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ABSTRACT

Legal pluralism has seen a marked rise in interest since the turn of the century. While long rejected in legal studies, legal pluralism is now widely accepted, not least in light of the broad range of perspectives on the state it has sought to interpret and it has produced. A crucial change could be noted in the 1970s, when legal anthropologists began to demonstrate the applicability of this term, and not just in anthropological thinking about law. Political and economic developments also profoundly changed constellations of legal pluralism, following diverse trajectories in which the concept obtained multiple meanings. While highlighting significant stages of this process, this chapter discusses how anthropological insights in law and legal pluralism metamorphosed from the study of law in colonial societies towards law of a widely varying scope under conditions of ever-increasing global connectedness. The epistemological insights drawn from the diverse trajectories reflect and shape the social theories of the time, where intersections of state and law represent a central theme, albeit to a greater extent in some periods, and virtually absent in others.

1. Introduction

Long rejected in legal studies, the term legal pluralism has seen a remarkable rise of interest since the turn of the century. Now legal pluralist approaches both reflect and produce new perspectives on the role of the state in plural legal orders. This article focuses on the role of state law and discusses significant stages in the development of research on legal pluralism. The study of law and legal pluralism occurred in dialog with various strands of social theories, ranging from highly abstract theories, such as evolutionist theories, to general theories of social phenomena, such as structuralism, functionalism, and actor-oriented approaches, such as structuration, social constructivism, and actor network theory. More recently, this list has also come to include social theories concerned with specific political and economic development, such as globalization theories. Such theoretical tools proved essential for analytical frameworks to be able to address the anthropological dimensions and in the context of global modernity to direct the analytical gaze to everyday instances where law, the state,

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and the social interact. We highlight some intermediary stages in the development of general social theory that display simultaneous, interacting and co-constituting trajectories and the emergence of various approaches to studying the role of the state and its law in plural legal configurations.[1] We argue that the analysis of these simultaneities sheds light on modifications that have had an impact on how the state is viewed in legal pluralism.

We proceed from the understanding that there is no impermeable disciplinary demarcation between anthropology and other social sciences, nor do we see the anthropology of law as a closed sub-discipline (F. von Benda-Beckmann 2005). While the focus of this chapter is on anthropological understandings, where appropriate, we include disciplines that are intimately linked with anthropology. However, what distinguishes anthropological work from other social science studies is its inherent focus on everyday practices in (multi-)local situations and the aim to capture the terms by which people understand their social life.

2. Legal complexity in early history

Although a fairly recent concept in the social sciences, the phenomenon of legal pluralism has persisted throughout history. It has provided the very "condition of possibility" for pre-modern empires and thus has been part of a normative logic of statehood. Such a model of statehood also referenced the diversity of its constitutive people in terms of normativity. All early empires recognized this and dealt with it in pragmatic ways. In a post-Westphalian world order, two entangled strands of politico-legal development gained momentum, the nation state and its political counterpart, the imperial and colonial state. This development entailed the axiomatic shift from "where there is society, there is law" to "where there is state, there is law." Only with the establishment of nation states and ideologies that canonized the state-people-law nexus in the nineteenth century, the prevalence of legal pluralism came to be seen as problematic. This coincided with theories of modernity and evolutionist conceptions of social organization, development and linear progress, and that included imperialism and colonialism. While emerging nation states sought to eliminate all traces of legal pluralism in domestic legal ideology, though it continued to exist unabated in practice, in colonial states, the realities of legal pluralism needed to be acknowledged, not least as an administrative necessity.

In this context, colonial empires began to distinguish "modern" law from customs, tradition, and "primitive" law. In line with evolutionist thinking, scholars began to systematically collect and compare "precursors" of modern law. But this issue was not merely of theoretical interest. It was also of high political relevance, because according to legal doctrine, customs and tradition – in contrast to customary or traditional law – could be disregarded at the whim of the administration. Colonial experiences incited lawyers and administrators to consider whether existing normative orders in the colonies could be characterized as law or as mere custom. Scholars of different provenience also developed an interest in local laws. There was greater "disciplinary job sharing" among scholars of different disciplines than today (Turner 2017, 291–295). Most scholars adopted *evolutionary* theories aimed at a universal theory of law.[2] These theories

presumed that early models of order had been based on feuds and retaliation, genea-logical relationships, and on communal ownership. These evolved into hierarchical soci-eties with property regimes based on individual ownership. But it was only with the emergence of states that law assumed its full role of maintaining order.

Circumstances such as these provided the setting in which anthropology emerged as a discipline, whereby "anthropology of law," as one of its constitutive sections, developed in dialogue with legal history and legal philosophy. Towards the end of the nineteenth century, a *comparative* interest in uncodified or "primitive" law emerged as precursors of modern law, as orally transmitted remnants of the earliest forms of law. The study of these laws made early forms methodologically accessible. Following the standard anthropological methods of the time, questionnaires were designed for various colonial territories, based on which colonial administrators, missionaries, judges, and travelers were expected to generate descriptions of the local and regional laws. The standard format would enable systematic comparison of different manifes-tations of "primitive law." However, the fact that the questionnaire was based on European legal systems led to serious misrepresentations. Thus within the ambit of disciplines concerned with a universal legal history of humankind, the aim of legal anthropology was twofold: On the one hand, to research phaseologically pre-, or early law in presentist environments and, on the other, to address the challenges of "legal pluralism" as an applied colonial practice. The mass of collected data showed that the transition from "primitive" to modern law was not unilineal. Complex legal configu-rations in which incommensurable legal systems overlapped in time and space were the rule endured within and across state boundaries.

3. From colonialism to the postcolony

At the turn to the twentieth century, new fields and methods of inquiry emerged with growing interest in what constituted law in daily social and economic interac-tions. A holistic approach was supposed to guarantee the study of all aspects of social life. Anthropological fieldwork entailed full immersion in a society to allow the researcher to see how law was used in daily practices. Societies with relatively loose forms of institutionalization and flat hierarchies were studied without interrogating the effects of colonial rule. Such research nevertheless helped understand how law could function in societies without specialized institutions for legislation and law enforcement, and to what extent social organization relied on reciprocity and on community as a public forum. That line of research embraced functionalist perspec-tives, and paid special attention to the social function of law and customs.

Parallel to this development, as legal scholars began to engage in empirical research, emergent disciplinary boundaries between social and legal sciences were blurred. In the Netherlands, Van Vollenhoven (1909) argued that a deep understand-ing of customary law was essential for the Dutch colonial government. Misunderstanding its character led to illegal expropriation of land and other resour-ces. His interest in the diversity of laws, their similarities and differences across the Malay Archipelago, was genuinely academic, notwithstanding his political motivation. The relations between local and colonial laws and the manner in which colonial

courts determined how local laws were interpreted were key to his analyses (F. von Benda-Beckmann 2002, Benda-Beckmann and Benda-Beckmann 2011).

Colonial administrative activity itself contributed to the complexity and diversity of plural legal configurations. Parts of local legal registers interacted with the legal order of the colonial state as they were acknowledged and codified by the colonial state. In this way, they became entangled with the dynamics within traditional and religious normativity. The result was that the borders between state and other-than-state law were sometimes barely recognizable. Similar diversity would later be rediscovered both in the post-colonial and the industrialized colonizing states.

The pioneers of this era, among them, anthropologists Bronislaw Malinowski and Richard Thurnwald, as well as Eugen Ehrlich, a legal scholar, built the foundation for the modern anthropological work on law through various trajectories. Primarily interested in law as an organizing principle of society that ensured social cohesion, they paid relatively little attention to conflicts and disputes. Pioneering the study of local laws in relation to the state and its law, however, Van Vollenhoven argued that *adat* (customary) law inevitably undergoes change when colonial courts and administrative institutions use it, which Anglo-American legal anthropology did not take into account until the 1970s. His analytical concepts underscored his criticism towards the colonial government, which systematically, and often intentionally, misrepresented the character of *adat* regimes and thereby violated its promise to fully recognize *adat* law. Careful academic analysis thus had profound political implications, for it showed that the government's expropriation of large tracts of land for economic development was largely illegal.

That brought forth the insight that more knowledge of "unadulterated customary law" was needed, a trajectory that allowed legal anthropologists to step out of the shadow of the colonial state. Thus, the focus on law as organized in registers that inevitably share basic features and allow for a comparative analysis did not go unchallenged. Pioneers in the African colonial context, such as Max Gluckman and his Manchester School, put customary law center stage, advancing the notion that customary law was best understood through the study of disputes by means of the extended case method. However, the disadvantage of this very method was that they lost sight of the state. In fact, many authors interested in customary laws in this period show a remarkable lack of interest in the state.

Eventually, a paradigm shift could be noted in the last phases of colonialism, roughly between the 1940s and the 1970s, when legal anthropologists took to conceptualizing customary law devoid of the state. The interest shifted towards the "pathological aspects of law," that is, disputes and processes of dispute resolution (Twining 2012, 123). This coincided with new theoretical views that underlined the importance of conflict for maintaining society (Nader 1965, 21). In the US, Llewellyn and Hoebel (lawyer and anthropologist respectively) jointly published a famous study of Cheyenne law in 1941 based on an analysis of case material. It was inspired by legal realists, who argued that regulations obtained their true meaning through interpretation in real situations, so that only court decisions could shed light on the precise content of a law (Darian-Smith 2013a, 62). Nevertheless, this line of research eventually brought legal pluralism back on the agenda as it paved the way from disputes as a source of law to law in practice.

Two research strands could be distinguished in the use of the case method to study disputes, each with a different theoretical objective (Roberts 1979a). Anthropologists like Leopold Pospíšil (1971) used disputes as a source from which unwritten law could be distilled. Others took a more process-oriented approach, studying disputes to understand processes of disputing behavior and decision-making (Comaroff and Roberts 1981).

The interest pursued by the German and Dutch legal anthropologists was broader in scope. They argued that the significance of law derived from its use in the social, economic, and political life in general, and only secondarily from disputes, calling for the study of "trouble cases" and "trouble-less cases" (Holleman 1981; F. von Benda Beckmann 1985). In these studies, the state represented a part of the complex legal situation in which people operated. While for some anthropologists the guiding theoretical questions addressed how law was used in decision-making, others also studied how law affected practices of negotiation. The shift in focus from code to cases, and subsequently to contexts and settings, eventually brought the state back on the agenda and with it also legal pluralism. Dispute studies were thus instrumental in the 'discovery' of plural legal configurations within the modern nation state.

4. Social and legal complexity

4.1. Consolidating research on disputing processes

In the 1970s, insights in disputing processes were further refined with field research in so-called developing countries and industrial societies.[3] At the height of the independence movements against the colonial regimes, when postcolonial and emerging states and their institutions became the subject of critical reflection, the nation state became the standard organizing principle of the political world order. This casted doubt on the portrayal of state involvement as negligible or nonexistent.[4] Critics argued that the state had been edited out, although state institutions, such as the police, were, in fact, much closer than some studies suggested. This had two important implications. Anthropologists, once again, began to pay attention to the relationships of local normative orders and that of the state. Besides, the notion of customary law itself was criticized. Sally Falk Moore (1978a) argued that state law often was mediated through the relationships and networks in what she called "semi-autonomous social fields." Social fields had internal rules and sanctions that interacted with the official state regulations that were filtered through the internal normative order. This publication became the starting point for a new anthropology of law in which the interrelations between state law, religious law, unofficial law, and customary law had moved center stage.

American scholars who had previously conducted fieldwork solely outside the US shifted their research focus to the US. In order to gain insights in disputing processes in the US,[5] they used the lens of legal pluralism in colonial settings. This allowed them to identify "at home" mechanisms of "informal justice" in places outside of formal courts. Such research suggested that many disputes in the US are dealt with by way of other-than-state law, within many "rooms" in which justice is extended – or not, and that disputing parties are frequently engaged in "forum shopping," a term

borrowed from private international law (Galanter 1974, 1981). Systematic reflection on power differentials between parties explained why stronger parties tended to profit most from the judicial system. Legal anthropologists criticized the lack of mitigating mechanisms of power differentials in mediation. Felstiner, Abel, and Sarat (1981) showed that only a minute section of all potential grievances actually reach the courts and discussed the intervening factors along the trajectory. Resorting to court within a local community was often seen as an inappropriate response to conflict.

Characteristic for this period in the study of law by anthropologists is the use of actor-oriented approaches. Later on, interpretative perspectives that paid closer attention to the discursive and power dimensions of law were used. They focused on the use actors made of the available laws and legal institutions in plural legal situations. Since economic, social, and symbolic power relations are differentially inscribed into law, choices from among legal systems have real consequences. Moreover, not just the disputing parties resort to forum shopping, but often also institutions dealing with the dispute, depending on how they stand to gain greater authority (K. von Benda-Beckmann 1981).

In the ensuing years, the inventory of theoretical tools to study legal pluralism, also in its state-embeddedness, was expanded and its analysis further refined. In conflict processing, how problems are framed is largely determined by idiom shopping and code switching – choosing from among the available legal idioms or discourses. Those concepts underscored the significance of the findings of interpretive anthropology, which understood legal registers as ways of seeing the world. Moreover, gender studies and feminist anthropology focused, in particular, on the socio-legal production of inequalities. The latter strand inspired anthropologists to study gender issues within the framework of family relations, for instance, in property regimes, or for ascertaining terms of access to natural resources under conditions of legal pluralism. Based on this literature, F. von Benda-Beckmann (2000, 153) demonstrated that the public-private distinctions, fundamental to western political theories and to legal doctrines of statehood, failed to appreciate that gendered attributes might be differently ascribed in other legal orders.

The intellectual environment, within which legal pluralism emerged as a concept, and began to further develop, took inspiration from the sociological theory of Anthony Giddens on structuration and his constructivist perspective, from Bourdieu's contributions to praxeological theories, and from Foucault's notions of power and governmentality. Since the 1990s, governance, significantly, also alludes to normative activities such as law production by a wide range of public and private organizations, which include (I)NGOs and corporations. Established as a less controversial concept, but offering a complementary tool to legal pluralism, eventually, it also proved to be conducive to the study of interlinkages between legal pluralism and the state. Governance and legal pluralism have thus stood in a "symbiotic" relationship (Zips and Weilenmann 2011).

4.2. Critique at "customary law"

Increased emphasis in anthropological research on disputing in colonial settings led to a reconsideration of the character of customary law. Critical analysis showed that

customary law, too, was pluralized and transformed over time by colonial state law and reinvented as neo-tradition. This critique revealed how deeply interwoven dispute analysis was with state normativity, be it the state as the leviathan against which informal conflict processing takes shape, or entailing the involvement of state officials in conflict processing outside the framework of state institutions, often also wearing the hat of local informal grass roots legal agents. Customary law allowed chiefs endowed with colonial authority, for instance, to enhance their power and steward-ship over land at the expense of women's rights to land (Stewart 2003, 48; Hellum et al. 2007), a creative, still ongoing practice that entails combining state law with custom.[6]

This explains the politics of law, and the entanglement of laws in plural legal orders, but it is not necessarily the full story. Critics focused too much on state insti-tutions and political rhetoric, and failed to reflect on the broader range of contexts in which law is used and where other versions and interpretations might apply. To very different degrees, all colonial legal orders incorporated customary laws, thereby assigning to them specific, often truncated interpretations that co-existed and inter-acted with interpretations developed in other contexts. But most local laws are flex-ible, context-dependent, and constantly changing in response to state demands, such as economic development, democracy, or human rights, as well as to general social and economic developments. When shifting the gaze to actors that bring about the change, customary law appears not to be entirely made by the state and often is not even applied in state institutions.[7] The relationship between local law and state law alternates between rapprochement and distancing. Local communities may even actively choose to adopt state law, erasing almost all traces of legal pluralism. But local groups may also capture elements of state law and single these out from later renderings of state law. In the process, these elements become vernacularized and remain valid in this vernacularized form as local law. Legal pluralism studies estab-lished that the agency of persons connecting various legal orders was manifold or plural-legal. Zenker and Hoehne (2018), for instance, call attention to the paradox that, in their attempts to implement state law, state officials in Africa are obliged to deal with the logic of customs that is often incompatible with that of state law, in order to be able to do their work of the state. The translation work of street-level bureaucrats creates interpretations of law that are not always compatible with official interpretations. This represents another layer of legal pluralism.[8]

4.3. The concept of legal pluralism

Deeper insights into disputing processes showed for one, that people in colonial set-tings often had a choice to opt for one legal system over another, and secondly, that the state was not a passive onlooker but an active agent in the construction of mul-tiple legal orders. Thus debate about legal anthropological concepts and categories to identify and spell out links between normative orders was spurred by a heightened interest in the state.[9] Legal anthropologists now needed an analytical framework to accommodate a conceptual inclusion of the state, its judiciary and legal institutions into their analyses of legal situations at local level.

The legal sociologist Gurvitch (1935) first used legal pluralism to denote co-existing legal orders. But it was the Belgian lawyer Vanderlinden (1971) who first used the term in an analytical sense.[10] Legal pluralism, according to him, referred to a situation in which people could choose from among more than one co-existing set of rules. Legal plurality, by contrast, denoted the co-existence of multiple (sub-)legal systems within one state, to cater to different categories of persons who had no option to choose from among these bodies of law. For example, if commercial law was applicable for merchants, civil law was applicable for other citizens. The term legal pluralism initially met with considerable resistance and there were opposing views about what the term law signified. Over the years, many alternative terms were coined to deal with this discomfort (K. von Benda-Beckmann and Turner forthcoming). The nineteenth-century modernist notion of the nation state as the sole source of law dominated, whereby only state law and not normative orders deserved to be labeled as law, as the codified, differentiated, institutionalized and legitimized expression of the state sovereignty and monopoly of power. This understanding of law continued to be widely accepted by lawyers, economists, and social and political scientists throughout the twentieth century. They held that law would otherwise lose its distinctive meaning. Moore's publication on the semi-autonomous social field is often erroneously cited in favor of the term legal pluralism. In fact, she reserved the term law for state law (Moore 1973). Roberts (1979b, 1998) and Tamanaha (1993) also shared this opinion, but Tamanaha (2007) made an about-face later on and now considers any normative order to be law if the participants call it law.

In this context, it is revealing that concepts that presupposed the existence of legal pluralism were warmly welcomed in academia and did not evoke comparable polemics, even if they conveyed the same message about the plurality of law. For the related concept of governance, for instance, it was generally accepted that state institutions are not the only institutions that produce law. Rather, there is pluralism in lawmaking beyond the purview of lawmakers who increasingly experience the power of organized non-state governance intervening in the state's legislative processes. Governance is key to the study of the relationship between the state and non-state lawmaking institutions, as this link sets the stage for broadly acknowledging the existence of something called global legal pluralism.

John Griffiths' seminal article of 1986 in this journal that details his analysis of the trajectories of legal pluralism invited broad criticism. Unfortunately, the article was incorrectly interpreted as a value judgment that positioned legal pluralism against the state. Griffiths' polemic was meant to show lawyers that a state-centric view of law eclipsed the significance of other kinds of law being used in social interactions; it did not entail a value judgment. Empirical data on plural legal circumstances provide neither a positive nor negative content assessment of the respective legal regimes (see, e.g. Sharafi 2008; Zips and Weilenmann 2011). The critics of legal pluralism argued that this article represented the eternal bible of all adherents of a moral anti-state tenet overlooking the considerable diversity among scholars studying legal pluralism. The objective was rather to address the incompatibility between state legal dogmatism and empirical challenges, for the ideology does not need an empirical foundation.

In this period, two main conceptions of legal pluralism proliferated, especially in debates on the relationship between legal pluralism and the state. Even if scholars who considered law as standing for state law did not necessarily reject the notion of legal pluralism, they accommodated legal plurality only if and to the extent the state legal system recognized other forms of law. Legal pluralism also concerns the various degrees of plurality. Concepts of legal pluralism that put the state and its domestic law center stage in plural legal configurations, are labeled as "state," "weak," "juristic," "classic," (e.g. A. Griffiths 1986; see also, e.g. J. Griffiths 2002; Sezgin 2004; F. von Benda-Beckmann 1997), "relative" (Vanderlinden 1989), "lawyer's" (e.g. Benda-Beckmann 2002, 25), or "legally constructed" (e.g. K. von Benda-Beckmann 2001a, 24). They vary in how much power and sovereignty are ascribed to the state and to what extent inter-actions can be allocated to the various normative registers within such configuration. These positions assert that law must be recognized by the state, that the scope of "existence" of other-than-state law is defined by the state legal system, and that incorp-oration of plural legal components into the state system is possible to be achieved. Or more concretely, legal pluralism is understood here as deriving from the *recognition* of one legal system by another legal system – usually that of the nation state. Keebet von Benda-Beckmann (2001b; see also, Anders 2004) calls this a legal political concept of legal pluralism that has developed into what scholars interested in law at the trans-national and global level today understand as "normative legal pluralism."

However, other scholars considered a state-centric position inconsistent, because most proponents of this view acknowledged the existence of religious law as law, des-pite the fact that it was not enacted by the state. It was therefore not appropriate for the social scientific study of law that aimed at understanding the social working of law (F. von Benda-Beckmann 1979). The second strand places the formal legal system principally on a more or less equal footing with all or some of the other legal orders constituting a plural legal constellation. Here the relationship is qualified, for instance, as "deep," "strong," "real" (J. Griffiths 1986) or as "factual" legal pluralism (Angelo 1996, 1).[11] An implicit or explicit agency of diverse legal regimes (customary, religious) is often assumed. The term "co-existence" then translates into an arrangement of nor-mative orders, each with its own legitimacy and validity. Here the existence of law irre-spective of what the state declares to be law is emphasized. People may refer to a normative register even if it is not recognized by the state.

A focus on the spatial and scalar arrangement of legal pluralism reveals that com-ponents from "above" and "below" state law may take effect inside a state territory and interact with state law in various ways. They generate overlapping spaces of authority, and invite dogmatic analyses of legal content and interpretation of concrete norms within the legal system. Legal actors "on the ground" quite often reach differ-ent conclusions about these forms of territorial inclusion of domestic law in plural legal arrangements from those of state institutions. No coherent system can be formed as a result; instead only a patchwork of normative components is translated into the legal landscape (Anders 2004). As Santos (2002, 95) has put it, this gives rise to a condition of "internal legal pluralism" where it is possible for "different logics of regulation carried out by different state institutions with very little communication between them" to co-exist.

Those who advocate a broad understanding of law emphasized that the term "law" references a number of categorically different domains. It may signify a science, an ideology, a technology or a craft, or a cognitive concept as a way of imagining the real (Geertz 1983). Moore (1978b) pointed to the great variety of social processes in which law is involved. Interpretation, confirmation, validation and reproduction occur especially in formalized situations (e.g. tribunals, notary, and administrative decisions), in the media, education and academia, at the work place, or in informal communication; social practices generate standardization of action as do other forms of routinization of social practices. As these routinized and standardized practices may eventually translate into normativity, law must be viewed as one of the basic domains of practice of the human existence. As a social institution, it is comparable to religion, political or economic practice. This requires reflecting on law on a higher level of abstraction than dogmatic law with its exclusive focus on the state allows for. It requires abstracting comparative and analytical concepts from the specific – often western – manifestations from which they derive, an operation that resembles how kinship and religion have become analytical terms.

Much of the confusion and controversy in the debate results from a lack of refinement and of the specificity of the dimensions in which legal orders differ from each other. Legal orders differ on several dimensions: degree of regulation, institutionalization, differentiation, systematization, modes of sanctioning, spatial and social scope of validity, and basis of legitimacy. In addition, they can also differ in terms of the number of concrete norms and principles; they can be codified, written, or oral.[12] Comparisons along these diverse lines have shown that there are important commonalities between state law on the one hand and customary law and other normative orders on the other, even if other differences are significant. They have also disproved the claim that state law is by definition more important. Legal pluralism in the anthropological sense therefore is a sensitizing concept for situations in which people draw upon several legal systems, irrespective of their status within the state legal system. It endorses anthropological findings indicating that, in their social and economic interactions, people resort to customary, religious law or an unnamed new law, often mixed with parts of state law, even when the state explicitly denies the validity of these other kinds of law. Moreover, normatively defined legal pluralisms abound (Benda-Beckmann and Benda-Beckmann 2006, 26). All legal systems embody ways of dealing with other legal systems. In Islamic law, for instance, elaborate regulations have been put in place to recognize customary law. According to this view, state recognition of other legal orders – or the lack of it – is a significant indication about what the normative relationship will be. But that does not fully capture the range of laws that people actually employ in social interaction. For this, a broad empirical and comparative concept is necessary that calls attention to the *possibility* that more than one legal system could be relevant for social interaction, without claiming that this is necessarily the case always and everywhere. This view of legal pluralism has been extremely useful for understanding that constellations of legal pluralism differ widely in scope and that the relative importance of their components varies. It has served to study modes of governance and the ways in which power relations are inscribed into law, and to understand how law regulates access to resources and justice – and the

lack of it. Situating the state its law, this perspective lays out the specific contexts and ways in which normative orders are invoked, interpreted, and put into practice, and shows the dynamics of how law is both maintained and modified along the chains of interaction, settings and contexts. Alternative concepts, such as polycentrism, legalities and interlegality, parallel legal orders, nomosphere, hybridity, vernacularization, iterations, law fare, legal diversity, and call attention to specific aspects of legal pluralism.

5. Global dynamics

The end of the twentieth century saw a rise in globalizing economies. This was characterized by mass migration, innovations in transportation and communication technologies, growing significance of international finance, and the proliferation of secular and religious transnational organizations. These dynamics affected various social, political and economic fields and evoked critical tensions in legal environments between homogenization and hyperspecialization. Global supply chains, natural resource management and development cooperation, for instance, were increasingly dominated by the logics of neoliberal normativity. Global governance institutions increasingly claimed legislative powers on global scale, adding new dimensions to legal choice making. These developments have generated a wide array of theoretical work on the role and character of legal pluralism. The most salient issues concerning the relationship of state and legal pluralism shall be discussed below.

The burgeoning of new forms of governance has compelled social scientists to theorize the role and character of the expanding field of transnational organizations, and thus also the scope of epistemic communities that are in a crucial position to influence the framing of issues to be regulated. Their norm-setting activities often materialize not so much in explicit rulemaking as in contracts and in standardizing procedures that define what constitutes admissible evidence. Unequal relations among epistemic communities, such as among lawyers, technical experts, and economists, have given rise to legal complexity. Legal pluralism studies have addressed the conundrum of unequal power relations for actors defending their rights in fields dominated by epistemic communities (e.g. Wiber 2005). This required, on the one hand, reconsidering the concept of law in light of the fact that the nation-state had ceased to be the main source of law; the position of states and the concept of governance had to be reconsidered (Reyntjens 2015). Theories of relationality, such as actor-network and assemblage theory, have produced new perspectives in the social sciences and in socio-legal studies on actors involved in lawmaking.

With a global legal environment replete with lawmaking bodies, the sovereign state is no longer the sole legislative forum. State law is viewed no less as a bottleneck for global flows of transnational law in attempts to link above-the-state and below-the-state legal pluralisms (Helfand 2015, 5). In other words, where lawmaking processes are pluralized, to a great extent, nation states no longer remain pivotal to law, nor do they represent the sole legitimate source of lawmaking in every single social and economic field. These conditions have finally convinced legal scholars and social scientists to adopt the concept of legal pluralism without relinquishing the significance of

the state (see, e.g. Berman 2014, 2016; Croce and Goldoni 2015; Michaels 2009, 2013; Twining 2009).

The proliferation of "particularized normative orders" (Darian-Smith 2013a, 37) also sparked an interest in the time, space, and scalar dimensions of legal pluralism. Postfoundational and critical social theories and the theoretical work on transboundary communities has stimulated research on laws conveyed to such new scalar arrangements, and the changes these undergo in the new socio-economic and legal contexts. Similarly, such research is confronted with the challenge of viewing the state from a global perspective, as also embodying a diversity of people, of religious expressions and citizens and migrants desirous of or requiring a high degree of mobility. Religious law and doctrine crossing national boundaries played a pioneering role in the formulation of an emerging concept of global legal pluralism. More than the study of custom, it is the increasingly contested sovereignties of domestic and religious law that has moved legal pluralism closer to the state in liberal democracies (Turner and Kirsch 2009). While many predicted the end of the nation state, migration studies have showed that nation states were far from fading in significance, and in crucial ways affected the life of migrants (Darian-Smith 2013a, 37).

On a global scale, such dynamics translated into new theoretical deliberations. Globalizing processes required looking afresh at asymmetrical power relationships entailed in law (Croce and Goldoni 2015). Postcolonial and subaltern theories as well as critical approaches to legal orientalism focused on the enduring power differentials after decolonization and helped to deconstruct the underlying conviction on the supremacy of Western law (Darian-Smith 2013b; Baxi 2000). Not surprisingly, the politics of global legal pluralism shows to be deeply involved in neoliberal projects. They include decentralization, for instance, when powerful actors manipulate legal registers of vulnerable groups to weaken the validity of claimants' rights. Other projects concern democratization, for instance, when the rights of non-majoritarians are acknowledged. Yet others deal with free trade, where goods and money can freely move but not people. "Lawfare," once an instrument of colonial oppression, is now the "weapon of the weak" to claim resources, recognition, and voice (Comaroff and Comaroff 2009, 37).

Claims to recognition of grassroots law found also expression in constitutional legal pluralism, especially in Latin American countries (Hoekema 2017). Paradoxically, one result of such radical legal thinking may be that indigenous cosmovisional law may be applied in cases where possibly it is the judge and not the protagonists who considers indigenous legal reflections the most appropriate to adopt.

The expansion of development cooperation led to a flourishing legal development industry featuring a host of "law merchants." Transnational legal templates are traded around the globe to promote the rule of law and to assist constitution making in emerging or vulnerable states to ensure compliance with the requirements of transnational extraction schemes (Grenfell 2013; Seidel 2017). Such projects often involve a neo-codification of local forms of normativity to fit the constitutional requirements similar to what was practiced during colonial times. The problem of legal complexity is exacerbated by the fact that development agencies often propose new laws on the

erroneous assumption that they fill a legal void. They also have to navigate between the legal environments of the donor and the recipient states. The resulting "project law" compounds the plural legal order that forms the environment for the recipients of development cooperation.

Legal models travel around the world at an unprecedented pace through a great variety of channels, pluralizing constellations of legal pluralism at the intersection of various scales (Behrends et al. 2014). This entails important translation processes. Some transnational legal models need to be downscaled to the level of the nation state and below. Human rights, for example, will only be understood and taken up in practice if they are successfully translated into local discourses and politics (Corradi et al. 2017). Moreover, global standard setting tools, such as the UN Declaration on Human Rights, may gradually change their meaning and significance and assume a new shape within global assemblages of which this hybrid law is but one – internally fragmented – component. It is not just the vernacularization of human rights on the ground that adds to legal pluralism; it is more its neoliberal exegesis that takes effect in global legal pluralism (Goodale 2009). Such neo-standardization endows global law with new meaning but also re-pluralizes it at a national scale. Strong tendencies toward a re-nationalization of the nomosphere, in domains such as the legal regulation of migration and of global trade, render global legal pluralism even more complex.

Other legal models must undergo upscaling, for example, when indigenous rights acquire a generic meaning within a national legal order or across boundaries in international law. Studies of such translating processes have called attention to the role of the intermediating actors and their relations with the recipients and addressees of the new laws. As Turner (2015) has argued, in order to capture the interconnections of plural legal constellations and the differences in the scope of the components, multi-sited and multi-scalar studies appear to be better suited than methodological nationalism, which presumes the nation state to be the sole "natural" socio-political and legal unit of reference (Wimmer and Schiller 2003; Sassen 2010).

While social sciences developed an empirically grounded concept of global legal pluralism, legal studies suggested a postulated normative concept of legal pluralism (Berman 2014). According to Berman (2014; 2016), such normative pluralism may pursue either a substantive strategy accommodating diversity, or a proceduralist one that seeks to manage pluralism under condition of both the fragmented landscape of legal sovereignties and the project of global legal harmonization. There, non-state law acknowledges an emerging world legal order that while indicative of the growing significance of international law does not imply the diminishing importance of domestic law. By invoking the term non-state law, these scholars put the interaction and degrees of the mutually constituting dynamics between the spheres of state and non-state center stage in research and analysis (Hertogh 2008; Dedek and Praagh 2015; Helfand 2015; Kötter et al. 2015).[13]

Scholars of Science and Technology Studies have shown that we are only beginning to understand the ontological and epistemological challenges posed to the actors involved (Cadena and Lien 2015). Methodologically, the research focus within legal anthropology already shifted the units of analysis from codes to (extended) cases and

events, situations and contexts. Postfoundational epistemological interest turned its gaze to legal practice and situated knowledge (Davies 2017). In this line of thought, the unit of research eventually came to be understood as a complex web of relations including human and non-human, discursive and other constitutive elements such as knowledge regimes (e.g. McGee 2014; Pieraccini 2016; Robinson and Graham 2018).

6. Conclusions

We have shown that anthropological analyses of plural legal orders have alternated between moving towards state law and away from it. This occurred in engagement with successive social and legal theories and as a result of perceived socio-economic and political changes. Evolution theory constructed a unilineal development from "primitive" to modern state law. Structural functionalist theories were so preoccupied with finding the internal working of the laws they found in the colonies that the state receded to the background. These studies were based on the theory that law created order. Anglo-American legal doctrine in the mid-twentieth century, which focused on case law, the American school of legal realism, and a shift in anthropology to the study of conflict, narrowed down the study of law to disputes. In European legal anthropology, the social working of law in the interaction of different legal systems was at the core of research. Legal pluralism was developed as an analytic tool for that purpose. The term was criticized on the basis of a modernist view of law. From a post-colonial perspective, the concept of customary law was also criticized for being an invention of the colonial state, though customary law was not purely a state invention. In the late twentieth century, actor-oriented theories, social constructivism, interpretative theories, relational approaches, and network theories diverted attention to the contexts in which law was deployed in social interaction. This again brought the state into sharper relief. Globalization theories at the turn of the twenty-first century have spawned interest not only in transnational networks and production chains but also in legal transfers and the translation processes at different scale. Skepticism towards the concept of legal pluralism vanished in general. Multi-scalar and multi-sited studies repositioned the state as one of the sources of law, amongst many, at both the transnational and sub-national levels. Analyzing the co-transformative processes to which the concept of the state itself was subjected in these developments would be beyond the purview of this article. Suffice it to say that the concept of the state today is a far cry from the twentieth century ideal of a sovereign nation state. An epistemological insight provided through the use of the analytical concept of legal pluralism is that any sort of plural legal configuration eventually engages or is entangled with statehood, whether it is about co-opting, bypassing, neglecting, accommodating, or merging. Eventually, the acceptance of global legal pluralism has resuscitated the significance of the state in its present fragmented and dependent guise in complex plural legal assemblages.

Notes

1. We discuss the literature selectively and cannot do justice to each individual author's view on the relationship between state law and legal pluralism in relation to the social

theory in play to the full extent. We have selected those authors that are of particular relevance for the question how legal pluralism deals with the state.

2. Nader 1965,7; Turner 2004; Tuori 2013; K. v. Benda-Beckmann and Turner, forthcoming.
3. Nader and Todd 1978; Engel 1980; Merry 1979.
4. Hooker 1975,52; Bohannan 1965; Moore 1970.
5. See for an overview over this literature Albiston et al. 2014.
6. Oomen 2005; Hellum and Derman 2009; James 2006.
7. K. von Benda-Beckmann 1984; Benda-Beckmann and Benda-Beckmann 2011; Goodale and Merry 2007; Ubink 2011; Gebeye 2017, 240.
8. F. von Benda-Beckmann 2002; See for further details K. von Benda-Beckmann and Turner, forthcoming.
9. K. von Benda-Beckmann and Turner, forthcoming.
10. Gilissen 1971; Van den Berghe 1973; Reyntjens 2015, 347–349.
11. See for references K. von Benda-Beckmann and Turner, forthcoming.
12. Benda-Beckmann and Benda-Beckmann 2006; Woodman 1998, 44; and John Griffiths 2017 conceptualise law in terms of social control.
13. The currently preferred expression 'non-state law' was used in anthropology in connection with legal pluralism as a catch-all-but-state-law term every now and then since the early research period; see, e.g., Merry 1988.

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