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**INTERNATIONAL COURSE ON LEGAL PLURALISM**

 **Lisbon**

**9-12 July 2022**

Meeting location:

Course Materials: Required readings, the Course Program and a copy of the course venue map can be found at:

**Saturday, July 9, 2022**

**08.30 – 09.30** Registration, Welcome and Introduction

*Janine Ubink*

**09.30 – 12.30** Introduction to the Concept of Legal Pluralism

*Keebet von Benda-Beckmann* *and Jorge Armando Guevara Gil*

(Including Coffee Break)

**Introduction to the concept of Legal Pluralism**

**Abstract**

The term legal pluralism has acquired a broad array of meanings of both normative and analytical kind. In the introduction we will discuss how the concept was first used in (post)-colonial contexts to understand the overlapping and incommensurate kinds of law with which local populations were confronted in diverse social interactions. An important question is how actors deal in various contexts with the problem of incommensurability. Power imbalances thereby affect the options actors have to choose from among the available sets of law. We will look at some of the major dimensions by which legal orders may differ from each other. The concept of legal pluralism also allows for an inquiry into the ways in which legal orders become intertwined and how this generates hybrid legal forms.

Over time it became clear that legal pluralism is a far more general condition and that it can be found all over the world, including western countries. Besides, globalization of the economy has spawned a rise of international and transnational law. Modern communication technologies, and modes of production that span across many countries, require many to deal with various legal orders. These issues are also discussed under the term regulatory pluralism. Besides, large scale migration has transported national and religious laws across borders. These developments have generated a transnational dimension to the national and sub-national parts of plural legal orders.

We will see that an analytical concept of legal pluralism allows one to analyze the relative importance of each of the component parts of plural legal orders at particular places and in particular social settings where specific persons draw upon these orders in interaction with each other. Such a perspective also points to the at times surprisingly resilient power of customary laws and the emergence of new, unnamed law. The claims of universality of both secular and religious international law, or of national sovereignty of national laws have to be questioned rather than taken for granted. Paying attention to the spatial and temporal dimensions of law reveals that an increase in overlapping spaces regulated by special legal regimes and the spectacular rise of regulation in general generates very fragmented, flexible and complex legal (sub)regimes. This may even affect some of the relatively stable parts of plural legal orders. Attempts to coordinate the various legal regimes often paradoxically result in less rather than more cohesion.

**Required Readings:**

Benda-Beckmann, Keebet von, and Bertram Turner. 2020. "Anthropological Roots of Global Legal Pluralism." Chap. 2 In Oxford Handbook on Global Legal Pluralism, edited by Paul Schiff Berman, 67-141. Oxford Oxford University Press, 2020.

Gillespie, John.2014. "New Transnational Governance and the Changing Composition of Regulatory Pluralism in Southeast Asia." Asian Journal of Comparative Law 9, no. 1: 65-95. https://doi.org/doi:10.1515/asjcl-2013-0045. <https://doi.org/10.1515/asjcl-2013-0045>.

**12.30 – 14.30** Lunch Break together at restaurant XXXX

**14.30 – 18.00** Epistemologies of the south and legal pluralism

*Boaventura de Sousa Santos*

(Including Coffee Break)

In a world of appalling social inequalities people are becoming more aware of the multiple dimensions of injustice, whether social, political, cultural, sexual, ethnic, religious, historical, or ecological. Rarely acknowledged is another vital dimension: cognitive injustice, the failure to recognize the different ways of knowing by which people across the globe run their lives and provide meaning to their existence. This book shows why cognitive injustice underlies all the other dimensions; global social justice is not possible without global cognitive justice.

Santos’s argument unfolds in two inquiries. No matter how internally diverse, Western Modernity provided the knowledge underlying the long cycle of colonialism followed by global capitalism. These historical processes profoundly devalued and marginalized the knowledge and wisdom that had been in existence in the global South. Today, working against epistemicide is imperative in order to recover and valorize the epistemological diversity of the world. Such recovery and valorization is the book’s second inquiry and is based on four key analytical tools: sociology of absences, sociology of emergences, ecology of knowledges, and intercultural translation. The transformation of the world’s epistemological diversity into an empowering instrument against hegemonic globalization points to a new kind of bottom-up cosmopolitanism. It would promote a wide conversation of humankind, celebrating conviviality, solidarity, and life against the logic of market-ridden greed and individualism and the destruction of life to which world populations large and small are condemned by the dominant forces of globalization.

**Required Readings:**

Santos, Boaventura de Sousa (2017) “The Resilience of Abyssal Exclusions in Our Societies: Toward a Post-Abyssal Law”, Tilburg Law Review 22, 237-258.

Santos, Boaventura de Sousa (2020) “Postface as Disquietude”, in Santos, Boaventura de Sousa, Toward a New Legal Common Sense. Law, Globalization, and Emancipation - Third Edition. Cambridge: Cambridge University Press.

**Sunday, July 10, 2022**

**010:00 – 14.00** Field trip/ Excursion/ Museum

**Monday, July 11, 2022**

**09.00 – 10.30** Science, Technology and Governance

*Bertram Turner*

This course session aims to explore the concept of Legal Pluralism (LP) as an analytical tool in the field of Science and Technology Studies (STS). Currently, the study of law and STS (L-STS) concentrates primarily on the law of the state and institutions of global governance. A more sophisticated look at complex legal configurations is needed. The course session will empirically and theoretically address the ways in which law, science, materiality and technology intersect in plural legal configurations and will explore how they are linked with processes of law production at various scales. The course will elaborate on how the normative power of materiality, of technologies and knowledge regimes interact with plural legal configurations and increase their complexity. It is also necessary to explore how techno-legal components affect the processes of choice making from among various legal registers that are fundamental for legal pluralism.

While science and the law often appear as mutually reinforcing domains, the pace of scientific and technological change is constantly challenging legal orders and legal institutions that are ‘lagging behind’. Agencies of global governance and epistemic communities are increasingly involved in legislative processes addressing the transfer of technology and science and monitoring the effects that technological innovation may entail in various settings. At the same time technological innovation and knowledge production prove to continuously involve normative processes that account for their own inherent logics and combine with the social, the political, the religious, the ecological, and the economic. Meanwhile different legal registers such as customary and religious-spiritual ones are developing different takes on technoscience, even as the state, under neo-liberal imperatives creates new legal-scientific fictions that are contested by activists, communities, and civil society organizations.

To mention just but two domains:

Algorithms, big data, ai and blockchain technology, for instance, produce techno-legal devices such as automated law, smart contracts, digital law, precrime and surveillance software and many more that appear as markers of the anthropocene and transform everything we know about plural legal configurations.

The normativity of the anthropocene, the entanglements of climate change, global warming and environmental disasters with scientific knowledge production and legal ordering seems to increasingly inform processes of inscription of plural legal constellations in constitutional texts and the interaction of spiritual-indigenous normative orders with techno-material ones as they legally regulate the interaction of human with other/more-than-human actors. We are thus called to address onto-legalities within and across plural legal configurations.

The course session is an invitation to collectively reflect on the question what consequences STS, materiality, technologies, and knowledge regimes may have in and for plural legal configurations and the legal universe.

**Introductory readings:**

Turner, Bertram and Melanie Wiber 2020. Law, Science, and Technologies. In Marie-Claire Foblets; Marc Goodale; Maria Sapignoli; Olaf Zenker (eds.) The Oxford Handbook of Law and Anthropology, Oxford: Oxford University Press:

Turner, Bertram and Melanie G. Wiber 2022. Legal Pluralism and Science and Technology Studies: Exploring Sources of the Legal Pluriverse’, Science, Technology, & Human Values

**Recommended reading:**

Jasanoff, Sheila 2008³. Making Order: Law and Science in Action. In Edward J. Hackett; Olga Amsterdamska; Michael Lynn; Judy Wajcman (eds.). The Handbook of Science and Technology Studies. Cambridge, Mss.: MIT Press: 761-786.

**10.30 – 11.00** Coffee Break

11:30 – 13:00 Governance, administration, and bureaucracy

 *Larissa Vetters and Sophie Andreetta*

In this course session, we explore how the analytical concept of legal pluralism can be fruitfully applied to various strands of discussions about the normative ordering of state-citizens interactions, be it within a disciplinary framework of administrative law scholarship, under the broader umbrella term of governance often used within political science, a sociolegal perspective on bureaucracy, or the anthropology of the state. We will first address these questions within the framework of public service provision in general, before looking into more specific policy areas such as for example, social assistance, migration control or policing.

Drawing on distinct strands of literature, we identify common emerging themes and invite course participants to join in an interdisciplinary discussion on the following sub-questions:

- How much scope for normative plurality exists within public/administrative black-letter law?

- How much scope for normative plurality exists within administrative/bureaucratic practice?

- What are the non-state normative orders that structure the practice of public officials/state actors?

- How do these actors combine/reconcile/juggle between different normative orders?

- What notions of hybrid governance are being put forward by non-state policy makers/international organisations?

- What new perspectives do these recent discussions add to the classic question ‘what is law’ at the heart of the legal pluralism perspective?

**Mandatory Readings:**

• Olivier de Sardan, J.-P. (2015), ‘Practical norms: Informal regulations within public bureaucracies (in Africa and beyond)’, in T. de Herdt and J.-P. Olivier de Sardan (eds.), Real Governance and Practical Norms in Sub­Saharan Africa: The Game of the Rules (New York: Routledge), 19–62.

• Vetters, Larissa. 2019. Administrative guidelines as a source of immigration law? Ethnographic perspectives on law at work and in the making. Journal of Legal Anthropology 3(2): 70–90.

**Further readings:**

• Benda-Beckmann, Franz von and Keebet von Benda-Beckmann (1998) Where structures merge: state and off-state involvement in rural social security on Ambon, Indonesia, in: Sandra N. Pannell and Franz von Benda-Beckmann (eds.). Old world places, new world problems: Exploring resource management issues in Eastern Indonesia. Canberra: The Australian National University, Centre for Resource and Environmental Studies, 143−180.

• Andreetta, Sophie (2019) Writing for different audiences. Social workers, irregular migrants and fragmented statehood in Belgian welfare bureaucracies. Journal of Legal Anthropology, 3/2, 91-110. doi:10.3167/jla.2019.030206

• Mashaw, Jeremy (2005) Norms, Practices and the Paradox of Deference: A preliminary inquiry into agency statutory interpretation, Administrative Law Review 57/2: 501-542.

• Lipsky, Michael. 19080. Street-level Bureaucracy. Dilemmas of the Individual in Public Services ( New York: Russell Sage Foundation).

• Bierschenk, T. and J. P. Olivier de Sardan (eds.) (2014), States at Work: Dynamics of African Bureaucracies (Leiden: Brill).

• Zenker, O. and M. V. Hoehne (eds) (2018), The State and the Paradox of Customary Law in Africa ( London: Routledge).

• Thelen, Tatjana, Larissa Vetters and Keebet von Benda-Beckmann (eds.) 2018. Stategraphy. Towards a Relational Anthropology of the State (New York: Berghahn).

• Göpfert, Mirco. 2016. Repairing the Law. The search for justice in the Nigerien gendarmerie, Theoretical Criminology 20/4: 446-461.

• Beek, Jan et al. 2017. Police in Africa. The Street Level View (Oxford: Oxford University Press).

• Krisch, Nico. 2006. The Pluralism of Global Administrative Law, The European Journal of International Law 17/1: 247-278.

• Fisher, Elizabeth (2015)- "Jurisdictional' Facts and 'Hot' Facts: Legal Formalism, Legal Pluralism, and the Nature of Australian Administrative Law", MelbULawRw 38/3: 968

**13.00 – 14.30** Lunch Break

14.30 – 18.00 Human-nature relations: legal pluralism, property and rights of nature

 *Helen Dancer and Dik Roth*

(Including Coffee Break)

This “governing nature” block of the course has two parts, each combining short presentations by the teachers with plenary discussion. In the first part we will look into the role of legal pluralism in how nature is claimed, contested, exploited, managed and governed. In the recent past, human relationships with their natural environment have radically changed. Colonial expansion led to the imposition by colonial powers of new forms of exploitation and western legal orders. Post-colonial economic growth, globalization of production and commodity chains have increased pressures on nature and contestations between local and foreign resource claimants (e.g. in land and other “grabs”). International development and inter- / transnational forms of governance have added another normative layer to the fabric. “Property” is a key concept for analysing processes of claiming and appropriation of nature (e.g. privatization of commons), often in a setting of legal pluralism and competing notions of property.

In the second part of this session we will discuss more recent developments in attempts to reshape human relationships to nature: the trend towards turning nature (or elements of it, like forests and rivers – as mainly discussed here) from an object of human exploitation into a legal subject with rights (including legal personhood). Although earlier examples can be found in various Latin American countries, initiatives giving rights to nature became widely known since 2017, when rivers in New Zealand (Whanganui) and Colombia (Atrato) were given this legal status, while a third case (in India; Ganges-Yamuna) was stayed in court. Since then, the idea has travelled to other parts of the world (e.g. Bangladesh; the Netherlands) as a policy solution. But what are the challenges with this approach? How does legal pluralism come in? How can it be related to theoretical approaches to property developed in the anthropology of law? Can nature be governed and be a legal subject? What are the potential advantages and pitfalls?

**Reading for this session:**

- Perramond, E.P. (2013) Water governance in New Mexico: Adjudication, law, and geography. Geoforum 45: 83-93.

- Dancer, H. (2021) ‘Harmony with Nature: towards a new deep legal pluralism’ The Journal of Legal Pluralism and Unofficial Law 53:1, 21-41.

**Tuesday, July 12, 2020**

**09:00 – 12.30** Customary Justice Mechanisms and traditional Authority in Contemporary Societies

*Janine Ubink*

(Including Coffee Break)

This session of the course deals with the continued salience of traditional authority and customary justice structures. It focuses on the African region, where after independence many governments tried to curtail the power of traditional leaders ruling on the basis of customary justice systems. They saw them as remnants of colonial rule, dividing their country into ethnic tribes, and thus as impediments to modernization and nation-building. Since the 1990s, this has changed quite dramatically. In a ‘resurgence of tradition’ numerous African states have enhanced and formalized the position of traditional leaders in their legislation and constitutions. Donor organizations have also ‘turned to the local’, with rule of law programming as well as transitional justice programming increasingly engaging with customary justice systems and traditional leaders.

It is now quite commonly accepted that customary law and traditional rulers are here to stay. In fact, in many countries they are the main providers of access to justice for their citizens. However, traditional authority and customary justice systems are now to function in very different contexts, characterized by capitalist economies instead of subsistence economies, as part of broader nation states with democratically elected government, ostensibly committed to inclusiveness, such as regarding women, in a strongly globalized world. And how does engagement of governments and donors with customary justice systems, and inclusion in state legal systems impact on the unwritten, somewhat flexible customary justice systems? External actors often lack knowledge about the different versions of customary law, the negotiable nature of customary justice and the power differentials involved in defining customary law.

In this session we will look at several examples of engagement of donors and governments with traditional authority and customary justice structures, including South Africa, Uganda, Ghana and Namibia. We assess how the form and regulation of legal pluralism is connected to power, authority and control over local resources, and what it means for the citizenship rights of people living in ‘customary communities’.

**Required Readings:**

* Mnwana, S. (2014). Mining, accountability and the law in the Bakgatla-ba-Kgafela Traditional Authority Area. *South African Crime Quarterly*, *49*, 21-29.
* Ubink, J. (2018). Customary Legal Empowerment in Namibia and Ghana? Lessons about Access, Power and Participation in Non‐state Justice Systems. *Development and Change*, *49*(4), 930-950.
* Branch, Adam. "The violence of peace: ethnojustice in northern Uganda." *Development and Change* 45.3 (2014): 608-630.

**12.30 – 14.00** Lunch Break

**14.00 – 17.30** Participants’ research forum

*All*

(Including Coffee Break)

**17:30 – 18:00** Closing session, evaluation