

# THE DYNAMICS OF CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS

Franz and Keebet von Benda-Beckmann

This special issue is a result of the research of the Project Group Legal Pluralism at the Max Planck Institute for Social Anthropology in Halle. One of the main goals of our research is to generate a deeper understanding of the ways different bodies of law in plural legal orders are interrelated and of the social processes through which constellations of legal pluralism emerge, are maintained and changed, and to see how different constellations of legal pluralism play out in social life. Extensive as the literature on legal pluralism is, it mainly consists of case studies, on the one hand, or of very general summary statements simply reproducing the official, state-law version of legal pluralism on the other hand. The studies of the Project Group aim to bridge the social and theoretical space between small-scale case studies and normative or empirical generalisation, and to understand the dynamics of plural legal constellations. The members of the research group have diverse theoretical backgrounds and regional specialisations including Morocco, India, Kyrgyzstan, Tibet (China), Lithuania, Hungary, Germany, and Indonesia. This has provided a broad comparative perspective generating insights beyond the regional specificities of each single study. Thematically and methodologically, the contributions of this volume are part of an emerging anthropology of law that focuses on the complex dynamics of plural legal constellations in contemporary social formations in the context of globalisation.

© Copyright Franz and Keebet von Benda-Beckmann – 2006

The increasing complexity of legal orders has become a field of anthropological inquiry that has virtually exploded since the 1970s.<sup>1</sup> Until then, anthropology of law largely meant anthropology of the mostly unwritten law of so-called primitive or tribal peoples in the ‘non-West’ in small-scale localities and in a relatively unhistorical way, and the study of disputing processes remained the core of the two paradigms distinguished by Comaroff and Roberts (1981). The co-existence and potential interdependence of local laws and disputing processes with the law and administrative apparatus of the colonial states until then were widely ignored by anthropologists.<sup>2</sup>

Under the influence of the decolonisation processes it became clear that the co-existence of local social and legal organisation as well as wider political and economic networks including the state could no longer be ‘edited out’ (Moore 1978b). In the 1970s the field of research expanded to include legal regulation and institutions of the state. This was increasingly captured with the concept of ‘legal pluralism’.<sup>3</sup> It started with a focus on the differential use of state and local institutions of dispute settlement and expanded to include the role of plural legal constellations in other domains of social organisation such as land law and natural resource management, property and inheritance, gender relations, social security, governance and neo-traditional administration. In addition to the classical interplay between traditional or customary law and state law, religious law and religious courts<sup>4</sup> as well as law generated in new urban fringes in Africa and Latin America

---

<sup>1</sup> For overviews of the development of the anthropology of law, see: Moore 2001; Schott 1980; Nader 1965, 2002; Snyder 1993; Rouland 1994.

<sup>2</sup> Legal anthropologists such as Malinowski (1926), Llewellyn and Hoebel (1941), Gluckman (1967), and Gulliver (1963) had, sometimes purposefully, disregarded the colonial state and its law in their analysis of the law of the people they studied (Moore 1978b).

<sup>3</sup> On the concept of legal pluralism, see: Vanderlinden 1971, 1989; Henry 1983; J. Griffiths 1986; Merry 1988; Tamanaha 1993; Woodman 1998; Tie 1999; K. von Benda-Beckmann 2001; F. von Benda-Beckmann 2002; A. Griffiths 2002.

<sup>4</sup> Rosen 1989; Bowen 2003; Greenhouse 1986; Hirsch 1998; Turner 2002, 2003, 2006; F. and K. von Benda-Beckmann 1988; Mundy 1979.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

were also studied (Foblets and Reyntjens 1998). The field of legal anthropology was also increasingly opened up to law in industrial societies.<sup>5</sup>

This generated new debates about the term ‘law’ and about theoretical approaches to the study of the social functioning of law in society. Legal anthropologists increasingly turned towards ‘agency-institution-structure’ approaches, nowadays often summarised as ‘practice theory’, informed by authors such as Giddens or Bourdieu. This fostered an understanding of law as both an enabling and a constraining structure, within and outside of disputing processes. Law as a resource (Turk 1978), the selective use of legal systems (Tanner 1970) and the possibilities of ‘forum shopping’ and shopping behaviour by courts and other authorities (K. von Benda-Beckmann 1981, Spiertz 1991) moved into the centre of research interest and theoretical considerations.<sup>6</sup>

From the mid-1990s the field of research began to expand further with globalisation and different transnational dimensions of law and legal pluralism coming into view. While the transnational flows of legal models and their ‘localisations’ have a long history, the more recent transnational flows involve a great variety of actors, including governmental and non-governmental organisations, multilateral and bi-lateral donors, foreign and international law firms and epistemic communities who offer legal models and services to organisations and states in developing countries and the former communist states. The subjects range from human rights law and good governance, bankruptcy and soft law standards, to nature protection and natural resource management.<sup>7</sup> Anthropologists have also started to study transnationally operating donor and financing institutes such as the World Bank and development agencies, showing how their ‘project law’ (Thomson 1987) is becoming part of the complex legal structures in the countries in which they carry out their programmes. Apart from processes of ‘hegemonic globalisation’, however, we also see the rejection or appropriation of transnationalised legal and economic models by local people and

---

<sup>5</sup> See: Merry 1982; Foblets et al. 1996. See also Thelen 2003a, below; Peleikis below.

<sup>6</sup> Nader 2002 speaks of a “user theory of law”. See also: Wiber 1993; Eckert in this volume.

<sup>7</sup> Merry 1992, 1997, 2005; Wilson 1997; K. von Benda-Beckmann 2001; Riles 2000; Wanitzek and Woodman 2004; F. and K. von Benda-Beckmann and A. Griffiths 2005; Maurer 2005; Wiber 2005; McCarthy 2005.

NGOs, and the emergence of transnational networks critical of neo-liberal globalisations, ‘globalisations from below’ (Santos and Rodríguez-Garavito 2005). The focus on processes of globalisation and transnationalisation has also stimulated a renewed interest in structures and processes of governance and in the changing nature of the state and internal and external sovereignty of states.<sup>8</sup> The changing nature of state power in relation to other, intra-state organisations is also visible in the state’s relations to ‘civil society’, in processes of revitalisation and reinvention of religious and traditional law and the re-emergence of neo-traditional authorities in many regions of the world.<sup>9</sup> These processes, which are characteristic – and probably inevitable – in plural political and legal orders are often a repetition or continuation of earlier transformations that occurred in colonial and post-colonial and pre-socialist and socialist legal histories.<sup>10</sup>

The project group has taken an active part in developing these new approaches, and this volume is one of the results of the comparative work of the group.<sup>11</sup> The contributions focus on issues of governance, dispute management, decentralisation, social security and natural resource management, bridging transnational, national and local settings. The volume combines studies in various post-socialist countries

---

<sup>8</sup> The question of the extent to which states have lost their sovereignty and political autonomy through these processes is one of the most discussed issues in globalisation debates. See: Appadurai 1990; Featherstone 1990; Featherstone, Lash and Robertson 1995; Held et al. 1999. It has been much debated to what extent the globalisation of law has had unifying effects. For a comprehensive discussion of the literature on the globalisation of law, see: Wanitzek and Woodman 2004; Halliday and Osinsky 2006. See also: Darian-Smith 2004; Twining 2004; F. and K. von Benda-Beckmann and A. Griffiths 2005; F. and K. von Benda-Beckmann n.d..

<sup>9</sup> Mamdani 1996; Comaroff 1997, Van Rouveroy van Nieuwaal and Zips 1998; Comaroff and Comaroff 1997, 1999; F. and K. von Benda-Beckmann 2001; Oomen 2002, 2005; Eckert 2003; Beyer in this volume.

<sup>10</sup> Asad 1973; Said 1978; Hobsbawm and Ranger 1983. The classics for law are: Clammer 1973; Snyder 1981; Roberts 1984; Chanock 1985; Woodman 1987. For West Sumatra, see: F. and K. von Benda-Beckmann 1985; Spiertz 1991.

<sup>11</sup> For overviews of the research findings and for publications see the Biennial Reports of the Max Planck Institute for Social Anthropology: MPISA 2001, 2003, 2005.

and in other authoritarian and post-authoritarian settings such as Indonesia, Morocco and China, which allows for comparisons beyond the separation of the (post-) socialist region from the rest of the world. They present analyses of the interplay of various types of law and the transformative processes involved, with their pluralising and depluralising effects. While focusing on legal pluralism, the papers also address some more general themes currently being debated in the social sciences and which we briefly discuss in section 1 before we deal more extensively with the conceptual framework of law and the dynamics of legal pluralism. Law is a crucial factor in globalising processes. Analysing local responses to globalising law provides important insights into more general processes of globalisation, including the transformation processes involved. Studying the use of different bodies of law also reveals ways by which state institutions are embedded in society. Section 2 discusses the conceptualisation of law and legal pluralism. Section 3 turns to the elements that make up plural legal orders and their interrelations and looks at some of the systemic issues. It looks at processes of hybridisation and transformation and inquires into the social, spatial and temporal scope of the various bodies of law involved. Focusing on the actors and arenas in which they operate, section 4 discusses the dynamics, the changing social life of legal pluralism. This volume reflects the temporal dynamics of transformations, the changes and continuities in the composition of the different components of plural legal orders, the normative constructions of their interrelationships, and the interrelations between bodies of law in social processes. Hence the title of this volume: *Dynamics of Change and Continuity in Plural Legal Orders*.

## 1. General Themes

### *Local responses to globalisation*

Studying the transnational dimensions of law, including the religious, in local settings generates insights into local responses to processes of globalisation. Most of the countries studied are at present undergoing rather dramatic changes in their political and economic organisation. In West Sumatra it was the fall of the Suharto regime in 1998 that led to greater political freedom and (re)emerging discourses and practices affecting plural legal constellations. The official state policy of decentralisation and the reorganisation of the villages in particular, led to a revitalisation of interest in the relations between *adat*, Islam and *adat* as an object

of regional and local politics, and also shifted the relative significance of state, *adat* and Islamic law. In Morocco, the period after the enthronement of king Mohammed VI in 1999 was marked by high expectations for political liberalisation. The Casablanca bomb attack in 2003, however, led to a development combining reforms towards democratisation with an increase of state control and constraint of civic liberties. These conditions shaped the Moroccan countryside together with other external factors such as development cooperation, UNESCO-related environmental protection and the Salafiyya Islamic movement. In the new independent state of Kyrgyzstan that emerged after the collapse of the Soviet Union we can also see the close connection between the revitalisation (or reinvention) of the *aksakal* courts and national politics, and, in particular, the (former) president's political agenda. Lithuania, Eastern Germany and Hungary all had to come to terms with the dramatic changes from a socialist political and economic organisation to democratic party politics and economic reforms. India is experiencing the ever intensifying integration into the global market with a liberalised economy and at the same time a fundamental change in its democratic structures, democratic participation having pluralised the party system and brought segments of the population into the political arena that had hitherto been excluded from it. In Tibet the 1980s saw dramatic reforms after the end of the Cultural Revolution and a programme of intense economic development now dominates the governmental agenda.

These changes have often been initiated by the combined efforts of foreign and transnational actors and local pressure groups. The contributions to this volume deal with a range of transnational actors of various religious and secular provenance, including UNESCO and development experts (Morocco, Indonesia, Kyrgyzstan, Lithuania) and Islamic activists (Morocco), who try to impose their own regulatory models. Examples are the Biosphere Reserve in Morocco, a World Heritage Site in Lithuania, decentralisation, good governance and human rights in Indonesia and India, ownership models in Indonesia and post-socialist states, property restitution and the market economy in Germany and Hungary. Some papers discuss the role of migrants who have intensified contact with their places of origin since the demise of the Soviet Union (Lithuania, Germany) or after the reorganisation of village government in Indonesia. In Germany, relationships that used to be transnational became intra-national after German reunification.

As a consequence, social and political life is becoming more complex, opening up new opportunities for some, while creating anxieties and constraints for others. Peleikis and Thelen describe this for the transformation of political and economic

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

organisation and the introduction of new laws and property rights in former socialist states. Transnational actors and legal influences have become important factors in these developments, adding to the legal complexity. Often these actors interact not only with central state representatives but, as in Morocco and Indonesia, also directly with their new partners or adversaries at local levels, bypassing the institutions of the central state. Thus, at local levels we find various state officials side by side with a range of transnational actors who each try to propagate their particular set of legal norms. Often these legal norms contradict each other in essential points. This constellation has implications for the forms of governance that emerge. In some cases, local people are overwhelmed by a flood of overlapping legal regulations increasing their insecurity, as Thelen shows. Others see a wider and richer legal 'cook book'. And, as Turner suggests, such a field of competing actors and competing legal repertoires can also provide local actors with more room for manoeuvre towards state agents as well as towards transnational actors. F. and K. von Benda-Beckmann and Turner point to the role of religion as a mobilising force against corrupt state practices, while Eckert shows that under specific political conditions local populations are capable of resisting corrupt government officials by reference to state law, forcing democratisation from below.

The papers show how these external influences change the local economic and power relationships and local constellations of legal ordering; they also show how the fate of these external influences is shaped by existing constellations of legal pluralism as well as historic social, economic and political structures and practices, both legal and illegal. While these changes are part of general globalising developments, the papers show that in each country the responses are shaped by the particular constellations in which centralised and sometimes authoritarian governments continue to exert their influence. It is striking that despite the great differences between the case studies, many reveal and analyse the way legal understandings of former periods continue to shape current legal practices.<sup>12</sup> Thus, post-socialist responses to legal change have to be understood in terms of the locally embedded ideologies of equality and secularism of the socialist period, as the contributions of Thelen and Peleikis show. The period of *Reformasi* in Indonesia, with its policies of decentralisation and its hesitant attempts at more democratisation, is deeply shaped by the conditions of corruption and land

---

<sup>12</sup> In her previous work Thelen (2003a,b, 2005) has shown that long periods of arbitrary violence and arbitrary application of legal regulations may disrupt such legal continuities.

grabbing by the political elites under President Suharto. In Morocco neoliberal reforms contribute to the maintenance of a political elite centred around centralised political authority.

### *Transformations*

Looking at the local responses to globalisation brings into focus some of the dynamics of pluralisation and depluralisation. While earlier writings emphasized the homogenising tendencies, it has now become clear that intricate processes of adaptation, appropriation and vernacularisation take place, but these precise processes are not yet fully understood. The contributions to this volume show that local responses to globalisation involve complex processes of adaptation and transformation, involving mutual transformations among all types of law.

Earlier legal models are resurrected, actualised, and strategically reinvented by many agents to legitimate contemporary and future agendas. As we have mentioned, such processes are often a continuation of earlier transformations that occurred in the colonial and post-colonial and pre-socialist and socialist legal histories (F. von Benda-Beckmann et al. 2003). As in earlier periods, older legal forms are re-actualised or reinvented to match current interests. While the earlier critiques of the distorting effects of colonial interpretations of customary law focused on such ‘transformations from above’ and the effects of ‘Western ethnocentric categories’, the contributions to this volume look at the ways in which very different kinds of actors may be involved in the transformative processes and in the most recent emergence of neo-traditional structures, including ‘transformations from below’, and the appropriation and vernacularisation of ‘the law’ by local actors.<sup>13</sup>

What state law, transnational law, customary law and religious law are and become in the hands of different authorities varies a great deal, as the examples in this volume suggest. Turner describes the competing interpretations of Islamic law in southern Morocco and speaks of an “accumulation of contradictory legal standards”. Likewise, Peleikis shows how actors resort to earlier state law to

---

<sup>13</sup> As Merry (1988: 884) observed, the ways other normative structures have shaped state law are ‘particularly understudied’. Eckert, in her study of the adjudicative practices of a Hindu-nationalist party in Mumbai, discusses how the latter’s legal norms shape the practices of state agents (Eckert 2004).



CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

compete for the old church of Nida. The *aksakal* courts in Kyrkisztan are an example of transformation and re-invention starting from above but actively taken up by local actors (Beyer). The reorganisation of traditional villages in West Sumatra also started as a top-down process, but it was taken up and received new impetus by actors at lower administrative levels and in the villages. Some of the new importance attached to local law was directed against the government. Eckert points to the generation of an 'unnamed law' by various competing non-state judicial authorities in Mumbai who increasingly refer to state legal norms. The greater relevance of state legal norms in the adjudications of non-state legal authorities is due to the possibility of forum shopping by the clients. In the Moroccan case, it is Islamic activists who propagate an orthodox *Hanbali* version of Islamic law, trying to replace the local folk version of Islam while development oriented actors pin their hopes on a top-down reactivation of 'good tradition'.

The papers in this volume suggest that such transformation processes are an integral part of the dynamics of legal pluralism. The trends are not uni-directional. We rather observe simultaneous and alternating homogenising and differentiating or pluralising and depluralising tendencies at different levels and spaces of socio-political organisation. While most papers describe a tendency towards more plurality in bodies of law and neo-traditional and other self-proclaimed political authorities within and beyond the state legal order, Eckert describes a contrary development. Here, greater judicial pluralism, including traditional, neo-traditional and urban political authorities, goes together with a decreasing legal and normative pluralism. Citizens frequently draw on the law of the state to force state officials to abide by it, but they do not merely follow official interpretations. Instead they interpret it according to popular notions of 'common sense law' and justice. Eckert shows that under specific political conditions local populations are capable of resisting a corrupt government by reference to state law, using, to speak with Santos (2002: 467), 'hegemonic legal tools in a non-hegemonic way'. Comparing socialist and postsocialist Hungary and Eastern Germany, Thelen shows that the two countries used to share the ideology of gender equity but developed very different family policies on the basis of this ideology during the socialist period, leading to quite distinct practices of parenting. In the post-socialist period the family policies became more similar, but this has not resulted in a convergence of parenting practices and in Eastern Germany people stick to the old regulations. The analysis shows that this is a result of both continuities in legal understanding lingering on from socialist times and differences in the frameworks of political and economic restructuring taking place in the two countries.

*The embedded state*

These developments suggest that the globalisation of law is leading to new forms of governance in which the relations of national states and their law are renegotiated both internally and in international settings. This volume shows a great variety regarding the extent and degree of state involvement in local settings. It also points to the ways in which state institutions and state agents are socially embedded. Recent theoretical conceptions of the state have increasingly taken an interest in the dynamics of power relationships and the position of state agencies within society (Migdal 1994: 8). However, in these discussions law and legal pluralism usually do not figure prominently. Using an actor-oriented approach and studying the negotiation of law and rights between various actors, this volume contributes to an understanding of the role of the state in such negotiations and in struggles for power under conditions of legal pluralism. It presents many examples of the entanglement of state agencies in wider social settings.

State agents, transnational actors, and local religious or secular actors all draw on various legal repertoires, interpreting and using them in the pursuit of their interests. This occurs not only where state institutions are deeply involved in local life, but also in situations in which the state is kept at a distance by the local population, such as that in the remote area of Amdo described by Pirie. The contributions of Turner, Beyer, F. and K. von Benda-Beckmann and Eckert show that state representatives often have to compete in local arenas with other players and other legal repertoires, each of which represents different values and interests. In order to have any impact at all, state agents have to adjust to some extent to local organisation and local normative orders. They typically operate in different roles and capacities, sometimes as state representatives, sometimes as ordinary citizens and as members of other, non-state organisations and networks. But even when acting in their capacity as state officials, they may draw on different legal orders at the same time. Conversely, as shown by F. and K. von Benda-Beckmann, when acting in their non-state roles, the fact that they are part of the state apparatus usually makes a difference.<sup>14</sup> In other words, 'the state', i.e. the state personnel and state resources, is embedded in wider structures of social organisation entangling state law with other types of law. The emerging picture is that of a state which manifests itself – and is treated by the local population – as a fractured, potentially powerful, but also manipulable set of players, sometimes

---

<sup>14</sup> See also F. and K. von Benda-Beckmann 1998.

considered useful, rarely considered reliable and always to be treated with suspicion. State institutions are deeply embedded in society and their officials compete with each other, often on a par with other actors. They also frequently compete with other state agencies over political and economic influence and resources, as becomes particularly obvious in processes of decentralisation.

## 2. Law and legal pluralism

Discussions about an appropriate concept of law have been an issue in the anthropology of law for a long time. Calling the local ethnic order of the Barotse or the Minangkabau 'legal' had not been a great problem as long as the different types were ordered evolutionally. But when these local laws appeared in the backyard of the colonial state, these orders had to be accepted as coeval with state law (see Fabian 1983). This forced anthropologists to rethink the concept of law under conditions of the co-existence and interdependence of different normative and institutional orders within the same political organisation. The ensuing conceptual debates were concerned with two main problems. The first problem was whether the concept of law might serve as an analytical concept for comparative cross-cultural analysis. The second and more prominent question was whether the term 'law' should by definition be tied to the state, or whether it would also include normative structures of other political or social units. The discussion seems to have lost some of its sting since the increasing dominance of international and transnational law has forced even the strictest étatists to reconsider the role of states and state law. However, legal pluralism in this body of literature is often confined to the co-existence of international and transnational law and state law. Global legal pluralism, therefore, is largely discussed without considering its co-existence with and consequences for the existing configurations of legal pluralism within states.<sup>15</sup> The question of whether traditional law, the law of ethnic groups, or religious law could be regarded as a variation of law besides state law remains contested.

---

<sup>15</sup> See in particular: Robé 1997; Teubner 1997; and Callies 2002. Only few authors have coupled this to propositions of how these different forms of transnationalisation have led to new variants of legal pluralism. See: Santos 1987, 1995; Merry 1992, 1997; K. von Benda-Beckmann 2001; Günther and Randeria 2001; F. von Benda-Beckmann 2002; Randeria 2003; Wanitzek and Woodman 2004; Twining 2004; Wiber 2005; F. and K. von Benda-Beckmann n.d.

For an intercultural and historical comparison one needs analytical concepts that can encompass a variety of empirical legal phenomena, legal folk (or emic) systems and folk theories about these folk systems.<sup>16</sup> In an analytical sense, they share the properties of the category but vary in empirical constellation. Along with many anthropologists, we think that the term ‘law’ can be used as an analytical concept. As the name of our project group suggests, we hold that the concept of law encompasses more than state law. In the following we will first give a brief outline of our analytical concept of law and the criteria indicating the dimensions of variation between different kinds of law. We shall then briefly discuss the arguments against such an analytical concept and discuss why we think these arguments are not convincing.

### *Law*

We consider law the summary indication of those objectified cognitive and normative conceptions for which validity for a certain social formation is authoritatively asserted. Cognitive conceptions state how things are and why they are what they are; normative conceptions state how things ought to be, must be, or may be.<sup>17</sup> Through legal conceptions elements of the social and natural world (persons, organisations, natural resources, social relationships, behaviour, occurrences) are constituted and constructed as meaningful categories, evaluated in terms of permissibility and/or validity, and given relevance by attaching consequences (sanctions) to such evaluations. Law becomes manifest in two major forms. The first is a ‘categorical’ form as ‘general law’, that is in general rules and principles that evaluate typified situation images for typified consequences, largely as conditional ‘if-then’ schemes. Second, in a more general, less institutionalised manner, law becomes the subject of ideological claims and representations which often differ from the actual legal framework of institutions.

---

<sup>16</sup> In earlier legal anthropology, the reasons for trying to develop such comparative analytical frameworks were explicated on the basis of what has been called the Bohannan-Gluckman controversy (see: Bohannan 1969; Nader 1969: 4; F. von Benda-Beckmann 2002; Turner 2005a).

<sup>17</sup> We use the term ‘conceptions’ as a generic term that encompasses rules, principles, categories, concepts, standards, notions, schemes of meaning (see Berger and Luckmann 1966: 96).

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

Furthermore, law becomes manifest in ‘concretised’ form as ‘concrete law’ that concretises general legal conceptions and their relevance and consequences with respect to the constitution and interpretation of a concrete problem, relationship, occurrence, person, organisation, or decision. In these concretised forms, law also becomes inscribed into actual social relationships, giving a relationship legal meaning and relevance as, for instance, legally relevant kinship relations, or as property rights relations (see also Thompson 1978: 288). It also becomes inscribed/embodied in the material and immaterial objects by giving them a specific legal status, e.g. monument, protected park, state-owned land; it becomes embodied in persons who are defined by their legal status, such as citizen, father, mentally ill; and it is embodied in organisations such as community, town, the state, or in international organisations.

‘Law’ in this sense is a generic term that comprises a variety of social phenomena (concepts, rules, principles, procedures, regulations of different sorts, relationships, decisions) at different levels of social organisation. Speaking of law for descriptive and theoretical purposes therefore always requires clarification of the kind of legal phenomena to which one refers, to legislation at different levels of state organisation, to decisions in disputes, to processes in which transactions are validated, to legal philosophies, etc. Moreover, the general category has to be supplemented by analytical criteria that indicate the specific kind of law we are talking of dimensions of variation in structure, form, content and significance in social life, between and within legal systems. In our view, the major dimensions are:

- the basic underlying legitimation of a body of law, or legal system, ranging from theoretical constructions of a *Grundnorm* (Kelsen) to assertions of a social contract, the politically organised will of the people, divine revelation, tradition, or customary practice;
- the extent to which legal rules and principles are defined as mandatory or optional;
- the extent to which general legal cognitive and normative conceptions have been institutionalised and systematised;
- the agents or organisations generating and maintaining bodies of law;
- the social, geographical and temporal scope for which validity is asserted;

- the extent to which knowledge, interpretation and application of law have been differentiated from everyday knowledge; the extent of professionalisation, theoretisation and scientification;
- the mode of maintenance and transmission, oral or written;
- the extent to which legal conceptions are distinguished from other normative universes such as religion, ethics, morals;
- differences in substantive content.

### *Legal pluralism*

The concept of legal pluralism draws attention to the possibility that within the same social order, or social or geographical space, more than one body of law, pertaining to more or less the same set of activities, may co-exist.<sup>18</sup> Rules and principles generated and used by the state organisation appear as one variation besides law generated and maintained by other organisations and authorities with different legitimations such as religion or tradition.<sup>19</sup> ‘Legal pluralism’ is not an explanatory theory but primarily a sensitising concept. It provides a starting point for developing analytical criteria for distinguishing variations within the empirical complexities of bodies of law and their interrelationships. Before we elaborate such understanding in more detail and show what the contributions to this volume have to say, we want to address the major arguments which some lawyers, sociologists and anthropologists of law have made against the usefulness of such a wide concept of law and legal pluralism.

### *The ethnocentricity argument*

A first argument against defining law without a connection to the state, or against developing law into an analytical comparative category, is what we call the ‘ethnocentricity argument’. According to Roberts, using the term law for

---

<sup>18</sup> We follow the distinction of parallel or duplicatory regulation (Vanderlinden 1971; van den Berghe 1973).

<sup>19</sup> On our understanding of the concepts of law and legal pluralism, see: MPISA 1999-2001; F. von Benda-Beckmann 1992, 2002; K. von Benda-Beckmann 2001.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

comparative purposes means remaining “implicated in the parochial scene” (Roberts 1998: 104), for:

[s]o much of our sense of what law ‘is’, is bound up with, and has been created through, law’s association with a particular history – early on, the emergence of secular government in Europe; later, the management of colonial expansion (Roberts 1998: 98; see also Roberts 1979).

By using the word ‘law’ for normative orders different from state law, Roberts argues, one would impose the Western Eurocentric concept of law on them, jamming other peoples’ normative ideas into Western categories and thereby distorting them. Law, in this view, can only be retained in a practical sense as a familiar and ethnocentric folk category of what a given population, or a subset of a population such as lawyers, usually call law in a given society and in a given period of history.<sup>20</sup>

We are not convinced by this argument. Firstly, even in common language the term comprises more than state law, including at least religious law such as Islamic law or Canon law, even if this is not officially recognised by the state legal order. More importantly, other concepts which amongst others have a definite legal meaning in our own society, such as ‘marriage’, ‘property’, or ‘religion’, have successfully been developed into comparative analytical concepts.<sup>21</sup> While the danger of ethnocentric distortions should not be underestimated, and one cannot completely escape from ethnocentric influences, it would be quite naïve, or very cultural deterministic to maintain that anthropologists are not able to distance themselves from the meanings which were developed in their own society and would have to submit to the definitions provided by powerful or hegemonic

---

<sup>20</sup> Tamanaha switched from an ethnocentric lawyer definition, “law is law as defined by us” (1993), to a multi-ethnocentric folk definition, in which “law is whatever people identify and treat through their social practices as ‘law’” (2000: 313).

<sup>21</sup> See also Geertz (1983) on why this appears to be so much more difficult for the concept of law.

agents.<sup>22</sup> Accusing authors who transform the concept into a comparative analytical concept of being ethnocentric in our view is a case of projection of the writers' own biases, for they do exactly what they accuse others of. They impose their own ethnocentric legal ideology on other peoples' normative orders and exclude anything from being 'legal' that does not conform to that ideology. However thin the dividing line between social actors' conceptualisations of social reality (and law) and the scientists' categories through which they try to understand such conceptualisation may be, it is this distinction that is constitutive of social science.

*The hegemony argument*

According to this argument, the conceptual difference between law, as state law, and other normative orders is justified by the assumption that the law of the state is so overwhelmingly dominant and its application in courts so specific, that it would make no sense to consider other, more flexible, vague and negotiable norms and decision-making processes also to be law and legal. Yet historical and comparative studies show that it may not be useful to include a specific degree of effectiveness into one's definition; rather should the extent to which a body of law is used, adhered to, or reaches its explicit objectives, be treated as dimensions of variation. Law, whether state, religious or customary law, at all times exhibits considerable differences in the extent to which it is effective. In certain historical periods, state law was pathetic in its validity claims, while religious or local ethnic laws regulated rather effectively most parts of social life of the majority of the population in most domains of social organisation. This was often the case in the early years of colonisation and state formation. In other historical periods, state law was more dominant and much more powerful than non-state legal orders. This is the case in many contemporary states in many domains of social organisation. But as we have indicated above, there is no unidirectional development in most states. The social significance of any given type of law is an empirical question.

---

<sup>22</sup> F. von Benda-Beckmann 2002. See: Henry 1983: 21; Snyder 1993: 8 for a similar criticism. On the comparative logic see: Goldschmidt 1966; Geertz 1983:168; Turner 2005a.



*The 'all is law' argument*

Perhaps the most common argument is that by embracing the notion of legal pluralism, the concept of law would become too wide and could comprise 'anything' (Merry 1988), that crucial differences between normative phenomena or systems would be 'melted down' (Moore 1978a: 81, 2001: 106). While we agree that our concept of law is broad indeed, we suggest that concepts of law and legal pluralism can only be usefully employed and criticised in conjunction with the analytical dimensions in which bodies of law vary in structure, form, content and significance in social life. We think that together with the analytical criteria of variation we have suggested it does not obscure, but rather reveals relevant distinctions between normative orders. In particular, it also allows the description and analysis of similarities and differences within state law (and other legal orders) itself. These differences are obscured rather than brought to attention by the implicit homogeneity of law as state law. As analytical concepts, law and legal pluralism indicate the *theoretical possibility* that what is captured by the concept *may* exist empirically. The concept does not entail the assertion that there is legal pluralism everywhere and in all societies, with standard characteristics, or with similar social consequences. The term 'legal pluralism' does not imply a value-judgement about any of the relevant bodies of law or about constellations of legal pluralism as such (see also Santos 2002: 89). However, an analytical approach does make the political nature of the discussions about law and legal pluralism visible and points to the inevitable political dilemmas and logical constraints of political actors (F. von Benda-Beckmann 1997, 2002).

### 3. The elements of plural legal constellations

In the conceptual discussions, the questions of how constellations of legal pluralism might differ from each other and how the elements of legal systems might interact have remained underexposed due to the over-emphasis on the question of whether or not it might be fruitful to speak of legal pluralism at all. We suggest that our approach allows us to take a closer look at the elements of plural legal orders and the different ways in which they can be said to 'co-exist'.

*Elements and interrelationships*

The most visible kind of plural legal constellation is the co-existence of two or more legal systems. By ‘legal system’ we mean a body of legal rules and regulations conceived of as a totality and represented as a bounded symbolic universe by social actors, and for which often, but not necessarily, a claim of internal systematisation and coherence is made.<sup>23</sup> Such orders provide substantive and procedural rules and principles for social, economic, political organisation, and usually also constitute persons or organisations as legitimate authorities for solving problems with the help of these conceptions. People and experts may conceive of their legal situation as consisting of a number of distinct legal systems, in the West Sumatran case of ‘state law’, ‘Islamic law’, and ‘Minangkabau *adat*’. ‘System’ in this sense does not imply that these bodies of law are self-contained units, and that the rules and principles attributed to them would conform to ideological assertions of consistency, systematicity and boundedness.<sup>24</sup> Nevertheless, bodies of law are often treated as if they do, and these ideas usually influence the thoughts and interaction of social actors.

Besides such pluralism of systems, there may be system-internal pluralism in the sense that the same legal system may contain duplicatory regulations of the same set of activities or domains.<sup>25</sup> This can be the consequence of system-internal facultative choices for the same social problem (e.g. legitimate cohabitation and marriage) or the result of inconsistent or competitive rule-making by different state authorities at different levels of the state administration, or with different but overlapping jurisdictions concerning the regulation of activities (e.g. natural resource management regulated by ministries of land, forest, tourism etc., different court jurisdictions and different procedures for inheritance).

Plural legal constellations do not necessarily consist of such systems only. In many societies only one body of law is recognised as a fully developed legal system, while there may be other sets of rules, principles and procedures that run parallel to (and are often different from) this legal system. These may not be recognised as

---

<sup>23</sup> For ‘system’ in the sense of a ‘taxonomic collectivity’, see Harrée 1980, or as a cognitive and normative macrostructure, see Knorr-Cetina 1988: 34.

<sup>24</sup> See also: Woodman 1998; Santos 2002. See also Pirie in this volume.

<sup>25</sup> See: Woodman 1998; A. Griffiths 2002; F. von Benda-Beckmann 2002; Santos 2002: 95.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

'law' or attributed to a specific legal system by social actors, but nevertheless fall under our analytical concept of law. We have called such bodies of law 'unnamed law' (F. von Benda-Beckmann 2002). Eckert discusses how varieties of 'common sense law', generated in the adjudicative practices of competing non-state judicial authorities, are increasingly related to and influenced by state legal norms.<sup>26</sup> An important kind of unnamed law are the principles, rules and procedures which transnationally operating funding agencies and development projects have introduced as 'project law'. As it was first conceived, project law referred to the rules emerging in the interaction of development project staff and their local target group, regulating access to resources and the distribution of authority in the project area.<sup>27</sup> Classical cases are nature protection and sustainable resource development projects, irrigation systems, or community forestry projects. The idea was then expanded to include rules and procedures, usually set by law and political conditions of the donor country, which shape the interactions within development organisations as well as between donor agencies and the governments, universities, and NGOs with whom they cooperate.<sup>28</sup> Another source of transnational law is religious law (K. von Benda-Beckmann 2001). As Turner shows, the already considerable complexity of local law in southern Morocco has been enriched by two types of transnational actors. The *Salafiyya* missionaries with their strict interpretation of the *sharia* and the development agents initiating the UNESCO Biosphere project simultaneously introduce their respective legal regulations concerning agricultural production, economic transactions and gender relations. Such transnational legal forms seeping into locales through NGOs and programmes for good governance by donor agencies sometimes are, or may be, or may not be locally regarded as a separate type of law.

Under conditions of legal pluralism elements of one legal order may change under the influence of another legal order, and new, hybrid or syncretic legal forms may emerge and become institutionalized, replacing or modifying earlier legal forms or co-existing with them. In other cases, concepts from one legal vocabulary are used to label institutions of another legal order. For instance, in West Sumatra many Arabic-Islamic legal concepts, e.g. *hibah*, have been used for Minangkabau institutions as adat institutions without significantly changing their adat substance

---

<sup>26</sup> Elsewhere she has described the law of Shiv Sena and its inclusion into the practices of state agents (Eckert 2003, 2004).

<sup>27</sup> Thomson 1987; F. von Benda-Beckmann 1991.

<sup>28</sup> Günther and Randeria 2001; Randeria 2003; Weilenmann 2004, 2005; Li 2006.

(F. and K. von Benda-Beckmann in this volume). Or, the legal categories and rules of one system are ‘vernacularised’ (Merry 1997) in another legal language. Sometimes such transformed legal forms replace the older ones, but this is not necessarily the case. Such processes of transformation and hybridisation become the more multifaceted the more the law users and authorities primarily associated with one legal order concern themselves with the interpretation of other legal orders. If different legal arenas each systematically create their own interpretations, parallel versions of ‘customary law’, ‘religious law’ or state law may emerge. Thus we may find next to ‘lawyers’ customary or religious law’, there may also be ‘people’s or religious authorities’ state law’.<sup>29</sup> Turner gives an example of the competing interpretation of Islamic law in southern Morocco, the different degrees of amalgamation of local customary rules and Maliki law and the re-emerging of older legal forms. Due to a combination of social, climatic, economic and ecological factors, sharecropping arrangements have been revitalised in a specific region in Morocco. This led to the emergence of a new moral code and legal regulation of a mode of production, which is fully acknowledged neither by state law nor by religious law (Turner 2003). Elsewhere Turner has described the impact of the Salafi legal ‘framing’ and the process of vernacularisation of the Salafi legal doctrine on the local construction of identity (Turner 2006). Ordinary people, Islamic activists, religious experts and state representatives may hold different views on religious law and how it may be related to other legal repertoires. Eckert, Beyer and F. and K. von Benda-Beckmann provide instances of vernacularisation and the emergence and institutionalisation of combined or hybrid legal forms beyond the state context, often supported by international development organisations. Thelen and Peleikis show that such transformations and co-existence may also occur with various types of state law. As Thelen shows, earlier state law no longer officially valid may turn out to have been appropriated by the East German population and become their new ‘customary’ law in a process in which they distinguish themselves from their West German co-citizens.

*The social, spatial and temporal scope of law*

Constellations of legal pluralism vary in their degrees of complexity. Usually the co-existence of different bodies of law pertains to specific fields of social organisation, or, as in the case of project law, to one set of institutions only. For

---

<sup>29</sup> F. von Benda-Beckmann 1984. See: Roberts 1984, K. von Benda-Beckmann 1984; Woodman 1987; Turner 2005b.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

example, local legal systems usually have not developed legal regulations for the modern sectors of finance, economy and administration. Earlier local legal regulations have more or less disappeared. It is also the case with a lot of international and transnational law, which often is highly sectional and domain-specific, and rarely duplicates in full state, traditional or religious legal systems. Some religious laws, on the other hand, claim to cover all sectors of social and economic life, but in fact only regulate parts.

Co-existing bodies of law may cover different geographical or political spaces. For example, Indonesian *adat* laws, Islamic law, state and international law differ considerably in the geographical scale in which they claim validity and in the spatial grounding of the social processes through which they actually function. The project law of a development project, for instance, mainly functions around the relations and interactions of the project staff and its 'target group' or area. Depending on its significance for the allocation of resources, it may become more important than other laws in a village, but it may not have any validity, may not even exist, in the neighbouring village.

The temporal dimension of law is particularly interesting. The temporal validity inscribed legally into law gives only a limited indication of the temporal scope of the social workings of law. The fact that state legal orders do not, or do not any longer recognise the validity of rules, institutions or authorities based on other law, be it religious or *adat* law or their own earlier legislation, does not preclude their further existence and relevance. Therefore often bodies of law 'linger on' beyond their formal validity and so contribute to the contemporary normative complexity.<sup>30</sup> Law may not only 'linger' on as remembered concepts, standards or rules. It may also have become inscribed into and linger on in social relations. Even if the law through which these relations were once defined should no longer be officially valid, the legal characteristics inscribed into the relationships remain important. The significance of such 'lingering law', especially of former official

---

<sup>30</sup> Roquas (2002) talks about 'stacked law' to characterise the continued social meaning of a long series of legal reforms culminating in the current complex constellation of law in Honduras. Santos (2006: 47) has recently used the metaphor of the 'palimpsest' of political and legal cultures. A palimpsest is a parchment written upon twice, the original writing having been erased or rubbed out but not having fully disappeared. He uses the metaphor "to characterize the intricate ways in which very different political and legal cultures and very different historical durations are inextricably intertwined".

state law, can be clearly observed in the research in postsocialist countries where the sudden and profound legal change after the collapse of the Soviet Union and, in the Lithuanian and German case, the redrawing of national boundaries, have left clear traces of the pre-existing legal structures and people tend to stick to old regulations, which can sometimes be ‘resurrected’. Peleikis shows how the succession of periods of profound change and injustice culminate in the current competition over the status and meaning of a church and graveyard that have also obtained the status of Cultural Heritage. The old legal regulations continue to provide interpretative schemes and legitimations to define the current rights to the Church and graveyard, and these interpretative schemes compete with the new legal status under the law of Lithuania and the international rules pertaining to Cultural Heritage. In Morocco, formerly valid customary regulations of resource management, which are no longer locally respected because they relate to and made sense only in a past demographic situation, nevertheless survived as codified custom in the framework of state legislation and became revitalised as ‘good tradition’ decades later in the context of development cooperation.

This has consequences for the analysis of the much discussed ‘re-vitalisation’, ‘re-invention’ and ‘re-actualisation’ of older legal forms. Besides social processes in which such earlier legal forms are creatively re-imagined and their continued or future validity is asserted, the ‘re’ in these concepts may often refer to the level of systematic validity politics only. As some papers in this volume suggest, besides such changes in political rhetoric there may be ongoing use and significance, or continued vitality, on the level of (other) social practices.

#### 4. The Changing Social Life of Legal Pluralism

These different elements and their interrelationships emerge, and are maintained and changed by various social actors, in a range of different social processes taking place simultaneously and consecutively in different arenas.<sup>31</sup>

There is a wide range of social processes through which demarcations between legal systems, institutions, rules or procedures emerge, are maintained and

---

<sup>31</sup> With the exception perhaps of Fitzpatrick (1983); Henry (1983), and Santos (1995, 2002), there have been very few comprehensive attempts to understand the process of the reproduction of constellations of legal pluralism.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

changed. Some of these processes are directed at the intersystem-demarkation as such, relatively removed from substantive issues such as marriage or property rights. Here, actors construct what the relationship between the distinct legal orders 'is' (should be) in normative terms, as mutually exclusive, complementary, or hierarchical. Demarcation of legal systems may also occur for single legal institutions such as property or inheritance, or within certain social or political domains, such as village government, labour relations or social security. The relationship is regularly constructed in concrete issues, e.g. in disputes about land, marriage, divisions of inheritance, the establishment of a Cultural Heritage Site or a Biosphere Reservation, where legal rules are used to rationalise and justify arguments and decisions. Demarcating legal systems is only one kind of interrelation in plural legal orders. Other kinds involve the effacing of boundaries between bodies of law and different ways of compounding elements originally associated with a system.

These processes of maintaining and changing the relationships between bodies of law take place 'in many rooms', to echo Galanter (1981): in everyday interactions, disputing processes in villages and in courts, in provincial, district and village politics, in parliaments, the media, university teaching and in NGOs. What the law and the interrelationships between legal orders are, and what the social significance of law is, can vary considerably between these arenas, and may also vary considerably between regions of a state.<sup>32</sup>

*Actors in multiple arenas and contexts*

The analysis of social interaction in the context of legal pluralism poses important challenges to those conventional understandings of the interrelations between 'law' and social interaction based on inferences from the 'gap' between ideal legal rules and the extent to which they are followed by its addressees or sanctioned by courts or court-like institutions (see Nelken 1981). Legal pluralism forces us to look at these relationships from different methodological perspectives. In the first place, legal repertoires and institutions dealing with law form part of the enabling and constraining context for social interaction in all arenas. Secondly, these repertoires

---

<sup>32</sup> Legal theory and much sociology of law privileges the courts as major arenas for the reproduction of law. To what extent this reproduction is indeed so important outside the realm of legal doctrine, is an empirical question. See: Holleman 1973; Galanter 1981; K. von Benda-Beckmann 1984.

provide schemes of meaning, which may serve as motivation for people to act, or not to act, according to the demands or options the laws provide. Thirdly, they provide the idiom through which people interact. In particular, they provide structured and legitimate forms for social, economic and political transactions such as marriages, inheritance, property transfers. And they constitute positions of legitimate social and political power and regulate the ways in which such positions can be acquired. The repertoires also provide means to rationalise and justify actors' objectives, behaviour and choices, whether in a struggle over inheritance, in determining the property rights to a church, in understanding the nature of proper economic transactions, in engaging in the critique of state action, etc. Legal elements may also constrain the options actors have, and may influence or force them into courses of action they dislike. Fourthly, legal pluralism is reproduced and changed in these processes, and thus is the outcome of interactions, and becomes the context for further interactions.<sup>33</sup> The relationship and significance of the different elements can be seen in the differential use which people make of legal orders and of the political authorities and procedures that ideally represent these orders.

In each arena actors make more or less constrained choices. They may avoid any use of law, opting for non-legal means. They may opt for one law and exclude others; they may also use more than one law. They may sharply distinguish legal systems, or efface their boundaries, or develop hybrid forms. Most of the time, people just go along in their daily routines without reflecting on law that has shaped these routines, their social relationships and attitude (see: Bourdieu 1977; Giddens 1979). The specific relevance or irrelevance of law usually crops up only when people have to deal with problematic situations, with disputes and in processes (such as that of making new law) that aim at changing routines and the law structuring them. For instance it arises when people have to decide whom to ask to validate their marriage, who inherits a particular rice field flows, whether or not to register land, or whether to go to the aksakal court or turn to aksakals in their more traditional capacity, etc. Reflection of law may also inform interaction when people do not want to involve the law and courts at all but aim at informal negotiations. As Mnookin and Kornhauser (1979) have shown, such negotiations take place 'in the shadow of the law', or better, in the shadow of legal pluralism. Under conditions of legal pluralism each single system tends to lose its self-evidence. Choices therefore often demand explicit legitimation.

---

<sup>33</sup> In the terms of Giddens' (1979) idea of structuration.



CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

What people do, the extent to which they are influenced by an orientation at a particular type of law and the consequences of this cannot be inferred from the normative demands of the legal orders, quite apart from the fact that in plural legal orders these demands are often contradictory. And as the examples of ‘lingering laws’ indicate, the official temporal validity of a body of law may be of little concern to actors. While their interactions may not reinstall the official validity of abolished laws, they may still orient their behaviour at these, as Peleikis, Thelen and others in this volume illustrate.

Research on the differential use of legal idioms and forums has shown that many factors tend to influence the choices political and other authorities and people make. Usually this depends on a complex set in which self-interest, commitment to or rejection of normative orders, the suitability of one kind of law for one’s objectives, personal characteristics as well as a range of economic and political factors.<sup>34</sup> As law provides an important legitimation for the exercise of power by social actors or organisations, the question which is the proper law is frequently the object of political struggles. The invocation of the rules or the authorities of one law not only serve to settle a particular problem, but may also be treated as a *pars pro toto* for the relationship between the respective legal orders as a whole. The ways in which legal orders and their interrelations are reproduced depends to a large extent on the structure of authority and power exercised or aspired to by the persons or organisations representing the respective orders.

*The politics of legal pluralism*

In these processes of demarcating the respective spheres of validity of legal orders, states often assert the exclusiveness and superiority of their law. This is based on the political and ideological assertions of the state’s authority and its legal experts, which is referred to as ‘legal centralism’ or ‘monism’ (see J. Griffiths 1986). States occasionally concede legal validity to other bodies of normative ordering or decision-making authorities (customary law, religious law) on their own conditions. Such a legal construction of the validity spheres of different normative orders through the law of one of the orders has been called ‘relative’ (Vanderlinden 1989),

---

<sup>34</sup> See e.g. Nader and Todd 1978; Comaroff and Roberts 1981; K. von Benda-Beckmann 1981; J. Griffiths 1983.

‘weak’ (J. Griffiths 1986) or ‘state law’ (Woodman 1998) legal pluralism.<sup>35</sup> Such constructions are part of law, elaborated in more or less systematised treatments of ‘internal conflict of law’ in the former British colonies or *‘intergentiel recht’* as in the Dutch East Indies. Like any law, the fact that legal orders do, or do not recognise the existence of other legal orders as ‘subservient’, ‘dominant’ or ‘just there’ is likely to have consequences for the ways in which different actors use legal repertoires or decision-making authorities. Whether people keep to these legal constructions or not, and whether what is ‘dominant’ in a legal construction is also dominant in social practice are empirical questions which cannot be inferred from normative constructions. It is therefore misleading to juxtapose weak and strong legal pluralism as ‘ideological’ and ‘empirical’. This detracts from the fact that similar centralist assertions and legal constructions of legal pluralism are to be found also in religious or traditional legal orders. Islamic law, for instance, acknowledges the existence of *urf* or *adat*, customary law, while many customary legal systems in turn have their rules of recognising religious law. In the case of Minangkabau, the balance in the relationships between *adat*, Islamic and state law is theorised by *adat* authorities, religious scholars and state officials.

In plural legal constellations, we therefore often encounter a pluralism of such legal pluralisms (F. von Benda-Beckmann 1992). The argument that the *concept* of legal pluralism should not be defined through the normativity of one legal order should not distract attention from the fact that many social, economic and political struggles take place over what legal order is superior to the others, or over the recognition by one legal order (often the state or international law) of other orders and the rights assigned to certain population groups and authorities under such legal orders. While radical interpretations and claims see any form of legal pluralism construction under the conditions of the state as a political placebo, other actors take their struggles within the context of the state constitution seriously, because for them it matters whether, for instance, rights to village commons are based on *adat* law as recognised by the state, or on non-*adat*ised state law on the grounds of which the state claims ownership (F. and K. von Benda-Beckmann, this volume). These struggles over what law should be the proper state law, or which non-state law should be applied in state courts, are carried out as struggles over the prominence of state and non-state, traditional or religious legitimations, not yet transformed by the state.

---

<sup>35</sup> For a classic presentation of plural legal systems through their construction by state law, see Hooker 1975.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

In such struggles, state law and interests supported by it are often mobilised against local normative, economic and political interests, or vice versa. In some arenas the relation between state and non-state laws may be the most problematic issue. In other arenas, the relation between religious and customary law, or between various customary laws, may be the most contested problem, as the examples from Minangkabau and Morocco show. The major issue may also be the correct interpretation of religious law, as Turner's example of the struggles between local residents and the *Salafyya* missionaries and their local recruits illustrates.

In other situations, such as in Mumbai, inter-system differences seem to fade into the background and instead state law and the best and most effective authority to engage in decision-making processes constitute the important problem (See also Eckert 2003, 2004). Eckert describes how people in urban Mumbai increasingly tend to express values and interests in terms of state law, and refer to religion or caste-based legal principles and decision-making authorities only in undisputed cases. She investigates the conditions under which people refer to state law in order to counter the power and arbitrariness of organisations such as the Shiv Sena or the police. As Eckert states, these processes are closely connected to the 'democratisation of democracy'. The political developments have pluralised the party system. Under these conditions people have wider choices, and they make use of them. This democratisation of democracy and the increasing use of state law against the state and other power-holders are two signs of the same process which she calls a transformation 'from subject to citizen'.

Pirie shows how in Amdo, the Tibetan nomads do not really care very much about distinguishing 'legal systems' and deal very pragmatically with the different sources of regulation and power. She suggests that among the pastoralists there is both adaptation and resistance to the new normative landscape, and acceptance as well as avoidance of new Chinese structures of authority on their part.<sup>36</sup> The co-existence of state and local norms and sanctioning procedures has to be tolerated where it cannot be avoided. For instance, persons having been punished by state agents for criminal offences according to state law cannot (and do not want to) avoid the social control and sanction mechanisms of their own legal order. But the nomads are not averse to invoking state power when it suits them well. The pastoralists thus rely on government officers to determine boundaries and prevent conflicts over them, but do not regard these officers as having authority to resolve

---

<sup>36</sup> For the situation in Ladakh, see Pirie 2006.

their feuds. Pirie emphasises that the nomads' attitudes towards their own and Chinese norms and the respective political authorities do not coincide. The relationship between the legal orders thus is not always a matter of struggle. Different types of law may co-exist peacefully, or there may be grumbling and reluctant acceptance. Moreover, within the same social formation the relationship between different bodies of law may vary considerably according to different domains of social life, and there may be ambiguity.

The examples show that different ideas of legitimate norms may be, but are not necessarily, mobilised publicly against each other as 'alternative legalities'. In Indonesia and Morocco this is often the case, where in certain domains of local government and resource rights it is not regarded as legitimate if state regulation does not acknowledge the superiority of local law or at least incorporate it. However, the dominant view of a population may also be that one legal order sets the main standard of 'legality', and that potential alternative legalities, or even illegalities (such as corruption or Mafia rule systems) are not regarded as legal or legitimate. This is often the case in industrialised states, in which the extent and visibility of legal pluralism is much lower than in former colonial states. It also seems to be the case in urban India, where the legality of state law becomes 'the' legality with cultural capital (Eckert), putting other, earlier standards into non-use or even oblivion. However, frequently the opinions about which is the valid law diverge, and there is not one shared view. The examples of Morocco, Minangkabau and India suggest that it depends on the political ambitions of groups and political authorities representing legal orders, whether 'their' rules are regarded as distinct from each other or whether people strive for compromise and convergence. Those whose authority depends a legal order different from that of the state, such as *adat* leaders or religious authorities, tend to emphasise the distinctiveness of legal orders. However, the papers also show that one cannot assume a one-to-one relationship between categories of actors and 'their' law. Actors are frequently Janus-faced, and processes of forum shopping and shopping forums are characteristic of most plural legal orders. While state law often is the legal expression of state domination and dominant economic interests, it can also be mobilised by villagers or ethnic groups against oppression, while local customary or religious laws may be mobilised by the state to legitimate exploitation and oppression.<sup>37</sup> As Peleikis shows, actors in Lithuania pragmatically use the law of the state in order to pursue interests and claims based on their respective religious law.

---

<sup>37</sup> See F. von Benda-Beckmann 1990.

*Linking domains and expanding issues*

The dynamics of legal pluralism largely depend on how the arenas in which these processes take place and are spatially grounded are interlinked. The characteristics of these linkages give constellations of legal pluralism their special character. They are important conduits through which changes are conveyed, and their nature determines whether 'changing one' is indeed 'changing all', as in the contribution about Minangkabau in this volume. Understanding the types of interdependences requires investigating the intended and unintended consequences of such interactions for more distant arenas and different domains in time and space, tracing the small 'ripple effects' (Long 1989: 230) or the high waves of interdependence through time and space.<sup>38</sup> A focus on how the interactions within one arena are connected to interactions in other arenas offers us important insights into the extent to which legal systems become entangled.

The extent to which time and space-bound interactions have intended or unintended consequences, and the scale of such consequences in other interaction processes vary considerably. In some cases, what happens in one arena remains more or less confined to that arena and has no further effects. However, small-scale incidents may gradually develop into wider issues; micro-histories become conflicts on a much larger scale and have a host of intended and unintended consequences in other arenas and domains (Sahlins 2005). In other cases, small-scale events right from the start are part of a wider network of interdependent relationships and interactions, in which much larger political and economic issues are at stake. F. and K. von Benda-Beckmann describe a case where disagreement between a village and a cement factory about legitimate control over their village resources was connected with decentralisation policies, with the privatisation of the cement factory and with local and national land policies, involving a wide range of actors operating in many different arenas. And as Turner shows how the Casablanca bomb attack quickly led to a range of legal changes in rural Morocco.

Such interconnections do not occur automatically. It is always actors who, following their own agenda or being forced by others, treat single instances as single issues or as expressions of a general issue, and who connect issues in different arenas, often reacting to events in other contexts. These interlinkages are

---

<sup>38</sup> See: F. and K. von Benda-Beckmann 1998; F. von Benda-Beckmann 2001.

facilitated by different mechanisms. Issues may become connected across domains and social fields through the relations and interactions of persons and institutions operating in different contexts and arenas. Linkages may also emerge when people at different places simultaneously react to what has happened elsewhere. The improved means of communication and public media play an important role here. Moreover, connections may be facilitated when actors wear different 'hats', that is, have a multifunctional status and multiple interests in various social domains, and operate in different sets of social relations (domains, or even legal systems) at the same time. F. and K. von Benda-Beckmann give examples of civil servants who also act as university teachers, as members of NGOs, as traditional lineage heads and as advisors to the government. As these examples and the examples mentioned by Beyer and Turner show, they often wear their various hats at one and the same time, drawing on different legal repertoires at the same time.

Furthermore, the systemic character of legal systems and inter-system relationships may also be conducive to linking legal domains. Legal systems and societies vary considerably in the amount of these linkages. A high potential for such linkages is present when there is a low degree of social and functional differentiation and institutionalisation. This tends to lead to a high incidence of dense multiplex and multifunctional relationships and institutions in actual social organisation. For instance, being an *adat* leader in Minangkabau means having political leadership, playing a role in dispute settlement, and being responsible for one's lineage's property. An improvement or weakening of the position of *adat* leaders in one domain by implication affects their roles in other issues as well. Struggles over property are often struggles over power, and vice versa. Changes in one legal system, though intended to be limited to one specific field such as property only, are under these conditions likely to affect the less differentiated property, inheritance and kinship relations in the other legal order. In this way, small issues may become connected to larger issues by systemic implication (K. von Benda-Beckmann 2003).

The contributions in this volume illustrate these processes in various ways. In Minangkabau, for instance, there is a very dense network of such interactional, relational and systemic linkages in space, in which distance is easily overcome by a well functioning network of transportation and mobile phone communication. In rural southern Morocco, lines of communication and interaction are also rather short. This is quite different in the situation Pirie describes for the Amdo region in China. Here the reproduction of the state legal order is socially and spatially relatively separate from the ways in which the Amdo nomads use their own

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

normative order and processes. Pirie shows how the nomads adapt to the new norms and authority structures of the Chinese state and their impact on the Tibetans' lives. Yet compared with the state presence in Indonesia or Morocco, the density of interconnections and frequency of such linkages is comparatively low. The government authorities exercise direct control over many aspects of the Tibetans' lives – their family sizes, pastoral activities and boundaries. However when it comes to the dynamics of feuding and mediation, government officials are forced to recognise, and even support, the nomads' practices.

*Changing constellations: pluralisation and depluralisation*

As a conclusion, then, the emergence, maintenance and change of constellations of legal pluralism are the result of dynamic processes, and the contributions to this volume all deal with these dynamics. New legal models covering many social domains become available through state bureaucrats, NGOs, foreign development agents, migrants or through modern communication channels. The ensuing confrontations with alternative modes of life and the processes through which these are appropriated or rejected at different levels of administrative organisation and other social arenas are important factors in legal change. Given the close relations between law and power, changes in relations of social, political and economic power and authority, sometimes expressed in legal form but also occurring relatively independently of legal changes, usually trigger changes in plural legal constellations. This change is in part imposed on local populations. However, the contributions show that the ways these changes occur depend on the actions of local people who often design creative responses unintended by those initiating legal change.

In many parts of the world we can thus observe a tendency towards more plurality in bodies of law and neo-traditional and other self-proclaimed political authorities within and beyond the state legal order, as a consequence of a transnationalisation of law and the emergence of new versions of traditional and religious laws. In Morocco the state is forced to counterbalance the effects of neoliberal legal reform pushed by global players. In order to prevent a transfer of power and control from the political elite to the civil society, the state accepts an empowerment of plural local legal arenas. In other situations such as urban India we rather find a depluralisation of law. This depluralisation in the realm of legal rules and principles, however, is not necessarily matched with a decrease in law-applying institutions, as Eckert shows. Pirie also emphasises that people's attitudes towards

their own and Chinese norms and towards authorities differ. The examples in this volume suggest that understanding change in plural legal constellations requires looking at the connections between the various co-existing substantive and procedural legal norms, the actors using them, and in particular the political and administrative authorities and decision-making institutions of the respective systems.

### Acknowledgments

The idea to publish a collection of papers with contributions from the members of the Project Group Legal Pluralism emerged in summer 2005 when we were discussing the results of our research and concluded that the insights we had generated on the dynamics of legal pluralism would make an interesting collection of papers. We approached Gordon Woodman, editor-in-chief of the *Journal of Legal Pluralism*, who immediately and generously welcomed the idea. Together we drew up a tight time schedule which allowed publication before the conference on ‘Law and Governance’, November 9-11, 2006, that marks the end of the current Project Group and the beginning of two new research projects: ‘State Courts and their Religious Alternatives’ and ‘Law Against the State’. The volume is the result of intensive cooperation and discussion within the Project Group. We began with a two days’ session in which we discussed the main general results of our research and the way we might present these results. We decided that each would write a case study on the basis of his or her fieldwork that would exemplify some important features of the ways legal pluralism works out in social life and develops over time. During the writing process we had another two sessions of two days each in which we commented on and discussed each other’s drafts, before entering into the final rounds of editing. During these sessions each of us became aware of some of the dimensions of the dynamics of legal pluralism that we had not seen as clearly before and that were worthwhile developing further. This process alone has been worth the efforts. We as the editors have profited immensely from the comments of each of the members of the Project Group on the various drafts of the introduction. As all but one of the contributors are not native English writers, we needed much assistance to bring the language into shape. We are grateful to Astrid Finke and Jacqueline Cottrell for their efforts to bring the papers into understandable English and to Gesine Koch for making sure the lists of references are complete. In the last phase, Gordon Woodman contributed a great deal to finalise the language and to sharpen the arguments. We greatly appreciate his support for this project.



CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

References

- APPADURAI, Arjun  
1990 'Disjuncture and difference in the global cultural economy.' Pp. 295-310 in Mike Featherstone (ed.), *Global Culture, Nationalism, Globalization, and Modernity*. London: Sage.
- ASAD, Talal (ed.)  
1973 *Anthropology and the Colonial Encounter*. Atlantic Highlands: Humanities Press.
- BENDA-BECKMANN, Franz von  
1984 'Law out of context: A comment on the creation of customary law discussion.' *Journal of African Law* 28: 28-33.  
1990 'Ambonese adat as jurisprudence of insurgency and oppression.' Pp. 25-42 in Rüdiger Kuppe, and Richard Potz (eds.), *Law and Anthropology, International Yearbook for Legal Anthropology*. Volume 5. The Hague, Boston, London: Martinus Nijhoff.  
1991 'Legal uncertainty and land management.' Pp. 75-88 in Herman Savenije, and A. Huijsman (eds.), *Making Haste Slowly: Strengthening Local Environmental Management in Agricultural Development*. The Hague: Royal Tropical Institute.  
1992 'Symbiosis of indigenous and Western law in Africa and Asia: an essay in legal pluralism.' Pp. 307-325 in Wolfgang J. Mommsen, and Jaap A. de Moor (eds.), *European Expansion and Law: the Encounter of European and Indigenous Laws in 19th- and 20th-century Africa and Asia*. Oxford, New York: Berg Publishers.  
2001 'On the reproduction of law: micro and macro in the time-space geography of law.' Pp. 119-131 in Wolfgang Fikentscher (ed.), *Begegnung und Konflikt – eine kulturanthropologische Bestandsaufnahme*. München: Verlag der Bayerischen Akademie der Wissenschaften, C.H. Beck Verlag.  
2002 'Who's afraid of legal pluralism?' *Journal of Legal Pluralism* 47: 37-82.
- BENDA-BECKMANN, Keebet von  
1981 'Forum shopping and shopping forums: dispute processing in a Minangkabau village.' *Journal of Legal Pluralism* 19: 117-159.

- 1984 *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau*. Dordrecht, Leiden, Cinnaminson: Foris Publications, KITLV Press
- 2001 'Transnational dimensions of legal pluralism.' Pp. 33-48 in Wolfgang Fikentscher (ed.), *Begegnung und Konflikt – eine kulturanthropologische Bestandsaufnahme*. München: Verlag der Bayerischen Akademie der Wissenschaften, C.H. Beck Verlag.
- 2003 'The contexts of law.' Pp. 299-315 in Rajendra Pradhan (ed.), *Legal Pluralism and Unofficial Law in Social, Economic and Political Development. Papers of the XIIIth International Congress, 7-10 April, 2002, Chiang Mai, Thailand*. Volume III. Kathmandu: ICNEC.
- BENDA-BECKMANN, Franz von and Keebet von BENDA-BECKMANN
- 1985 'Transformation and change in Minangkabau.' Pp. 235-278 in Lynn L. Thomas, and Franz von Benda-Beckmann (eds.), *Change and Continuity in Minangkabau. Monographs in International Studies, Southeast Asia Series Number 71*. Athens, Ohio: Ohio University Center for International Studies, Center for Southeast Asian Studies.
- 1998 'Where structures merge: state and off-state involvement in rural social security on Ambon, Eastern Indonesia.' Pp. 143-180 in Sandra Pannell, and Franz von Benda-Beckmann (eds.), *Old World Places, New World Problems: Exploring Issues of Resource Management in Eastern Indonesia*. Canberra: The Australian National University, Centre for Resource and Environmental Studies, CRES Publications.
- 2001 'Actualising history for binding the future: decentralisation in Minangkabau.' Pp. 33-47 in Paul Hebinck, and Gerard Verschoor (eds.), *Resonances and Dissonances in Development: Actors, Networks and Cultural Repertoires*. Assen: van Gorcum.
- n.d. 'Between global forces and local politics: decentralisation and reorganisation of village government in Indonesia.' In Christoph Antons and Volkmar Gessner (eds.), *Law and Globalisation in Asia*. Oxford: Hart Publishing.
- BENDA-BECKMANN, Franz von, Keebet von BENDA-BECKMANN, Julia ECKERT, Fernanda PIRIE and Bertram TURNER
- 2003 'Vitality and revitalisation of tradition in law: going back to the past or future-oriented development?' Pp. 296-306 in Max Planck Institute for Social Anthropology (ed.), *Report 2002-2003*. Halle/Saale: druck-medienverlag.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

- BENDA-BECKMANN, Franz von, Keebet von BENDA-BECKMANN, and Anne GRIFFITHS (eds.)  
2005 *Mobile People, Mobile Law. Expanding Legal Relations in a Contracting World*. Aldershot: Ashgate.
- BERGER, Peter L. and Thomas LUCKMANN  
1966 *The Social Construction of Reality*. Harmondsworth: Penguin Books.
- VAN DEN BERGHE, Pierre L.  
1973 'Pluralism.' Pp. 959-977 in John J. Honigman (ed.), *Handbook of Social and Cultural Anthropology*. Chicago: McNally.
- BOHANNAN, Paul  
1969 'Ethnography and comparison in legal anthropology.' Pp. 401-418 in Laura Nader (ed.), *Law in Culture and Society*. Chicago: Aldine.
- BOURDIEU, Pierre  
1977 *Outline of a Theory of Practice*. Cambridge: Cambridge University Press.
- BOWEN, John R.  
2003 *Islam, Law and Equality in Indonesia: an Anthropology of Public Reasoning*. Cambridge: Cambridge University Press.
- CALLIES, Galf-Peter  
2002 'Reflexive transnational law: on definition of transnational law.' *Zeitschrift für Rechtssoziologie* 23: 185-216.
- CHANOCK, Martin  
1985 *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge: Cambridge University Press.
- CLAMMER, John  
1973 'Colonialism and the perception of tradition in Fiji.' Pp. 199-220 in Talal Asad (ed.), *Anthropology and the Colonial Encounter*. Atlantic Highlands, N.J.: Humanities Press.
- COMAROFF, John L.  
1997 'The discourse of rights in colonial South Africa: subjectivity, sovereignty, modernity.' Pp. 193-236 in Austin Sarat, and Thomas R. Kearns (eds.), *Identities, Politics and Rights*. Wisconsin: The Michigan University Press.
- COMAROFF, John L. and Jean COMAROFF  
1997 *Of Revelation and Revolution: The Dialectics of Modernity on a South African Frontier*. Vol 2. Chicago and London: The University of Chicago Press.
- COMAROFF, John L., and Jean COMAROFF (eds.)  
1999 *Civil Society and the Political Imagination in Africa: Critical Perspectives*. Chicago and London: The University of Chicago Press.

- COMAROFF, John L. and Simon A. ROBERTS  
1981 *Rules and Processes: The Cultural Logic of Dispute in an African Context*. Chicago, London: University of Chicago Press.
- DARIAN-SMITH, Eve  
2004 'The ethnographies of law.' Pp. 545-568 in Austin Sarat (ed.), *The Blackwell Companion to Law and Society*. Malden, MA.: Blackwell.
- ECKERT, Julia  
2003 *The Charisma of Direct Action. Power, Politics, and the Shiv Sena*. Oxford: University Press.  
2004 'Urban governance and emergent forms of legal pluralism in Mumbai.' *Journal of Legal Pluralism* 5: 29-60.
- FABIAN, Johannes  
1983 *Time and the Other: How Amthropology Makes Its Object*. New York: Columbia University Press.
- FEATHERSTONE, Mike (ed.)  
1990 *Global Culture: Nationalism, Globalization and Modernity*. London: Sage.
- FEATHERSTONE, Mike, Scott LASH, and Roland ROBERTSON (eds.)  
1995 *Global Modernities*. London: Sage.
- FITZPATRICK, Peter  
1983 'Law, plurality and underdevelopment.' Pp. 159-182 in David Sugarman (ed.), *Legality, Ideology and the State*. London: Academic Press.
- FOBLETS, Marie-Claire, Anne GRIFFITHS, Carol LAPRAIRIE, and Gordon R. WOODMAN  
1996 '*Popular Justice: Conflict Resolution within Communities*.' Special issue *Journal of Legal Pluralism* 36.
- FOBLETS, Marie-Claire, and Filip Reyntjens (eds.)  
1998 *Urban Normative Fields in Africa Today*. Special issue *Journal of Legal Pluralism* 42.
- GALANTER, Marc  
1981 'Justice in many rooms; courts, private ordering and indigenous law.' *Journal of Legal Pluralism* 19: 1-47.
- GEERTZ, Clifford  
1983 *Local Knowledge: Further Essays in Interpretative Anthropology*. New York: Basic Books.
- GIDDENS, Anthony  
1979 *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis*. London: Macmillan Press.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

- GLUCKMAN, Max  
1967 *The Judicial Process among the Barotse of Northern Rhodesia (Zambia)*.  
Manchester: Manchester University Press.
- GOLDSCHMIDT, Walter  
1966 *Comparative Functionalism*. Berkeley: University of California Press.
- GREENHOUSE, Carol J.  
1986 *Praying for Justice: Faith, Order and Community in an American Town*.  
Ithaca: Cornell University Press.
- GRIFFITHS, Anne  
2002 'Legal pluralism.' Pp. 289-310 in Reza Banakar, and Max Travers (eds.),  
*An Introduction to Law and Social Theory*. Oregon: Hart Publishing.
- GRIFFITHS, John  
1983 'The general theory of litigation: a first step.' *Zeitschrift für  
Rechtssoziologie* 2: 145-201.  
1986 'What is legal pluralism?' *Journal of Legal Pluralism* 24: 1-5.
- GULLIVER, Philip H.  
1963 *Social Control in an African Society*. Boston: Boston University Press.
- GÜNTHER, Klaus and Shalini RANDERIA  
2001 *Recht, Kultur und Gesellschaft im Prozess der Globalisierung*. Bad  
Homburg: Werner Reimers Stiftung.
- HALLIDAY, Terence C. and Pavel OSINSKY  
2006 'Globalisation of law.' *American Review of Sociology* 32: 447-470.
- HARRÉE, R.  
1980 *Social Being*. Ottawa: Rowman-Littlefield-Adams.
- HELD, David, Andrew MC GREW, David GOLDBLATT, and Jonathan  
PERRATON (eds.)  
1999 *Global Transformations: Politics, Economics and Culture*. Polity Press:  
Cambridge.
- HENRY, Stuart  
1983 *Private Justice. Towards Integrated Theorising in the Sociology of Law*.  
London: Routledge and Kegan Paul.
- HIRSCH, Susan F.  
1998 *Pronouncing and Persevering: Gender and the Discourses of Disputing in  
an African Islamic Court*. Chicago Series in Law and Society. Chicago:  
The University of Chicago Press.
- HOBBSAWM, Eric J. and Terence O. RANGER  
1983 *The Invention of Tradition*. Cambridge: Cambridge University Press.
- HOEBEL, Edward A.  
1954 *The Law of Primitive Man*. Cambridge: Harvard University Press.

HOLLEMAN, Johan F.

1973 'Trouble-cases and trouble-less cases in the study of customary law and legal reform.' *Law & Society Review* 7: 585-609.

HOOKER, M. Barry

1975 *Legal Pluralism: an Introduction to Colonial and Neo-colonial Laws*. Oxford: Clarendon Press.

KNORR-CETINA, Karin D.

1988 'The micro-social order: towards a reconception.' Pp. 21-53 in Nigel G. Fielding (ed.), *Actions and Structure: Research Method in Social Theory*. London: Sage.

LI, Tania M.

2006 *Government through Community: The World Bank in Indonesia*. Working Paper. New York University Law School's program on transnational governance.

LLEWELLYN, Karl and Edmund A. HOEBEL

1941 *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. Norman: University of Oklahoma Press.

LONG, Norman

1989 'Conclusion: theoretical reflections on actor, structure and interface.' Pp. 221-243 in Norman Long (ed.), *Encounters at the Interface*. Wageningen: Pudoc.

MALINOWSKI, Bronisław

1926 *Crime and Custom in Savage Society*. London: Routledge.

MAMDANI, Mahmood

1996 *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton: Princeton University Press.

MAURER, Bill

2005 'Due diligence and "reasonable man".' *Offshore. Cultural Anthropology* 20: 474- 505.

MCCARTHY, John F.

2005 'Contesting decentralisation: transnational policy narratives and the emergence of volatile socio-legal configurations in Central Kalimantan, Indonesia.' Pp. 153-175 in Franz von Benda-Beckmann, Keebet von Benda Beckmann, and Anne Griffiths (eds.), *Mobile People, Mobile Law. Expanding Legal Relations in a Contracting World*. Aldershot, Hampshire: Ashgate.

MERRY, Sally E.

1982 'The social organization of mediation in non-industrial societies: implications for informal community justice in America.' Pp. 17-45 in

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

- Richard L. Abel (ed.), *The Politics of Informal Justice*. New York: Academic Press.
- 1988 'Legal pluralism.' *Law & Society Review* 22: 869-896.
- 1992 'Anthropology, law, and transnational processes.' *Annual Review of Anthropology* 21: 357-379.
- 1997 'Legal pluralism and transnational culture: the Ka Ho'okolokolonui Kanaka Maoli Tribunal.' Pp. 28-48 in Richard A. Wilson (ed.), *Human Rights, Culture and Context*. London: Pluto Press.
- 2005 'Human rights and global legal pluralism: Reciprocity and disjuncture.' Pp. 215-232 in Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths (eds.), *Mobile People, Mobile Law. Expanding Legal Relations in a Contracting World*. Aldershot: Ashgate.
- MIGDAL, Joel S.
- 1994 'The state and society: an approach to struggles for domination.' Pp. 7-36 in Joel S. Migdal, Atul Kohli and Vivienne Shue (eds.), *State Power and Social Forces: Domination and Transformation in the Third World*. Cambridge, Cambridge: University Press.
- MNOOKIN, Robert M. and Lewis KORNHAUSER
- 1979 'Bargaining in the shadow of the law: The case of divorce.' *Yale Law Journal* 88: 950-997.
- MOORE, Sally F.
- 1978a *Law as Process*. London: Routledge and Kegan Paul.
- 1978b 'Archaic law and modern times on the Zambezi: some thoughts on Max Gluckman's interpretation of Barotse law.' Pp. 53-77 in Philip H. Gulliver (ed.), *Cross-examinations: Essays in Memory of Max Gluckman*. Leiden: E.J. Brill.
- 2001 'Certainties undone: fifty turbulent years of legal anthropology, 1949-1999.' *Journal of the Royal Anthropological Institute* 7: 95-116.
- MPISA (MAX PLANCK INSTITUTE FOR SOCIAL ANTHROPOLOGY) (ed.)
- 2001 *Report 1999-2001*. Halle/Saale: Druckerei Heinrich John.
- 2003 *Report 2002-2003*. Halle/Saale: druck-medienverlag.
- 2005 *Report 2004-2005*. Halle/Saale: druck-medienverlag.
- MUNDY, Martha
- 1979 'Women's inheritance of land in Highland Yemen.' *Arabian Studies* 5: 161-187.
- NADER, Laura
- 1965 'The anthropological study of law.' *American Anthropologist* 67: 3-32.
- 1969 'Introduction.' Pp. 1-11 in Laura Nader (ed.), *Law in Culture and Society*. Chicago: Aldine.

- 2002 *The Life of the Law. Anthropological Projects.* Berkeley, Los Angeles, London: University of California Press.
- NADER, Laura, and Harry F. TODD (eds.)
- 1978 *The Disputing Process – Law in Ten Societies.* New York: Columbia University Press.
- NELKEN, David
- 1981 ‘The “gap problem” in the sociology of law: a theoretical review.’ *Windsor Yearbook of Access to Justice*: 35-61.
- OOMEN, Barbara
- 2002 *Chiefs! Law, Power and Culture on Contemporary South Africa.* University of Leiden.
- 2005 ‘Mctradition in the new South Africa: commodified custom and rights talk with the Bafokeng and the Bapedi.’ Pp. 91-109 in Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths (eds.), *Mobile People, Mobile Law. Expanding Legal Relations in a Contracting World.* Aldershot: Ashgate.
- PIRIE, Fernanda
- 2006 ‘Legal autonomy as political engagement: the Ladakhi village in the wider world.’ *Law and Society Review* 40: 77-103.
- RANDERIA, Shalini
- 2003 ‘Glocalization of law: environmental justice, World Bank, NGOs and the cunning state in India.’ Special issue *Current Sociology* 51: 305-328.
- RILES, Annelise
- 2000 *The Network Inside Out.* Ann Arbor: The University of Michigan Press.
- ROBÉ, Jean-Philippe
- 1997 ‘Multinational enterprises: the constitution of a pluralistic legal order.’ Pp. 45-77 in Günther Teubner (ed.), *Global Law without a State.* Aldershot: Dartmouth.
- ROBERTS, Simon
- 1979 *Order and Dispute: an Introduction to Legal Anthropology.* Harmondsworth, England: Penguin Books.
- 1984 ‘Some notes on “African customary law”.’ Pp. 1-5 in Simon Roberts (ed.), *The Construction and Transformation of African Customary Law.* Special issue *Journal of African Law* 28.
- 1998 ‘Against legal pluralism: some reflections on the contemporary enlargement of the legal domain.’ *Journal of Legal Pluralism* 42: 95-106.
- ROQUAS, Esther
- 2002 *Stacked Law: Land, Property and Conflict in Honduras.* Amsterdam: Rozenberg Publishers.



CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

- ROSEN, Lawrence  
1989 *The Anthropology of Justice: Law as a Culture in Islamic Society*.  
Cambridge: Cambridge University Press.
- ROULAND, Norbert  
1994 *Legal Anthropology*. London: Athlone Press.
- ROUVEROY VAN NIEUWAAL, Emile Adriaan B. van, and Werner ZIPS (eds.)  
1998 *Sovereignty, Legitimacy, and Power in West African Societies: Perspectives from Legal Anthropology*. Hamburg: LIT Verlag.
- SAHLINS, Marshall  
2005 'Structural work: how microhistories become macrohistories and vice versa.' *Anthropological Theory* 5: 5-30.
- SAID, Edward W.  
1978 *Orientalism: Western Conceptions of the Orient*. Harmondsworth: Penguin Books.
- SANTOS, Boaventura de Sousa  
1995 *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. London, New York: Routledge.  
2002 *Toward a New Legal Common Sense*. 2nd edition. London: Butterworth.  
2006 'The heterogeneous state and legal pluralism in Mozambique.' *Law and Society Review* 40: 39-75.
- SANTOS, Boaventura de Sousa, and César A. RODRÍGUEZ-GARAVITO (eds.)  
2005 *Law and Globalization from below*. Cambridge: Cambridge University Press.
- SCHOTT, Rüdiger  
1982 'Main trends in German ethnological jurisprudence and legal ethnology.' *Journal of Legal Pluralism* 20: 37-68.
- SNYDER, Francis G.  
1981 'Colonialism and legal form: the creation of 'customary law' in Senegal.' *Journal of Legal Pluralism* 19: 49-90.  
1993 *Law and Anthropology: a Review*. Badia Fiesole: European University Institute.
- SPIERTZ, H. L. Joep  
1991 'The transformation of traditional law: a tale of people's participation in irrigation management on Bali.' *Landscape and Urban Planning* 20: 189-196.
- TAMANAH, Brian Z.  
1993 'The folly of the 'social scientific' concept of legal pluralism.' *Journal of Law & Society* 20: 192-217.

- 2000 'A non-essentialist version of legal pluralism.' *Journal of Law and Society* 27: 296-321.
- TANNER, Ralph E. S.  
1970 'The selective use of legal systems in East Africa.' Pp.35-49 in Ralph E. S. Tanner (ed.), *Three Studies in East African Criminology*. Uppsala: The Scandinavian Institute of African Studies.
- TEUBNER, Günther  
1997 'Global Bukowina: legal pluralism in the world society.' Pp. 3-30 in Günther Teubner (ed.), *Global Law without a State*. Aldershot, Dartmouth: Ashgate.
- THELEN, Tatjana  
2003a *Privatisierung und soziale Ungleichheit in der osteuropäischen Landwirtschaft. Zwei Fallstudien aus Ungarn und Rumänien*. Frankfurt am Main: Campus.
- 2003b 'Are the *kuláks* back? Inherited capital and social continuity in Mesterszállás, Hungary.' Pp. 329-346 in Patrick Heady, and Hannes Grandits (eds.), *Distinct Inheritances. Property, Family and Community in a Changing Europe*. Münster: LIT Verlag.
- 2005 'Violence and social (dis)continuity: comparing collectivization in two East European villages.' *Social History* 30: 25-44.
- THOMPSON, Edward P.  
1978 *The Poverty of Theory & Other Essays*. London: Merlin Press.
- THOMSON, J. T.  
1987 'Land and tree issues in three francophone Sahelian countries: Niger, Mali and Burkina Faso.' Pp. 211-216 in John B. Raintree (ed.), *Land, Trees and Tenure*. Nairobi, Madison: International Council for Research in Agroforestry (ICRAF) and Land Tenure Center.
- TIE, Warwick  
1999 *Legal Pluralism: toward a Multicultural Conception of Law*. Aldershot: Ashgate.
- TURK, Austin T.  
1978 'Law as a weapon in social conflict.' Pp. 213-232 in Charles Reasons, and Robert M. Rich (eds.), *The Sociology of Law: a Conflict Perspective*. Toronto: Butterworth.
- TURNER, Bertram  
2002 'Die Persistenz traditioneller Konfliktregulierungsverfahren im Souss, Marokko.' Pp. 187-202 in Wolfgang Fikentscher (ed.), *Begegnung und Konflikt. Eine kulturanthropologische Bestandsaufnahme*. München: Verlag der Bayerischen Akademie der Wissenschaften.

CHANGE AND CONTINUITY IN PLURAL LEGAL ORDERS  
Franz and Keebet von Benda-Beckmann

---

- 2003 'Chr'ka in Southwest Morocco: forms of agrarian cooperation between Khammessat system and legal pluralism.' Pp. 227-256 in Rajendra Pradhan (ed.), *Commission on Folk Law and Legal Pluralism. Papers of the XIIIth International Congress. Legal Pluralism and Unofficial Law in Social, Economic and Political Development*. Vol. III. Chiang Mai, Thailand: ICNEC.
- 2005a *Asyl und Konflikt von der Antike bis heute*. Berlin: Reimer.
- 2005b 'Der Wald im Dickicht der Gesetze: Transnationales Recht und lokale Rechtspraxis im Arganwald (Marokko).' Pp. 97-117 in Franz von Benda-Beckmann, Keebet von Benda-Beckmann, Wolfram Heise, and Michael Schönhuth (eds.), *Recht und Entwicklung. Law and Development, Zeitschrift für Entwicklungsethnologie* 14(1+2). Saarbrücken: Verlag für Entwicklungspolitik.
- 2006 'The legal arena as a battlefield: Salafiyya legal intervention and local response in rural Morocco.' Pp. 169-186 in Hans-Jörg Albrecht, Jan Simon, Hassan Rezaei, Holger-Christoph Rohne, and Ernesto Kiza (eds.), *Conflicts and Conflict Resolution in Middle Eastern Societies: between Tradition and Modernity*. Berlin: Duncker & Humblot.
- TWINING, William
- 2004 'Diffusion of law: a global perspective.' *Journal of Legal Pluralism* 49: 1-45.
- VANDERLINDEN, Jacques
- 1971 'Le pluralisme juridique: essai de synthèse.' Pp. 19-56 in Jacques Gillissen (ed.), *Le Pluralisme Juridique*. Brussels: Université Libre de Bruxelles.
- 1989 'Return to legal pluralism: twenty years later.' *Journal of Legal Pluralism* 28: 149-157.
- WANTIZEK, Ulrike and Gordon R. WOODMAN
- 2004 'Relating local legal activity to global influences: a theoretical survey.' Pp. 1-79 in Gordon R. Woodman, Ulrike Wanitzek, and Harald Sippel (eds.), *Local Land Law and Globalization. A Comparative Study of Peri-urban Areas in Benin, Ghana and Tanzania*. Münster: Lit Verlag.
- WEILENMANN, Markus
- 2005 'Project law – normative orders of bilateral development cooperation and social change: a case study from the German Agency for Technical Cooperation.' Pp. 233-255 in Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths (eds.), *Mobile People, Mobile Law. Expanding Legal Relations in a Contracting World*. Aldershot: Ashgate.

WIBER, Melanie G.

1993 *Politics, Property and Law in the Philippine Uplands*. Waterloo (Canada): Wilfried Laurier University Press.

2005 'Mobile law and globalism: epistemic communities versus communities-based innovation in the fisheries sector.' Pp. 131-151 in Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths (eds.), *Mobile People, Mobile Law. Expanding Legal Relations in a Contracting*. Aldershot, Hampshire: Ashgate.

WILSON, Richard A.

1997 'Human rights, culture and context: an introduction.' Pp. 1-28 in Richard A. Wilson (ed.), *Human Rights, Culture and Context: Anthropological Perspectives*. London, Chicago: Pluto Press.

WOODMAN, Gordon R.

1987 'How state courts create customary law in Ghana and Nigeria.' Pp. 181-220 in Bradford W. Morse, and Gordon R. Woodman (eds.), *Indigenous Law and the State*. Dordrecht: Foris.

1998 'Ideological combat and social observation: recent debate about legal pluralism.' *Journal of Legal Pluralism* 42: 21-59.