisting of law governing a

25. See *infra* note 28 and accompanying text.

26. He does not make this case in the final chapter either, apparently assuming that the demonstrable fact of pluralism and diversity simply entails the legal polycentrist view.

27. Sinha, *supra* note 5, at 134.

28. *Id.* at 135-36. Each of these principles is discussed in further detail in Chapter 4.

29. *Id.* at 139-40.

broad range of cooperative cross-border matters such as economic relations and environmental protection); and (3) intranational international law (including laws applying to an individual's existence within a state, with human rights law the most prominent example).³⁰

One of the strengths of this book lies in establishing this matrix of questions and categories within which to analyze these complex issues. Unfortunately, Sinha's ensuing application of this matrix is too conclusory at times and stands in need of further development.

Sinha argues that the non-universality of law and the axiological diversity of the world do not challenge either the validity of an international *legal* order or the normative content of the interstate and transnational categories of international law.³¹ First, Sinha maintains that the non-universality of the *nomos* principle does not invalidate the possibility of an international *legal* order, at least insofar as that legal order confines itself to the first subcategory, interstate matters.³² Although law is not a universal principle of social organization, it can nevertheless be adopted as a principle for *interstate* order without necessarily interfering with each state's freedom to order itself internally according to nonlegal principles.³³ Second, non-universality and axiological diversity do not invalidate the normative content of interstate and transnational international law, as according to Sinha these areas are not affected by whether the states involved share a concept of legal order, and "the variety in value systems has no bearing upon the matters of [these] categories."³⁴

Sinha's assertion that non-universality and axiological diversity do not directly challenge the possibility of an international *legal*

30. *Id.* at 134-35.

31. For clarity of presentation, my summary of Sinha's argument here is organized according to his categories of international law, although Sinha himself does not always follow this method.

32. Sinha does not expressly limit his conclusion regarding the effect of non-universality on the validity of an international legal order to the first category of international law, but he characterizes international law for this part of the analysis as "primarily" consisting of law governing external relations of states, and his illustrations are drawn from this category. Sinha, *supra* note 5, at 136-37. It may be, however, that the validity of an international legal order is called into question in the transnational and intranational realms by the normative problems raised by the non-universality of law in those areas. See *infra* notes 35-36 and accompanying text.

33. Sinha, *supra* note 5, at 137.

34. *Id.* at 137, 140. Perhaps not surprisingly, Soviet legal theorists assert the same view. See Vereshchetin and Danilenko, *supra* note 1, at 59 (in certain areas of international law differences in ideology and culture play no role).

order seems open to question. Where the international legal order goes beyond interstate matters and seeks to regulate transnational and, more significantly, intranational matters, the non-universality of law as a principle of social order makes difficult the possibility of international law as a *legal* principle for order across nonlegal societies, absent a change in those societies towards *legal* order. For example, within the domain of transnational law states may encounter pressure to conform aspects of their internal society to a legal (or more fully legal) model as a price of cooperation in the transnational realm.³⁵ Without such change, those states would find it difficult to be admitted to or participate in aspects of the international *legal* order.

Moreover, Sinha may be articulating the wrong standard when he asserts in support of his argument that "economic, technical or environmental cooperation among states does not require that their internal societies be axiologically uniform."³⁶ *Uniformity* may not be the relevant criterion. If economic cooperation puts pressure on states that maintain different norms (reflecting divergent values) in areas such as intellectual property and environmental protection, towards a convergence or harmonization short of uniformity, then axiological diversity *is* challenging the normative content of transnational law, which in turn is threatening the continued axiological diversity of the world's civilizations. Thus non-universality and axiological diversity challenge and are challenged by international law to a significant degree, even in the interstate and transnational areas which Sinha characterizes as impervious to pluralism's effects.

Sinha's main argument, however, is that the non-universality of law and the axiological diversity of the world have a significant effect on international law in its third category, the intranational

35. I am thinking, for example, of the pressure on China to reform its intellectual property enforcement practices as a price for joining the World Trade Organization, or the requirement that Mexico revise aspects of its legal system (for example, to include injunctive relief) as a condition of the negotiation of the North American Free Trade Agreement. See generally Assafa Endeshaw, A Critical Assessment of the U.S.-China Conflict on Intellectual Property, 6 Alb. L.J. Sci. & Tech. 295 (1996); Stephen Zamora, The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement, 24 Law & Pol'y Int'l Bus. 391 (1993) (suggesting that Western legalism may be a prerequisite for at least some forms of transnational law.)

36. Sinha, *supra* note 5, at 140.

laws applying to individuals;³⁷ here he is on surer ground.³⁸ Sinha criticizes intranational international law's "agenda" to transform nonlegal cultures into legal cultures through the field's primary instruments,³⁹ which advance legalism as the favored means to resolve conflicts involving human rights.⁴⁰ According to Sinha, it is inappropriate for international law to require states which traditionally follow nonlegal principles of social order to accept a mandate for Western-style legalism as a price of accession to these instruments.⁴¹

Axiologically, Sinha maintains that the international human rights system should conform to the world's plurality of value systems, rather than crusading for a uniform value system for the entire world.⁴² Sinha characterizes the primary international human rights instruments as built on a "single-catalog approach" centered around the Western values of individualism and legalism.⁴³ He divides international human rights into six categories,⁴⁴ and critiques each category according to the degree of axiological

37. Sinha characterizes this category of international law as law concerned with "how human beings pursue their moral life within the territory of their state and how states are to be held accountable for securing that life." *Id.* at 137.

38. See, e.g., Vereshchetin and Danilenko, *supra* note 1, at 59 (effect of differences in ideology and culture greater in approaches to international human rights protection).

39. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are collectively referred to as the "International Bill of Human Rights." Sinha, *supra* note 5, at 138.

40. Sinha details several aspects of the regime established by these instruments which require or presuppose a legalist model of social order, such as equal recognition before and protection under law, due process rights, and access to judicial process and remedies. *Id.* at 138-39.

41. *Id.* at 140-41. Sinha is correct in suggesting that the problem of the non-universality of law is most acute where international law claims to apply within the national order despite traditional sovereignty notions. Sinha ignores, however, the view that a state's right to simply refuse to accede to conventional human rights law would safeguard that state's right to follow nonlegal social principles, perhaps relying on the emerging recognition of a broad customary law of human rights. See Symposium, Customary International Human Rights Law: Evolution, Status, Prospects, 25 *Ga. J. Int'l & Comp. L.* 1 (1995-96). Alternatively, this may simply be the frank recognition that in today's international climate a state which hopes to meaningfully participate in international political and, more important, economic life will face considerable pressure to commit at least formally to the International Bill of Rights.

42. This raises issues more widely discussed as part of the debate over relativism and the universality of human rights. See, e.g., *supra* notes 2 and 10 and works cited therein.

43. Elsewhere Sinha defines and critiques the "single catalog" approach as one prescribing one set of values for all civilizations. S.P. Sinha, *The Axiology of the International Bill of Human Rights*, 1 *Pace Y.B. Int'l L.* 21, 21 (1989). Sinha's analysis in the present work of the effects of axiological diversity on human rights law draws heavily on this earlier piece.

uniformity imposed or presupposed, as well as the adequacy of its treatment of axiological diversity. With the exception of rights regarding the integrity of the person, which are consistent with the values of all societies,⁴⁵ Sinha critiques the remaining categories of rights as failing to address adequately the range of cultural values and practices with regard to the issue in question,⁴⁶ and criticizes the universalist approach generally as inadequate and counterproductive.⁴⁷

The remedy? On the last page of the book, Sinha suggests that intranational international law be made responsive to civilizational pluralism by abandoning the single-category approach and making states responsible for implementing value ideals of their respective civilizations.⁴⁸ The proper role of international law, from this view, is to ensure that in culture-specific matters, states adhere to and are made accountable for the norms of the civilization to which they belong. The standard for intrastate matters would then

44. The categories are: (1) integrity of the person, (2) personal relationships, (3) social assertion, (4) economic well-being, (5) political assertion, and (6) conflict resolution. Sinha, *supra* note 5, at 141.

45. These rights provide for life, liberty and security of the person, freedom of movement, protection from slavery and other forms of inhuman or degrading treatment or punishment, and protection from arbitrary arrest or interference with home or reputation. *Id.* at 142.

46. Personal relationships law fails to deal with alternative family systems such as hierarchical or extended families, and social assertion law fails to account for societies based on hierarchical, non-equal, relationships. *Id.* at 142-43. (Although Sinha asserts these societies still seek human "emancipation," what does that mean without equality? Here I show my Western ignorance and, perhaps, bias). The law of economic well-being adequately protects industrial workers but fails to cover other economic styles, such as rural India or Africa. *Id.* (This point needs further elaboration—what sorts of protection would they need? Are these not covered by other rights?) Sinha completely sidesteps the issue of political rights as, somewhat surprisingly, outside the focus of discussion on "value systems," although he does state that existing treatments are fine for political democracies. *Id.* Finally, he maintains that conflict resolution rules favor Western legalism, ignoring other forms of social organization. *Id.*

47. Essentially, Sinha sees an approach to human rights law that seeks to impose universal standards as resulting in numerous shortcomings: a minimalist, lowest common denominator approach to human rights; the claimed universality itself is in fact fictional (e.g., "universal" rights to life and to freedom from inhumane treatment are meaningless where the "inhumane treatment" has different meanings going to the substance of the right, and states disagree over the status of the prenatal entity); it dismisses other approaches to "human emancipation" (although it may in fact advocate emancipation as emancipation from these other forms of life); it adopts as universal institutions which have no meaning in certain contexts (e.g., consensual marriage in village India); it excludes serious non-Western problems (e.g., dowry); and it prevents accommodation of fundamentally different social institutions (e.g., the problem of a right to property ownership in communist societies). *Id.*

48. *Id.* at 147.

become, not universal norms contained in multilateral human rights instruments or customary law, but the unique norms of each of the world's principal civilizations.

Sinha's analysis of the problems that intranational international law faces in a pluralist world is penetrating. His suggested remedy is logical and intuitively appealing and satisfies the criteria of legal polycentricity:⁴⁹ it eschews moral universalism but suggests a way around radical relativism through recognition of multiple normative centers, in the sense that states' behavior will be held accountable to standards, but standards rooted in their civilizations and not in a false universalism. However, this approach raises serious difficulties that Sinha does not address.

In advocating this type of "civilizational" responsibility, Sinha points out, quite rightly, that particular states cannot be considered coextensive with a civilization, nor should they be viewed as the spokesperson for one.⁵⁰ His suggested approach to intranational law, however, presupposes that the norms of a particular civilization can otherwise be determined "objectively,"⁵¹ independent of state opinion, without explaining how this might be done.⁵² If an authoritative statement of such norms cannot be developed, then there is no hope of a justiciable standard by which to judge state behavior.

One alternative, not considered by Sinha, may be that states that share a common civilization could negotiate a regional treaty along civilizational lines.⁵³ States would then choose which treaties to join based on civilizational allegiance. This approach would itself fall short of solving the accountability problem in that it would still give states the power to articulate the norms of the civilization in question, albeit in concert, through negotiation of the treaty. Moreover, it would isolate states from any role in the development of the intranational norms of other civilizations, which Sinha might approve but which arguably goes against the thrust of the modern human rights movement. Finally, it creates the additional problem

49. See *supra* notes 9-11 and accompanying text.

50. Otherwise, each state could then freely claim civilizational authority for its preferred human rights policy, and the system would devolve into unfettered individual state discretion.

51. Or at least consensually.

52. See *supra* notes 9-11 and accompanying text.

53. Sinha is critical of regional approaches which do not reflect civilizational pluralism. Sinha, *supra* note 5, at 145. This suggestion is not subject to that criticism, but still falls short of a solution to the accountability problem for the reasons set forth below.

of accountability in states that include significant minority populations that claim allegiance to different civilizations (for example, Hindu v. Muslim, Christian v. Muslim). Since the rights of the minority populations might be conceptualized and protected differently in one treaty than in another, the decision of which treaty to join or apply could have significantly different consequences on the rights of these groups.

Sinha does not address the possibility of an interpretive solution to the pluralist problem, whereby civilizational differences are taken into account in the interpretation or application of a right.⁵⁴ Such an approach might be especially promising as, given that many countries are already signatories of or have assented to the basic human rights instruments and norms, it may be too late to substantially redraft or completely overhaul the system along civilizational lines. In this alternative, the problem of developing and articulating civilizational standards for justifying deviant application and interpretation would be placed into the hands of the courts, which might be preferable to placing it into the hands of the political organs of a state. However, an interpretive approach is not free from problems either, raising complex issues regarding the scope for variation, the “essence” of a right, and the distinction between “core” rights and derivative rights.⁵⁵

Considering the two challenges posed by legal polycentricity, “to identify the pluralistic values within a legal system, and . . . to devise modes for their realization,” Sinha does a commendable job of addressing the first with regard to international law, but only begins to develop the second.⁵⁶ The final chapter provides a useful set of questions and categories through which to analyze the “pluralistic values” within international law and their effects on international law’s normative structure. However, Sinha’s suggested mode for realizing these values in international human rights law requires further development.⁵⁷ The problems raised by Sinha’s proposed system of civilizational intrastate accountability must be

54. See, e.g., van Dijk, *supra* note 2, at 114 (universality of human rights does not preclude differences in interpretation and application to account for cultural and other differences); Fionnuala Ni Aolain, *The Emergence of Diversity: Differences in Human Rights Jurisprudence*, 19 *Fordham Int’l L.J.* 101 (1995) (documenting and criticizing judicial divergence in interpretation of human rights).

55. van Dijk, *supra* note 2, at 116-18.

56. Sinha, *supra* note 5, at 14.

57. In this sense, Sinha’s book reads like a provocative 15 page essay with a 131 page introduction.

addressed, and other alternative solutions such as an interpretive or regional approach should be considered.

Nevertheless, the legal polycentricity analysis provides a useful way to explore the impact of pluralism on international law, particularly human rights law. To the extent that modern international law remains committed to the development of intranational law in a pluralistic world, then legal polycentricity's reformist critique can play a role in strengthening the legitimacy and effectiveness of the resulting human rights system.