

LEGAL PLURALISM IN INDUSTRIALIZED SOCIETIES

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Introduction

In July, 1988, the Commission on Folk Law and Legal Pluralism sponsored three symposia at the Twelfth Congress of the International Union of Anthropological and Ethnological Sciences (IUAES), in Zagreb, Yugoslavia. This volume includes a selection of papers from the symposium on legal pluralism in industrialized societies.¹ Each of the Commission's symposia in Zagreb focussed on some aspect of legal pluralism. The goal of the call for papers for the symposium on industrialized societies was two-fold: (1) to gather together new scholarship on legal pluralism in societies not traditionally associated with the research project of legal ethnology (i.e., industrialized societies), and (2) to seek some rationale for comparing ethnographic studies of legal pluralism in the global processes of industrialization. Accordingly, the call for papers specified that the term 'industrialized societies' was not meant to restrict discussion to certain parts of the world, nor to some stage of

1 The session in Zagreb took place over the course of an entire day devoted to the papers of the sixteen participants who were able to attend the conference. In compiling the volume, we solicited papers from symposium participants, as well as several individuals who had been scheduled on the program, but who were unable to make the journey to Yugoslavia.

The other symposia were entitled 'The Socio-Legal Position of Women' (Symposium II) and 'Group Rights at the Close of the Twentieth Century' (Symposium III). Selections of their papers were published in, respectively, the *Journal of Legal Pluralism* (1990-91, nr 30-31, special editors Els Baerends and Carol LaPrairie) and in *Law and Anthropology, International Yearbook for Legal Anthropology* (1990, nr 5, ed. R. Kuppe).

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development, but rather to refer to forms of social relations generated by industrial work. More generally, the call for papers invited ethnological, historical, comparative and theoretical perspectives on legal pluralism, in an attempt to make explicit the widest possible range of approaches that constitute the field, and to place them in active conversation with each other. Our selection and presentation of these contributions were guided by criteria of thematic coherence and methodological diversity around basic issues that define and debate legal pluralism as a field of anthropological inquiry.

When the call for papers was issued in 1987, contemporary anthropological debates on legal pluralism (see Moore 1973, Galanter 1981, Griffiths 1986, Merry 1988, then available in draft form) were directed at redefining - and, to some extent, recontextualizing - what had been longstanding concerns in the ethnology of law with the diversity of legal cultures and practices within states. These new debates focussed attention on substantive definitional issues arising in part from the dramatic changes in post-colonial 'third world' societies, and in part from new ethnographic attention to the legal processes of the 'first world.' Early studies of legal pluralism had emphasized the distinctions between law and custom, official courts and unofficial forums, state law and native 'traditions', literacy and orality, and so on (for reviews of this literature, see Nader 1965, Collier 1975, and Moore 1969). In the ethnographic studies of the 1950s, 1960s and into the 1970s, legal pluralism came to be defined in practice, though not in theory, as a characteristic of colonial and post-colonial societies, not of the 'complex' societies of the west - which were assumed to have legal systems that were entirely integrated around formal state legal institutions and processes.

Two developments reoriented anthropologists' studies of legal pluralism around a broader comparative problem that would include 'the west' and other large-scale societies. The first of these was a significant accumulation of legal ethnography from around the world, including the United States, Europe, India and Japan (for examples, see contributions to volumes edited by Nader 1969 and Black and Mileski 1973) - nontraditional sites of anthropological research. These projects, however difficult they might have been to synthesize from most points of view, together made a compelling case for reconsidering conventional assumptions about legal pluralism and the limited degree to which social behavior is oriented toward (or reflects) formal law - and vice versa. The second development was the institutionalization of multidisciplinary sociolegal research, both internationally, through the Commission on Folk Law and Legal Pluralism, and in individual countries, through the Law and Society Association in the U.S. and numerous sociolegal research groups in Europe. The empirical concerns of many scholars who joined these new associations tended toward classic questions of legal pluralism - understanding of and access to the law, extra-legal and non-legal traditions, and so on - in new ethnographic contexts. Galanter's

'Justice in Many Rooms' (1981) provided a focus and a metaphor for this new work, which brought the old but transformed rubric of 'customary law' into the diverse regulatory contexts of familiar and contemporary societies. (For more recent reviews, see Comaroff and Roberts 1981, Snyder 1981, Moore 1986, and Starr and Collier 1988).

Ultimately, legal pluralism became more or less visualized as the presence or coincidence in a certain social field of more than one legal order (cf. Moore 1973, Griffiths 1986, and Merry 1988). The state's recognition of these legal orders ceased to be the primary defining criterion in studies of legal pluralism, and instead became one variable among others in investigations of people's conceptualizations and applications of law in society. The contributions to this volume provide ample illustrations of these points. Some authors (e.g., Böcker, Cottino, and Strijbosch) deal with forms of regulation that operate largely beyond the sphere of state recognition; others show multiple legal models at work *within* state legal processes.

While the symposium tended to confirm the intellectual and collegial value of these developments, the papers also represent advances of significant sorts. One way of summarizing the symposium would be to begin with terms that Galanter (1981: 21) set forth in his influential essay on legal pluralism, in which he observed that technology-rich bureaucratic states proliferate not only state law, but also non-state law. This proliferation of forums was taken to be the result of an increasing differentiation in the various social settings - or, in his word, the 'rooms' of U.S. society: aboriginal groups, business circles, churches, hospitals, migrant labor groups, sports associations, unions, and so forth. The state itself accelerates the expansion of forums to the extent that it selectively disengages itself from its monopoly of official law and empowers other agencies, e.g., mediation centers and local citizens' boards in the United States. The papers in this volume illustrate numerous contexts shaped by such processes of state-based sociolegal proliferation.

The conference papers, taken together, reveal the extent to which the proliferation of regulatory authority affects social life well beyond the domain of its direct application. First, they show that regulatory and administrative activities - even when such activities are highly informal and improvisatory, and lack reference to state law - are shaped by people's consciousness of the state's power and authority in their everyday lives. For example, whether it is customary groups in Togo, as described by Adjamagbo, who enjoy autonomy to follow local rules and practices as to succession, or U.S. suburbanites whose sense of property values is conditioned on local zoning categories, increased understanding of the practical and existential relevance of the state's authority is one outcome of scholars' expanded search for legal pluralism in as wide a field

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as possible. These papers - again, taken together - demonstrate a relationship between legal pluralism and processes of rationalization, in the Weberian sense of the term. Just as Galanter portrayed the state's role in expanding legal pluralism, these papers show that one corollary of those expanded forums is, perhaps paradoxically, the increased relevance of the state as a rationalizing force. Even when people's disputes and normative negotiations take place far from the venues of official law, the state's law remains relevant at the horizon, as Howes' essay on privacy or Strijbosch's on Moluccan forms of supernatural justice illustrate. The official law is always *rhetorically* available, even when it is not availed in practice; thus, social interactions are ordered, in part, in terms of principles of fairness and feasibility leveraged from what is locally understood of the state's forums as ultimate authoritative arenas. The law structures situations, if not events.

Second, while the theme of industrialization, and the contexts of industrial work, were not at the center of anyone's paper, the set of papers is nonetheless suggestive as to where - beyond the workplaces themselves - an industrial economy shapes the normative experience of individuals and groups. In diverse ways, each of the papers involves social, cultural, political and economic negotiations over the meanings and circulation (and sometimes circulability) of money, credit and other forms of wealth. Most of the papers involve people who live where they do because of the availability of work, primarily in the service sectors around industrial areas. Some of them examine directly the practical and personal changes due to dislocations of immigrant populations. Böcker, for example, observes how attitudes towards reciprocity among Turkish migrants are gradually changing, in reference to their residence in a new industrial society characterized by state social security. Members of the 'second generation' in Europe are not always prepared to participate in the informal systems of mutual help that would bind them to family and larger personal networks in Turkey. In other papers, too, industrialization provides one context for the circulation of material and cultural goods among individuals, groups (of kin, professionals, neighbors, and so on), and nations - as well as the people themselves. Thus, the papers on migrants to Europe, who seek employment in an industrial economy, and the papers on zoning and other local regulatory processes in the U.S., for example, are linked by the fact that industrialization and the global circulation of people and goods shapes the nature and relevance of social order at the local level. Furthermore, the papers that deal primarily with interpersonal processes of normative innovation and negotiation reflect local manifestations of large scale processes of legal pluralism and change at the national and international levels, as indicated in papers by Smith, on pluralistic elements in the Japanese constitution, and Chiba, on legal pluralism in Sri Lankan society .

Legal pluralism and cultural difference: the volume's themes

One way of presenting the papers in this volume is by relating the authors' different analytical approaches to legal pluralism. Some of the authors (see Part I) are interested in processes of regulation at society's local levels and in the various systems of law which play a role in these processes. Others (see Part II) primarily focus on state law and subsequently analyze its mobilization and meaning at a local level. A third group (see Part III) has yet a different orientation; its authors are interested in general, comparative and theoretical questions of legal pluralism at or beyond the level of the state. The empirical research on legal pluralism collected here demonstrates that the state's law is relevant at the level of meaning even when it is not relevant as a field of action. Overall, the papers explore both aspects of legal pluralism. With regard to the debates about legal pluralism as a field of inquiry, they suggest that legal pluralism is perhaps too narrowly defined when it is restricted to those forums and processes specifically authorized by official law; however, it is too broadly defined when it is equated with the notion of 'social field' or, even more broadly, 'cultural difference.' To equate legal pluralism with either of these terms is to mute the distinctions between social and legal processes, giving cultural expression the normative force of law. On the contrary, the papers reveal the extent to which cultural orientations of law stress the potential disparities between the law's substance and process on the one hand, and 'ordinary life' on the other.

To highlight these approaches, themes and cultural implications, we will review the three Parts of the volume, indicated above.

a. Regulation at the local level

The articles in Part I focus on the ways in which different types of normative negotiations are experienced in local settings. These papers refer to the classic domain of law's 'many rooms,' noted above. In some cases, these social processes exclusively concern internally generated rules, as in papers by Böcker, Strijbosch and Cottino. These deal respectively with the internal law of Turkish and Moluccan immigrants in the Netherlands and with farmers' communities in northern Italy at the beginning of this century. With reference to theories of reciprocity, Böcker analyzes migrants' financial support of their relatives in Turkey. In part, they are motivated by compassion; in part, they are also motivated by the desire to preserve the option of returning to Turkey. As noted above, these norms seem to lose relevance for second generation immigrants; Böcker details that generation's negotiating strategies. Strijbosch describes Moluccan procedures to explain individual and social adversity as ancestral

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intervention. He analyzes this conflict between individual(s) and ancestor(s) in terms of a 'real' social conflict, with reference to the existing body of social theories of litigation. Cottino theorizes about relatively strong social reactions by individuals and groups in cases where they felt their honor to be compromised. One of his hypotheses is that these reactions, which are conventionally held to have existed in peasant communities throughout the Mediterranean region, actually respond to a 'demand for social parity.' As such, they are shared reactions among landed farmers as well as landless people, even social marginals.

In other cases, local regulation involves combinations of internal and external sources. Such processes are described by Merry, Magoska and Vandervelde. The internal processes in Merry's work are patterned negotiations and avoidances among residents in different neighborhoods of a U.S. city; the external process is the state-generated system for resolving conflicts at the local level. Internal law, or more generally, 'community spirit,' appears to be minimally developed in these neighborhoods; preference is given to state control - a preference which Merry connects to general, cultural traditions in the USA of 'legality and faith in the intervention of the State' to keep order. Magoska undertakes a similar analysis with regard to two Polish villages, one of which is more oriented toward state law and procedures, the other more oriented toward internal village procedures. These procedures vary from simple avoidance to rather well developed forms of negotiation and mediation. Magoska explains the preference of this second village for settling conflicts in an informal way by referring to certain historical and ecological factors, which would have produced a relatively high sense of togetherness and, herewith, a tendency to settle disputes within the group. Vandervelde observes and interprets the articulation and application of official land use regulations (zoning laws) by a local citizens' board in Iowa City (U.S.A.). She does so with a special interest in the use of the legal criteria for granting 'variances' of the zoning laws. She finds that the social significance of these criteria is limited by local attitudes towards law and its application. In particular, cultural ethics with respect to privacy limit the investigatory functions of local zoning boards considering requests for variance of the official law.

In these papers, the cultural inflections of law are to be found in different aspects of the ethnography. In the papers on immigrant ethnic groups in urban settings, as well as the papers on rural life, the cultural dimension is situated in the authors' definition of a coterminous relationship between legal practices and the corporate quality of social life at the margins. In the papers about urban United States, the cultural analysis is less relevant at the level of description, but instead frames the interpretive questions authors pose with regard to the

structural principles linking local experience to broader, legally constituted social fields.

b. Regulation within states

Where Part I deals primarily with the experience and application of different kinds of law in small-scale social settings, Part II reverses that focus to examine the mobilization of state law at the national level by specific groups. Regulation, in particular state legislation, offers the starting point of these papers, which are aimed at the social management and cultural meanings of regulation in communities. McMullan, for example, analyzes the Canadian law regulating the lobster industry, and demonstrates how the law itself structured subsequent contests over the control of lobstering practices in Nova Scotia. Resistance against the state and its regulations of lobster harvesting and production, which became particularly manifest in practices of 'poaching' is inspired by norms regarding free fishing among the fisherman's communities. These widespread practices of poaching are also analyzed with reference to their function of 'routine forms of resistance' as part of an ongoing process of renegotiating the terms of harvesting and production. Vincent analyzes a Trading Ordinance in colonial Uganda, examining in particular the negotiation and circulation of the legal categories in terms of which social interaction was to be defined. She focusses on elements of racial differentiation between African, Asian and European groups within that Ordinance and stresses the transformative, as distinct from a progressive, potential of this law. Rules of the Ordinance which have furthered specific colonial forms of capitalism have also unintentionally generated forms of resistance resulting in new processes of social transformation.

Adjamagbo examines a new code of succession in Togo, with particular emphasis on the problems of articulating state law and local practice in a nation encompassing plural former sovereignties. This new law is applicable only to individuals and groups who declare their abandonment of their 'statut coutumier'. According to Adjamagbo, this institutionalized practice of choice between old and new law has stimulated the development of a new law of succession that expresses values of both the written code and traditional law. Assier-Andrieu examines the legal construction of 'Indians' in Canadian law, with particular emphasis on the way anthropological ideas about indigenous life and legal ideas of indigenous and colonial, and, later, state sovereignty were fused by the very nature of the state's processes in assessing and resisting indigenous claims. His examination is based on archive materials, particularly on the proceedings of the Nishga case between 1969 and 1973. This case officially resolved Nishga tribal claims for territory by Canadian courts.

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The cultural questions posed by these authors inhere in their analysis of state law as itself involving specific cultural practices and expressions. They do this in different ways. In the case of Vincent and Assier-Andrieu, the law's textuality is taken seriously, primarily as the stage for the claims and actions of individuals whose offices make them the law's agents. Thus, 'the state' is not left to some taken-for-granted apostrophe, but is present ethnographically in the record of individuals acting and interacting in their official capacity. In Adjamagbo's paper, the textual aspects of the law are more in the foreground, and considered as paradigms for subsequent social action.

c. Regulation at the state level

In Part III, the focal length shifts again, from problems of national integration and fragmentation to larger fields of anthropological investigation and comparison. In defining the larger field, Smith and Howes demonstrate - in very different ways - that even when state law at the national level asserts powerful claims as to its unity and internal coherence, it is by nature pluralistic. Smith examines the internal pluralism of the Japanese constitution, regarding it as a form of 'combined law' resulting from the incorporation of Japanese and western legal ideas into a single text over time. Howes also takes a longitudinal approach to state law in his analysis of the phases and turning points in the substantive development of publicity law in Canada, the United Kingdom, and the United States. Chiba focuses on the conceptual problems of comparison resulting from the incorporation of western legal ideas and values (and assumptions about legal pluralism itself) into comparative sociolegal scholarship; he argues for a broader approach that takes non-western legal systems into full account.

The papers in this section are the most explicitly theoretical and, as a subset, the most internally diverse methodologically. On the surface, they can be taken as examples of historical ethnography (Smith), postmodern hermeneutics (Howes) and cross-national legal sociology (Chiba). At a deeper level, however, their methodological experiments are related to a common theme, and that is the self-legitimizing claims of nation-states, themselves understood as cultural practices. Within state agencies, internal negotiations and tensions are relevant to social life, no less than the interpersonal tensions that have traditionally been a part of sociolegal scholarship among anthropologists. The temporal and transnational aspects of those negotiations are the focus of this section, and provide a vantage point for both rereading the other essays, and linking anthropological scholarship on legal pluralism to contemporary developments in related disciplines.

References

- BLACK, DONALD AND MAUREEN MILESKI (EDS.)
1973 *The Social Organization of Law*. New York: Seminar Press.
- COLLIER, JANE FISHBURNE
1975 'Legal processes', pp. 121-144 in *Annual Review of Anthropology* 4,
ed. B.J. Siegel. Palo Alto: Annual Review Press.
- COMAROFF, JOHN AND SIMON ROBERTS
1981 'Introduction' in *Rules and Processes*. Chicago: University of Chicago
Press.
- GALANTER, MARC
1981 'Justice in many rooms'. *Journal of Legal Pluralism* 19: 1-47.
- GRIFFITHS, JOHN
1986 'What is legal pluralism?' *Journal of Legal Pluralism* 24: 1-50.
- MERRY, SALLY ENGLE
1988 'Legal pluralism', *Law and Society Review* 22: 869-897.
- MOORE, SALLY FALK
1969 'Law and anthropology', pp. 252-300 in *Biennial Review of
Anthropology*, ed. B.J. Siegel. Stanford CA: Stanford University Press.
1973 'Law and social change: the semi-autonomous social field as an
appropriate field of study', *Law and Society Review* 7: 719-746.
1986 *Social Facts and Fabrications: 'Customary' Law on Kilimanjaro
1880-1980*. Cambridge: Cambridge University Press.
- NADER, LAURA
1965 'The ethnography of law', *American Anthropologist* 67(6,2): 3-32.
1969 *Law in Culture and Society*. Chicago: Aldine Press.
- SNYDER, FRANCIS
1981 'Anthropology, dispute processes and law: a critical introduction',
British Journal of Law and Society, 8: 141-181.
- STARR, JUNE AND JANE COLLIER
1988 'Introduction', in *History and Power in the Study of Law*. Ithaca:
Cornell University Press.