

INVITED ARTICLE

## Rethinking the Rethinking of Legal Pluralism: Toward a Manifesto for a Pluri-Legal Perspective

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### Abstract

The paper addresses the perpetual discontent evoked by the concept of legal pluralism, one which, in turn, brings about incessant efforts to “rethink” it. We suggest that one of the sources of this discontent is the erroneous view that legal pluralism is a theory, and the consequent misguided expectations that it should provide scholars of law and society with causal hypotheses and explanations. We argue that legal pluralism is not a theory but a *research perspective*, and, as such, is not meant to provide us with explanatory propositions, but rather to increase our awareness of the plurality and inter-relatedness of socio-legal spheres and of the implications thereof. We further identify—and briefly discuss—the four core principles of a pluri-legal perspective: *plurality*, *relationality*, *power*, and *agency*. Taken together, these four premises constitute a manifesto of sorts for a pluri-legal perspective.

Legal pluralism is, without doubt, a “successful” academic concept. It made its entrance into the socio-legal discourse in the 1970s, and has gained momentum ever since.<sup>1</sup> Its burgeoning impact on law-and-society scholarship has been evident both in the sheer number of references to it in the academic literature<sup>2</sup>

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<sup>1</sup> For informative reviews of the intellectual history of the notion of legal pluralism, see Jacques Vanderlinden, “Le pluralisme juridique: essai de synthèse,” in *Le pluralisme juridique*, ed. John Gillissen (Brussels: Université libre de Bruxelles, 1971), 19–56; John Griffiths, “What is Legal Pluralism?” *Journal of Legal Pluralism* 24 (1986): 1–55; Sally Engle Merry, “Legal Pluralism,” *Law and Society Review* 22 (1988): 869–96; Gordon R. Woodman, “Ideological Combat and Social Observation: Recent Debate about Legal Pluralism,” *Journal of Legal Pluralism* 42 (1998): 21–59; Anne Griffiths, “Legal Pluralism,” in *An Introduction to Law and Social Theory*, eds. R. Banakar and M. Travers (Oxford: Hart Publishing, 2002), 289–311; Keebet von Benda-Beckmann and Bertram Turner, “Legal Pluralism, Social Theory, and the State,” *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 255–74.

<sup>2</sup> A quick search in Google Scholar reveals, for example, that mentions of the term “legal pluralism” have increased exponentially over the years: while there were 27 references to the

and in the broadening scope of its application.<sup>3</sup> Yet despite—and perhaps because of—its palpable success, the concept has also attracted significant criticism and raised considerable discontent. Some critics, who were particularly hostile toward the concept and its proponents (the “legal pluralists”),<sup>4</sup> sought “to pierce the legal pluralism balloon,” so that “the momentum of the doctrine will break.”<sup>5</sup> Others were perhaps less hostile, but made sure to express their discontent with the conceptual and theoretical problems entailed by the concept, in their view.<sup>6</sup> Many writers, including some who may be regarded as pertaining to the “legal pluralist camp,” have taken issue with the so-called “under-theorization” of legal pluralism, with its futility as a theoretical framework, and with its “lack of analytic rigor.”<sup>7</sup>

This continuous discontent with legal pluralism has yielded a ceaseless effort to “rethink” the concept, “revisit” it,<sup>8</sup> “go beyond” it,<sup>9</sup> or coin

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term in 1975, there were 111 in 1985, 337 in 1995, 1,190 in 2005, and 2,930 in 2015. In 2022 there were 4520 references to the term.

<sup>3</sup> The scope of the notion of legal pluralism has broadened both in terms of its subject matters, i.e., the themes and social arenas to which it has been applied, and in terms of the academic disciplines in which it has gained currency. Furthermore, recent decades have also witnessed the concept being propagated in non-academic governmental and civil society circles.

<sup>4</sup> Franz von Benda-Beckmann notes that there is a tendency among critics of legal pluralism to turn legal pluralists into bogeymen. See Franz von Benda-Beckmann, “Who’s Afraid of Legal Pluralism?” *The Journal of Legal Pluralism and Unofficial Law* 47 (2002): 72–73.

<sup>5</sup> Brian Z. Tamanaha, “The Folly of the ‘Social Scientific’ Concept of Legal Pluralism,” *Journal of Law and Society* 20, no. 2 (1993): 192–217, 202. Another leading scholar who is unusually hostile towards legal pluralism and its proponents is Simon Roberts. See Simon Roberts, “Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain,” *Journal of Legal Pluralism* 42 (1998): 95–106; idem, “After Government: On Representing Law without the State,” *Modern Law Review* 68 (2005): 1–24.

<sup>6</sup> See, e.g., Chris Fuller, “Legal Anthropology, Legal Pluralism and Legal Thought,” *Anthropology Today* 10, no. 3 (1994): 9–12; Carol J. Greenhouse, “Legal Pluralism and Cultural Difference,” *Journal of Legal Pluralism* 42 (1998): 64–65.

<sup>7</sup> To mention just a few examples, among many others: Fuller, “Legal Anthropology,” 10; Kamari Maxine Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (Cambridge: Cambridge University Press, 2009), 186; Paul Dresch, “Legalism, Anthropology and History: A View from the Part of Anthropology,” in *Legalism: Anthropology and History*, eds. Paul Dresch and Hannah Skoda (Oxford: Oxford University Press, 2012), 15; Geoffrey Swenson, “Legal Pluralism in Theory and Practice,” *International Studies Review* 20, no. 3 (2018): 440; Jonathan Crowe, “The Limits of Legal Pluralism,” *Griffith Law Review* 24, no. 2 (2015): 314–31.

<sup>8</sup> See, e.g., Gunther Teubner, “The Two Faces of Janus: Rethinking Legal Pluralism,” *Cardozo Law Review* 13 (1991): 1443–62; Richard A. Wilson, “Reconciliation and Revenge in Post-Apartheid South Africa: Rethinking Legal Pluralism and Human Rights,” *Current Anthropology* 41, no. 1 (2000): 75–98; Nafay Choudhury, “Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom,” *Asian Journal of Law and Society* 4, no. 1 (2017): 229–55. The present symposium, entitled “Rethinking Legal Pluralism,” should surely be seen as yet another manifestation of this trend.

<sup>9</sup> See, e.g., June Starr and Jane F. Collier, “Introduction: Dialogues in Legal Anthropology,” in *History and Power in the Study of Law: New Directions in Legal Anthropology*, eds. June Starr and Jane F. Collier (Ithaca: Cornell University Press, 1989), 9; Lauren Benton, “Beyond Legal Pluralism: Towards a New Approach to Law in the Informal Sector,” *Social and Legal Studies* 3, no. 2 (1994): 223–42; Martha-Marie Kleinhans and Roderick A. Macdonald, “What Is a Critical Legal Pluralism?” *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société* 12, no. 2 (1997): 25–46; Christoph Eberhard, “Beyond Legal Pluralism—A Dynamic and Intercultural Approach to

alternative, more appropriate terms. The literature on legal pluralism is thus replete with such alternative concepts as “legal polycentricity,”<sup>10</sup> “interpolity law,”<sup>11</sup> “interstitial law,”<sup>12</sup> and “parallel legal systems,”<sup>13</sup> which were designed to replace what many authors perceived as a flawed, or at least an unsatisfactory, term. This incessant uneasiness has been a double-edged sword for the study of legal pluralism: on the one hand, it has cast doubt on the validity and usefulness of the term, and on the other hand, it has kept the discourse surrounding it lively and inventive.

What is it, then, in legal pluralism—as a concept/notion/theory/perspective—that elicits such doubts and qualms? And, more importantly, is it possible to ease these doubts? Is it possible to establish legal pluralism as a sound, sustainable perspective, and moreover, to do so without sacrificing its vitality and innovative character? In this short essay, we aim to provide some preliminary answers to these questions. We argue that the discontent regarding legal pluralism stems from three different sources: first, the concept’s “over-success,” which has turned it into a victim of its own popularity; second, some unsettled conceptual problems in the pluri-legal literature; and third, common misperceptions regarding the nature and purposes of the concept which have led to unrealistic expectations with regard to it.

In the next section we briefly discuss these three sources of discontent. We contend that while there is not much that can be done against the first concern (which is, obviously, not a genuine problem), and while the second concern has been addressed quite amply (and in our view, satisfactorily), the third concern has remained relatively unattended to thus far. Consequently, the literature on legal pluralism has been plagued with misperceptions and erroneous assumptions about this construct and about what we can do with it. Authors continue to misconstrue legal pluralism as a theory, and then complain—as a recent influential textbook on the anthropology of law has done—that “[legal pluralism] is surely too general to be particularly useful: the coexistence of plural legal or normative orders is a universal fact of the modern world, so the concept points to nothing distinctive.”<sup>14</sup>

Following such authors as Franz and Keebet von Benda-Beckmann and Sally Engle Merry, we contend that legal pluralism is a research perspective—nothing

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Law in India,” *Indian Socio-Legal Journal* 31 (2005): 131–48; James G. Stewart and Asad Kiyani, “The Ahistoricism of Legal Pluralism in International Criminal Law,” *The American Journal of Comparative Law* 65, no. 2 (2017): 393–449.

<sup>10</sup> Hanne Petersen and Henrik Zahle, eds. *Legal Polycentricity: Consequences of Pluralism in Law* (Aldershot: Dartmouth, 1995).

<sup>11</sup> Lauren Benton and Adam Clulow, “Legal Encounters and the Origins of Global Law,” in *Cambridge History of the World*, vol. 6 (Cambridge: Cambridge University Press, 2015), 80–100.

<sup>12</sup> Kevin R. Johnson, “Bridging the Gap: Some Thoughts about Interstitial Lawmaking and the Federal Securities Laws,” *Washington & Lee Law Review* 48 (1991): 879–936.

<sup>13</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (New Delhi: Vikas Publications, 1982), 30.

<sup>14</sup> Fernanda Pirie, *The Anthropology of Law* (Oxford: Oxford University Press, 2015), 41. For similar statements, see Fuller, “Legal Anthropology,” 10.

more, nothing less.<sup>15</sup> As a research perspective, legal pluralism does not provide students of the socio-legal sphere with propositions, hypotheses, or explanations, and expecting it to do so is plainly misguided. As a research perspective, its purpose is first to draw our attention “to the possibility that within the same social order, or social or geographical space, more than one body of law, pertaining to more or less the same set of activities, may co-exist,” and, second, to provide law-and-society researchers with a set of basic premises about how to approach the study of this (omnipresent) reality of multiple legal orders.<sup>16</sup> This is what a pluri-legal perspective should do, and this is what it does.

We suggest that the erroneous views about legal pluralism and its purposes stand at the core of the perpetual discontent surrounding this concept. Thus, after briefly discussing the sources of the pervasive uneasiness with regard to legal pluralism, we move on to specify the four premises that stand at the foundation of the pluri-legal perspective, in our view. By stating these four premises, we aim to draft a manifesto of sorts for a pluri-legal perspective.

### Three Sources of Discontent with Legal Pluralism

#### *A victim of its own success*

As mentioned earlier, legal pluralism is a remarkably successful concept. Because of its relevance to diverse subject matters and contexts, and because of its appropriation by scholars from a plentitude of disciplines—legal anthropology, legal history, comparative law, jurisprudence, sociology, political science, development studies, management, and so on—the literature that employs it is vast and variegated.<sup>17</sup> As noted by Franz von Benda-Beckmann, one cannot (and should not) expect, for example, that an anthropologist, a political scientist, a legal academic, and a judge will all share the same

<sup>15</sup> Indeed, we are not the first to conceptualize legal pluralism in such terms. Franz and Keebet von Benda-Beckmann, for example, described legal pluralism in many of their articles as a “‘sensitising’ concept, drawing attention to the frequent existence of parallel or duplicatory legal regulations within one political organisation” (see, F. Benda-Beckmann, “Who’s Afraid,” 37; see also, idem, “Riding or killing the centaur? Reflections on the identities of legal anthropology,” *International Journal of Law in Context* 4, no. 2 (2008): 97; Franz and Keebet von Benda-Beckmann, “The Dynamics,” 14). Similarly, Sally Engle Merry, in one of her last public talks on the subject, declared that “Legal pluralism is not a theory of law or an explanation of how it functions, but a description of what law is like. It alerts observers to the fact that law takes many forms and can exist in parallel regimes. It provides a framework for thinking about law, about where to find it and how it works.” See Sally Engle Merry, “McGill Convocation Address: Legal Pluralism in Practice,” *McGill Law Journal/Revue de droit de McGill* 59, no. 1 (2013): 2. Nevertheless, given the current state of the debate on legal pluralism—as reflected in this symposium—we believe that our intervention is both required and timely.

<sup>16</sup> Franz von Benda-Beckmann and Keebet von Benda-Beckmann, “The Dynamics of Change and Continuity in Plural Legal Orders,” *The Journal of Legal Pluralism and Unofficial Law* 53, no. 4 (2006): 14.

<sup>17</sup> For general reviews of the expanding themes and subjects tackled by the literature on legal pluralism, see Paul Schiff Berman, “The New Legal Pluralism,” *Annual Review of Law and Social Science* 5 (2009): 225–42; Brain Z. Tamanaha, “Understanding Legal Pluralism: Past to Present, Local to Global,” *Sydney Law Review* 30 (2008): 375–411.

understanding of what law is, what it does or should do, and how we should study it.<sup>18</sup> The same is true for legal pluralism. The marked heterogeneity of the pluri-legal scholarship brings about, almost inevitably, conceptual confusions, incongruities, and sometimes even contradictions, which—in turn—naturally yield criticism.

Hence, legal pluralism is a victim of its own success: had it remained within the confines of a single discipline or a single research topic, it would have probably been much easier to maintain its thematic and analytic coherence. Yet, in our view, it would be inadvisable, and probably also impossible, to endeavor to delimit the meanings of the term for the purpose of attaining conceptual unity and coherence. Indeed, the concept's elasticity and its "interpretative viability" are among its core strengths.<sup>19</sup> A remedy for the uneasiness surrounding the notion of legal pluralism should therefore be sought elsewhere.

### *Conceptual and definitional concerns*

The appropriation and application of legal pluralism in diverse disciplines and fields of research has led to many conceptual confusions. Debates on this notion have therefore focused mainly on issues of definition and conceptualization: how do we distinguish the legal from the non-legal? Is it admissible to talk about "non-state law?" What types of legal complexity are covered by the term "legal pluralism?" Can one speak of legal pluralism within a single legal order? And what does the "coexistence" of laws or legal orders mean? We will not partake in these hairsplitting yet foundational analytical discussions here—on the one hand, because other scholars have already taken this task upon themselves, and have provided what we believe to be quite satisfactory conceptual solutions;<sup>20</sup> on the other hand, because our purpose here—namely, the drafting of a brief manifesto for a pluri-legal perspective—does not necessitate our engagement in such discussions.

Instead, at the conceptual level, we choose to follow in the footsteps of such scholars as Gordon Woodman, Franz and Keebet von Benda-Beckmann, Baudouin Dupret, and Brian Z. Tamanaha. These scholars of law and society—despite some noticeable differences in their approaches to legal pluralism—have all opted for broad and encompassing conceptualizations of the term, which are based either on wide-ranging definitions of law (e.g., Woodman and the Benda-Beckmanns),<sup>21</sup> or on viewing law as a folk concept (Dupret

<sup>18</sup> Franz von Benda-Beckmann, "Who's Afraid," 41; See also Tamanaha, "Understanding Legal Pluralism," 391.

<sup>19</sup> See Jos Benders and Kees Van Veen, "What's in a Fashion? Interpretative Viability and Management Fashions," *Organization* 8, no. 1 (2001): 33–53.

<sup>20</sup> See, e.g., Woodman, "Ideological Combat"; Franz von Benda-Beckmann, "Who's Afraid"; Keebet von Benda-Beckmann and Turner, "Legal Pluralism."

<sup>21</sup> According to the Benda-Beckmanns, for example, law is "the summary indication of those objectified cognitive and normative conceptions for which validity for a certain social formation is authoritatively asserted." Franz and Keebet von Benda-Beckmann, "The Dynamic," 12. See also Woodman, "Ideological Combat," 50–52.

and Tamanaha).<sup>22</sup> These and like-minded authors promote a “user theory of law,” whose conceptualizations of legal terms draw heavily on the meanings attributed to these terms by the social actors themselves.<sup>23</sup> As Woodman put it, since “law covers a continuum which runs from the clearest form of state law through to the vaguest forms of informal social control,”<sup>24</sup> it remains for scholars of law and society to determine, operationally and for the specific context and purpose under hand, whether the phenomenon they are observing falls under the banner of “law” and of “legal pluralism.”<sup>25</sup> It goes without saying that this “user theory of law” also applies to the readers, who must evaluate whether or not the description of a social phenomenon in terms of legal pluralism is persuasive.

In line with this approach, we submit that there is no point in providing a positive definition of “law,” or even of “legal pluralism,” as we believe that such definitions should be operational, context-dependent, and content-specific. Let researchers embracing a pluri-legal perspective choose the definitions that they deem appropriate and useful for their particular topic and purpose. However, we strongly advise fellow scholars of law and society to embrace broad definitions of law that expand the scope of legal pluralism rather than narrow its boundaries. Such definitions should, in our view, allow for the recognition of “non-state law”; allow for the application of the term to “non-modern” and stateless settings; and acknowledge the existence of legal pluralism within a single system (e.g., within state law or within a religious/indigenous law).

### *The problem of unrealistic expectations*

Is legal pluralism a descriptive or a normative concept? Is it a theory? A paradigm? A movement? An ideology? If legal pluralism is a theory, we should expect it to provide us with concrete and testable propositions, hypotheses, and explanations of the studied social phenomenon. If it is an “ideology” or a “movement,” we should expect its proponents to openly declare what their normative purposes are. We contend that at least some of the discontent surrounding legal pluralism emanates from misconceptions about the nature and status of this concept. These misconceptions, in turn, lead to unrealistic expectations with regard to legal pluralism which are bound to be frustrated.

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<sup>22</sup> According to Dupret, e.g., “law is what people consider as law, nothing more nothing less.” See Baudouin Dupret, “Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-Specification,” *European Journal of Legal Studies* 1, no. 1 (2008): 296. See also Brian S. Tamanaha, “A Non-Essentialist Version of Legal Pluralism,” *Journal of Law and Society* 27, no. 2 (2000): 296–321.

<sup>23</sup> Laura Nader, “A User Theory of Law,” *Southwestern Law Review* 38, no. 4 (1984): 951–63. Also see her discussion of the concept in her *The Life of the Law: Anthropological Projects* (Berkeley: University of California Press, 2002), 49–52.

<sup>24</sup> Woodman, “Ideological Combat,” 45.

<sup>25</sup> According to Nader, this operational approach to conceptual issues has been dominant in legal anthropology since the late 1950s. See Laura Nader, “The Anthropological Study of Law,” *American Anthropologist* 67 (1965): 3–32.

We argue that legal pluralism is not an ideology. It has no normative purpose, nor does it tell us how things should be.<sup>26</sup> It is also not a theory: it has no pretense to predict or explain social actors' behavior under particular circumstances of legal pluralism, nor to predict or explain the emergence of particular constellations of coexisting legal orders. Accordingly, it does not present us with sets of propositions or hypotheses.

What is legal pluralism, then? As briefly stated earlier, we believe—like other legal pluralists such as the Benda-Beckmanns and Sally Engle Merry—that legal pluralism should be viewed as a research perspective. It is, in our view, a well-articulated and internally coherent research perspective, which has matured and consolidated over the last half-century. It offers scholars who adopt it a set of underlying premises, as well as a cluster of useful concepts, distinctions, and analytical categories that can assist them in their efforts to make sense of the phenomenon of multiple socio-legal orders. Thus, such analytical concepts as “semi-autonomous social field,”<sup>27</sup> “forum shopping,”<sup>28</sup> “interlegality,”<sup>29</sup> and many others, which were all developed and elaborated in the pluri-legal literature, are a considerable aid to students of law-and-society as they struggle to gain an understanding of the complexities of pluralistic legal realities.

Beyond these analytical constructs—which, again, do not comprise a “theory” of legal pluralism—what is sorely missing from the literature on legal pluralism at this point is a concise and informed “statement of purpose” or “credo” pertaining to the pluri-legal research perspective. While seminal works on legal pluralism do offer some programmatic framing, they tend to focus on problems of conceptualization and definition.<sup>30</sup> Indeed, a manifesto

<sup>26</sup> We acknowledge that in some academic and non-academic circles—particularly among activists advocating indigenous people's rights—legal pluralism is conceived as an essential ideological tool for the attainment of social objectives (see, e.g., John B. Henriksen, “Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169” (2008), [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/publication/wcms\\_118120.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_118120.pdf)). Nevertheless, for the purpose of analytical clarity, we opt for maintaining legal pluralism as a purely descriptive perspective.

<sup>27</sup> Sally F. Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” *Law & Society Review* 7 (1972): 719–42.

<sup>28</sup> See Keebet von Benda-Beckmann, “Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village,” *Journal of Legal Pluralism* 19 (1981): 117–59; Jeop H. L. Spiertz, “The Transformation of Traditional Law: A Tale of People's Participation in Irrigation Management on Bali,” *Landscape and Urban Planning* 20 (1991): 189–96; Ido Shahar, “Forum Shopping between Civil and Shari'a Courts: Maintenance Suits in Contemporary Jerusalem,” in eds. Keebet von Benda-Beckmann, Franz von Benda-Beckmann, Bertram Turner, and Martin Ramstadt, *Religion in Disputes: Pervasiveness of Religious Normativity in Disputing Processes* (London: Palgrave MacMillan, 2013), 147–64.

<sup>29</sup> The term was coined by Bonaventura de Sousa-Santos in his “Law: A Map of Misreading. Toward a Postmodern Conception of Law,” *Journal of Law and Society* 14 (1987): 279–97. For recent usage of this term, see eds. Jan Klabbers and Gianluigi Palombella, *The Challenge of Inter-Legality* (Cambridge: Cambridge University Press, 2019).

<sup>30</sup> E.g., Merry, “Legal Pluralism”; Woodman, “Ideological Combat”; Baudouin Dupret, “What is Plural in the Law? A Praxiological Answer,” *Égypte/Monde arabe* 1 (2005): 159–72; Franz and Keebet Benda-Beckmann, “The Dynamics.” See also Merry, “Convocation Address.”



for legal pluralism has not been put forward since John Griffiths published “What is Legal Pluralism?” in the mid-1980s.<sup>31</sup> Griffiths’ piece was exceedingly influential, and certainly helpful in elucidating some conceptual issues, yet it was also highly problematic as it introduced its own conceptual and methodological problems.<sup>32</sup> Furthermore, Griffiths articulated his pluri-legal statement of purpose in negative terms, claiming that “[a] central objective of a descriptive conception of legal pluralism is [...] destructive: to break the stranglehold of the idea that what law is, is a single, unified, and exclusive hierarchical normative ordering depending from the power of the state...”<sup>33</sup>

We believe that the time is ripe for drafting an up-to-date manifesto for a pluri-legal perspective, which clearly stipulates its basic premises. In what follows, we briefly present four premises that, in our view, make up the core of a pluri-legal perspective: (a) a plurality of legal orders is omnipresent, and may be found wherever and whenever one looks; (b) coexisting legal orders interact and influence one another profoundly, to such an extent that they may often be said to constitute one another; (c) power relations are part and parcel of these interactions between legal orders; and (d) the agency of social actors, too, is part and parcel of these interactions. Taken together, these four premises—plurality, relationality, power, and agency—comprise a coherent pluri-legal perspective.

## Toward a Manifesto for a Pluri-Legal Perspective: Four Premises

### Plurality

To paraphrase the poet John Donne, “no society is an island entire of itself.” Indeed, and as noted by countless thinkers, in the contemporary global world no society is detached from other societies or untouched by them.<sup>34</sup> Moreover, contemporary societies are complex and comprise many “semi-autonomous social fields,” that is, many social groupings that maintain “rule-making capacities and the means to induce and coerce compliance” while also being “set in a larger social matrix which can, and does, affect and invade

<sup>31</sup> In fact, Griffiths wrote his piece in the late 1970s, but it was only published in 1986. See Gordon R. Woodman, “The Idea of Legal Pluralism,” in *Legal Pluralism in the Arab World*, eds. Badouin Dupres, Maurits Berger, and Laila al-Zwaini (The Hague: Kluwer Law International, 1999), 9.

<sup>32</sup> Ironically, Griffiths’ most influential distinction, the one between “strong” and “weak” types of legal pluralism, was based on an implicit “statist” assumption according to which state law is a unified and centralist entity—the very conceptualization that he so fiercely objected to. See Ido Shahar, “State, Society, and the Relations between Them: Implications for the Study of Legal Pluralism,” *Theoretical Inquiries in Law* 9, no. 2 (2008): 417–41. For a criticism of Griffiths’ misguided conceptualization of “the empirical,” see Franz von Benda-Beckmann, “Who’s Afraid,” 46–47, and for a critique of his “naïve” understanding of objective socio-legal reality, see Tamanaha, “The Folly.”

<sup>33</sup> Griffiths, “What is,” 4–5, emphasis in the original text.

<sup>34</sup> See, e.g., Ralf Michaels, “Global Legal Pluralism,” *Annual Review of Law and Social Sciences* 5 (2009): 243–62; Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (Oxford: Oxford University Press, 2021), 209–214.



them.”<sup>35</sup> In the words of Brian Tamanaha, a former “heretic” who repented and became a devout legal pluralist, “In every social arena one examines, a seeming multiplicity of legal orders exists. There are village, municipal, and county laws of various types; there are state, district, or regional laws of various types; there are national, transnational, and international laws of various types. In many societies there are additional forms of law, like indigenous law, customary law, religious law, and the law of distinct ethnic or cultural communities.”<sup>36</sup> Thus, a pluri-legal perspective’s point of departure is that a plurality of legal orders is an omnipresent fact of life, characterizing any society and any social group in the modern and pre-modern worlds. While this statement may seem trivial, taking the plurality of co-existing legal orders as the primary lens through which a legal system is studied is far from banal, as demonstrated by the many works that examine legal systems—whether explicitly or implicitly—as singular, self-sustaining, and internally coherent.

### *Relationality*

The second premise of a pluri-legal perspective is that the interrelations between coexisting legal orders should not be understood as encounters between well-defined, sealed systems (say, like billiard balls hitting one another), but rather as encounters between elastic, “porous,” constantly transforming, and easily affected systems.<sup>37</sup> In other words, these interrelations are constitutive: interacting legal orders/bodies of law/legal institutions affect one another so profoundly that they shape and define one another. Regardless of whether legal systems contradict, compete, complement, or even merge, their interrelations define them and render them what they are.<sup>38</sup>

Thus, the premise of relationality directs the researcher’s attention to the mutually constitutive relationships between legal systems/bodies of law—both as primary objects of study and as an explanatory force.<sup>39</sup> In this respect, the pluri-legal perspective is akin to the tradition of relational sociology, and entails a non-essentialist and constructivist understanding of the studied legal systems.<sup>40</sup> A good illustration of the utility of the premise of relationality can be found in the influential works of Martin Chanock (1985) and Sally

<sup>35</sup> Moore, “Law and Social Change,” 724.

<sup>36</sup> See, Tamanaha, *Legal Pluralism Explained*, 1.

<sup>37</sup> The term “porous legality” or “legal porosity” was coined by de Sousa-Santos. See Sousa-Santos, “Law: A Map,” 298.

<sup>38</sup> For a discussion of different types of relationships between legal systems, see Swenson, “Legal Pluralism.”

<sup>39</sup> In her seminal essay, Merry warned that “a legal pluralist analysis tends to emphasize changes that occur through interactions between social fields but not those taking place within a social field,” and that “the focus on legal systems must not supersede the meticulous study of local legal practices.” Merry, “Legal Pluralism,” 891. While this admonition is certainly due, we would like to note that the emphasis on relations comes with the territory: if one applies a pluri-legal perspective, one pays particular attention to relational aspects.

<sup>40</sup> On relational sociology, see Mustafa Emirbayer, “Manifesto for a Relational Sociology,” *American Journal of Sociology* 103, no. 2 (1997): 281–317.

Falk-Moore (1986), who wrote meticulous ethno-historical monographs focusing on the interrelations between colonial regimes in Africa and various indigenous/customary legal systems.<sup>41</sup> Instead of studying “customary laws” as ahistorical, pristine entities conveying indigenous cultures and values—as earlier works in legal anthropology had done<sup>42</sup>—these authors convincingly argued that what came to be known as “customary laws” in Africa were by no means authentic or original remnants of undisturbed indigenous cultures, but rather new creations, which took shape in the context of asymmetric power relations between colonizers and colonized.

According to Chanock, for example, processes of state-sponsored legalization combined with economic and social transformations led to the dominance of a new version of customary law that suited the white administrators who ruled colonial society and the African male elders who assisted them. His analysis thus highlights the constitutive nature of the interrelations between legal orders, and moreover, it helps us escape the false dichotomies of essentialist, ahistorical, and power-blind conceptualizations.

### Power

As argued by Michel Foucault, power is ubiquitous in human interactions: it “is, always already there,” and one cannot be outside of it.<sup>43</sup> Since law and legal orders are human-made, as most students of law-and-society would probably agree, they are shot through with power relations. This truism applies to the study of law in general, but it is all the more significant when one studies the interrelations between legal systems or bodies of law, as students of legal pluralism do.

An influential, yet misguided, criticism that has been leveled against the pluri-legal perspective is that it purportedly tends to “misrepresent the asymmetrical power relations that inhere in the coexistence of multiple legal orders.”<sup>44</sup> In sharp contradiction to this criticism, we contend that the pluri-legal perspective, as a perspective that focuses on relations, is also particularly attentive to power relations. Indeed, the pluri-legal literature of recent decades has been replete with studies of “power and legal pluralism,” tackling power relations both between legal orders and within them.<sup>45</sup> Boelens, Bustamante,

<sup>41</sup> Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985); Sally F. Moore, *Social Facts and Fabrications: “Customary Law” on Kilimanjaro, 1880–1980* (Cambridge: Cambridge University Press, 1986).

<sup>42</sup> See, e.g., Isaac Schapera, *A Handbook of Tswana Law and Custom* (London: Routledge, 2019 [1938]).

<sup>43</sup> Michel Foucault, *Power/Knowledge*, ed. Colin Gordon (New York: Pantheon Books, 1972), 141. See also Richard A. Lynch, “Is Power All There Is? Michel Foucault and the Omnipresence of Power Relations,” *Philosophy Today* 42, no. 1 (1998): 65–70.

<sup>44</sup> Starr and Collier, “Introduction: Dialogues in Legal Anthropology,” 9. See also Fuller, “Legal Anthropology,” 10.

<sup>45</sup> See, e.g., Gad Barzilai, “Beyond Relativism: Where Is Political Power in Legal Pluralism?” *Theoretical Inquiries in Law* 9, no. 2 (2008): 395–416; Aymar Nyenyenzi Bisoka, Cécile Giraud, and Ann Ansoms, “Competing Claims over Access to Land in Rwanda: Legal Pluralism, Power and

and De Vos's study of water-rights contestations in the Andes presents a compelling example of this emphasis on power relations in pluri-legal research.<sup>46</sup> According to these authors, water—which is, of course, a vital resource in the Andes' rural communities—is managed by “a dynamic and complex set of hybrid rules, rights and organizational forms: a tremendous diversity of context-defined ‘sociolegal repertoires’ or ‘normative systems’ can be found that generally combine non-local rule-making patterns with local organizational arrangements, frameworks of rights and rules for water distribution, system operation and maintenance.”<sup>47</sup> Yet Boelens et al. do not stop at identifying this multiplicity of normative orders—they also show how these orders are shaped by ongoing power struggles between a diverse set of actors, which include international and local corporations, national governments, human rights and indigenous rights organizations, and local interest groups. These interested parties not only struggle over concrete water rights, but also over the interpretative framework under which water rights should be decided: modernizing-national, global-neoliberal, or multicultural-traditional. Boelens et al.'s research is thus anything but oblivious to power relations. On the contrary, power constitutes the main axis of their pluri-legal analysis, which fleshes out conflicts of interest both within and between socio-legal domains—the local, the regional, the national, and the international. Their power-centered analysis proves to be particularly insightful and illuminating.

### Agency

Finally, an obvious conclusion arising from the three premises outlined earlier is that a pluri-legal perspective must pay heed to agency. If the plurality of laws is a given feature of human societies, and if this plurality is constituted through ongoing power-embedded interactions and interrelations, then the agency of social actors—their (legal) actions and the understandings, motives, and choices that lead to these actions—is of prime interest to a pluri-legal perspective.<sup>48</sup>

Keebet von Benda-Beckmann offers an insightful analysis of agency in a pluri-legal situation in her classic piece “Forum shopping and shopping forums: Dispute processing in a Minangkabau village in West Sumatra.”<sup>49</sup> This paper dwells upon agency as a key factor in shaping the pluri-legal domain of dispute

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Subjectivities,” *Geoforum* 109 (2020): 115–24; Diana Suhardiman, John Bright, and Casper Palmano, “The Politics of Legal Pluralism in the Shaping of Spatial Power in Myanmar’s Land Governance,” *The Journal of Peasant Studies* 48, no. 2 (2021): 411–35.

<sup>46</sup> Rutgerd Boelens, Rocio Bustamante, and Hugo De Vos. “Legal Pluralism and the Politics of Inclusion, Recognition and Contestation of Local Water Rights in the Andes,” in *Community-Based Water Law and Water Resource Management Reform in Developing Countries*, eds. B. C. P. Koppen, M. Giordano, and J. Butterworth (Wallingford, UK: CABI, 2007), 96–113.

<sup>47</sup> Boelens, Bustamante, and De Vos, “Legal Pluralism,” 96.

<sup>48</sup> For understandings of the distinction between the legal and the non-legal, see Tamanaha, “A Non-Essentialist.” For motives see, e.g., Jeremy Webber, “Legal Pluralism and Human Agency,” *Osgoode Hall Law Journal* 44 (2006): 167–98.

<sup>49</sup> Keebet von Benda-Beckmann, “Forum Shopping.”

resolution in Minangkabau, West Sumatra. It shows that the plurality of normative orders and dispute resolution forums in this social setting allows actors to exercise their agency by choosing among forums and maneuvering between them. Moreover, it is not only disputing parties who exert their agency by “shopping” for forums that best serve their interests; it is also third-party functionaries—engaged in dispute-resolution through formal or informal, communal or statal institutions—who may exert agency by “shopping for disputants” and by manipulating disputes and framing them in a manner that serves their own goals, be they political, economic, or otherwise.

Keebet von Benda-Beckmann’s agency-centered analysis is thus a conspicuous example of the action-theory (or praxis perspective) that came to dominate pluri-legal research in recent decades.<sup>50</sup> She demonstrated that in order to understand a concrete situation of legal pluralism, one cannot settle for an abstract, structural macro-analysis of “coexisting” legal/normative orders devoid of actors and their choices; rather, one must direct attention to agents, their worldview, and their actions.

## Conclusion

The four premises briefly outlined and exemplified earlier make up the core of a pluri-legal perspective. It is, of course, a pluri-legal perspective as we see it, and other legal pluralists would undoubtedly draft a different manifesto. Yet we would like to believe that most contemporary legal pluralists would find our framing agreeable. Having said that, many works in the field of legal pluralism are not built on the premises outlined above. In particular, works dating from the first decades of research into legal pluralism, between the 1970s and the 1990s, were especially prone to adopting essentialist conceptualizations of legal systems or bodies of law (e.g., of customary or indigenous laws) or to disregard power relations and agency. Such faulty applications of the pluri-legal perspective have indeed subsided over the years, but one cannot say that they have disappeared altogether.

We hope that our outline of a pluri-legal perspective helps to promote the ongoing debate on legal pluralism. We ourselves embrace in our studies broad and encompassing conceptualizations of law and of legal pluralism that extend the scope of this field of research, and we encourage others to do the same. By all means, employ the term “legal pluralism” for studying both contemporary societies and ancient ones, for examining plurality both within legal systems and between them, for exploring semi-autonomous social fields in both colonial and post-colonial contexts, and for studying the manifestations of legal plurality in local communities, nation states, and regional systems within a transnational context. Surely, the “Law” in each of these contexts, however defined, would be fundamentally distinct from the “Law” in other contexts. Yet, as long as we base our examination of the plurality of social regulation(s) on the four premises outlined earlier—plurality, relationality, power, and

<sup>50</sup> For more on this shift, see Franz von Benda-Beckmann and Keebet von Benda-Beckmann, “The Dynamics of Change,” 3.

agency—we are in fact approaching the subject matter from a pluri-legal perspective. Certainly, we should continue to “rethink” and “revisit” legal pluralism. We should carry on innovative and pathbreaking research into uncharted territories of legal pluralism—undoubtedly, even after 50 years of extensive research into legal pluralism, such uncharted domains still abound—and we should continue to create new analytical tools that prove useful for analyzing the intricacies of the interrelations between legal orders. But we should do all that from the vantage point of a well-established, self-assured research perspective, without feeling the need to reinvent the wheel or to substitute an allegedly flawed theory with a new and better one.

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