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Édition électronique

URL : <https://journals.openedition.org/ema/1869>

DOI : 10.4000/ema.1869

ISSN : 2090-7273

Éditeur

CEDEJ - Centre d'études et de documentation économiques juridiques et sociales

Édition imprimée

Date de publication : 30 juin 2005

Pagination : 159-172

ISSN : 1110-5097

Référence électronique

Baudouin Dupret, « What is plural in the law ? A praxiological answer », *Égypte/Monde arabe* [En ligne], 1 | 2005, mis en ligne le 08 juillet 2008, consulté le 07 juillet 2022. URL : <http://journals.openedition.org/ema/1869> ; DOI : <https://doi.org/10.4000/ema.1869>

Ce document a été généré automatiquement le 7 juillet 2022.

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What is plural in the law ? A praxiological answer

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- 1 Legal pluralism has become a major theme in socio-legal studies. However, under this very broad term many different trends can be identified which share little but the very basic idea that law is much more than state law. This article focuses on these theories that address the plural nature of the law. It proceeds in five stages. In a first section, it describes the historical scientific background of the theories, namely, the pioneer influence of Mauss and the works of Ehrlich, Malinowski, the Adat Law School, Pospisil and Gurvitch. In a second section, it addresses recent theories of legal pluralism and summarizes the approaches of many scholars and scholarly trends to law; among which, Griffiths' radical theory, the French-speaking research, legal polycentricity, autopoiesis and Chiba's culturalist theory. The third section presents some of the major criticisms of legal pluralism. These critical stances *vis-à-vis* the legal pluralistic study of law are centered around three main questions: the definitional problem, the functionalist premises and the culturalist conception, all of which undermine existing theories. Among possible remedies, realism and praxiology are proposed as answers in the fourth section, in an attempt to mitigate the consequences of these flaws. In the final section, this praxiological re-specification is illustrated through the study of cases related to customary marriage and homosexual relationships in Egypt. It is argued that these cases, far from constituting overwhelming cases of legal pluralism, reveal the extent to which the law is what people consider as law, and how often people's actions orient to the existence of law as an identifiable and specific referring point, according to which they modify their behavior.

The people's law and state law: an old dispute

- 2 Reactions to dogmatic conceptions of law are as old as social science. According to Durkheim, law is a social phenomenon that reflects "all the essential varieties of social solidarity"; "social life, wherever it becomes lasting, inevitably tends to assume a

definite form and become organized. Law is nothing more than the most stable and precise element in this very organization.” (Durkheim, 1983:33) However, Durkheim makes a strong distinction between law and other normative phenomena. In *La Division du travail social*, (1960) he makes the assessment that rules belonging to law and rules belonging to morality – that is, rules with an organized sanction and those with a diffused one – must be differentiated, even though both are linked to each other either through the legal rule itself (e.g. the morality of the rule sanctioning the crime), or through the obligation generated by the legal rule (the morality of the obligation to abide by the law). In a later article (1924) he detaches morality from the idea of sanction, and moves toward the concept of duty, conscientiousness and duty-bound desirability.

- 3 In establishing such a distinction between law and morality, the work of Durkheim allowed many theoreticians studying normativity in social life to break from the legal perspective in order to analyse the social. However, it also led to the establishment of law as a realm that was autonomous and impervious to the influence of other norms. As such, he reproduced the classical positivistic distinction drawn by Austin, for whom law is distinct from other normative orders because it is established on a command expressed by a *de facto* legitimate authority with the power to sanction. Paradoxically, such a theory, which aimed at making law independent from the hold of transcendence, was criticized for its lack of social sensitivity.

Malinowski and Ehrlich: law as social order

- 4 Building on Durkheim’s legacy, Marcel Mauss formulated the idea that, within a society, there can be many legal systems interacting with each other, but he did not elaborate further. More relevant for present purposes is Bronislaw Malinowski’s definition of law, which he strongly associates with the notion of social control. According to him, law should be defined “by function and not by form” (1934:xiii). There are many societies lacking any centralized institution to enforce *the* law, but there is no society that is devoid of rules that “are felt and regarded as the obligations of one person and the rightful claims of another” (1926:55). As Brian Tamanaha puts it, Malinowski’s reasoning is that:

the function of law is to maintain social order; social order can be found in regularized patterns of actual behavior; the binding mechanism maintaining these patterns of behavior is the complex of social obligations (i.e. reciprocity); *ipso facto*, legal norms are the norms abstracted from actual patterns of behavior and the mechanism of law resides in the social relations themselves. (Tamanaha, 1997:104)

- 5 Accordingly, law is as plural as social life itself, and represents the rules that are “too practical to be backed up by religious sanctions, too burdensome to be left to mere goodwill, too personally vital to individuals to be enforced by any abstract agency.” (*Ibid.*:68)
- 6 The contribution of Eugene Ehrlich is central to the concept of legal pluralism. This Austrian sociologist developed the theory of “living law” in reaction to the ideology of an exclusively state-centered law. Considering that law is mostly independent from the state, Ehrlich proposes what he calls a “scientific conception of law”, which is about the rules of conduct. Accordingly, he states that “it is not an essential element of the concept of law that it be created by the state, nor that it constitute the basis for the decisions of the courts or other tribunals, nor that it be the basis of a legal compulsion

consequent upon such a decision.” (1936:24) Like Malinowski, Ehrlich considers that law is fundamentally a question of social order, which is to be found everywhere, “ordering and upholding every human association” (*ibid.*:25). It is from these associations, from these instances that produce norms of social control, that law emerges. In other words, law is synonymous with normativity.

- 7 American legal realism was also concerned with the idea of plurality in the development of legal systems, although it does not use the word “pluralism”. Focusing on conflict resolution more than on law as such, Llewellyn and Hoebel, (1941) for instance, stressed the fact that normativity is dependent on the type of social unit in which people are embedded in their relationships. But legal pluralism was indebted much more to the Dutch Adat School, at least in its anthropological dimension¹(*adat* is a word of Arabic origin specifying local practices in Southeast Asia, as opposed to state law and Islamic law). As early as 1901, Van Vollenhoven²stated that the associative sub-groups that societies are composed of produce their own law. He was followed by a whole set of Dutch researchers, who succeeded in collecting and describing many legal practices in the field of inheritance, marriage, land law, etc. After independence was achieved by the former colonies, these researchers were followed by indigenous scholars who furthered the study of local customs, although often idealizing their properties.³

The many levels of social law

- 8 Georges Gurvitch’s theory deserves a particular mention. In two of his major books, *L’idée du droit social* (1932) and *L’expérience juridique et la philosophie du droit* (1935), he developed an unquestionably pluralistic approach to law. According to Gurvitch, there is historically no fundamental unitary principle in law. State centralism is the achievement of specific historical and political conditions. He identifies three main types of law, which are hierarchized differently in every society: state law (claiming to monopolize legal activities), inter-individual or inter-group law (bringing together exchanging individuals or groups), and social law (bringing together individuals so as to constitute a collective entity). The latter is clearly non-static, since it corresponds to the multiplicity of legal systems that social law generates. Gurvitch also makes an important distinction between the plurality of the sources of law and legal pluralism (Rouland, 1988). His theory did not receive much attention. This may be attributed to different reasons, among which were his vague, fanciful, complex and abstract language on the one hand, and on the other, the fact that “his concept of ‘social law’ challenged and disturbed the traditional juristic notion of law which was founded on a state-centralistic ideology” (Banakar, 2000).
- 9 Another approach that should be mentioned is Leopold Pospisil’s concept of “legal levels”, which is articulated around the idea that societies are never fully integrated. On the contrary, societal structures are much more complex:
Society, be it a tribe or a ‘modern’ nation, is not an undifferentiated amalgam of people. It is rather a patterned mosaic of subgroups that belong to certain, usually well-defined (or definable) types with different memberships, composition, and degree of inclusiveness. Every such subgroup owes its existence in a large degree to a legal system that is its own and that regulates the behavior of its members. (Pospisil, 1971)

- 10 Hence, there are as many legal systems as there are social subgroups. These systems are organized segmentarily in inclusive levels, each level being made up of the sum of the legal systems of subgroups of the same type and sharing the same degree of inclusiveness.
- 11 These many theories, which shared in common a conception of the non-centralized pluralistic nature of law, constituted a patchwork of very different trends that were independent from one another. On the contrary, the 1970s and the 1980s witnessed the blossoming of a more fully integrated attempt to deal with law from a social perspective that denied the state its monopoly on, and even its mastery of, the production of law.

The new legal pluralism

- 12 The expression “new legal pluralism”, borrowed from Sally Engle Merry, (1988:869-901) aims at describing the emergence of the notion of legal pluralism in scholarship by studying societies without a colonial past. “To recognize 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.” (*id.*:874)

Griffiths’ radical perspective

- 13 In its radicalism, John Griffiths’ article “What Is Legal Pluralism”⁴ might prove instrumental for describing the basic tenets of this new trend. Moreover, it remains a seminal contribution in the field.⁵ Griffiths first identifies his main enemy: legal centralism, the law of which
- is an exclusive, systematic and unified hierarchical ordering of normative propositions, which can be looked at either from the top downwards as depending from a sovereign command (Bodin, 1576; Hobbes, 1651; Austin, 1832) or from the bottom upwards as deriving their validity from ever more general layers of norms until one reaches some ultimate norm(s) (Kelsen, 1949; Hart, 1961).⁶
- 14 Claiming that legal centralism is an ideology, he charges many social scientists with having confused a normative stance and a descriptive one. According to him, law does not exist where the proponents of legal centralism asserted that it would: if it did exist, legal centralism would be “a myth, an ideal, a claim, an illusion”,⁷ whereas legal pluralism would be the fact. Griffiths then proceeds to the distinction between what he calls strong and weak definitions of legal pluralism. The former refers to legal systems in which the sovereign commands or validates or recognizes different bodies of law for different groups in the population; a weak conception of legal pluralism, however, is mainly a (weak) conception of legal centralism, for it gives the central state the ultimate power to acknowledge or deny the existence of such different bodies of law. The strong definition of legal pluralism, on the other hand, is the one that, according to Griffiths, is directly concerned with “an empirical state of affairs in society,”⁸ and not with mere ideology.
- 15 It is by the yardstick of such a distinction between weak and strong definitions that Griffiths evaluates existing descriptive conceptions of legal pluralism. This explains his comments both on Gilissen’s introduction and Jacques Vanderlinden’s contribution to

Le pluralisme juridique (1972), which he criticizes for having remained at the level of “the typification, explanation and justification of non-uniformity within state legal systems.”⁹ On the contrary, anthropologists would have no difficulty in recognizing legal pluralism in its strong empirical sense. Here Griffiths reviews the works of Ehrlich and Pospisil (see above), and then adds to the discussion the writings of M. G. Smith and

- 16 S. F. Moore. Before turning to the latter, it should be said that Griffiths concludes by giving his definition of law and legal pluralism. Law, he says, is the self-regulation of every social field – it becomes synonymous with social control; but in regard to legal pluralism, law becomes the legal organization of society, which is “congruent with its social organization.”¹⁰
- 17 Sally Falk Moore has been unanimously applauded among legal pluralists for having provided the appropriate locus of law in socio-legal research. She claims that “the social structure” is composed of many “semi-autonomous social fields”, the definition and boundaries of which are not given by their organization, but “by a processual characteristic, the fact that it can generate rules and coerce or induce compliance to them” (1978:57). Three characteristics of Moore’s concept explain the appeal it exercised: first, she presents these fields as the fundamental unit of social control, which is directly connected to behavioral norms of conduct; second, every individual may simultaneously belong to many social fields, which accounts for social complexity; ¹¹third, a social field is autonomous, i.e. it can resist the penetration of external norms, but never totally, because its capacity for resistance is a function of the degree of independence of its members *vis-à-vis* itself and of its ability to resist norms originating in other fields. It should be noted, however, that Moore does not use the word “law” when describing the rules and norms that are generated by semi-autonomous social fields.

French-speaking scholarship

- 18 Jacques Vanderlinden, who was one of the many victims of Griffiths’ critique, contributed a reappraisal of his own concept of legal pluralism 20 years later. (1989:149-157) Vanderlinden’s position is interesting in that it identifies some of the reasons that propelled lawyers into adhering to a certain concept of legal pluralism. First, he reacts against a continental, civil (as in civil law) way of considering law. In contrast to legal theory, which has a very restrictive understanding of the concept of rule, Vanderlinden advocates taking into consideration normative practices. Second, he considers law as just one regulating system among others (politeness, morals, fashion, good manners, etc.), which is, however, distinctive because of its hegemonic ambition. This means that, contrary to Griffiths, Vanderlinden does not deny the specificity of state law and does not reduce it to mere social control. Third, he states that society as such is plural, meaning that pluralistic normative orderings cannot be evaluated by the yardstick of a monistic societal conception. Finally, Vanderlinden advocates approaching the phenomenon of legal pluralism from the perspective of the normative practices of individuals embedded within social networks, and individually shopping in these many normative fora. Paradoxically, Vanderlinden, who at the beginning of his argument recognizes a certain specificity of law, ends with the statement that

individuals, because of their belonging to many social networks, are subjected to many legal systems. (1993:575-583)

- 19 In sum, scholars like Vanderlinden made the assumption that, because of the existing gap between legal practices and formal textual legal provisions, there is a plurality of laws. As Evelyne Serverin puts it, “instead of seeing in these practices the sad effect of the inefficiency of law, it should be read [following these authors] as the positive manifestation of their conformity to other legal orderings.”¹² According to some of these scholars, these alternative legal orderings are totally independent of state law, whereas according to others the state remains the gravity point of these practices. However, all converge in challenging the legitimacy of state law. In France, people like André-Jean Arnaud focus their research on the emergence of “multiple spontaneous legal orderings” (1998:81) on the basis of the distinction between law as it is imposed and law as it is lived. In Québec, Jean-Guy Belley made an attempt to bridge the gap between French-inspired and Anglo-Saxon approaches to legal pluralism. In his last research, he speaks of the “conjunction of normativities” rather than of concurrence (1998). In Switzerland, Jean-François Perrin stresses the efficacy of “parallel or concurring legalities ... even when they conflict with the system of state norms.” (1997:36)
- 20 Today, the classical theme of conflict resolution seems to constitute the focus of this French-speaking pluralist program. “Lawyers, whether they call themselves legal sociologists or anthropologists, converge in the same perspective of the recognition of a non-institutional justice administered by nonprofessional third parties.” Serverin, *op.cit.*:68) As mentioned above, this interest in the anthropology of conflict may be traced back to American legal realism and Llewellyn’s “trouble case method”, and more recently to Laura Nader and Harry Todd’s *Disputing Process* (1978) and Simon Roberts’s *Order and Dispute* (1979).¹³

Legal polycentricity

- 21 With the emergence of the “concept” of postmodernity, scholars oriented their research in legal pluralism toward a new definition. According to Armando Guevara-Gil and Joseph Thome, Boaventura de Sousa Santos “has been able to forge a postmodern conception of law defined in terms of legal pluralism and of interlegality, that is, encompassing both the social constructions of normative orders and the human experiencing of them.” (1992:87)¹⁴ Santos states:

legal pluralism is the key concept in a postmodern view of law. Not the legal pluralism of traditional legal anthropology in which the different legal orders are conceived as separate entities coexisting in the same political space, but rather the conception of different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our legal actions (1989:279-302, at 297-298).
- 22 Between these multiple networks of legal orders, there is continuous porosity. A person’s life “is constituted by an intersection of different legal orders, that is, by interlegality” (Santos, *op.cit.*:298).
- 23 In order to make sense of these legally plural contexts, people need a “new common legal sense”, which would aim “at trivializing our daily encounters with the laws so that their meaning becomes clear to the untrained law user” (Santos, *op.cit.*:302). Drawing a metaphorical comparison with geographical cartography, Santos describes

how this “polycentric legal world” represents and transforms reality through a set of conventions. It would provide, according to Ghevara-Gil and Thome, “the methodological clues and theoretical propositions regarding how different legalities are constructed, enforced and experienced, within and beyond the intra-state level of conflicting legalities” (Guevara-Gil, Thome, *op.cit.*:91). Santos acknowledges that, under his definition, there is a great variety of legal orders. However, he focuses on what he calls “six structural clusters of social relations in capitalist societies integrating the world system:” domestic law (norms and dispute settlements resulting from social relations in the household), production law (resulting from labor relations), exchange law (resulting from merchant relations), community law (resulting from group identities), state law and systemic law (“the legal form of the worldplace”), and these very broadly defined legal clusters potentially and partly overlap each other (Santos, 1995:429).

- 24 The concept of polycentricity of law was also developed by scholars in the Nordic European countries. It refers to a category of instances of legal pluralism, which is described as the use of sources of law in different sectors of the state administration. As summarized by Gordon Woodman (1998): “the principal hypothesis, which is currently the subject of research, is that different authorities frequently use different sources of law, and that even when they use the same sources they observe different orders of priority between them.” According to Agnete Bentzon (1992), the aim is to supplement “Sally Falk Moore’s picture of the semi-autonomous social fields inside the apparatus of the State.”

Autopoiesis and legal pluralism

- 25 The theory of autopoiesis rests on three main assumptions: law, as an autonomous epistemological subject, constructs its own social reality; law, as a communicational process, produces human actors as semantic artifacts; and because of the simultaneity of its dependence and independence *vis-à-vis* other social discourses, modern law permanently balances between positions of cognitive autonomy and heteronomy (Teubner, 1992a:1150). On such a basis, Gunther Teubner, the theory’s leading figure together with Niklas Luhmann, constructs his own theory of legal pluralism.
- 26 First, Teubner criticizes the “classical approach” to legal pluralism for its inability to properly define law. This is due to two main flaws in classical legal pluralism: first, legal pluralists make no proper distinction between law and other kinds of normativities; second, they attribute to law a single function, whereas various functions are identifiable. Then, he defines legal pluralism “no longer as a set of conflicting social norms in a given social field but as a multiplicity of diverse communicative processes that observe social action under the binary code of legal/illegal” (Teubner, 1992b).
- 27 This binary code of legal/illegal is constituted as the discriminating factor, which allows the exclusion of “purely economic calculations” as well as of “sheer pressures of power and merely conventional or moral norms, transactional patterns or organizational routines” (*ibid.*). This binary code is not peculiar to state law, but “it creates instead the imagery of a heterarchy of diverse legal discourses” (*ibid.*). Finally, it serves many functions, among which are “social control, conflict regulation, reaffirmation of expectations, social regulation, coordination of behavior or the disciplining of bodies and souls” (*ibid.*:15). Law in its autopoietic version is thus, as

Brian Tamanaha stresses, “essential to the survival and functioning of the overall social system that provides its environment” (Tamanaha, *op.cit.*:308). It should be added that, following Teubner, the legal system is everything that is coded along this binary legal/illegal line and is not confined to formal legal institutions.

Legal pluralism as an anti-hegemonic counter-claim

- 28 Massaji Chiba’s theory of non-official laws remains apart from the different orientations described above. The main endeavor of this Japanese scholar is, Gordon Woodman says, “less to develop or clarify a definition of legal pluralism than to develop or clarify the features of certain instances of legal pluralism.” (Woodman, *op.cit.*) Instead of simply opposing state law and people’s law, Chiba identifies many legal levels: official law, i.e. “the legal system authorized by the legitimate authority of a country” (1987:173); unofficial law, i.e. “the legal system which is not officially authorized by the official authorities, but authorized in practice by the general consensus of a certain circle of people” (*ibid.*) – and which has a distinctive influence on the effectiveness of the official law; and legal postulates, i.e. “the system of values and ideals specifically relevant to both official and unofficial law in founding and orienting the latter” (*ibid.*). These three levels are not organized according to a rigid and permanent hierarchy, but differ from one society to another. For instance, Eastern societies would be characterized by their reliance on unofficial law, whereas Western ones would be mainly state-centered. Besides these legal levels, Chiba identifies three dichotomies of law: official law vs. unofficial law, legal rules vs. legal postulates, and indigenous law vs. transplanted law (*ibid.*:177-179). It is in the combination of these many levels and dichotomies that the law of each individual country could be analyzed. This analytical scheme serves “to advance social sciences of non-Western law with respect to the alleged cultural lag or legal pluralism” (Chiba, 1993:13).

Critiques

- 29 According to Merry, Moore’s concept of semi-autonomous social fields remains “the most enduring, generalizable, and widely-used conception of plural legal order” (Merry, *op.cit.*:878). Such a statement reveals how little criticism has been addressed to the concept and the propositions associated with it (Woodman, *op.cit.*). It also reflects the increasing support that the radical theory of legal pluralism received. Nowadays, legal anthropology, the sociology of law and legal theory, must pay tribute to it. However, the two sections above have shown that, “since there are many competing versions of what is meant by ‘law’, the assertion that law exists in plurality leaves us with a plurality of legal pluralisms” (Tamanaha, 2000:297). Accordingly, the critiques that may be addressed are many, and potentially different from one version to another. In the following section, these critiques are organized around what appear to be the three main fundamental flaws undermining existing legal pluralistic theories: its definitional problem, its functionalist nature and its holistic essentialist culturalism.

Definitional deadlock

- 30 Griffiths explicitly identifies the ideology of legal centralism as what legal pluralism set out to challenge. While the state portrays itself as the sole lawmaker, legal pluralism highlights the multitude of partially autonomous and self-regulating social fields also producing legal rules. However, there is a strong case for moving away from the present dichotomization of the analysis of the phenomenon of law between state law and legal pluralism.
- 31 Brian Tamanaha reveals some of the many weaknesses in the reasoning of the proponents of legal pluralism, among which is the “conclusion that all forms of social control are law” (Tamanaha, 1993:193). Merry comments that “calling all forms of ordering that are not state law by the name law confounds the analysis” (*op.cit.*:878). The problem can be attributed to the confusion between descriptive and non-descriptive concepts. Law belongs to the latter, at least in the sense that it never constituted a tool in the hands of sociologists for describing social reality. When they establish law as synonymous with social norm, legal pluralists create an ambiguity, since they use a word that has a commonsense meaning to perform an analytical task that runs contrary to this meaning. In other words, what is the analytical utility of using the word “law” to describe what common sense would never associate with law (good manners, etc.), especially if this alleged concept either does not convey anything that makes it distinct from other less connoted words (like norm), or surreptitiously conveys the distinctive character of what it is supposed to be contrary to?
- 32 Tamanaha goes further and states that “lived norms are qualitatively different from norms recognized and applied by legal institutions because the latter involves ‘positivizing’ the norms, that is, the norms become ‘legal’ norms when they are recognized as such by legal actors” (*id.*:208). Contrary to what I claimed in another article (1999), this critique is very sound, although the dividing line is less between lived norms and positivized norms, than between law as recognized and referred to by people –whoever they are – and other moralities and normativities as recognized and referred to by people, whoever they are.¹⁵
- 33 In other words, law is not an analytical concept, but only what people claim that it is, a position that allows denial of the relevance of a question that a hundred years of legal sociology and anthropology have been unable to settle: the question of the boundaries of juridicity. The existence of law is evidenced only by its self-affirmation, or, rather, by its identification as such by people. This does not preclude the study of normativity in general – on the contrary – but it seriously challenges the possibility of conducting it under the auspices of a non-descriptive (“legal”) ideology (“pluralism”).¹⁶ It is non-descriptive, in the sense that it has used the legal vocabulary to describe general normativity and has used general normativity to completely dilute law (as it is referred to by people in general). It is ideological, in the sense that legal pluralism, although it leans towards the recognition of all diffused normativities, ignores the fact that there is no possibility of recognizing any normativity as law without an authority having the right to say what is right and the capacity to interpret it as law, meaning that arguing against state law would necessarily mean arguing in favor of any such other authority.

Functionalism

- 34 This definitional problem of legal pluralism is related to the fundamental assumption that lies behind its construction. Law is considered to be the concept that expresses the social function of ordering which is performed by social institutions. According to Tamanaha (1997, *op. cit.*:106), the main representatives of the functionalist theory in the study of law are Malinowski, Parsons and Luhman. Basically, these authors share the idea that: (1) law has a role and a nature; (2) this role and nature are determined *a priori* by their social function; (3) this function is to maintain order in society. Even in its most sophisticated versions, legal pluralists assume this legal function: “The normative orders of legal pluralism always produce normative expectations [...] And they may serve many functions.” (Teubner, 1992, *op.cit.*:15)
- 35 As shown by Searle, among others, functionalism is necessarily associated with intentionality: the heart does not have the function to pump blood, except if there was an intentional agent that created it to pump blood; on the other hand, artificial hearts indeed have the function to pump blood.
- Whenever the function of X is to Y, X and Y are parts of a *system* where the system is in part defined by *purposes, goals, and values generally*. This is why there are functions of policemen and professors but no function of human as such – unless we think of human as part of some larger system where their function is, e.g., to serve God. (Searle, 1995:19)
- 36 Accordingly, whereas law, when conceived as an institution created to regulate human relations, might be given a social function, law, when it is understood as emanating from the social, might hardly be given such a function. Otherwise, it would mean as a consequence that societies would be credited from scratch (from before their existence as societies) with a collective consciousness, which in turn would result in their creating the institutions necessary to their functioning, i.e. they would have created themselves. In other words, functional analysis can only operate if law is considered as the product of an intentional agency.
- 37 Yet, some legal pluralists consider law as the product of an intentional agency. This is the case with Teubner, for whom the multiple orders of legal pluralism exclude “merely social conventions and moral norms”, recharacterized by their common organizing “on the binary code legal/illegal,” and “may serve many functions: social control, conflict regulation, reaffirmation of expectations, social regulation, coordination of behavior or the disciplining of bodies and souls” (Teubner, 1992b, *op.cit.*:15). However, this “legalistic” version of legal pluralism is only a partial solution to the problem of functionalism. Indeed, in considering that law is multifunctional or even dysfunctional, this explanation still assumes that legal institutions have been created so as to systematically perform one function or another. This leaves no room for their being non-functional. Moreover, these systems are, according to Teubner, autopoietic, i.e. they are radically autonomous subsystems which communicationally produce and reproduce their components within the system (which is operationally closed).¹⁷
- 38 The question that remains is: Has law been intentionally created so as to independently perform social functions? This is historically and empirically dubious. Obviously, parts of law were crafted so as to perform functions (though they never succeeded in being totally efficient in performing them). Also, it is clear that other parts of law were not conceived in such a way. If there are many legal constructors, there was never any

Creator of the Concept of Law, although such an intention remains necessary for the sake of functional analysis.

Essentialist culturalism

- 39 Legal pluralism has also often proved very essentialist and culturalist. Generally with the best intentions, some legal pluralists promoted concepts like “folk law,” “indigenous law,” “native law,” “imported law,” “transplanted law,” “state law,” “official law,” “unofficial law,” “primitive law,” etc. Besides the huge definitional problems associated with the term “law,” it mainly assumes that there is something like a “true” law, which is the reflection of an “authentic” society whose main cultural characters are translated into rules of conduct. Actually, this kind of “nativist” interpretation is not worth any close examination. It offers a very naïve picture of law, which is far from being supported by substantial empirical evidence. The so-called “indigenous” or “native” law has often never existed except in the heads of these scholars, although it is constituted as the yardstick to which the scope of legal “acculturation” is evaluated.
- 40 Much more interesting is Clifford Geertz’s interpretive theory. This is not the proper place to discuss it, and suffice to say that he conceives of law as a cultural code of meanings for interpreting the world: “Law’ here, there, or anywhere, is part of a distinctive manner of imagining the real.” (Geertz, 1983:184) In this hermeneutic project, “words are keys to understanding the social institutions and cultural formulations that surround them and give them meaning” (Merry, *op.cit.*:886). Geertz gives the example of the Arabic word “*haqq*”, which is supposed to come from a specific moral world and to connect to a distinctive legal sensibility (Geertz, *op.cit.*:185). This word would carry along with it all the specific meanings that are co-substantial with something called “Islamic law.” In plural situations, i.e., situations where many cultural systems are described as interacting (for instance in Egypt, where modern law is commonly presented as co-existing with Islamic law and customary law), law would produce a “polyglot discourse” (Geertz, *op.cit.*:226). In that sense, pluralism would only be the juxtaposition of many cultural and legal histories.
- 41 However, culturalism fundamentally conceives of law in holistic terms, that is, as one of the many reverberations of a larger explaining principle: culture.¹⁸ Yet, this cultural unity is not deduced from empirical observation, but assumed from the beginning. This is how Rosen proceeds when, starting from the small Moroccan town of Sefrou, he ends his journey with the anthropology of justice in Islam (Rosen, 1989). Moreover, he considers that Middle Eastern culture, which Moroccan culture is supposed to epitomize, can itself be caught by one “key metaphor”, one “central analogy”: “It is an image of the bazaar market-place writ large in social relations, of negotiated agreements extending from the realm of the public forum into those domains – of family, history, and cosmology – where they might not most immediately be expected to reside.” (*id.*:11)
- 42 This kind of approach carries a strong flavor of genetic essentialism, according to which societies – and the laws that characterize them – carry with them throughout history the same basic tenets, which are only superficially scratched by historical incidents. Also, it seems that cultural interpretivists are much more interested in the “why” question than in the “how”, although attention given to the latter would have

enabled them to consider that law is not necessarily and integrally part of culture, and that culture is not a set of permanent pre-existing assumptions, but something that is permanently produced, reproduced, negotiated and oriented to by members of various social settings.

Respecifications

- 43 This fourth section reviews some of the possible remedies that might help to re-specify the question of the plural nature of law. A few years ago, I supported the idea of giving up the use of the words “law” and “legal” for analytical purposes. In response to the question of the sociological boundaries of juridicity, I answered that the question is devoid of sociological relevance (Dupret, *op.cit.*:30). From a distance, I would say that social scientists have no means of sociologically defining law outside what people say law is, with the consequence that any study of law should basically look at what people do and say when practicing what they call law.

Realism

- 44 From an epistemological standpoint, the problem of definition is fundamental. The real danger of speaking of “law” when dealing with all forms of norms is, first, to equate them with something that people consider as totally different. Second, it is to take a product of political theory (state law) for a sociological tool (legal pluralism). Third, it is to assume a functional definition of some general social mechanisms (social control), whereas non-intentional phenomena cannot be given any social function. Instead of elevating law to the rank of an analytical instrument, I would suggest going back to the observation of social practices and considering, in the broad field of the many normativities, that law is what people refer to as law.
- 45 This is what is advocated by Tamanaha, according to whom “the project to devise a scientific concept of law was based upon the misguided belief that law comprises a fundamental category. [...] Law is whatever we attach the label *law* to. It is a term conventionally applied to a variety of multifaceted, multifunctional phenomena” (1997, *op.cit.*:128). In other words, “what law is, is determined by the people in the social arena through their own common usages, not in advance by the social scientist or theorist” (*ibid.*:314). Accordingly, a situation of legal pluralism would exist “whenever more than one kind of ‘law’ is recognized through the social practices of a group in a given social arena” (*ibid.*:315). Tamanaha argues that, whereas legal pluralism states that the word law applies to the many manifestations of a single basic phenomenon, his approach, conversely, would assume that the same label ‘law’ applies to many different phenomena.
- 46 Tamanaha claims that his approach conveys many advantages. First, it overcomes the inability to distinguish legal norms from social norms. Second, it provides practicable criteria for distinguishing between a legal rule-system and normative pluralisms. Third, it urges that all these forms of law-recognized-as-such in one specific social arena “be studied in their specific manifestation, and in their relations with other kinds of law in that social arena, and as they compare to general categories of kinds of law or manifestations of law in other social arenas” (*ibid.*:318). Fourth, this approach does not, through its elaboration, lose the force of the legal pluralistic appeal, i.e. that there are

forms of law which are not connected to the state, or only loosely . By so doing, this approach would be successful, according to Tamanaha, precisely where legal pluralism has failed, that is, in providing a descriptive non-ideological theory of the plural nature of law. “Indeed, one merit of this approach – what makes it non-essentialist – is that it is entirely free of presuppositions about law (beyond the negative one that it has no essence). Everything is left open to empirical investigation, and category construction and analysis following such investigation. Another significant merit [...] it directs an equally sharp-eyed, unsentimental view at all manifestations and kinds of law” (*ibid.*:318-319). In sum, conducting research into legal pluralism is to look at situations where there is a plurality of kinds of law, law being understood as what people conventionally refer to as law.

Praxiology

- 47 Under this heading, it will be argued that, even though Tamanaha’s approach greatly enhances the sociological study of law, it still suffers from some flaws, which can be mitigated by the deepening of his insights and by the adoption of a praxiological approach to legal phenomena.
- 48 The main problem of Tamanaha’s conception of law comes from his attempt to root it in the combination of behaviorism and interpretivism, which is deemed to have overcome some of the classical caveats of legal sociology and anthropology and to be reflected in his realistic socio-legal theory. However, as mentioned above, one of the difficulties of interpretivism is related to its culturalist essentialist standpoint. This is not to say that such a perspective has no scientific value, but it points to the fact that it reproduces some of the deficiencies it is supposed to eliminate. Among other things, it maintains one of the dualities that muddies contemporary sociological theorizing, that is, the duality opposing activities and meanings. Instead of considering that this opposition constitutes the main problem to be solved in order to succeed in theorizing, I suggest that it is the propensity to theorizing itself that should be questioned. In other words, the inquiry “into the *comprehensibility of society*, into the ways in which social life can be understood and described when seen from within by members” should be substituted for the theoretical elaboration of “a specific mode of comprehending society, a theoretical framework *within* which a substantive conception of society is to be construed” (Sharrock *et al.*, 1988:59). It is definitely not Geertz’s interpretivist culturalism – not to mention Rosen’s – that will promote such an inquiry, for he assumes the constraint of a preexisting cultural order to which people conform, and that the task of the social scientist is to discover the keyword that epitomizes it, and not to look at practices from which to infer people’s orientation to the many constraints of the local settings in which they (inter)act.
- 49 On the contrary, a praxiological approach requires using “the criteria that participants have for determining the salient features of interactional episodes,” (Maynard, 1984:19) and this does not provide an interpretation of people’s conduct. “Rather, analysis is based on, and made valid by, the participants’ own orientations, characterizations, and exhibited understandings” (*ibid.*). In other words, while the opposition between meaning and behavior “requires its solution by means [...] which are external to the orderliness observable in the sites of everyday activity,” e.g. social structures, local cultures, schemes of behavior, etc., the praxiological respecification that I advocate,

following ethnomethodologists like Wes Sharrock and Graham Button, considers “the problem of social order’ as completely *internal* to *those sites*” (1991:141). It also means that it is not so much the “why” questions – which form the basis of interpretivism – which should draw the attention of legal sociology, but the “what” and “how” questions – “what is involved in doing this or that?”; “how does X manage to do Y?”.

- 50 Another major problem arises from the slippery nature of definitional endeavors. Although Tamanaha succeeds in escaping legal pluralism’s definitional caveat, mainly by characterizing law as what people refer to as law, it does not make him immune from falling into the pit of other definitional enigmas. For instance, when advocating the restriction of the use of the word “legal” to state law (Tamanaha, 1993, *op.cit.*:212) or when ascribing to certain legal systems a particular character (e.g. theocracy in Iran–Tamanaha, 2000, *op.cit.*:318), he substitutes the wider perspective of his scholarly vision to people’s production of and orientation to an identifiable, understandable, and practicable law, which does not necessarily attend to these statist or theocratic characterizations. There are other places where one can find this ambivalence, for example, when it is stated, on the one hand, that law is what people refer to as law, and when it is assumed, on the other hand, that people use the label law to refer to what are often quite different phenomena.
- 51 In other words, whereas Tamanaha rightly criticizes legal pluralism for its over-inclusiveness, i.e. its inclusion of phenomena that most people would not consider to be law, and its under-inclusiveness, i.e. its exclusion of phenomena that many would consider to be law (*ibid.*:315), he queers the pitch by underestimating people’s practical and context-sensitive understanding of the word “law” or its equivalents. In fact, people do not loosely use the same word to refer to different phenomena; they specifically use one word to refer to some specific phenomenon, the production and intelligibility of which they orient toward in the local and temporal context in which they interact. The same word might be used to refer to another phenomenon in another context or in another sequence, but this is a question that must be empirically answered through the close examination of each interactional occurrence taking place in every specific setting. This runs against the interpretivist notion of the legal polyglot discourse. In that sense, the notion of legal pluralism does not exist as a sociological question unless people, participants, or members orient to it as such. In other words, the question of legal pluralism does not arise from scholars looking at the social world from outside, but it becomes a topic in its own right when it emerges out of people’s practices that they orient to a situation of co-existing, conflating and/or conflicting multiple laws.
- 52 Finally, with regard to the questions that the realistic approach to legal phenomena might raise, my contention is that they are better solved by adopting a praxiological perspective. The first question concerns the identity of the people whose practices qualify a phenomenon as law. While the realistic theory answers that it is any social group, the praxiological approach would rather say that there is no such question unless or until people call into question the authority of someone or something having identified a phenomenon as law. The question only emerges from practical, local, specific circumstances. Up to that point, it is a question of a philosophical and political nature, not a practical and sociological one.
- 53 To the question of how many people are necessary to view a phenomenon as law for this phenomenon to qualify as such, it is answered that “a minimum threshold to

qualify is if sufficient people with sufficient conviction consider something to be ‘law’, and act pursuant to this belief, in ways that have an influence in the social arena” (*ibid.*: 319). This answer suffers from its giving to whatever external authority the task to subsequently determine how people, conviction and influence should be rated in order to be considered as sufficient, whereas it would be said in a praxiological perspective that no answer can be given *a priori*, since it is from people’s practices that the qualification of something as law will be recognized as such (and thus will remain unnoticed), or will not be recognized as such (and thus will be noticed and become accountable).

- 54 It is also said that a third question would address the risk of a proliferation of kinds of law in the social arena. Tamanaha’s answer is that such a profusion of kinds of law will seldom occur in practice. To the same question, the praxiological answer would be that it is not up to social scientists to decide by means of concepts whether there are too many or too few kinds of law, but it is an empirical phenomenon which must be attended to through a close scrutiny of people’s practices. Moreover, since activities in legal settings are characterized, as are human activities in general, by the general orientation to the production of intelligibility, coordination and order, it would be rather surprising to observe such an anarchical proliferation of laws without observable attempts to reduce it. This last question addresses the authority which is granted by conventionalism to social actors to initiate new kinds of law. The realistic answer stresses that law as a social institution is necessarily produced by social actors, and that recognizing these actors’ authority only threatens the authority of social and legal theorists. This holds true in a praxiological perspective. Moreover, it should be said that it is not up to legal sociologists and anthropologists to determine whether or not to grant social actors the authority to initiate new laws. All that social sciences can do is to observe and describe how real people in real settings orient to the production of a phenomenon which they call law.

Plurality of sources, plurality of laws, plurality of practices: Egyptian cases by way of illustration

- 55 This last section aims to illustrate the many ways in which the notion of legal plurality is given a practical meaning and is practically oriented to by various people engaged in the performance of some legal activity. All three cases presented below concern the issue of customary marriage in the Egyptian context. It must be noted that the very succinct treatment of these cases forbids considering them as the proper way to conduct any praxiological research. Instead, their contribution is to the strengthening of my contention that the theory of legal pluralism has little heuristic capacity in the explanation of the law, the pluralistic character of which must not be determined by some external criterion, but only when it belongs explicitly to the relevancies of situated practices.

Customary marriage according to Egyptian law

- 56 In Egypt, a series of laws (1920, 1929, 1943, 1946, 1947, 1952, 1976, 1985, and 2000) organize personal status, i.e., the regulations concerning marriage, divorce, affiliation, and inheritance. The law has always encouraged the contracting of formal marriages

registered by a notary (*ma'dhûn*), whose authority is officially acknowledged. However, marriages satisfying minimal conditions, i.e., those established in a contractual form and testified by two witnesses are deemed legitimate. Nevertheless, contrary to official marriages registered by the notary, this type of marriage is not demurrable and cannot be invoked by the wife in front of law courts. Until Law No. 1 of the year 2000, no claim concerning marriage could be heard by the courts unless it was supported by an official marriage document (Art. 99 § 4 of Law No. 78 of 1931). Law No. 1 of the year 2000 introduces a very important change in that respect: any written document can be used to prove the existence of the customary marriage whose dissolution is asked to the judge. Article 17 al. 2 provides:

Shall not be admissible in case of denial [of] the petitions arising from a marriage contract – in respect of the facts subsequent to August 1st, 1931 – unless its conclusion is established by an official document. This notwithstanding, the petition in divorce or annulment shall be admissible, as the case may be, to the exclusion of other lawsuits, if the marriage is established by any writing.

- 57 This type of marriage, which does not fulfill the official registration requirement but is still legitimate, is commonly called *zawâg urfî*, meaning literally “customary marriage.” According to the theory of legal pluralism, the mere use of this word testifies to the existence of a multitude of legal orders among which people navigate and engage in forum shopping. However, it must be stressed that this “customary marriage” is explicitly recognized by the law (even though restrictively) and regarded as legal by the people. In no way does it constitute an alternative or parallel legal order. It is used in order to preclude some of the consequences of officially registered marriages – for example, in the case of polygamous marriage, keeping the subsequent marriage secret and not informing the first wife as required by Law No. 100 of 1985; when minors are getting married; to escape the high cost of marriage; as a way for widows to remarry without forfeiting their widowhood pensions – but it is also explicitly practiced in order to extend a legal status to sexual intercourse and to some of the practices associated with it that are otherwise blameworthy (e.g., cohabiting, procreating legitimate children, etc.) In this case, the theories of legal pluralism, far from providing us with the means to properly describe the situation, contribute to the prevailing confusion, through laying the groundwork for a pluralistic situation to which people do not orient themselves

Gay customary marriage as a law-centered practice

- 58 In April 2000, the press heard about a case investigated by the Public Prosecutor, which involved two men who had contracted a customary marriage. The investigation transcripts show that it was the case of a computer store owner who had induced a young man working in his store to have homosexual intercourse under threat of divulging marriage-like documents that had been signed by the latter. The young man eventually complained at the police station and the police and then the Prosecutor investigated the facts, which were subsequently characterized as indecent assault under duress. The plaintiff's narrative was as follows:

Question of the Public Prosecutor: What is your information concerning the facts of the investigation? Answer of the plaintiff: Since August 1988 A.D.¹⁹ I went working at the Computer Office [...] because I went often to the Office to play with the computer and I worked for a monthly stipend of 150 EGP and it must increase after settling better in the work and after two or three months work he told me to take

some furniture in the store and come we go down Cairo to know you better and we purchase stuff from there and we went to Cairo and after having bought stuff for work he asked we stay in a place that pleases me and we stayed in the Shahrazâd hotel and he took a beer and we drank and it was the first time I drank beer and it disturbed me and my head turned and I didn't feel myself and every time I feel tired he tells me you aren't a man look how you drink and then we went down to go out and we took the car and he opened the box and he took from it three or four sheets and he told me this sheet you sign it you and me and I asked him why do I sign on an empty sheet and he told me you you'll get important responsibility in work and whoever who has important responsibility in work signs a sheet like this one in case anything happens in the store I signed on the sheet in good faith cause I respected him a lot and I wasn't on my guard and we went out and after three or four days he told me come eating with me at home and I went with him to the house which is in Nizâm and there're beer bottles and I told him I felt tired last time and I don't wanna drink and he began insisting and I drank a bottle and I said it's enough he can't anymore cause I'm going to vomit and in the middle of the dinner he put his hand on my leg and on my male organ and I pushed him back and he told me stay so we finish dining and after we'll speak and after dinner and he resumed his attempt and I I (???) him and I was ready to go he told me the door's in front of you if you wanna go down go down but don't forget the sheet you signed and I asked him the sheet and I told him this is a sheet for work he told me it's blank and I I'll write on it that you you'd money and your family had money and I'll add words of my own and I'll destitute you and your family and I was compelled under the sheet menace to listen to him and I ask him what do you want from me and he tells me sit down and he went taking a video movie a sex movie and he put it on and he told me come so we do like them and he took off his clothes and I took off my clothes except the underwear and he began putting his hand on me and he told me watch the movie and [...] later he slept with me a second time and after that one I put on my clothes and I went down and all what I was talking about it was in his room in his father's house [...] and the day after I didn't go to work he called me and I told him I don't come working and you give me the sheet as soon as I quit the job and after two or three days he spoke to me a second time on this issue and I began telling him shame on you it's unnecessary and he menaced me with the sheet and he told me we aren't going to Nizâm and we're going to go to Kafr al-Zand and the day after I went with him in the flat which is in Kafr al-Zand and he told me come you're the first one [...] the process repeated every week three times [...] and we kept on until December 1998 and afterwards I tried to keep out of him and he sent me people and I came back to work a second time in July approximately and he asked me to have intercourse and I kept on refusing and at the last feast of the sacrifice one week before the feast when I was working with him he menaced me with the sheet and theft if I didn't go at his home and I went home and I told [the story] to my family and to Khilânî and they told me you must bring an action and he sent me letters at home he asked me to come back to work and I kept the letters until he sent me a copy of the contract of declaration and mutual engagement and his name was crossed out and the number of the card and his signature and his fingerprint and on it also my name and the number of my card and my signature and my fingerprint and in addition a letter in which he was menacing me and all this it was last week and the first sheet the week before and I took the letters and I went to the police station and I presented my complaint and the made me a record and the brought Mu'min and we're presented to the Prosecution. (Public Prosecution, Zagazig, 2000)

- 59 The press, the parties, the Public Prosecutor, all parties refer to the “contract of declaration and mutual engagement.” It is implicitly or explicitly argued that the two men had contracted a kind of “customary marriage.” According to the theories of legal pluralism, this would testify to the existence of a plurality of social fields (e.g., gay

people, the police, the state, the press, etc.), each one being endowed with and generating its own normative values and rules, i.e., producing its own law and having a law mirroring its social norms. However, this is particularly confusing, since it is obvious from the case that there is no legal plurality but only legal practices, i.e., practices oriented toward an object of reference identified by the people as law, be it for interpreting it, implementing it, bypassing it, emptying it of its substance, contesting it, or whatever else.

- 60 So-called “customary law” is centered on the legally organized practices of marriage contracting. It is oriented toward the creation of mutual rights and obligations by the signing of a written document. It follows the lines of “customary marriage”, despite the malicious intent of one of the two parties. It does not reflect the existence of parallel systems of law, but only reveals the law-centered organization of a whole range of (private) practices. It is not only the state legal system that “digests” the social so as to give to the facts that are brought to its attention a characterization that makes them legally relevant and open to the ascription of legal consequences, but it is also the many so-called social fields that take state law as their focal point.

Gay customary marriage condemnation as an instance of legal plurality

- 61 Also in 2000 it was reported by the press that two young men were found dead in the countryside near the town of Aswân, in Upper Egypt. Their bodies showed that they had been executed. In accordance with the law and their own professional procedures, the police opened a file and transferred the case to the Public Prosecution, which had to conduct the investigation. However, for lack of evidence on which to build the case, the case was soon considered closed. Parallel to the official story of the case, the press reported that the boys in fact had a sexual relationship and had entered into a kind of customary marriage. Because their families found the situation unacceptable, they asked that a customary assembly (*majlis al-arab*, *majlis urfi*), be convened, which was required to adjudicate the case. It is said that the assembly convened and issued a ruling condemning the two boys to death.
- 62 Short as it is, this little story explicitly reflects the existence of parallel systems of justice that function autonomously, independent of each other, despite the possibility that their respective paths may cross at a certain point. There is, on the one hand, the state justice system, represented by the police and the Public Prosecution, whose functioning necessitates the opening of a file and a procedure as soon as some criminal act comes to their attention. Technically speaking, this system cannot enter into any negotiation with an alternative justice system without jeopardizing its claim to the monopoly of legitimate authority. Practically, it is often confronted by certain types of crimes that are known by its professionals to fall outside the scope of its jurisdiction. Both policemen and prosecutors are very much aware of the existence of so-called Arab councils and local traditions, which issue rulings and cover what appears to state law as criminal liability beyond a collectively enforced solidarity (which results mainly in the unavailability of witnesses testifying to, and of evidence substantiating, the crime and its individual author).
- 63 On the other hand, there is a “customary” legal system which is identified as such, and oriented to, by the people and issues its own rulings²⁰ on a large number of matters.

This justice system, which runs parallel to the official system, may borrow many of its features from the latter (form of procedures, explicit references to substantial provisions of positive law, written rulings, etc.) However, it clearly stands on its own feet and neither depends nor is centered on the existence of state law. In other words, it constitutes an example of a legal plural order. In this case, *urf* (custom) does constitute law, in so far as social actors attribute such a quality to it. It can therefore be called customary law and can become the object of customary legal practices.

- 64 In sum, the three cases briefly discussed appear to constitute instances of legal pluralism (weak or strong in Griffiths' terminology). However, if we closely examine the fine detail of these cases, and especially the ways in which people orient to the supposedly many laws and norms, we get a much better picture of what law is and is not for these people. We also get a much better understanding of its plural sources and the non-pluralistic ways of its implementation, and of the many places where laws interfere with each other and the very few places where they remain totally autonomous. Last but not least, norms, laws and legal practices cease to be confounded. Any set of norms is not necessarily law, and law is no more diluted in the all-encompassing and little-analyzed category of "social control." Many practices can be characterized as legal practices, and not as parallel social, normative or legal fields. Legal practices are those practices that develop around an object of reference identified by the people as law (and that can be state law or any other law recognized as such). In other words, a legal practice is everything that is done in a way in which it would not be done if the law of reference did not exist.

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NOTES

1. On the Adat Law School, see K. von Benda-Beckmann and F. Strijbosch, 1986. Also, C. Geertz, 1983.
2. C. Van Vollenhoven, *Het Adatrecht van Nederlandsche Indië*, 3 vols, Leyde, 1918, 1931, 1933.
3. Among these scholars, see M. Koesnoe, 1971.
4. J. Griffiths, "What Is Legal Pluralism", *Journal of Legal Pluralism*, no. 24:1-55.

5. Although other contributions are certainly as important as Griffiths'; see for instance M. Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law", *Journal of Legal Pluralism and Unofficial Law*, no. 19. As a whole, Griffiths' approach to legal pluralism is mainly represented in the Commission on Folk-Law and Legal Pluralism and in the *Journal of Legal Pluralism and Unofficial Law*, in which the influential presence of Dutch scholarship must be stressed. Among other prominent representatives of this "school", one might mention Gordon Woodman, Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Fons Strijbosch.
6. J. Griffiths, *op.cit.*:3.
7. J. Griffiths, *op.cit.*:4.
8. J. Griffiths, *op.cit.*:8.
9. J. Griffiths, *op.cit.*:14.
10. J. Griffiths, *op.cit.*:38.
11. The semi-autonomous social field "can generate rules and customs and symbols internally, but [...] 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". S.F. Moore, 1973:720.
12. E. Serverin, *Sociologie du droit*, Paris, La Découverte, 2000. The following paragraph is directly borrowed from this book.
13. Also, J. Comaroff and S. Roberts, 1981. Recently, Marie-Claire Foblets edited a special issue of the *Journal of Legal Pluralism* on the theme of "popular justice" (no. 36, 1996).
14. A. Guevara-Gil, J. Thome, "Notes on Legal Pluralism", *Beyond Law*, vol. 2, no. 5, 1992:75-102, at 87.
15. See *infra*, section 4.
16. This is why I proposed to substitute the notion of "normative plurality." B. Dupret, "Legal Pluralism, Normative Plurality, and the Arab World", *op.cit.*
17. For an excellent and concise summary, see K. Bälz, "Sharî'a and Qanun in Egyptian Law: A Systems Theory Approach to Legal Pluralism", *Yearbook of Islamic and Middle Eastern Law*, no. 2, 1995, 37-53, at 40-42.
18. Lawrence Rosen describes it as "a set of orientations which gains its very life by reverberating through numerous analytically separable domains so as to appear immanent in all of them", and as "commonsense assumptions about features that crosscut virtually all domains of law and life –assumptions about human nature, particular kinds of relationships, the "meaning" of given acts." L. Rosen, "Legal Pluralism and Cultural Unity in Morocco", in B. Dupret, M. Berger, L. al-Zwaini (eds), *op.cit.*:90.
19. In Arabic, "*milâdî*", which means, "of the Christian era."
20. On Arab councils and customary law in Upper Egypt, see H.K. Nielsen, "Négociation et écriture: à propos du droit coutumier en Égypte", *Égypte/Monde arabe*, no. 34:155-165 and S. Ben Nefissa, "The *Haqq al-'Arab*: Conflict Resolution and Distinctive Features of Legal Pluralism in Contemporary Egypt", in B. Dupret, M. Berger, L. al-Zwaini (eds), *op.cit.* See also H. Korsholm Nielsen in this volume.

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Mots-clés : droit, pluralisme juridique, praxéologie

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