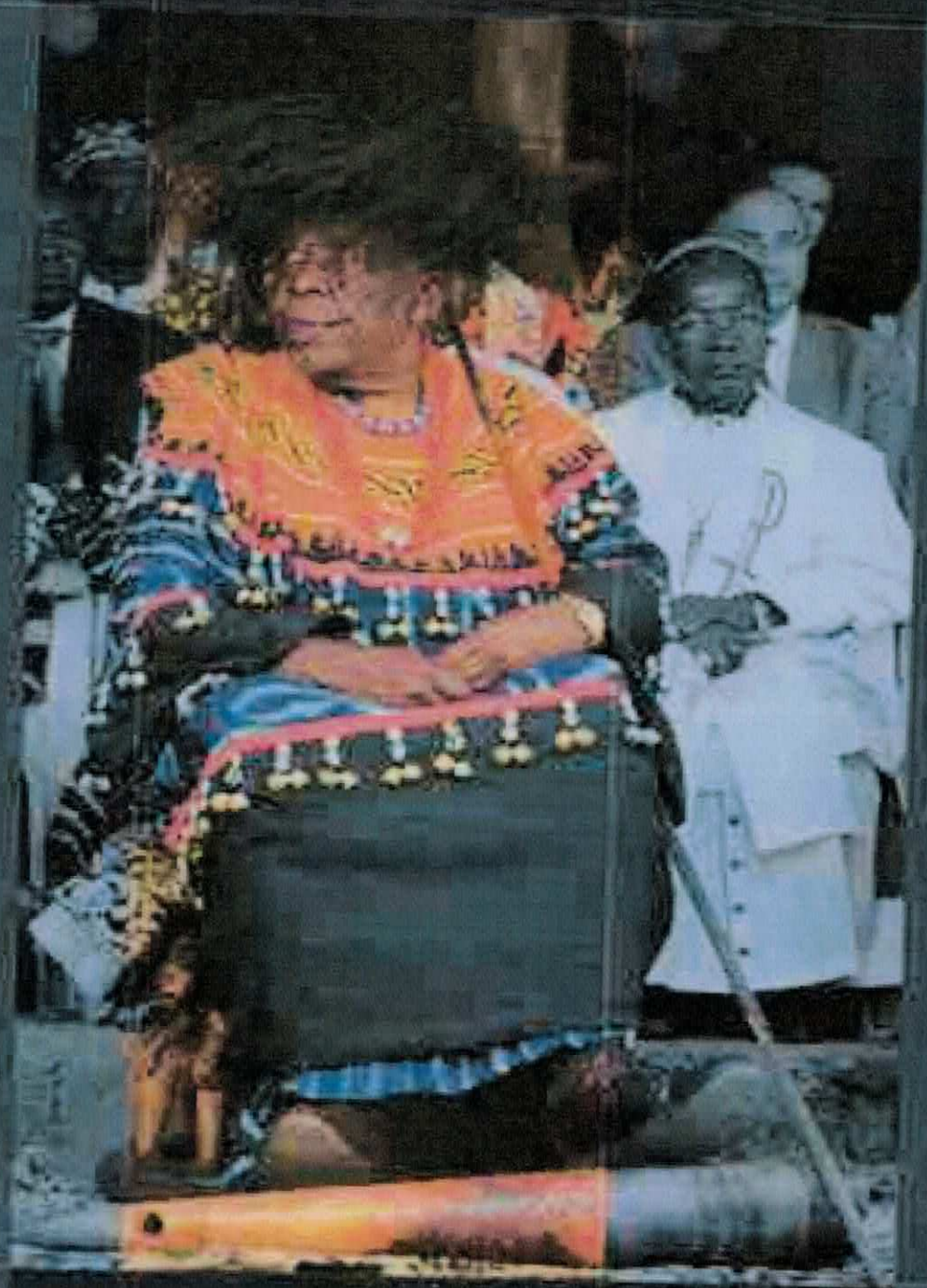
The Governance of Legal Pluralism

Empirical Studies from Africa and Beyond



Werner Zips / Markus Weilenmann (eds.)

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THE GOVERNANCE OF LEGAL PLURALISM

Empirical Studies
from Africa and Beyond

edited by

Werner Zips and Markus Weilenmann

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Introduction:

Governance and Legal Pluralism – an Emerging Symbiotic Relationship?[1]

Werner Zips and Markus Weilenmann

1. Ubiquitous plurality: opening remarks

What "governance" represents for political science and policy-science communities applies to the notion of "legal pluralism" for anthropology of law and the sociological interest in legal institutions, relationships and practices. Both analytical concepts have made an unprecedented "career" in their respective discourse universes over the past three to four decades. However, governance as much as legal pluralism may be considered as still evolving paradigmatic shifts from (a predominant focus on) state government and state law to pluralized modes that are enthusiastically embraced by some and fiercely contested by others. On the most general level, both notions refer to the social phenomenon of *pluralisation* that draws attention to non-state actors in the overlapping fields of politics and law. Nevertheless, governance and legal pluralism belong to separate academic idioms to observe, describe and compare the political and the legal spheres. This volume attempts to bring the divergent political and legal perspectives of social science closer together in order to make a modest contribution to an integrated "political anthropology of law".[2]

Most contributions to this book depart from an empirical situation of legal pluralism, which evokes challenges to adequate modes of governance. While it may be overstating the case to claim that governance and legal pluralism are two

1 We wish to express our gratitude to Andre Gingrich for his valuable suggestions to this introduction.

2 Such an aim clearly derives from a growing empirical interest in a governance focus on legal pluralism; see for instance the recently published volume "Rules of Law and Laws of Ruling. On the Governance of Law" (F. von Benda-Beckmann, K. von Benda-Beckmann and J. Eckert 2009) with selected papers from the Conference "Law and Governance" at the Max-Planck-Institute for Social Anthropology in Halle, Germany.

sides of the same coin, the very social fact of a particular constellation of legal plurality brings about pressure to employ a set or network of institutions, actors and practices different from (state) government. The relatively new language of various forms or modes of governance is clearly rooted in an appreciation of the importance of this growing range of political practices situated between institutional layers of the transnational, regional, national, and local spheres. Accordingly, interactive governance involves different public, semi-public and private actors. Such empirical findings attest to the insight that many pressing problems appear no longer soluble for the established systems of politics, state law and public administration (Hajer and Wagenaar 2003: 1). In the latest stage of globalization formerly distinct spheres of social action became amalgamated in a process commonly referred to as "outsourcing". The dissolution of the rule of law, the legal or involuntary privatization of state functions and the visible erosion of the judicial system may perhaps be read as part of the other side of the coin. Its exposure reveals in many empirical contexts the widespread phenomenon of corruption in the overlapping fields of public and private involvements in what used to be the sole domain of state service benefits.

Yet to conclude that practical needs alone drive the development of cooperative efforts among new constellations of actors in governance and lead to hitherto unknown layers of law shortens the theoretical depth of the logic of practice. Instead, powerful interests often lurk behind the seemingly neutral discourse of (development) cooperation. Transnational disseminations of legal rules, norms and *conditionalities* (in development regimes) are often backed by unequal distributions of power. In terms of their democratic legitimacy, it is important to distinguish such "impacts" or "necessities" forced by donor institutions from deliberate choices of adequate normative frameworks under pluralized options. A good deal of global governance and transnational law fulfils the interpretative conditions of hegemonic empire, veiled behind the naturalized and purportedly inevitable evolution of globalization, as Bourdieu and Wacquant (1999: 42) wrote at the end of the 20th century:

> *"We would need here also to analyse, in all of its presuppositions and implications, the strongly polysemic notion of 'globalization' which has the effect, if not the function, of submerging the effects of imperialism in cultural ecumenism or economic fatalism and of making transnational relationships of power appear as a neutral necessity."*

Almost a decade into the third millennium, the homogenizing efforts of globalization, implicitly referred to in the above quote, appear strongly counter-balanced with viable and often violent centrifugal forces. The "global village" (McLuhan 1962), if anything like that exists in an even prenatal stage, appears strictly segregated and differentiated by heterogeneous worldviews, histories, and experiences of its inhabitants – especially with each other. Democratic procedures are still missing on the global level of governance, where hegemony represents the order of the day. Against the grain of much lip service to a proclaimed overall aim of democratization, insti-

tutionalized procedures of will-formations and consensus building in transnational contexts remain absent to a large extent. National interests still dominate global governance (cf. Habermas 1998: 165–169). Some alternative forums of cosmopolitan "solidarity" in emerging networks of a global society realize rare but nevertheless imaginative counter-examples. Grassroots globalization is of course happening in myriad "ethnoscapes", yet often within dominated political spaces (cf. Appadurai 2000 and 1998: 36–38; see also Beck 1993: 189–192).

Hierarchical normative orderings provoke unintended consequences in many cases, including political and legal struggles over the validity and legitimacy of imposed frameworks. This holds as much true for the illegitimate (from the standpoint of the international law of nations) military interventions of the superpower(s), with their foreseeable dramatic increases in violent conflicts and resultant spread of disorder, as for the market-enforced deregulation and privatization of state functions with its anticipated "recession of the managerial, bureaucratic state into governance-by-franchise" (J. Comaroff and J. L. Comarroff 2006: x). The decentralization dictates by self-interested development policies follow in a similar vein. But various strategies of coercive "structural adjustment" backed by transnational law exports lead neither to the envisioned enforcement of a new (world) order nor to its pessimistic variant of an emerging lawlessness or legal vacuum and political anarchy. Rather, empirically, the emergence of relatively autonomous subfields or sectors of governance, law and dis/order becomes visible. Their relationship may be characterized by a troubled dialectic inscribed with a dark underside of hitherto unknown proportions of rising violence and criminality. This is the space of emerging simulacra of social order in the (universal state of affairs of the) "postcolony" as J. Comaroff and J. L. Comarroff (2006: 5) convincingly argue:

> *"(A) dialectic of law and dis/order, framed by neoliberal mechanisms of deregulation and new modes of mediating human transactions at once politico-economic and cultural, moral, and mortal. Under such conditions – and this is our key point – criminal violence does not so much repudiate the rule of law or the licit operations of the market as appropriate their forms – and recommission their substance. Its perpetrators create parallel modes of production and profiteering, sometimes even of governance and taxation, thereby establishing simulacra of social order."*

Such "counterfeit governments", including new quasi-corporate criminal polities, exploit the revenues of their perhaps unintended empowerment by state agents. In the wake of such orchestrated state pauperizations through forcefully effective governing networks, parallel lawmaking and jurisdictions occasionally co-opt or even recolonize the state by means of intersecting and overlapping legalities. Transnational flows of law and intra-national delegations of self-regulating power and their sedimentary properties of inequalities thus contribute to a "bewildering kaleidoscope" of multi-legal fields and intertwined legalities within and across national boundaries (cf. F. von Benda-Beckmann 2001: 129).

On the other hand, inverse channels of globalization were opened up by a great variety of transnational networks and civil society actors to explore and negotiate common grounds for heaving their commensurable legal and/or political struggles from the national or local to the more visible international stage. The struggles of indigenous peoples may serve as useful examples in this regard.[3] Interestingly enough, the much-decried "toothless" or "soft" international law picks up considerably under specific cultural conditions. Due to the power of mediatisation such political agency appealing to the legal philosophy of justice may suddenly appear quite effective. This observation speaks to the important fact that law cannot be subsumed to governance as a means of policy-making or vice versa governance to law as an exclusive mode to implement legal norms. The problem-solving capacity of law, as the potential site of social integration, depends heavily on the actual socio-political legitimization process of its formation. Governance structures and practices in turn depend on the legitimizing quality of law.

Legal pluralism as an ever-expanding condition of political modes of ordering adds to the complexity. Governance can no longer draw upon any unchallenged sources of legitimization. Rather the seemingly ubiquitous situation of legal pluralism becomes in itself an object of governance. On a practical level, the examples of human rights and transnational regulations, as for instance from the World Trade Organization (WTO), provide evidence for the intricate relationship between these analytical categories (of governance and legal pluralism) and the empirical phenomena they seek to grasp. Both human rights and transnational regulations are part of governance structures and accordingly political, but they are also cultural and legal constructs with an economic dimension (F. von Benda-Beckmann, K. von Benda-Beckmann, Griffiths 2005: 2).

It appears therefore almost imperative to integrate the two concepts of legal pluralism and governance, both directed towards a plural situation. On the conceptual level they share a sensitizing and analytical quality to explore complex legal and political configurations. But neither governance nor legal pluralism are means to an end, as a potential all-encompassing theory of the political or legal. In other words, they enable "thicker descriptions" (Geertz), comparisons and differentiations, without providing final explanations; they rather need to be explained in their empirical state in time and space (cf. F. von Benda-Beckmann 2003: 277). One of the biggest obstacles remains the terminological vagueness and even fuzziness that refers in varying degrees to both notions. Another may be found in the contested status that applies as well to both.[4] Some short remarks must suffice in the empirical context of this volume.

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3 As the contributions of Mogwe, Zips-Mairitsch and Gabbert explore in more detail utilizing examples of indigenous rights movements.

4 Out of a vast literature see for instance: Melchior (2006: 7), Falkner (2006: 153), and Treib, Bähr and Falkner (2007) on the diverse concepts of governance; and Griffiths (2002: 289), Woodman (1998), K. von Benda-Beckmann (2001: 18), and more extensively

2. Notations on the contested notions of governance and legal pluralism

To begin with, the notion of legal pluralism is by far more accepted in its semantic meaning than its counterpart for pluralized polities, governance. What is contested in legal pluralism relates mainly to its conceptual value for the doctrinal study of law. Many emotionally loaded debates circled (often enough in short-circuit) around ideological positions concerning law and the presumed state monopoly over it. Such, in varying degrees evolutionist, positivist and étatist challenges have generally claimed that the notion of "law" (proper) should remain the exclusive property of the state and that its application to any other normative order is at best commonsensical and therefore scientifically misleading. So-called "legal pluralists" have been accused of threatening the presumed clarity of the concept of law on the positivist and epistemological grounds of preconceived nation-state modernities (cf. Tamanaha 1993; Roberts 1998: 96; von Trotha 2000). But not all critiques have been anchored on a crude ethnocentrism and/or Euro-centrism reinstating earlier positions that some societies have no law and therefore need to be "served" with the compulsory provision of an imported legal framework.[5] Some authors rejected the notion of legal pluralism for its alleged blurring of power imbalances (Starr and Collier 1989), as if the empirical diagnosis of legal plurality would have to suggest an uncritical approach leaning towards relativist comparisons.

A league of authors have convincingly answered to these challenges by carefully demonstrating that most debates drew less on heuristic and epistemological reasonings than on conceptual *a priories* and stereotypes positioned to fuel an ideological combat (cf. Woodman 1998; K. von Benda-Beckmann 2001: 26; Griffiths 2002: 293). Aptly summarized by F. von Benda-Beckmann (2002: 275), the issue at stake behind any acceptance or rejection of the sensitizing analytical concept of legal pluralism "(...) is whether or not one is prepared to admit the *theoretical possibility* of more than one legal order within one socio-political space, based on different sources of ultimate validity and maintained by forms of organization other than the state." Quite understandably, as F. von Benda-Beckmann (2002: 277–278) further elaborates, "(t)hose working as guardians and operators of a single normative universe, such as academic or practical lawyers, judges, religious or traditional authorities, mostly do not and cannot accept the notion of legal pluralism, because it is their job to teach or to apply 'the law' as defined in the normative logic of their own law discourses."

Along with the use of legal pluralism as a strictly analytical, heuristic concept goes a clear abstinence from moral and ideological judgements. Legal pluralism

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F. von Benda-Beckmann (2002) on the controversial discussions on the adequacy of "legal pluralism" (as a concept).

5 See for instance Radcliffe-Brown (1952: 212): "The obligations imposed on individuals in societies where there are no legal sanctions will be regarded as matters of custom and convention but not of law; in this sense some simple societies have no law, although all have customs which are supported by sanctions."

therefore cannot be conceived as an "ism" in the sense of capitalism, socialism, Buddhism or any other vantage point of a privileging world-view. Consistent with the interpretative framework of "analytic distance", the category does not imply any form of preference. Especially the aforementioned ever-increasing emergence of criminal clusters of law making, jurisdiction and governance should suffice as a reminder that plurality of legalities is not always "ideal" or "good". The notion of legal pluralism serves thus no automatic legitimization for the promotion, support or protection of pluralism as such. It is in this respect incommensurable with value-based new approaches towards cultural and biological diversity. Legal pluralism implies no abstract favourable attitudes as other "isms". Its limited protective quality may accordingly be expressed negatively: that a constellation of more than one legal order or system in a particular socio-political space does not per se privilege one of these, as most étatist concepts of law would prefer. Without further theoretical parameters, legal pluralism as a research perspective is unable to determine which law *should* be more valid than another. F. von Benda-Beckmann (2002: 280) clarifies this widely shared consensus among academics working empirically with this category: [6]

> *"Analytic distance, towards state and other law, avoids a scientific justification of partisan views on whatever law. An analytical approach is different from ideological or religious points of view; different from the views shared and propounded by the dominant legal ideology, but different also from those of the champions of traditional law or the rights of indigenous peoples. To give moral or political value to some law, to state law hegemony or to plural legal situations is a different 'profession' than creating and using analytical conceptual schemes."*

The concept of legal pluralism, as it is predominantly used by social scientists today, serves as a basis for an analytic and descriptive framework to grasp co-existing legal orders, which do not depend on each other's recognition (K. von Benda-Beckmann 2001: 24–25).[7] Its relative conceptual clarity stands in sharp contrast to the vagueness of the "notoriously slippery term" of governance "(...) that vaguely refers to non-hierarchical attempts at coordinating public and private interests, actions and resources" (Torfing 2006: 109). A discussion of the different definitions of governance could easily fill at least half a book. This fact does not only speak to the fashionableness of the notion, but also to the divergent political interests that lurk behind most, if not all of the semantic and epistemic ventures. Apart from the

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6 Rather, social theories are required for explicitly critical approaches towards law, including the ubiquitous situations of legal plurality. A procedural approach may provide different parameters to evaluate the rule of law and democratisation efforts in order to assess claims for legitimacy on the empirical level (cf. Zips 2010).

7 Such a notion refers to what has been called strong, descriptive or deep legal pluralism, in contrast to weak, relative or state law legal pluralism, which has one legal order (usually state law) allowing space and co-existence to another. See K. von Benda-Beckmann (2001: 24–25) for a discussion of this distinction and further bibliographical references.

difficulties that arise from missing equivalences to the English notion *governance* in many other languages, the referential dimension of the notion resembles a fairly blurred picture. It is not even clear if governance refers to *politics*, i.e. interactions or negotiations of ideologically determined aims, or to a new form of pluri-centric *polity* based on a system of rules and norms that allow for more or less voluntary coordination, or to *policy*, i.e. a mode of political steering to reach a particular goal or solve a problem (Treib, Bähr, Falkner 2007; Torfing 2006: 109).

Most definitions and characterizations emphasize one of these connotations of governance, often in line with a more or less explicit call for a particular transformation of presumably outdated orderings of state "government". New axiomatic reinventions of the notion, derived from the Greek verb *kubernân* (to direct or steer a polity on the basis of a system of rules, according to Plato)[8], cover a wide range of controversial proposals. It may need the apparatus of a refined discourse-analysis to unveil the apparently hidden intentions behind the semantic twists and rhetoric changes. This is to say that few programmatic designs for deliberative, participative, decentralized, engaged, politically active, democratized, self-regulated new modes of governance are, firstly, all that original, and, secondly, all that progressive. Euphemisms such as the "open method of coordination" (OMC), mostly associated with the latest trends in European Union governance patterns, borrow heavily from the vocabulary of the market, with notions such as guidelines, score boards, business plans, peer-reviews, benchmarking and "soft" sanctions of "naming, blaming and shaming" (Borrás and Jacobsson 2004; see also Zeitlin, Pochet and Magnusson 2005). Similar "unrestrained" tools of policy coordination are exported through various channels of development cooperation, where they take on the "allure of messages of liberation" (Bourdieu and Wacquant 1999: 51). Couched in terms of "soft" conditionalities they often enough serve as normative, sanctioned standards in unequal power relationships.[9]

It is therefore imperative to question the rationale given for these tools, which often refers to increasing complexities, diversity and, in fact, pluralism, at least if the analytical frame goes beyond mere descriptive research interests. However, the umbrella concept of governance allows for critical questioning of political action due to its sensitivity for public and private power imbalances, in-transparencies, vague accountabilities, forms of contingent inclusion and exclusion, and political inequalities (Melchior 2006: 8). What has been said above in relation to legal pluralism thus applies to governance as well: As sensitizing analytical categories they are both premised on exploring complex legal and political configurations without embedded ethical preferences for a particular conceptual sphere of social action. They neither contain a secret statement in favour of the transnational, national, or local sphere nor

8 See Kjaer (2004) for a detailed discussion of its etymology.

9 In this context, it appears justified to speak of "project law". This analytical term was coined to be able to grasp the coercive character of top-down policy coordination masked as "cooperation" (see Weilenmann 2005: 251).

the public or private sector. Any critical evaluation of the "outsourcing" of government functions, practices of de-regulation and recesses of public control functions in spreading niches of self-regulation depends on the historical contexts and their assessment on the basis of meaningful parameters derived from social theories. Different modes of governance cannot be determined as "good" or "bad" or even democratic or undemocratic per se. Such a *prima facie* neutrality differs from versions of neo-liberal programs of dehistoricization and depoliticization that promote the universalization and transnational circulation of certain ideas of "privatized governance":

> *"There is widespread agreement across Europe on the need for innovation in the forms and practices of contemporary governance. Within the neo-liberal discourse, this is sometimes cast as the need for 'less government' overall, justifying practices of privatization and deregulation" (Healey, de Magalheas, Madanipour and Pendlebury 2003: 60).*

What is sometimes sold as deregulation or advertised as self-regulation, according to Kooiman (2003: 79), may perhaps be more adequately conceptualized as forms of re-regulation in the interest of altering traditional forms of public control into "steering at a distance". The propagated reliance on the self-governing capacities of societies perhaps owes a good deal of its "motivation" to the colonizing imperatives derived from the market. Self-governance in this sense shares little in common with the emancipative meaning of the same notion in the context of decolonization. It rather imposes an overall meta-rule of flexibilization and the introduction of coordination mechanisms, such as matrix-organization, project management, and network-formations (Kooiman 2003: 58). Instead of a pretended democratic empowerment, these inventions may lead to a policy of empowering the already powerful in national and transnational networks. Therefore, the actual significance of deregulation largely depends on the historical context and the areas of social life that are governed by these self-governing or co-governing procedures, norms and rules. These spheres coincide with some new spaces of legal pluralism and emerging constellations of plural governance, as F. von Benda-Beckmann, K. von Benda-Beckmann and Eckert (2009: 3) emphasize:

> *"(T)he sheer number of actors involved, their character, as well as the global networks they are involved in, are of a different scale than previous constellations of plural governance. Moreover the normativity that shapes their relations has been transformed through international law, transnational legal norms and international conventions. The emerging constellations of governance, shaped as they are by global economic relations, power structures and legal pluralism, confront us with questions regarding their effect on inequality, on legal responsibility for acts of governance, and the role of law in these processes."*

Under conditions of legal pluralism the scope of state interventions becomes limited, as the state can no longer be expected to function as the sole guarantor of constitutionality and legality. Some political scientists seem to envision governance plura-

lism in the network society with an interventionist state "at the controls". According to such views, the constitutional state requires the multifaceted interactions of plural governance to be governed by legal principles, such as equality before the law, legal security, unity of the law and due care (Kooiman 2003: 124). But once the state-centric unity of law has become dispersed in various degrees, there are no uniform standards available anymore (if they have ever been) to refer to for interventionist control. Then legal pluralism itself becomes an object of plural forms of governance and therefore enters into an uneasy relationship with its mirror image.

In one or the other way, the contributions to this volume deal with empirical situations that are characterized by a destabilization of hierarchical arrangements in the legal and political sphere, for better or for worse, one may add. Conjoining the paradigms of governance and legal pluralism may however facilitate a more complex understanding of one in the light of the other and provide some new insights into the analytical opportunities and theoretical limitations of their application. In any case, the combination, whether under the heading of a political anthropology of law or not, may help to un-cover the intricacies connected to many self-acclaimed generic remedies and doctrines of salvation, from "good governance" to network governance and global governance.

3. Good governance or good hegemony?

Apart from governance concepts derived from empirical studies of certain fields of action, as for instance academic governance[10], genetic governance[11], or corporate governance[12], a great deal of the rapidly growing body of literature on diverse aspects of governance focuses on a particular governing level and its relation to the classical modernist view of state political institutions. In the case of local governance, various institutional arrangements are scrutinized for their enabling or restricting frameworks from the perspectives of contrasting visions of multi-level governance. These constellations stretch from communicative governance through co-governing or co-management devices (e.g. of natural resources) to new forms of "indirect rule" through hierarchically subordinated local institutions (Kooiman 2003: 96–114; Marks and Hooghe 2004).

On the other end of the spectrum, "global governance" has attracted a lot of critical attention for its tendency towards a coercive harmonization of national law systems inter alia. One particularly eloquent polemic may stand as exemplary for a growing literature of concern about the rise of a thoroughly concealed empire of "harmonization": "(I)f the impetus to further harmonization comes as a coercive

10 See Tierney (2004).

11 For a critical analysis of this highly contested sub-field of life sciences, see for instance Bunton and Peterson (2005); and Gottweis (2005a and 2005b).

12 See Gourevitch and Shinn (2005).

diplomatic overture, and the sources of the laws of a community no longer derive from the customs, values, attitudes, and culture of that community, there is a case of sounding a distant early warning, or we might just find a world government by stealth after all, and it will not be federal in design" (Wiener 1999: 198).

Of course, the "dreams of global governance (and control)" premised on a notion of "world government" have opened a wide space for academic deconstructions of the envisioned "global architecture of governance" based on the transnational agency of such institutions as the World Bank, International Monetary Fund or World Trade Organization. These include detailed studies of their globally governing instruments, for instance the Comprehensive Development Framework or Poverty Reduction Strategy Papers (Wilkinson and Hughes 2002). Theoretical strategies of poststructuralist policy analysis draw upon a Foucauldian perspective of "governmentality" (Foucault 1991) not just to describe newly emerging fields of institutions or patterns, but to question the historical conditions under which and the discursive means with which particular entities emerge, exist and change (Gottweis 2003: 255).

Imperatives for the national implementation of the Comprehensive Development Framework matrix are habitually presented as developmental, but intended and employed as a means of control. Certain formulae betray such motives in a tell-tale fashion: The commonly utilized slogan, "You must own this strategy" provides but one example in this regard. It could be read as an imperative order from a donor prescribing indirect rule to a recipient (Cammack 2002: 41). Similar discourse elements of developmental governance seek to achieve a two-fold aim: firstly, to delegate the responsibility and accountability of potential policy failures to states and secondly to create supreme supervision of the global players along a chain of mandatory reporting and auditing. In the context of this volume, the camouflage of normative orderings in development *lingua*, unveiled as para-legal "project law", corresponds with the assimilatory power of other transnational law in the financial and trade sector.[13]

Along with universalized notions of efficiency, effectiveness and flexibility goes the discursive dimension of democratization, participation and equality. This "friendlier side" of hegemonic orders offers another important starting point for deliberative policy analysis. Hence many authors take the lip service to democratization accompanying the agenda of "world developmentality" at face value to sue for a meaningful democratization from below. The postulated return of the political promotes the idea of an "agonistic pluralism". It foresees a "healthy democratic process" based on a "vibrant clash of political positions and an open conflict of interests" (Mouffe 1993: 6).[14] Arguments and reasons, as the only acceptable back-

13 See especially Wiener (1999: 150–185) for his treatise of the Lex Mercatoria developed from medieval trade agreements to a transnationally binding body of international codifications, "universal" principles and customary trade law.

14 See also Mouffe and Laclau (1985) for their classical conceptualization of radical democratic politics.

up for agonistic validity claims and the discursive space allowed for their free play, might provide measures for its degree of "democratic healthiness". Most conceptualizations of democratic or deliberative governance draw heavily on theorems of critical discourse theory and communicative rationality (Habermas 1996) to shape models of "collaborative policymaking" and communicative governance (cf. Innes and Booher 2003: 35–38; Kooiman 2003: 100). This communicative turn in (deliberative) policy analysis invokes a reversal in the relationship between politics and policy-making in favor of "people's participation". While policy-making is conventionally conceived as a result of politics, Hajer (2003: 88) maintains that policy discourse could be potentially constitutive of political identities that may in turn motivate a "reinvention of politics" on the communicative grounds of deliberative policy-making. Such conceptions appear in line with earlier normative ideals of "good governance" circulated in UN programmatic designs:

> *"Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources" (United Nations Development Program 1997a: 3).*

However well-intended such apodictic prescriptions may be, the legitimacy of universal normative standards for governance remains in doubt if their orderings arouse suspicion of serving particular interests. Behind the euphemistic talk of development cooperation commonly lurk quasi-legal requirements of law and governance imports. These are conditioned through project provisions in accordance with social and economic structural adjustment programmes. Critical analysis ideally allows the unmasking of these proclaimed forms of "good governance" as hierarchical arrangements of "well-behaving governance" (cf. Welch and Kennedy-Pipe 2004: 132–143).[15]

Correspondence of a given particularistic situation to the presumed substance of "good governance" and the "rule of law" says very little about a "broad consensus in society" in the historical genesis of law and policies. Appeals for the development of global consciousness rooted in civil society appear quite short-winded when confronted with the realities of presumably indispensable risk-managements, aptly characterized by Zygmunt Bauman (1992: 25): "In our society, risk-

15 The self-appeasing practices of prescribing conditions (of democratization) to development projects has contributed to a new discipline of role-play, as Eckert, Dafinger, Behrends (2003: 22) indicate for the case of a World Bank credit for the Chad: "It remains to be seen whether this new body of governance will have the desired impact in a country, whose regime still wants to support militia or ethnic groups on the one hand while at the same time maintaining the image of being internationally cooperative and following the dictates of good governance."

fighting can be nothing else but business – the bigger it is, the more impressive and reassuring. The politics of fear lubricates the wheels of consumerism and helps to 'keep the economy going' and steers away from the 'bane of recession'. Ever more resources are to be consumed in order to repair the gruesome effects of yesterday's resource consumption." New modes of multi-level or network governance may be participatory, transparent and accountable to some and opaque to others affected by their decision-making. Conjoining the two paradigms of governance and legal pluralism promises however some heuristic gains to determine the historical accumulations of power and their differentiations. A sufficient level of such information constitutes a prerequisite for any statement on the relational resources and thus the procedural quality of (good) governance and the (re)production of law (cf. Healey, de Magalheas, Madanipour and Pendlebury 2003).[16] A praxeological approach that focuses on the logic of actual practices as strategic though not necessarily rational choices of particular capital investments of actors appears most promising for the suggested political and legal history of dominance inherent in governance structures:

> *"What we need, in effect, is a form of structural history that is rarely practiced, which finds in each successive state of the structure under examination both the product of previous struggles to maintain or to transform this structure, and the principle, via the contradictions, the tensions, and the relations of force which constitute it, of subsequent transformations" (Bourdieu und Wacquant 1992: 91).*

Behind the simultaneity of different bodies of law – whatever their internal relationship – lies the temporal dimension of a historical dynamic. Certain governance structures may privilege a particular constellation of legal pluralism, but the latter in turn reproduces and thereby transforms the governance set-up as well. If the metaphor of "law as a river" (F. von Benda-Beckmann 2001) holds not only for seasonal fluctuations but also for irregular, non-linear changes, a thoroughly historicized perspective on "law in flux" draws attention to changing power relations, thus bridging the epistemological gap between simultaneity and dynamic processes:

> *"Similarly the relative volume, content and significance of different legal subsystems to the encompassing body of law may change through time. The history of plural legal systems in most third world countries provides particularly vivid illustrations of the ups and downs of state law, religious laws and customary laws" (F. von Benda-Beckmann 2001: 121).*[17]

Empirical studies of the processes and practices involved in the governance of legal pluralism are well advised to keep a critical distance from pre-fabricated notions

16 As various contributions to this volume show, a historical "sociology" of interest(s) allows for an account of imbalances in the processes of lawmaking predating the "rule of law".

17 Violeda Umali provides a striking example of such competing legalities in relation to Philippine fertility prevention regulations in this volume.

or "ideal-types" of governance. The roles of the state or state agencies in such dynamic arrangements do not fit well with presupposed "evolutionary" changes of a post-national constellation. They rather vary from a (partial) retreat or "departure" of the state, an arrival of new or reinvented state institutions and regulations, the resilience and persistence of the state as an internally changing actor to paradoxical processes of a state increasing its significance by devolving tasks to non-state actors, as a possible outcome of collaborative or complementary governance (Eckert, Dafinger, Behrends 2003: 25).

The contributions to this volume emphasize in different ways the asymmetries, hierarchies, double standards and euphemisms reflected in many pluralistic arrangements. They investigate the practices of governance shaped by legal pluralism and in turn examine how different modes of governance change actual arrangements of legal pluralism. Thereby a strong practical research focus is placed on the actual power struggles and the inequalities between different sets of actors. As a consequence they point to the need for further political legitimization that transcends the neat models of good, participant, democratic or network governance presented by some academic and political designs. Furthermore, an empirical focus on the interactions and practices of actors within a particular institutional setting of legal pluralism may entail the desirable side effect of questioning some persistent pleadings for abstract and ideal(ized) governance models. Most, if not all of the chapters introduced in brief in the following, contribute to a pragmatic and historical view of legal pluralism as an every so often contested social fact. They question the pretentious claim of exclusive state law legitimacy. However, their actual findings indicate that legal pluralism generally poses difficult problems of jurisdiction, judicial and administrative competence, legal certainty, predictability, regularity, access to justice, and, of course, governance.

4. The chapters

Bertram Turner's chapter on Salafiyya activism in the Moroccan Souss examines the contest between transnational (religious) law, state law and local "customary" law as a power struggle in the field of governance. It analyzes the legal sphere in a rural area in South West Morocco as an arena of competition between the transnationally active Islamic movement and other legal actors, including the state, over access to the ultimate source of legitimacy. The empirical observations of legal disputes show the Salafiyya attempts to promote a return to the roots of legal Islam (*shari'a)* in order to achieve the reorganization of social life in accordance with core Islamic principles. The Islamist activists challenge the capacity of other legal actors, particularly those associated with local Islamic practice, to serve justice in general. Their transnational religious activity enters an already plural legal setting and thereby creates a new constellation of plural governance. It provokes a reconsideration of local legal identity and social belonging.

This contribution shows how much potential is attributed to the law for achieving social change, at least by the Salafiyya. Legal discourse thus determines the emerging multi-level or network governance in all competing social sectors, but particularly for the Salafi activists who stress a universal Islamic morality founded on the *sunna*, i.e. the legal tradition based on the words of the Prophet Muhammad himself. Turner's chapter offers an enlightening treatise of overlapping legalities complicated by the advent of a transnational flow of (religious) law. It however allows a now and then amusing glimpse into a local legal battlefield, where the real-life story of the local moonshine distiller ends with a somewhat surprising outcome.

Julius Lambi's chapter on the struggle for democratic governance in Cameroon focuses on a particular event of political unrest and civil society protests against a rigid non-participatory and autocratic form of governance. It shows that legal pluralism in Cameroon does not only take the form of competing customary legal norms and state laws, but also manifests itself through a myriad of non-state actors, such as civil society organizations. Since the democracy movement of the 1990s in Cameroon, which resulted in the introduction of multiparty politics, the country has been stable and political turmoil has been rare. In February 2008 violent anti-government protests unexpectedly sparked off. Lambi analyses how social organization and grievances against the regime interacted to activate widespread citizen revolt against constitutional amendment – the elimination of presidential term limits – and high costs of living.

On the one hand, the disorganized protests succumbed easily to repression and failed to achieve their goal of preventing the removal of presidential term limits from the Constitution, thereby allowing President Paul Biya to run for another term in the 2011 election after gaining power in 1982. On the other hand, the geographical extensiveness and violent nature of the demonstrations pressured the government into taking precipitated measures to address some of the issues of popular discontent. Lambi's chapter seeks answers to the questions why protests never occurred before and no social movement was able to grow to some meaningful size, although grievances against the centralized and exclusive nature of the government have been a constant feature within the Cameroonian population. He comes to the conclusion that legal pluralism in this case lives side by side with a highly centralized form of governance. When traditional authorities and other social organizations are either co-opted or suppressed, even official multi-party democracy – according to Lambi – conforms to what those with absolute power say democracy is. He uses the umbrella concept of governance for his critical questioning of political action hampered by obvious power imbalances, in-transparencies, vague accountabilities, forms of contingent inclusion and exclusion, and political inequalities (referred to earlier in this introduction).

Janine Ubink's chapter on the "adaptation" of customary land law in Ghana according to the interpretative realm of traditional authorities – or "chiefs" – takes a critical stance on a governance landscape, in which legal pluralism does not provide sufficient checks and balances to deal with inequalities. It warns against an idealist view of chieftaincy (before the fact), which regards chiefs as a remedy for all possible political ills. This empirical example questions an a priori view of chieftaincy as a solution to the limited reach of (state) government into the locality and its low performance concerning the principles of good governance. Against the grain of such "traditionalist" argumentations this study of common land sale in peri-urban Kumasi maintains that chiefs in this local environment are not necessarily the "... prime movers in the fields of development and natural resource management who can preserve a reasonably inclusive and equitable system". In reference to the discourse of legal pluralism, some of the analyzed examples serve as a stern warning that customary norms do not always represent an ideal or at least better reality than state law and state courts generally treated as remote, strange, expensive and difficult to access.

Thus, Ubink's study may be read as giving a direction to the question of whether state institutions on whatever level or traditional authorities provide better solutions of ("good") governance. And the only possible answer to this often asked question in development circles is: it depends. Theory-derived parameters are in fact needed to evaluate particular practices, not only for assessing the management of communal lands or common properties, but for all forms of governance. A praxeological approach to the struggles over various forms of capital in a given field of power may surface unexpected structural inequalities in their historical genesis. Thorough procedural reconstructions of the actual decision-making in land re-distributions through sale, lease or re-allocation should allow further assessments of the extent to which chiefs actually manipulate and shift the meaning of landownership in their own interest. This contribution asks for further research, to find out if the case of peri-urban Kumasi with its current socio-economic reality of booming land prices is exceptional or rather symptomatic of a tendency to neglect the administration of land in the interest of the whole community. The clear increase in the power of chiefs has been observed in many African states beyond Ghana and may be due to their newly found role as voter-brokers for political parties (among other reasons). Ubink accuses the current political establishment of unwillingness to control stool land administration and sees politicians as reluctant to "rock the boat" in order to leave the presumed "internal village affairs" sacrosanct. Her analysis provides a rare case of critiquing a state's non-involvement in local governance.

Markus Weilenmann's chapter offers a statistical investigation of Burundi's state courts. His long-term study subjects state-centric judgements imputing effective conflict resolution and the rule of law exclusively to the realm of state law and "formal" judicial institutions to a thorough empirical scrutiny. In contrast to such pre-

conceived notions of "the" (state) law, Weilenmann questions the distinction of "formal" and "informal" law as inadequate on the actual level of legal practice(s). He rather employs a quantitative "deep" look at the correlation of actual law cases with their potential outcome for conflict prevention, management, or resolution. This contribution thus offers another critical review of some redundant positions of certain developmental agencies that only stress the access-to-justice-question and operate with a misleading juxtaposition of "modern" state and so-called "customary" law in order to question the legality of "informal law". Along with a common preconception of a self-evident superiority of Western state law and an almost lewd postcolonial appropriation of the human rights discourse goes the evolutionist teleology that suggests a necessary socio-political development from "informal" to "formal" law. One of the rarely considered costs of such thinking is the neglect of the sphere of interplay between state law, "customary law", indigenous law, religious law and so forth. All non-state law concepts are thus perceived as rather exotic normative orders on the brink of extinction and therefore seen as separate entities, whereby the focus on intertwined legalities is ignored. Moreover, transnational flows of law influencing the self-regulating powers and thereby contributing to the "bewildering kaleidoscope" of multi-legal fields are also exempted from such a simplistic view on "the" law.

In the violence-stricken Burundi the pre-colonial state order left behind by an abolished sacred kingdom competes with the bureaucratic state model, imported by the colonial powers Germany and Belgium. The author's statistical data accompanied by fieldwork depart from the "developmentalist" problem identification that rests on one single state model and assumes a more or less linear development from pre-colonial to post-colonial times. He pointedly coins this idea of the "modern" State simply devouring the former one as the "crocodile model". Project law often prescribes "conditionalities" which base any agreement of development support ("aid") on a prefabricated notion of "democratization" along a Western ideal, without raising the key-problem of popular consent, and thus the legitimization of governance as such. Based on the results of his historicized comparative data analysis of court cases throughout the country, Weilenmann rejects rash proposals of customary law codification (or assimilation to Western ideas of "law proper") to increase the rule of law and decrease the tendency to "ethnic" massacres. He concludes that ready-made solutions of decentralization, democratization, and the simple promotion of human rights remain imprisoned within the residual power structures of the colonial heritage and leave the fundamental issue of a legitimate governance of legal pluralism untouched.

Manuela Zips-Mairitsch's chapter expands on the legal struggle over land and other rights in the Kalahari semi-desert, particularly on what is today the Central Kalahari Game Reserve. It draws on two interviews with Mathambo Ngakaeaja, the Botswana representative of WIMSA (*Working Group of Indigenous Minorities in Southern Africa*) and the *First People of the Kalahari*. His border position between transnation-

al, regional, national, and local governance networks allows an exceptional access to the tug-of-war carried out by competing social sectors and individual stakeholders. Indigenous communities try to participate in a struggle, which affects them mostly and directly, but often enough find themselves caught between powerful forces at work in this political game about leadership in governance. In some way, the transformation of the confrontation to the judicial level takes away a good deal of the initiative from the affected indigenous communities and makes them appear almost like the rope or the prize at stake in the tug-of-war. They seek to find justice in a process that is thoroughly alien to them, removed from their ways of thought and expression and driven by lawyers who claim indigenous rights by claiming to know the law-ways of how to secure those interests translated into a law-suit.

Well into the second *International Decade of the World's Indigenous People* (2005–2014), proclaimed by the UN General Assembly, transnational legal norms and international conventions strongly influence plural constellations of governance and law. Zips-Mairitsch's contribution takes a look on the contested realm of governance through the eyes of a direct participant who needs to grasp the intricacies involved that are glossed over by some international NGOs such as *Survival International*. The choice of two contributions on the same topic giving space to local NGO representatives (namely Alice Mogwe and Mathambo Ngakaeaja) should not be interpreted as taking sides, but quite to the contrary as balancing a bias in the mediatisation process that almost exclusively emphasizes the most resourceful actors, i.e. the government of Botswana on the one hand and the international NGO *Survival International* on the other. In identifying himself as Motswana (citizen of Botswana) and "Bushman", Mathambo Ngakaeaja directs his hermeneutical efforts towards a multi-dimensional understanding of all parties involved. He has to go the difficult way to comprehend hidden or at least subcutaneous meanings of an unfolding drama of governance changes and legal developments. Whereas the international NGO could spare itself from considering the complexities involved, local activists had to concede that government actions were based on a sentiment of a jeopardized sovereignty and a postcolonial stance of non-external interference.

Nevertheless such sensitivities for the overall context of international power relationships do not absolve national or regional human rights organizations from taking into account the evolving transnational legal context at work. Zips-Mairitsch's contribution indicates emerging legal instruments for the protection of indigenous rights that are not sufficiently covered by existing instruments on minority or human rights (as some anthropologists seem to ignore). Through her contextualization of the two interviews shimmers the irony that nature conservation has been taken as a pretext for the termination of basic and essential services – water supply above all – leading to the more or less forceful resettlement on the outer margins of the Game Reserve, while private safari companies today boast all amenities (including swimming pools) on privatised camp sites adjacent to the former settlements of San communities.

Alice Mogwe's chapter on the court case of the Kalahari San against their internal displacement from their ancestral lands in Botswana examines a judicial indigenous rights struggle in the light of the divergent legal worldviews of the opponents. The interactions before the High Court of Botswana can be considered a showcase of legal pluralism even on the semantic level. The professional legal experts and the 189 San complainants appear as distinct epistemic communities divided by their historical relationship to land and natural resources. Mogwe's judicial discourse analysis provides an enlightening glimpse on the confrontation of divergent sets of normative and principled convictions and differing notions of validity. It illustrates the limitations of legal conceptual frameworks in the search for a sustainable resolution to conflict and questions the courtroom as an appropriate environment to interpret the multi-layered meanings of identity, culture, history and laws, which are embedded in the very make-up of societies. Her key-question is, if access to justice as well as justice itself can be realised for marginalised communities in a forum based on the application of one – i.e. Western – concept of law directed towards a conflict of competing legalities.

In this Botswana case (Roy Sesana and others vs. The Attorney General) – which may be seen on par with the "Mabo case" in Australia (1992) or the "Delgamuukw case" in Canada (1997) in its importance for indigenous land claims (in Africa) – inequalities were perhaps *the* defining element. The case uniquely exemplifies a judicial struggle for legal responsibility for acts of governance and the role of law shot through with various threads of international law, transnational legal norms and international conventions. Alice Mogwe observed not only the legal dispute in its entirety, but was already involved in the whole process of (failed) negotiations that predated it. Her participation as the chairperson of the most prominent Botswana human rights NGO enables her to transcend the perspective of a trained lawyer. Her contribution allows a rare insight into the shifts in governance from a tentative participatory approach based on consultation and involvement of local communities in the decision-making process concerning their own development to the (more or less) well-intentioned paternalism or "trickle-down" approach to governance that she views as a standard procedure in postcolonial Botswana. However, her careful questioning of the applied governance of legal pluralism in this case goes far beyond the "state bashing" practised by international activist NGOs such as Survival International, which she in fact criticizes of having unnecessarily hardened the Botswana stance towards a rights-based development approach. In her assessment of state developmental policies it is not so much the purely economic level of diamond mining – demonized as malevolent exploitation by the Survival International media campaign – that she critiques, but the paternalistic attitude behind the practised top-down mode of governance. On this premise government determines what is appropriate for the people, with little true consultation, participation and ownership of those to whom the development is geared. Against such hegemonic arrangements, which come at high costs of social disintegration and even public expenditures in exchange for dependence, Mogwe calls for inclusive forms of governance in plural legal

constellations. Regarding the court case on the rights in the Central Kalahari Game Reserve this means a return to a negotiated resolution on the basis of mutual respect of difference and similarities as well as recognition of different historical experiences and, indeed, legal pluralism.

Werner Zips' chapter takes the historic inauguration of the first female Paramount Chief in Botswana as a starting point to review the unique complementary governance set up in a country that is often depicted as a rare factual democracy in Africa. Kgosi Mosadi Seboko a Mokgôsi deliberately chose a rights-based approach to claim her leadership position of the Bagamalete. The succession process provides a striking example of the integral dynamism built into the discourse of tradition. Kgosi Mosadi based her claim to a conceived principle of "birthright equity" that she saw enshrined in the fundamental rights granted by the Constitution of Botswana. If it was therefore the rule that women could not succeed as Paramount Chiefs – as the anthropologist Schapera had apodictically stated – such a "rule" of a patriarchal system was there to be changed. The entire selection process may be understood as a political steering of social transformation and change. It involved a plurality of actors reaching far beyond the former kingmakers to women rights groups, the political elite and civil society in the national context as well as to media, NGOs and activist groups in the international arena. Thus, the choice of the first female Paramount Chief in the history of Botswana realized a form of complementary governance of legal pluralism.

Zips argues that generalizations about the undemocratic nature of "traditional authorities" in Africa (and beyond) appear misconceived as long as they are not established by empirical research. It rather depends on the actual processes of legitimization and procedural aspects of decision-making through consultation, deliberation, and consensus building to draw meaningful conclusions about the democratic quality of any institutions and the modes of governance. All political fields (of power) are obviously defined by competition, inequalities and conflicts of interests. Tensions between African kingdoms that variably trace their legitimization from precolonial, colonial, or postcolonial orders and the evolving bureaucratic state models are no exception. However, such tensions may not necessarily be translated into implacable obstacles for democratization. Kingship or Chieftaincy in Botswana is not merely running in parallel with state governmental institutions, but complementarily involved in a peculiar mode of multi-sphere governance on the district and village level. Furthermore the constitutional provision of Article 85 (5) entitles the House of Chiefs to "(...) discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognizance in the interests of the tribes and tribal organizations it represents and to make representations thereon to the President, or to send messages thereon to the National Assembly." Any a priori dismissal of traditional authorities as primordial undemocratic institutions not only runs the risk of a state-centric bias, but also misses the chance to grasp the potentials of these new arrangements of complementary governance. Chiefs in Bot-

swana are not merely voter-brokers, but co-designers, implementers, mediators and facilitators of policies. The case of Kgosi Mosadi Seboko illustrates how a dynamic of empowerment perhaps least expected in the institution of traditional leadership may evolve new spaces for participatory governance.

Annika Rabo's chapter examines family law in Syria in the context of legal pluralism. It is based on empirical multi-sited research over an extensive period of 25 years in various parts of Syria, and thus comparative in nature. For the author, family law neither simply reflects gendered and generational relationships, nor simply molds them. It is rather a product of social conditions and, at the same time, conditions and thereby potentially reproduces imbalances. Her comparative framework allows Rabo to base her analysis of the plural Syrian society on the dynamics of legal pluralism in the field of family law. She explores the evolution of Syrian family law (in its plurality) and the changes in its internal constellation (of legal pluralism) as an important indicator for state-citizen dynamics, the contentious ordering of majority-minorities relations, and transformed definitions of masculinity and femininity. The Syrian state law is based on Islamic law, but recognizes the right of religious minorities to (partially) organize and execute family law. Even where such official recognition does not exist, informal forms of family law may nonetheless be accepted informally. The chapter discusses various situations of legal pluralism and the policies dealing with such multi-legal realities. In certain rural areas, for instance, marriages and divorces used to be contracted informally without the obligatory state registration; in certain urban contexts people manage to contract 'legal' marriages when the bride has not reached the legal age for marriage. Syrian legal pluralism reveals a degree of (historically produced) flexibility and informality against more recent statements by some Syrians that proclaim family law as an expression of sacred law – *shari'a* – and thus an important symbol of Islamic authenticity.

This contribution carefully establishes the historical background of Syrian family law, which was only codified in 1953 and represents a patchwork from various legal sources. It enquires into the implications of the state family law based on the shari'a for Christians, Jews, Druze and Islamic minorities, foremost in rural areas. This "Law of Personal Status" (*qanoun al-ahwaal ash-shakhsiyya*) encompasses all Syrian citizens, but in a variety of matters – from betrothal, or marriage to divorce – some sectors of society follow their own codes, and have their own religious courts. Rabo presents the divergent practices of Syrian Christians (internally divided into a plurality of denominations with their own codes and religious courts), villagers in northeast Syria (often referring to their customs and traditions outside state law), and religious Sunni Muslim families in Aleppo (self-acclaimed guardians of tradition) in their dealings with state law. Her analysis demonstrates that women and men are presented as equal before the law in Syria, but a multitude of factual exceptions is regulated by the "Law of Personal Status", thus leading to some sort of legal pluralism even within one and the same source of law.

Whereas it is clearly possible for a woman to become a judge in the highest court of the country, the same woman would not be qualified as guardian of her own children in the case of a divorce. Inequalities therefore loom large in a multifarious legal arena, though perhaps in unexpected ways that occasionally motivate members of particular religious groups to look for legal solutions in alternative judicial fora. Nevertheless the legal exceptions made for Syrian Christians conserve and reproduce not only the influence of the Christian clergy, but also the difference between Muslims and Christians. Rabo shows a picture of legal pluralism that benefits few members of society and allows very few choices for a majority of the population. This is perhaps the major cause, why Syrian women – according to her contribution – now seem to favor legal subordination in their communities, rather than believe in weak promises of legal equality from the state.

Myrna Safitri's chapter on decentralization and legal pluralism in Indonesian state forestlands explores the outcome of policy reforms for local communities. Deforestation and other environmental problems have affected the third largest tropical forest in the world tremendously over the past decades. The Indonesian government introduced community forestry policies to counter the crisis brought about by degraded forests and social conflicts. This was also a way of reacting to international pressure calling for new regulations aimed at the protection of cultural diversity and indigenous livelihoods. New modes of governance were expected to steer delegations of self-regulating power to local communities. These were envisioned to serve the double purpose of offering remedies for inefficient, unaccountable and top-down practices of natural resource management and of delegating the responsibility for a multitude of complicated forest related conflicts, which have emerged as a consequence of competing and overlapping claims on forestlands. A state law on regional autonomy provided the legal framework for the decentralization of forestry policies in 2001. It was interpreted by some international monitoring agencies as a "big bang" to the top-down mode of non-participatory governance practised by central government until 1998. However, since then the policy changes and their ambivalent and diverse results in local contexts earned not just the expected praise but also a considerable amount of criticism.

Safitri observes that decentralization has created broader authority over the forestry sector for local governments and other local institutions, yet identifies a variety of problems in the interplay between government policies and the dynamic of local communities in enforcing their local rules. Her chapter elaborates on community forestry's relationship with decentralization and legal pluralism in one particular local community. One main focus is on the community's and civil society's experiment of setting up *forest user groups* and their difficulties of local rules enforcement. The new sphere of community forestry governance comes with the unexpected side effect of stimulating rent-seeking behaviour of local officers, elites and free riders. Resource sustainability and social justice for ordinary people of forest communities are thus not necessarily concomitants of well-meant com-

munity forestry policies implemented in state forestlands. Against their promises of emerging new forms of democratic governance set to open the state forest gate to local rules of forest communities, the government recognition of local rules appears not to be the end of the story. The recognition of legal pluralism in state forestlands is therefore – according to Safitri's empirical data – not enough to overcome some of the obstacles faced by local communities in enforcing their rules. Her chapter critically reviews the experiences of a local community in setting up their forest user groups and local rules. It analyses what factors determine the effectiveness of those local rules in addressing local forestry and social problems. She comes to the conclusion that the abuse of power and discriminatory policies of social differentiation are not the exclusive property of central state institutions. Legitimacy is a requirement that needs to be earned in whatever context from local to global.

Violeda A. Umali's chapter assesses one of the most controversial fields of governance in the Philippines for the past four decades, namely the population policy-making arena of legal pluralism. Her analysis provides a historic dimension to changing attempts of forging population policies to accommodate the urgent needs of population management under conditions of strong normative legislative advocacies. She describes changes in the pro-choice policy advocacy against the background of a sacrosanct attitude to fertility prevention – the pro-life doctrine – nurtured by the Catholic Church. The occurring struggle between these two normative ideologies is reviewed as one of the most enduring, most contentious and most high-profile policy advocacies in the Philippines. Umali carefully reconstructs the intense debates among the various actors subscribing to different and sometimes conflicting "normative contexts". She presents the issues at stake as a 'competition' between the pro-choice and pro-life stakeholders. Her empirical data illustrate the "governance in transition" within the pro-choice advocacy group that explores varying strategies against the doctrine enshrined in the encyclical *Humanae Vitae* (On the Regulation of Birth) by Pope Paul VI. (1968). Whereas the pro-choice ideology allowed for various paradigm shifts to address the criticisms that have been raised against it, the pro-life ideology remained unresponsive to change. The author links this resistance to even considerate possible adaptations over a period of four decades with the irrefutable doctrinal letter and its "wisdom" founded on the notion of the infallibility of the Pope.

The contribution examines the stalemate in legislative reform as a consequence of a complex power struggle in a problematic constellation of legal pluralism. As a population policy advocate the Catholic Church was able to prevail over several attempts of the pro-choice networking to pave the way for a law on population and reproductive health. Umali elucidates how the success of the pro-life advocacy maintaining (to some extent and for some sectors of the population) a ban on "artificial" contraceptives is reflected by the weaknesses within the pro-choice group of stakeholders. However, the paper takes the national government up on its duty to adopt

an official policy adequate to address an important public need and to redress an existing inequality of access to basic services. According to the author legal pluralism concerning population/reproductive health issues offers very little participation and very little choice to the population concerned, given the Catholic Church's opportunities to dominate and occupy a prominent role in national politics.

Wolfgang Gabbert's chapter questions the recognition of indigenous law through constitutional amendments of Latin American countries. After a long history of forced acculturation and assimilation following an even longer period of genocide, many new Latin American constitutions began to acknowledge the multicultural and ethnically diverse character of their affected populations and recognized the existing indigenous legal and political practices. Gabbert interprets these changes as first steps in creating more accessible and more adequate legal systems. But he issues yet another warning against some broad-spectrum medicines that might have undesirable side effects, particularly on the epistemological level. His concerns with these constitutional reforms touch on a number of practical and theoretical issues related to debates in social anthropology about the potential reification of culture and tradition through commonsensical uses of the concept of 'indigeneity'. The chapter discusses this new arena of 'strong legal pluralism', i.e. legal pluralism sanctioned by the state and government officials, namely the aspects of political fragmentation within indigenous populations, their possible cultural heterogeneity, the relationship between law and social structure, and the incidence of power relations in customary law. Gabbert asserts that indigenous peoples are perhaps not always that homogenous, egalitarian, participatory, and power-neutral as assumed by some (self-acclaimed) advocates of indigenous rights. He argues that much of the current debate on the recognition of so-called indigenous customary law applies the earlier model of the nation-state, thereby running the risk of fostering new forms of cultural homogenization and sustaining possible relations of domination in indigenous groups.

The contribution emphasises the necessary changes of immemorial structures of inequality and discrimination envisioned by the international and national protection of indigenous rights. But Gabbert at the same time reminds us that indigenous communities – even in the case that they are really communities in the strict sense – rarely speak with one voice, may be internally stratified and should therefore not be declared as saints in harmony with each other and with nature or, worse, as modern representatives of the proverbial "noble savages" and other imaginations of European or Western design. There is a simple reason why any overwhelming generalizations are potentially detrimental to the declared aims of empowering disadvantaged communities, and that is the idealization of 'indigenous peoples', which appears often enough "bigger than real life" and, therefore, almost impossible to live up to. It remains a task of legal anthropological research to establish such ascribed qualities in governance and conflict resolution empirically on the basis of actual practices and procedures. Autocratic leadership, irresponsive to open participation, may hijack indigenous groups, just like any other political entity. A priori assumptions that indige-

nous groups are automatically governed by equitable will-formation and consensus building presume social harmonies, which are easily traceable to Western projections of untouched "natural" forms of social living. Power relations are obviously not alien to groups arrogating the category of indigenous peoples for themselves in order to seek protection against all forms of violence exercised by other more powerful sectors of society. Indigeneity as a notion thus offers a legal remedy against a wide range of discriminations stretching even to the most extreme forms (such as genocide) that are otherwise not covered by alternative measures (such as minority rights protection). After all, the need for such a trans-cultural denominator issues from legitimate interests for legal protection against all possible forms of oppression. It is in this regard that Gabbert's chapter implicitly underlines a demand of legal considerations (and knowledge) from anthropologists who sometimes discuss rather blatantly terminological issues related to the notion of indigeneity.

Perhaps, referring to this last point, the greater part of this book may be read as aiming to make a modest contribution towards a more legally informed discipline of social or, well, political anthropology.

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