LEGAL PLURALISM

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I. INTRODUCTION

The intellectual odyssey of the concept of legal pluralism moves from the discovery of indigenous forms of law among remote African villagers and New Guinea tribesmen to debates concerning the pluralistic qualities of law under advanced capitalism. In the last decade, the concept of legal pluralism has been applied to the study of social and legal ordering in urban industrial societies, primarily the United States, Britain, and France. Indeed, given a sufficiently broad definition of the term legal system, virtually every society is legally plural, whether or not it has a colonial past. Legal pluralism is a central theme in the reconceptualization of the law/society relation.

Early twentieth century studies examined indigenous law ways among tribal and village peoples in colonized societies in Africa, Asia, and the Pacific. Social scientists (primarily anthropologists) were interested in how these peoples maintained social order without European law (e.g., Malinowski, 1926). As they documented the rich variety of social control, social pressure, custom, customary law, and judicial procedure within small-scale societies, these anthropologists gradually realized that colonized peoples had both indigenous law and European law. Colonial law was reshaping the social life of these villages and tribes in subtle ways, even when it seemed remote. Indeed, as Chanock observed for colonial Africa, "The law was the cutting edge of colonialism, . . ." (1985: 4). Tribes and villages had some law developed over the generations on to which formal rational law was imposed by the European colonial powers. The imposed law, forged for industrial capitalism rather than an agrarian or pastoral way of life, embodied very different principles and procedures. Scholars termed these situations legal pluralism. They recognized that the introduction of European colonial law created a plurality of legal orders but overlooked, to a large extent, the complexity of previous legal orders.

For the proponents of empire in the nineteenth century, this imposition of European law was a great gift, substituting civilized

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law for the anarchy and fear that they believed gripped the lives of the colonized peoples, freeing them from the scourges of war, witchcraft, and tyranny (Ranger, 1983). In Africa, the British and the French superimposed their law onto indigenous law, incorporating customary law as long as it was not "repugnant to natural justice, equity, and good conscience," or "inconsistent with any written law," (Okoth-Ogendo, 1979: 160; Adewoye, 1986: 60; Bentsi-Enchill, 1969). The repugnancy principle was used to outlaw unacceptable African customs. That the European legal system also helped to mold a cooperative labor force to serve the new extractive industries or to produce cash crops for export was probably not lost on the colonial administrators (cf., Chanock, 1985; Comaroff, 1985; Comaroff and Comaroff, 1986; Moore, 1986a).

Yet, legal pluralism goes far deeper than the joining of European and traditional forms of law. We are only now beginning to explore the extent to which previously colonized societies are legally and culturally plural. The Europeans were not the first outside influence bringing a new legal system to many Third World peoples. Indigenous law had been shaped by conquests and migrations for centuries. For example, Geertz describes the legal complexity of Java as the product of the encounters of an original group of settlers from South China and north Vietnam with India states, Chinese trading communities, Islamic missionaries, Dutch and British colonizers, Japanese occupation forces, and presently, the Indonesian state (1983: 226). As we engage in careful historical study, we throw off the notion that the pasts of traditional societies were unchanging (Ranger, 1983; Chanock, 1985).

What is legal pluralism? It is generally defined as a situation in which two or more legal systems coexist in the same social field (Pospisil, 1971; Griffiths 1986a; Moore, 1986a).[1] Pospisil, in his pioneering work on legal levels, claims that "every functioning subgroup in a society has its own legal system which is necessarily different in some respects from those of the other subgroups" (1971: 107). By subgroups he means units such as family, lineage, community, and political confederation that are integral parts of a homogenous society, hierarchically ranked, and essentially similar in rules and procedure. Recent work defines "legal system" broadly to include the system of courts and judges supported by the state as well as nonlegal forms of normative ordering. Some of these are part of institutions such as factories, corporations, and universities and include written codes, tribunals, and security forces, sometimes replicating the structure and symbolic form of state law (Macaulay, 1986; Henry, 1983). Other normative orders are informal systems in which the processes of establishing rules, securing

[1] In an important essay on the definition of legal pluralism, Griffiths defines it as "that state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs (1986a: 2)."

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compliance to these rules, and punishing rulebreakers seem natural and taken for granted, as occurs within families, work groups, and collectives (Abel, 1982; Henry, 1985). Thus, virtually every society is legally plural. This approach runs the risk of defining legal system so broadly that all social control forms are included (see further Comaroff and Roberts, 1981).

Griffiths distinguishes between the "social science" view of legal pluralism as an empirical state of affairs in society (the coexistence within a social group of legal orders that do not belong to a single "system") and what he calls a "juristic" view of legal pluralism as a particular problem of dual legal systems created when European countries established colonies that superimposed their legal systems on preexisting systems (1986a: 5, 8). A legal system is pluralistic in the juristic sense when the sovereign commands different bodies of law for different groups of the population varying by ethnicity, religion, nationality, or geography, and when the parallel legal regimes are all dependent on the state legal system. This situation creates a range of complex legal problems, such as the need to decide when a subgroup's law applies to a particular transaction or conflict, to what group particular individuals belong, how a person can change which law is applicable to him or her (educated Africans in the colonial era, for example, chafed at being judged under African law rather than European law), choice of law rules for issues between people of different groups, and determinations of which subjects, particularly family law, and in which geographical areas subgroup law should be accepted (Griffiths, 1986a: 7). It is often difficult to determine what the subgroup's rules are, particularly when they are not part of a written tradition. As we will see below, even those legal systems with written codes, such as Islamic law, are often embedded in very different ways of thinking about the fact/law dichotomy, the nature of evidence, and the meaning of judging (Rosen, 1980–81; Geertz, 1983; Messick, 1986).

Hooker provides a masterful and comprehensive overview of legal pluralism in this sense, surveying plural legal systems in Asia, Africa, and the Middle East (1975). He defines legal pluralism as circumstances "in the contemporary world which have resulted from the transfer of whole legal systems across cultural boundaries" (Ibid.: 1). Legal problems of the juristic kind confront leaders of many post-colonial societies, who widely regard their complex legal systems as frustrating, messy, and obstructive to progress (Bentsi-Enchill, 1969; Griffiths, 1986a). Contemporary elites in Africa see modernization and nation-building as requiring a unified legal system, often drawing on models of European law (Okoth-Ogendo, 1979: 165).[2] As post colonial societies endeavor to adopt uniform state law, however, they meet with pockets of in-

[2] To this extent, they appear to have accepted the dominant legal ideology of Western society (see Merry, 1986).

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tense resistance from those groups whose law has been preserved in some fashion (see further, Geertz, 1983: 228).

This review discusses primarily the social science version of legal pluralism. According to the design of the Fifth Issue, the review focuses on literature from the past decade, although I have included earlier work when it is important for my argument. I focused on materials published in English, although there is a substantial non-English literature. Central resources in the study of legal pluralism are the new *Journal of Legal Pluralism and Unofficial Law*, created in 1981,[3] and several important international conferences along with the books they have generated.

II. CLASSIC LEGAL PLURALISM AND THE NEW LEGAL PLURALISM

Research on colonial and post-colonial societies produced a version of legal pluralism I call "classic legal pluralism." This is the analysis of the intersections of indigenous and European law. Beginning in the late 1970s, there has been an interest among sociolegal scholars in applying the concept of legal pluralism to noncolonized societies, particularly to the advanced industrial countries of Europe and the United States. This move produces a version of legal pluralism I call the "new legal pluralism." A number of studies explore contemporary legal pluralism in the United States (e.g., Moore, 1973; Forer, 1979; Merry, 1979; Engel, 1980, 1984, 1987; Nader, 1980; Greenhouse, 1982, Buckle and Thomas-Buckle, 1982; Macaulay, 1986), Britain (e.g., Henry, 1983; 1985), and the Netherlands (e.g., van den Bergh *et al.*, 1980; Strijbosch, 1985; van den Bergh *et al.*, 1980). There are also several historical studies of legal pluralism in these countries (e.g., Auerbach, 1983; Arthurs, 1985; Bossy, 1983). Case studies on legal pluralism presented at a conference on the imposition of law included the American Indians, Hungarian farm cooperatives, British trade unions, British game laws, and the American death penalty along with the more traditional topics of legal pluralism in New Guinea, Kenya, and Niger (Burman and Harrell-Bond, 1979). Legal pluralism has expanded from a concept that refers to the relations between colonized and colonizer to relations between dominant groups and subordinate groups, such as religious, ethnic, or cultural minorities, immigrant groups, and unofficial forms of ordering located in social networks or institutions (Woodman,

[3] This journal, under the editorship of John Griffiths in the Netherlands, incorporates international scholarship on legal pluralism to a far greater extent than the *Law & Society Review*. The *Journal of Legal Pluralism* includes important theoretical articles, book reviews, and case studies on diverse subjects such as the role of public letter writers in the development of the legal profession in Ibadan, Nigeria between 1904 and 1960 (Adewoye, 1986), the coexistence of indigenous, Islamic, British colonial, and post-colonial Nigerian law in Northern Nigeria (Salamone, 1983), and the acquisition of indigenous Hawaiian lands through legal means (Lam, 1985).

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1987–88: 3–4; Macaulay, 1986). Moore provides a useful summary of concepts of legal and social pluralism in her overview of ways of comparing legal systems of the world (1986b: 15–24).

According to the new legal pluralism, plural normative orders are found in virtually all societies. This is an extraordinarily powerful move, in that it places at the center of investigation the relationship between the official legal system and other forms of ordering that connect with but are in some ways separate from and dependent on it. The new legal pluralism moves away from questions about the effect of law on society or even the effect of society on law toward conceptualizing a more complex and interactive relationship between official and unofficial forms of ordering. Instead of mutual influences between two separate entities, this perspective sees plural forms of ordering as participating in the same social field. In his remarks at the Bellagio Conference on People's Law and State Law (see Allott and Woodman, 1985), Francis Snyder argues that any dualistic distinction, such as that between folk and state law, is misleading because plural normative orders are part of the same system in any particular social context and are usually intertwined in the same social micro-processes (Griffiths, 1985: 17–18). The particulars of the relationship in any social location are historically derived and unsettled.

The new legal pluralism draws on the rich ethnographic and theoretical work from classic legal pluralism. Among the significant contributions of classic legal pluralism there are, I think, three of particular importance. First is the analysis of the interaction between normative orders that are fundamentally different in their underlying conceptual structure. Second is an attention to the elaboration of customary law as historically derived. Third is the delineation of the dialectic between normative orders. In classic legal pluralism, this dialectic takes place in situations in which different orders are readily identified and the dynamics of resistance and restructuring by groups experiencing the imposition of a very different normative order are relatively easy to see. When Pospisil reports the Kapauku Papuans' response to the introduction of Dutch law, for example, it is relatively easy to identify the actors, since Kapauku law and Dutch law are quite distinct. In this situation there are clearly limits to the penetration of Dutch law, areas in which the Kapauku have taken Dutch law and made it their own, and areas in which Dutch law has become part of the political struggle between different factions, some more attuned to the colonial order than others (1981).

In societies without colonial pasts, however, the nonstate forms of normative ordering are more difficult to see. They blend more readily into the landscape and, aside from some notable exceptions (such as Ehrlich's concept of "living law," (1913), Gurvitch's "social law," (1947) and Macaulay's work on private ordering (1963)) were generally ignored until the mid 1970s. To rec-

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ognize legal pluralism at home required rejecting what Griffiths calls the "ideology of legal centralism," the notion that the state and the system of lawyers, courts, and prisons is the only form of ordering (1986a). Indeed, scholars trained in legal positivism are taught that law and ordering take place in courthouses and law offices, not in corporate gossip, university regulations and tribunals, or neighborhood bars (on this point, see Arthurs, 1985). It is probably no accident that many of the prominent scholars in the new legal pluralism, such as Richard Abel, David Engel, Marc Galanter, Peter Fitzpatrick, Sally Falk Moore, Boaventura de Sousa Santos, and Francis Snyder began their sociolegal research in postcolonial societies in which legal pluralism was an obvious and unambiguous fact of life.

In sum, research on legal pluralism began in the study of colonial societies in which an imperialist nation, equipped with a centralized and codified legal system, imposed this system on societies with far different legal systems, often unwritten and lacking formal structures for judging and punishing. This kind of legal pluralism is embedded in relations of unequal power. The concept has been expanded in recent years to describe legal relations in advanced industrial countries, but here, discussions of legal pluralism are quite different. They center on a rejection of the law-centeredness of traditional studies of legal phenomena, arguing that not all law takes place in the courts (e.g., Nader and Todd, 1978; Arthurs, 1985). The concern is to document other forms of social regulation that draw on the symbols of the law, to a greater or lesser extent, but that operate in its shadows, its parking lots, and even down the street in mediation offices. Thus, in contexts in which the dominance of a central legal system is unambiguous, this thread of argument worries about missing what else is going on; the extent to which other forms of regulation outside law constitute law.

These two contexts make odd companions. Their central adversaries, the positions against which they are arguing, are quite different. They come out of different scholarly traditions. The nature of the relationship between the systems seems quite different. In the former, there is an unambiguous imposition or dominance of one system over the other; in the latter, the nature of the linkage is more fluid and opaque. Yet, on closer inspection, even dominant colonial legal orders failed to penetrate fully, encountered pockets of resistance, and were absorbed and co-opted, as Kidder has shown clearly in the Indian case (1974; 1979). Further, in industrial societies, despite the apparent autonomy of nonjudicial spheres, the legal system stands in a relation of superior power to other systems of regulation as the ultimate source of coercive power (Abel, 1982; Merry, 1986; Yngvesson, 1985). Thus, there are ways in which joining these two contexts of legal pluralism enhances our understanding of the interaction of plural orders rather than obstructing it.

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III. FOLK LAW, INDIGENOUS LAW, STATE LAW, LAWYER'S LAW: DEFINING THE TERMS

There are a wide variety of terms used to discuss the parts which make up legally plural societies: the systems or normative orders that make up a legally plural situation. Each is discredited in various ways because the term carries with it unwanted perjorative implications. The terminological debate concerning state law is the easier one: commonly used terms are law, state law, lawyers' law, official law, and bourgeois legality. Names for nonstate law form a far greater tangle. The early work in classic legal pluralism referred to a distinction between law and custom. Diamond, in an influential article, described the relations dichotomously (1973: 322–323):

> Custom—spontaneous, traditional, personal, commonly known, corporate, relatively unchanging—is the modality of primitive society; law is the instrument of civilization, of political society sanctioned by organized force, presumably above society at large, and buttressing a new set of social interests. Law and custom both involve the regulation of behavior but their characters are entirely distinct; no evolutionary balance has been struck between developing law and custom, whether traditional or emergent.

Rejecting the notion that custom is a form of primitive law that will gradually develop into state law, Diamond argues instead that the advance of law contradicts and extinguishes custom.

But what is custom? In colonial settings, pre-colonial law recognized or accepted by the colonial rulers after conquest or takeover was labeled customary law (e.g., Hooker, 1975). This law was often predominantly oral rather than written and derived from sources of authority outside the colonial state (Snyder, 1981b: 49). Yet, a rich body of recent ethno/historical research in Africa, Indonesia, and Papua New Guinea argues that the notion of an unchanging custom or even customary law was a myth of the colonial era, while customary law itself was a product of the colonial encounter (Colson, 1976; Benda-Beckmann, 1979; Fitzpatrick, 1980; Snyder, 1981a, 1981b; Ranger, 1983; Chanock, 1985; Gordon and Meggitt, 1985; Moore, 1986a; Starr and Collier, 1987, 1989).

Snyder, for example, argues that customary law was not simply an adapted or transformed version of indigenous law, but a new form created within the context of the colonial state (1981b). Through a detailed history of the changing social position of the rain priest among a group of rice farmers in Senegal, Snyder shows how customary law was created. Senegalese more familiar with European languages and customs served as intermediaries, interpreters of indigenous law to Europeans. The Europeans, in turn, accepted those versions of customary law which meshed best with their own ideology of land ownership as well as other legal relations. Snyder concludes (Ibid.: 74, 76):

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> Customary law in the Casamance [Senegal], as elsewhere, was a concept and a legal form that originated in specific historical circumstances, namely the period in the transformation of pre-capitalist social relations that saw the consolidation of the colonial state. . . . Produced in particular historical circumstances, the notion of 'customary law' was an ideology of colonial domination. The concept of 'customary law' itself manifested an attempt to reinterpret African legal forms in terms of European legal categories, which formed part of the ideology of those classes most closely associated with the colonial state. The designation of African law as 'customary' because it was oral, though apparently technical, embodied and masked an essentially political conclusion that it was subordinate to the colonial law of European origin.

Snyder urges a full reanalysis of the role law plays in post-colonial societies from the perspective of dependency theory rather than from that of modernization theory (1980). Rather than viewing plural legal orders as barriers to modernization, he suggests that their creation was a product of the expansion of the European capitalist order throughout the world over the last 400 years, an expansion which has gradually incorporated the most remote societies into a single economic system despite its fractionated political structures. These traditional forms of law were constructs of the European expansion and capitalist transformation, as were also the tribes, villages, chiefs and many other features of apparently traditional social systems (Wolf, 1982). Ranger argues, for example, that the vision of a traditional, unchanging African past ruled by long-established custom was a creation of colonial administrators of the early twentieth century in an effort to restore some order after the chaotic years of the nineteenth century (1983: 250–251).

If the nonstate forms of social ordering in legally plural situations are not customs or customary law, then what can we call them? A symposium in 1978, The Social Consequences of Imposed Law, debated using imposed law but abandoned the term as inadequate since all law is experienced as imposed in some ways, yet all law is also to some degree accepted rather than simply imposed (Burman and Harrell-Bond, 1979: 2). Kidder, pointing to the enthusiasm with which Indians adopted British law, suggested instead the concept of external law, which takes into account the "sources of power at different levels of externality" (1979: 296). He suggests thinking of multiple layers of legal organization at various levels of externality with struggles between these levels, rather than just law and custom (Ibid.: 299).

In a later paper, Galanter suggests the terms indigenous ordering and indigenous law to refer to forms of ordering outside the official system (1981: 17). But recent work indicates that even those societies analyzed as if they were untouched by European culture, and in that sense "indigenous," were vulnerable to outside

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influences at the time of early ethnographic research (Fitzpatrick, 1985). Indeed, Pospisil, an anthropologist who worked during the early contact period between a group of New Guinea peoples and the Dutch government and authored a classic text on indigenous law, points out that he himself was an important pawn in local politics, co-opted by one faction (1979). On a second trip to the Kapauku, he was surprised to find that the Dutch colonial administrators were using his book on Kapauku law as the basis for their determinations of customary law (Ibid.: 132). As anthropologists examine more carefully the situations in which early ethnographic accounts were produced they discover ways in which these accounts were structured by the colonial encounter (Marcus and Fisher, 1986).

At a 1981 conference on people's law and state law, participants discussed using the term folk law, but there was concern over whether the term romanticized folk law or minimized it (Roberts, 1986). The participants concluded that there is no such type of law as folk law distinct from state law, but instead a continuum of differentiation and organization of the generation and application of norms, a conception suggested by Galanter (Allott and Woodman, 1985).

Within the new legal pluralism, Macaulay proposes the concept of "private government," which he defines as that governing done by groups not part of federal and state constitutions but which may mimic symbols and structures of the public legal system (1986). He advocates a "private government perspective," which recognizes private associations that affect governing and also treats distinctions between public and private as problematic (1983: 2). He envisions a private government landscape as follows: ". . . While it may be necessary to draw a sharp line between public and private government even to think about law, actually there is no such line but situations of interpenetration, overlapping jurisdictions, and opportunities for harmony and conflict (Ibid.: 1)." Henry suggests the term "private justice" to refer to nonstate systems that "include practices of such institutions as the disciplinary bodies, boards, and councils of industrial and commercial organizations, professional and trade associations and unions, down to the peer sanctioning of relatively amorphous voluntary associations such as local self-help and mutual aid groups (1985: 89)."

Private justice does not exist in isolation but interrelates with the more formalized state order in a semiautonomous way (Henry, 1985: 89). As with Macaulay's private governments, private justice institutions can be formally constituted with written rules and procedures or informally constituted, generated spontaneously by members who share only tacit assumptions and who do not necessarily recognize that they are part of a system of normative ordering. Private government or private justice often replicates aspects of the legal order, such as security forces and tribunals, and

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mimics its symbols with similar police uniforms, lights, codes, and systems of judgment. However, there are also occasions when it takes an oppositional form, as it does with the law of cooperatives in a capitalist society (Henry, 1985; 1987).

The most enduring, generalizable, and widely-used conception of plural legal orders is Moore's notion of the semiautonomous social field, a concept developed to describe multiple systems of ordering in complex societies (1973). The semiautonomous social field is one that (Ibid.: 720):

> can generate rules and customs and symbols internally, but that . . . is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.

The advantages of this concept are that the semiautonomous social field is not attached to a single social group, that makes no claims about the nature of the orders themselves or their origin (whether traditional or imposed), and that it draws no definitive conclusions about the nature and direction of influence between the normative orders. The outside legal system penetrates the field but does not dominate it; there is room for resistance and autonomy.

Galanter, building on this model, argues that indigenous ordering persists not in bounded groups so much as in more open social networks that are regulated largely by reciprocity and shared but tacit understandings (1981: 22). Societies contain many partially self-regulating sectors organized along geographical, ethnic, or familial lines, often in fragmentary and overlapping social networks (Ibid.: 19–20). Galanter states (Ibid.: 22):

> If we have lost the experience of an all-encompassing inclusive community, it is not to a world of arms-length dealings with strangers, but in large measure to a world of loosely joined and partly overlapping partial or fragmentary communities. In this sense, our exposure to indigenous law has increased at the same time that official regulation has multiplied.

Macaulay's conception of private government is very similar: he envisions ordering through open social networks as well as within more organized and established institutional frameworks (1986).

Why is it so difficult to find a word for nonstate law? It is clearly difficult to define and circumscribe these forms of ordering. Where do we stop speaking of law and find ourselves simply describing social life? Is it useful to call all these forms of ordering law? In writing about legal pluralism, I find that once legal centralism has been vanquished, calling all forms of ordering that are not state law by the term law confounds the analysis. The

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literature in this field has not yet clearly demarcated a boundary between normative orders that can and cannot be called law. I think one of the difficulties lies in the tremendous variation in normative orders and the diversity of particular situations. The move to include noncolonized societies under the framework of legal pluralism adds to the complexity. However, there is general agreement that pluralism does not describe a type of society but is a condition found to a greater or lesser extent in most societies, with continuous variation between those that are more and those less plural (Galanter, 1981; Griffiths, 1986a).

Defining the orders which make up legal pluralism raises other issues as well. Does it make a difference that these plural legal orders vary greatly in power, in coercive potential, in symbolic strength, in attachment to class groupings? Are state and nonstate forms of ordering similar, or are there ways in which the state-law system is fundamentally different from all other forms of ordering? I think it is essential to see state law as fundamentally different in that it exercises the coercive power of the state and monopolizes the symbolic power associated with state authority. But, in many ways, it ideologically shapes other normative orders as well as provides an inescapable framework for their practice.

IV. RELATIONS BETWEEN NORMATIVE ORDERS: EXPLORING THE INTERACTIONS

Legal pluralism not only posits the existence of multiple legal spheres, but develops hypotheses concerning the relationships between them. The existence of legal pluralism itself is of less interest than the dynamics of change and transformation. Historically, there has been a shift in the way the interaction between legal orders, particularly between state law and nonstate law, has been described. Early research in classic legal pluralism saw normative orders as parallel but autonomous. During the 1960s and early 1970s, several studies demonstrated the power of state law to reshape the social order, suggesting the dominance of this form of law over other normative orders (e.g., Massell, 1968; Diamond, 1973; Burman and Harrell-Bond, 1979). Law appeared to be a potent tool for modernization in Third World countries (see Gardner, 1980; Lynch, 1983) and for creating social justice in the First World during this period.

But, it has not always worked that way, as law and development scholars discovered and as American social reformers found (Trubek and Galanter, 1974). In the 1970s, a more cautious and limited view of law's potential to reshape other social orders emerged. Some studies showed limits to the capacity of law to transform social life. The comparative examination of imposed law showed that sometimes it had powerful consequences for

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change but that at other times the consequences were unexpected or negligible (Burman and Harrell-Bond, 1979). In contrast to Massell's analysis of the revolutionary impact of new laws on the status of women in the Islamic societies of Soviet Central Asia (1968), for example, Starr and Pool showed that the drastic law reforms introduced into Turkish society in 1926 that swept away Islamic Ottoman law in favor of the Swiss civil code produced relatively little change in the normative ordering of local villages (1974: 534). The vast majority of the Turkish population continued to follow customs incompatible with the new codes (Ibid.). Instead of revolutionary transformation, Starr and Pool document gradual, incremental change as, for example, women began to use the courts more frequently for family problems.

The creation of customary law, to give another example, was an ongoing, collaborative process in which power was clearly unequal, but subordinate groups were hardly passive or powerless. For example, Adewoye describes the development of public letter writers in Ibadan, Nigeria, between 1904 and 1960 (1986). These Africans drafted and produced legal documents in the absence of trained lawyers, shaping the forms of sale and land ownership contracts. Moore's model of the semiautonomous social field was in part an effort to explain why new laws or other attempts to direct change did not always produce the anticipated results or brought unplanned or unexpected consequences (1973: 723):

> This is partly because new laws are thrust upon going social arrangements in which there are complexes of binding obligations already in existence. Legislation is often passed with the intention of altering the going social arrangements in specified ways. The social arrangements are often effectively stronger than the new laws.

Moore's careful historical study of customary law among the Chagga of Tanzania documents this process more fully (1986a). Here she defines customary law as a cultural construct with political implications, a set of ideas embedded in relationships that are historically shifting (Ibid.: xv). Franz von Benda-Beckmann points out that the particular areas of resistance or acquiescence to imposed colonial law are complex and historically situated, depending to some extent on the processes of imposition themselves, which are highly variable (1981).

Research in the 1980s has increasingly emphasized the dialectic, mutually constitutive relation between state law and other normative orders. I think this reflects a new awareness of the interconnectedness of social orders, of our vulnerability to structures of domination far outside our immediate worlds, and of the ways implicit and unrecognized systems of control are embedded in our day-to-day social lives. Moreover, analysis of this dialectic is enriched by recent interpretations of law as a symbolic and ideological system (c.f., *Law & Society Review Special Issue on Law and*

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Ideology, 1988). Research in the 1980s emphasizes the way state law penetrates and restructures other normative orders through symbols and through direct coercion and, at the same time, the way nonstate normative orders resist and circumvent penetration or even capture and use the symbolic capital of state law. In a final turn, some research explores the way nonstate normative orders constitute state law. Beyond well-known research on phenomena such as plea bargaining and courtroom workgroups, however, this study is in its infancy.

I will begin by describing research that focuses on the ways state law shapes other normative orders. Auerbach's study of the history of nonjudicial forms of dispute resolution in the United States demonstrates how state law gradually infiltrates and restructures alternatives so that they come to resemble state law (1983; see also Arthurs, 1985). This and other studies of the progressive reconstitution of alternatives as legalistic forums illuminate the expansion of state law into other normative orders over time (Nader, 1984; Harrington, 1985; Arthurs, 1985). But, subordinate groups may also choose to draw on the symbols and meanings of the state legal system. Santos's well-known study of law in the *favelas* of Brazil describes how residents of an illegal squatter settlement create their own legality using the forms and symbols of state law, the "law of the asphalt," as they call it (1977). Here, legal orders are attached to classes. Legal pluralism describes the relations between a dominant class and an oppressed urban class, relations that reflect the class hierarchy of Brazilian society, its structure of domination and unequal exchange. Squatters pursue a strategy of implicit confrontation at the same time as they adapt in order to survive (1977).

In another context, Westermark documents the practices of new village courts in Papua New Guinea, created in 1973 as informal, conciliatory alternatives to the state courts (1986). But the courts he studied replicated the state courts in architecture and furniture, using tables, chairs, the national flag, notes, and stone-lined walkways to an enclosed building (1986). Equipped with handbooks and badges, the magistrates pressed for uniforms and handcuffs. These village courts dispense what they call government law.

In an American study, John Brigham argues that legal discourse constitutes the discourse and practices of some American social movements (1987). Using examples from the gay rights movement, the anti-pornography movement, and the alternative dispute resolution movement, Brigham shows how references to rights or to the failures of law enter into and thus constitute movement discourse and even the strategies and tactics of the movements. Other studies have begun to explore the widespread legal consciousness of American society (Scheingold, 1974; Merry, 1986;

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Macaulay, 1987) but there has been relatively little investigation of how this consciousness shapes other normative orders.

Symbolic appropriation works the other way around as well: state law may borrow the symbols of other normative orders. Government reformers sometimes promote new state judicial institutions with traditional symbolic trappings, claiming to reinstitute traditional law. The Philippine *katarungang pambarangay*, (neighborhood justice) or Indian *nyaya panchayats* (justice village councils) (Silliman, 1985; Meschievitz and Galanter, 1982; Hayden, 1984) illustrate this practice. The Philippine system is called neighborhood justice but is administered by state officials called neighborhood captains (Silliman, 1985). Many have argued that American neighborhood justice is another example of state law masquerading under the symbolic trappings of nonstate normative orders (Santos, 1982; Abel, 1982; Harrington, 1985; Harrington and Merry, 1988). New state judicial institutions clothed in revolutionary symbols have been created in the service of social transformation, as in Allende's Chile (Spence, 1978) and Castro's Cuba (Salas, 1983).

Studies of the micro-level processes of legal action, disputing, and case processing describe the dynamics of the symbolic radiation and imposition of state law, its appropriation within other normative orders, and forms of resistance to its penetration. The rich ethnographic studies of local dispute processes reported in Nader and Todd (1978) provide numerous examples of individuals pursuing dispute strategies in legally plural arenas (see, e.g., Ruffini, 1978). Even when state law is not used, it constitutes bargaining and regulatory endowments, to use Galanter's terms (1981). In these situations, the contours of local disputing are inextricably connected with local political struggles between those whose authority claims rest on kinship or religion and those whose claims rest on knowledge of the state, education, or connections with the government. Moore's description of a dispute among the Chagga illustrates this dynamic, pointing to the linkage between local political competition for power and knowledge of and access to village and state legal systems (1977). Based on her analysis of disputing in a legally plural arena in Indonesia, Keebet von Benda-Beckmann proposes a model of forum shopping and social change that provides a way of understanding how local processes of disputing reshape legally plural situations (1981). Disputants shop for forums for their problems and forums compete for disputes, which they use for their own local political ends (Ibid.: 117). There are constraints on disputants, however. For example, state courts refuse to hear claims by women for rice plots since only the official representative of the lineage is entitled to sue, thus preventing women from appealing to the state courts to escape the control of the lineage head over their land (Ibid.: 143).

Abel (1979a) and Merry (1982) also develop models of disput-

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ing and legal change which argue that the cumulative effect of litigant choice of forum affects dispute institutions at the same time as dispute institutions are themselves changing along with developments in the political economy. Starr's analysis of disputing strategies during a period of capitalist transformation in Turkey carefully analyzes this process as well (1974; see also Abel, 1979b). Peter just explores the manipulation of evidence as a strategy for providing justice while conforming to law (1986).

Another new area of research examines how state law both constitutes and is constituted by the normative orders of which it is composed. Fitzpatrick's concept of "integral plurality" focuses on the interaction between normative orders, positing that state law is integrally constituted in relation to a plurality of social forms (1984). His work draws on Foucault's analysis of the emergence of modern law (Fitzpatrick 1983a: 176). Fitzpatrick argues that we need to look at law not simply as domination but also as constitutive of social life. Both state law and semiautonomous social fields are constituted in significant part by their interrelations with one another: the family and its legal order are shaped by the state, but the state in turn is shaped by the family and its legal order because each is a part of the other (Ibid.: 159). Here, Fitzpatrick makes the turn from seeing the semiautonomous social field as constituted by state law to seeing state law shaped by its constituent normative orders and vice versa.

In Fitzpatrick's theory, state law takes identity from and derives support from other social forms, but these forms both support and oppose state law. Bourgeois legality, for example, depends on social forms such as the prison and capitalist labor relations that both support and undermine it. The prison is a condition of the existence of bourgeois legality, since prison serves both as the ultimate enforcer of law and as an example of a pervasive disciplinary power that typifies modern society, yet it cannot itself incorporate bourgeois legality in its functioning. It coerces outside this structure while leaving bourgeois free to be equal and universal (1984: 116).

Integral relations of mutual support between law and other social forms tend toward convergence as elements of law are elements of the other social forms and vice versa. For example, science is incorporated into elements of law, and law supports and reinforces science: the two take identity from each other in positively supportive ways (Fitzpatrick, 1984). Similarly, custom, when penetrated by state law, changes its nature fundamentally and becomes part of state law. In his words, "Custom supports law but law transforms the elements of custom that it appropriates into its own image and likeness. Law, in turn, supports other social forms but becomes, in the process, part of the other forms" (1984: 9). Not a unitary phenomenon, law is constituted by a plurality of social forms. Since law is constituted in relations of oppo-

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sition and support to other social forms, however, there is a gap between law and other social forms that cannot be bridged; law depends on these opposed social forms. Integral pluralism is part of a dialectic of power and counter power. Fitzpatrick concludes, that "law is the unsettled resultant of relations with a plurality of social forms and in this law's identity is constantly and inherently subject to challenge and change" (Ibid.: 138).

Henry's work on law in collectives and cooperatives in Britain further develops this model of integral plurality (1983; 1985; 1987; see also Nelken, 1986). Henry argues that the relations between state law and other normative orders now appear very complicated, requiring attention to history, human agency, local contexts, and culture (1985: 315). Conflicting normative orders, such as those of the cooperative and the capitalist state, may challenge and oppose each other, both by outright rejection (when the state prohibits conflicting normative orders, for example), or by accepting and recognizing the autonomy of a separate normative order within that sphere. Thus, the law refuses to intervene in the cooperative because some matters are seen as the private concern of the co-op (Ibid.: 314). The members of the cooperative, on the other hand, can reject and to some extent undermine capitalist legality. Henry proposes a dialectical model, in which "[a]lternative institutions and their associated normative orders do not work transformations on capitalist structures and rule systems but instead interact with them in a dialectical way such that both the alternative system and the capitalist order are vulnerable to incremental reformulations" (Ibid.: 324). Drawing on Giddens' analysis of structure and action according to which action shapes structure and structures constrain and enable actions, an integrated theory that provides some space for individual actions to "make a difference," even for the powerless, Henry adds the dimension of individual action to Fitzpatrick's model of integral plurality. Individuals within communitarian organizations, he argues, are likely to interject communitarian elements into capitalist society as long as they are not totally marginal or separated from that society. Thus, the impact of communitarian organizations within capitalist society may be greater than that of marginal collectives (Ibid.).

Of particular interest, yet also particularly unstudied, is the way constituent normative orders shape state law. Yet, this describes how groups in power attempt to control state law and shape it to their ends at the same time as they are limited by the plural normative orders of which they are a part. Careful empirical work such as Henry's study of workplace discipline (1983) or Silbey's and Bittner's study of consumer protection reveal the importance of constituent normative orders within regulatory activities (1980–81, 1982). Yngvesson's ethnographic studies on local-level legal processes in American courts demonstrate how court clerks constitute the legality of the lower courts through their un-

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derstanding of community norms of justice (1985, 1988). Sarat and Felstiner, listening to the way lawyers talk to clients, hear the construction of a vision of legality for the client which seems to reflect the local normative order of lawyers (1986).

David Sugarman develops the mutually constitutive understanding of state law and nonstate normative orders in his edited volume, *Legality, Ideology, and the State* (1983). State law is itself plural: it contains procedures for establishing facts, general substantive rules that guide citizen action, enforcement of judgments, provisions for physical punishment, modes of appeal, insurance against loss, ideological and symbolic dimensions, and the ability to provide a degree of private ordering through facilitative laws (1983: 230–231). Law and legal institutions mean different things to different people. There are tensions between local and central regulation, indigenous and state conceptions of legality, discretionary practices and enforcement, and arbitration and other extralegal mechanisms for dispute resolution. In eighteenth and nineteenth century Britain, there were struggles between local courts, special courts, and the formal state system of courts. Arthurs demonstrates these struggles in British administrative law (1985) and Provine describes analogous debates over local lay judges in the United States (1986).

Sugarman explores the plurality of law through his discussion of facilitative law, law that functions not by imposing obligations but by providing individuals with facilities for realizing their wishes through conferring legal powers on them, such as the powers to construct marriages, wills, contracts, companies, trusts, and so forth (1983). This law permits private law-making and affords the opportunity to bypass the legal obligations of the state. Facilitative laws simultaneously define and constrain permissible conduct and enable individuals to expand or contract their autonomy, thus promoting, qualifying, or subverting state policy (Sugarman, 1983: 217).

In his review of this book, Freeman sees the move in British critical legal scholarship toward seeing law as pluralistic—as having many sides and many determinations—as analogous to the American critical legal studies' move to deconstruction (1986: 840). Freeman claims that, in an effort to avoid simple reductionist views of law as the product of the ruling class, British critical legal studies scholars argue that law is pluralistic just as Americans argue that it is indeterminant and incoherent. Yet, Freeman concludes, pluralism, just as deconstruction, ultimately ends in immobilization, since if everything is complex and variable, just as if everything is a matter of interpretation, how can one say anything?

The turn toward a dialectic analysis of the relations between plural legal orders, particularly between state law and other normative orders, comes primarily from work within the new legal

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pluralism: that is, from those who have used the model of legal pluralism to understand legality in the First World. Yet, this dialectic analysis is equally fruitful for a reanalysis of classic legal pluralism materials, as the example of the reanalysis of customary law demonstrates. In none of these analyses, however, is there an implication that the power relations between plural legal orders are equal: the theme instead is the penetration and dominance of state law and its subversion at the margins.

V. PLURAL LEGALITIES AND LOCAL KNOWLEDGE

Another aspect of legal pluralism is the study of law as a system of meanings, a cultural code for interpreting the world. Geertz, a preeminent spokesman for this perspective, has developed an interpretive view of legal pluralism, one richly evocative of cultural diversity (1983). Law is understood as a system of symbols, of meanings. Unlike the research tradition discussed above, there is little attention here to relations of power or to the political economy of legal pluralism, but there is a substantial interest in history and context.

In *Local Knowledge*, Geertz urges a focus on structures of meaning, especially on the symbols and systems of symbols through whose agency such structures are formed, communicated, and imposed, in the comparative analysis of law as in the comparative analysis of myth, ritual, ideology, art, or classification systems (1983: 182). In his words, . . . " 'law' here, there, or anywhere, is part of a distinctive manner of imagining the real (Ibid.: 184)." He conceives of law as a species of social imagination. Starting with basic words or concepts, he compares the "legal sensibilities" of three cultures, using these words to orient the reader to different senses of law. This is a hermeneutic project; the words are keys to understanding the social institutions and cultural formulations that surround them and give them meaning (1983: 187). For example, in the Islamic world he discusses the concept *haqq* which means reality, truth, or validity, and in various permutations and combinations, God, fact, actuality, right, duty, claim, obligation, fair, valid, just, or proper (1983: 188). In Islamic legal sensibility, to determine the empirical situation is to determine the jural principle. Facts, in other words, are normative; there is no fact/law dichotomy. Facts are estimates of character assumed by background and demeanor as much as they are weightings of notarized documents presented (Rosen, 1980–81: 231; see also Messick, 1986).[4] Because the law itself is certain and comprehensive, although what is just and unjust is not, it is in the recounting of incident and situa-

[4] The *qadi* or judge takes into account the relationship between the parties, their social background, each person's location in the system of ordering, their kin connections, residence, and occupation as evidence as to the likely way that the person acted in any situation (Rosen, 1980–81: 229). The standard of conduct to which a person is held depends on who he or she is.

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tion that value balancing comes in. To achieve the proper recounting of a situation, the court needs morally upright people who can testify about cases. In classical times these people were chosen by the *qadi* and appeared before the court over and over (Geertz, 1983: 191–192). Geertz argues that even in secular courts, one can see the lingering influence of the notion of the virtuous witness speaking moral truth in the persistence of certified truth bringers and other examples of normative witnessing in these courts (Ibid.: 193).[5] A hermeneutic approach applied to legally plural situations describes sets of meanings joined together in a "polyglot discourse" (Ibid.: 226). These views do not cohere into a systematic position, but bounce off one another. This means viewing the situation as one of several, incommensurate local expressions of legal sensibilities. The diversity and mingling of legal sensibilities is not likely to end, in Geertz's opinion, but may increase; it is something that Indonesians and other Third World peoples live with as they try to construct principled lives, as do many First World peoples as well.

In a recent paper that develops these themes, Santos asserts that legal pluralism is the key concept in a postmodern view of law (1987: 297). Using the metaphor of the map to discuss law, he suggests that law is a system of signs that represents/distorts reality through the mechanisms of scale, projection, and symbolization. As do maps, different legal orders have different scales, different forms of projection and centering, different systems of symbolization. Thus, another way of discussing legal pluralism is to talk about the different symbolic systems inscribed in each normative order.

Santos delineates two ideal-typical sign systems by means of which law symbolizes reality. The first he labels the Homeric style, in which (to shorten his description) everyday reality is described in abstract and formal terms through conventional cognitive and referential signs. A second, the biblical style, presupposes an image-based legality in which (again condensed) interactions are inscribed in multilayered contexts and described in figurative and informal terms through iconic, emotive, and expressive signs (1987: 295). These styles are perpetually in tension, with variations in dominance during particular historical periods. He suggests that the modern state legal order is predominantly Homeric. In Cape Verde, the tension between these two types of legal symbolization appears in the system of popular justice, which fuses both customary law and state law (Ibid.: 296). The tension crops up in the way judges settle disputes: some judges adopt one, some the other, some shift from one to another depending on the case and their familiarity with it. He concludes that the legal pluralism he is

[5] Hayden provides an analysis of forms of speaking and consideration of facts in Indian caste panchayts, government courts, and United States courts (1984; 1987).

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describing is not the legal pluralism of traditional legal anthropology (what I have called classic legal pluralism) but (Ibid.: 297–298)

> rather the conception of different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our actions. . . . Our legal life is constituted by an intersection of different legal orders, that is, by *interlegality*. Interlegality is the phenomenological counterpart of legal pluralism and that is why it is the second key concept of a postmodern conception of law.

Bentley develops the culturally constructive role of law in his analysis of disputing among the Maranao in the Philippines (1984). He argues that disputing is an expression of competing visions of social reality, an arena for constructing and expressing alternative visions of the world. In the society he studied, which combines custom (*adat*), Islamic law, and Philippine civil and criminal law, the manipulation of the different legal systems is part of the effort to construct an interpretation of truth in the world in a way that others will accept. He argues that the complexity and fluidity of the arenas of contest appears to enhance the range of manipulation and contest. In the same vein, O'Connor makes the intriguing argument that law is an indigenous social theory, using Thai ethnography (1980).

Foucault's conceptions of the forms of power and discipline of modern society provide yet another take on legal pluralism (1979), a perspective that is being developed by Fitzpatrick (1983b). If the nature of law that has emerged in the wake of capitalism is fundamentally different from that of pre-capitalist societies in what Foucault refers to as its "disciplinary technologies"—productive forms of power such as the timetable, the cell, and the panopticon—the encounter between these forms of power and discipline and those of noncapitalist societies takes on new meaning. Power, in Foucault's theory, is not simply based on prohibition but also on the positive formation of norms and shaping of individuals to fit these norms (Fitzpatrick, 1983b: 50). Law gives shape to institutions that supervise rather than contain; it creates new technologies of discipline that stretch from the prison to the factory to the military to the school (Fitzpatrick, 1983b; Foucault, 1979).

In an intriguing illustration of the meaning of these shifts in forms of power and discipline, Pospisil describes the dismay of the Kapauku Papuans at the use of jail as a punishment, one that to them seems extraordinarily severe since it separates the individual from the essential cooperation of soul and body, the linkage between one's actions and one's own free decisions (1979: 141). In their words, in jail, "The man's vital substance deteriorates and the man dies" (Ibid.: 142). Indeed, the Dutch colonial administrators found that Kapauku tended to pine and die if imprisoned long, despite the administrators' conviction that prison had a positive, civilizing effect.

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VI. CONCLUSIONS AND DIRECTIONS FOR FUTURE RESEARCH

What are the implications of focusing on legal pluralism for future sociolegal research? My review of this literature suggests at least five ways in which viewing sociolegal phenomena as plural expands the research framework. First, a concern with legal pluralism moves away from the ideology of legal centralism—the predisposition to think of all legal ordering as rooted in state law—and suggests attention to other forms of ordering and their interaction with state law. It highlights competing, contesting, and sometimes contradictory orders outside state law and their mutually constitutive relations to state law.

Second, this perspective requires a shift away from an essentialist definition of law to an historical understanding since any situation of legal pluralism develops over time through the dialectic between legal systems, each of which both constitutes and reconstitutes the other in some way. Defining the essence of law or custom is less valuable than situating these concepts in particular sets of relations between particular legal orders in particular historical contexts. Plural normative orders, once created, can persist with tenacity justifying themselves by appeals to tradition, or they can be radically reformed in the contest between opposing orders, a process exemplified by the creation of customary law in colonial societies.[6] Or they may change incrementally through small additions, subtractions, and reinterpretations. The papers from a recent conference, Ethnohistorical Models for the Evolution of Law within Specific Societies, provide rich descriptions of these historical processes of change and transformation in legally plural societies (Starr and Collier, 1988).[7]

Third, viewing situations as legally plural leads to an examination of the cultural or ideological nature of law and systems of normative ordering. Rather than focusing on the particular rules applied in situations of dispute, this perspective examines the ways social groups conceive of ordering, of social relationships, and of ways of determining truth and justice. Law is not simply a set of rules exercising coercive power, but a system of thought by which certain forms of relations come to seem natural and taken for granted, modes of thought that are inscribed in institutions that exercise some coercion in support of their categories and theories of explanation.

Fourth, examining the plurality of legal situations facilitates

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[6] Starr and Collier describe this process in terms of "historical struggles between native elites and their colonial and postcolonial rulers" (1987: 368).

[7] As the twenty participants in this 1985 conference concluded, societies may be characterized as having multiple legal systems that are not autonomous but negotiated in relation to an encompassing political structure and particular assymetrical relations of power (Starr and Collier, 1987: 371; see further, Starr and Collier, 1989).

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the move away from an exclusive focus on situations of dispute to an analysis of ordering in nondispute situations (see further, Collier, 1973; Engel, 1980). Holleman suggests the study of "troubleless cases" rather than situations of trouble, arguing that disputes are exceptional events and therefore misleading guides to the nature of ordering (1986).[8] The study of facilitative law and historical studies of legal change similarly move away from an exclusive focus on dispute.[9]

Fifth, the dialectical analysis of relations among normative orders provides a framework for understanding the dynamics of the imposition of law and of resistance to law, for examining the interactive relationship between dominant and subordinate groups or classes. It offers a way of thinking about the possibilities of domination through law and of the limits to this domination, pointing to areas in which individuals can and do resist. This is a difficult area for research. On the one hand, attention to law in its ideological role points to its power to construct modes of thinking and implicit understandings as a central aspect of its power. On the other hand, attention to plural orders examines limits to the ideological power of state law: areas where it does not penetrate and alternative forms of ordering persist, groups that incorporate the symbols of state law but oppose it, perhaps becoming expert in its intricacies and forms of power as in colonial India, and situations in which other forms of ordering are so embedded in the administration of law that they subvert its actual implementation. Here, of course, we are on the familiar terrain of plea bargaining, courtroom workgroups and agency capture, but instead of explaining why the law on the books and the law in action differ according to gap theory, we could understand this well-documented characteristic of legal life as one of plural legal orders within the courthouse, the police station, or the regulatory agency, some of which are organized around standards of community justice, others around rule-of-law standards, and others around the cultural predispositions of particular groups in power. Indeed, state law is itself plural. Despite efforts to root out pluralism such as attacks on "rough justice," on lay justices of the peace (Provine, 1986), and on police discretion, new plural orderings continually spring up. These plural orderings constitute state law.

[8] The Dutch tradition of the anthropology of law, which is premised on assumptions of legal pluralism, indicates the potential of an approach to sociolegal phenomena that looks at systems of ordering within arenas of social life such as the family, land tenure, inheritance, commercial transactions, and so forth, examining day-to-day peace rather than rare moments of trouble (Griffiths, 1986b). Griffiths suggests that perhaps the Anglo-American common law tradition leads British and American anthropologists to focus on moments of dispute rather than on systems of ordering embedded in the wider domain of uncontested social life (1986b; see also Ietswaart, 1986).

[9] As Starr and Collier point out, the dispute paradigm has become too normative and positivistic for many researchers, leading to a turn to historical research as a way of considering legal change (1987: 367).

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However, for some problems the concept has limitations. One is in the analysis of change within a single social field and a second is in the attention to the specific characteristics of particular social locations. A legal pluralist analysis tends to emphasize changes that occur through interactions between social fields but not those taking place within a social field. It is likely to miss the way a particular social field is gradually reshaped by a variety of ideological and political forces both within and outside it. For example, in their study of the impact of European missionaries on South Africa during the colonial period, Comaroff and Comaroff argue that the missionaries introduced new concepts of time, space, work, personhood, and so forth, at a variety of particular locations throughout the country over a period of years, gradually shifting the consciousness of the Africans they encountered and converted and paving the way for the colonial conquest of these people despite the missionaries' efforts to oppose it (1986).[10] Although this historical shift in consciousness could be described in terms of legal pluralism—the interaction between the African and the missionary legal orders—the concept tends not to highlight the intricate relations between ways of thinking and knowing within a social field, the ways they change over time, and the ways symbols seep into and out of legal systems in large cities, small towns, and provincial places.

Moreover, the concept of legal pluralism can press too quickly toward analyses of systems to the neglect of the variation in particular local places. It is difficult to understand the particularity of small situations and the interaction of large systems at the same time. Thinking of legal pluralism seems likely to get us out of the courtroom and the lawyers's office, but once outside, legal pluralist analyses could lead away from detailed examinations of particular local places. To examine the ever-changing conceptions of the normal and the cultural and the constant struggle of interpretation of the symbols and forms of legality in small places and large legal systems at the same time is, at the least, challenging.

In sum, the new legal pluralism has opened up questions of dialectic and resistance that build on the sophisticated theoretical traditions and rich ethnography of classic legal pluralism. There is much in these traditions that could serve as the basis for exciting new directions in law and society research. However, the concept requires refinement as we work to develop it, including attention to the specificity of each situation, to the variations in minute so-

[10] By introducing new symbols such as the moral worth of work, wealth, belief in free choice, liberal democracy, impersonal forms of regulation such as the clock, and conceptions of political authority as distinct from religious authority and power, the missionaries gradually transformed the taken-for-granted world of the Tswana people and, despite their explicit opposition to taking political power or fostering imperialist expansion, facilitated the political absorption of the Tswana into the colonial state (Comaroff and Comaroff, 1986; see also Comaroff, 1985).

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cial processes, and to the complex texture of ideological meanings formed within particular historical situations. This is no small project.

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