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Véronique Champeil-Desplats

EDITOR'S NOTE

Translated by Louis Gilbert, reviewed by Victoria Weavil

- 1 In the legal field, as in that of the human and social sciences, the aim of which is to analyze normative phenomena, the situation has for several years been that of a revival of reflections. These reflections are stimulated by the observation of an evolution and diversification of expressions which we will call modes of normativity as well as their forms of encounter and interaction. These modes can be characterized and differentiated from each other through the coagulation of a body of criteria : the types of authors who produce and receive them ; the procedures followed ; the methods of dispute settlement ; the forms of expression that determine them (*instrumentum* and type of deontic formulation) ; their modes – static and/or dynamic – of arrangement ; and the fields of regulation¹. We can thus distinguish between modes of religious, legal, managerial, and community normativity. Each mode of normativity is expressed in specific forms, and thus allows for its formatting².
- 2 The interest lawyers have expressed in the plurality of normative expressions is clearly not new. Nevertheless, the degree of generality of these lawyers' analyses and their choice of topic have varied depending on the subject area in question. The meeting of competing norms, particularly in the form of conflicts of law, are thus at the heart of private international law. The formulation of international texts and the determination of their normative scope (*hard law* or *soft law* ?) are recurrent questions in international law. The relationship between authorities, social norms, and legal norms is a central concern of modern criminal law. The coordination and articulation of norms produced by social partners and state authorities' structure part of social law. The theory of law has placed the identification of the distinctive characteristics of legal norms in relation

to competing normative systems (religious, moral, social normativity, etc.) at the center of its reflections. The sociology of law has also engaged in the analysis of normative powers based on the concept of legal pluralism, seeking to dissociate the identification of law from the norms produced by the State alone. The anthropology of law extends these reflections by seeking to rehabilitate so-called traditional forms of normativity which do not correspond, or correspond only imperfectly, to the definitions of law constructed from the theorization of norms produced by modern States.

- 3 These subjects of study, which usually structure the various legal disciplines, have recently been subject to new reflections. Such reflections are encouraged by the emergence and quasi-simultaneous development of several normative phenomena considered to weaken, if not call into question, the general criteria for identifying legal norms since the construction of the modern state.
- 4 This is the case, firstly, for the diversification of the wording of the statements contained in the legal texts produced by the State : constitutions, laws, decrees, and so on. In addition to the classic trilogy of “oblige-permit-inhibit” to which the expressions of legal normativity are supposed to, or even must, be reduced, there are a growing number of statements that encourage, favor, and promote activities and behaviors, a phenomenon that Norberto Bobbio identified in the 1980s and referred to as the “promotional law” concept³. This evolution met with some resistance. Some consider it to be a sign of the softening, dilution, or even degeneration of legal style and form⁴. On the basis of more or less predefined criteria, the normative nature of statements of a promotional, declarative, or recognitive nature is occasionally rejected by the courts⁵.
- 5 The evolution of normative phenomena is also demonstrated by the emergence of new sources and actors that claim to produce normativity, whose qualification as legal becomes a subject of questioning as well as an issue. These new forms of normativity may be presented as alternatives or parallels, and may even be intended to replace the forms of normativity usually produced by States. On the one hand, they are linked to technological developments, particularly in the field of information and communications technology. Their modes of regulation and normative framework first developed outside the traditional sources and forms of state law : self-regulation, co-regulation by groups of experts, agencies, and so on. These new forms also stem concomitantly, on the other hand, from the emergence of so-called global normative modes. These are expressed in a protean, diffuse, decentralized and denationalized way, both in terms of their instruments and their material supports (ethical charters, codes of conduct, indicators grid), and in terms of their modes of enunciation : the diversification of deontic formulations (use of the conditional, encouragement, advice, technical norms, standards, ratings, etc.) ; and the evolution of terminology (ethics, responsible action, ethic of care rather than law, obligation, social benefit, etc.). These modes of normativity are produced not only by international organizations whose autonomy in relation to the founding States has increased considerably (the IMF, the WTO, etc.), but also by private actors with transnational dimensions (expert groups, ethics committees, NGOs, rating agencies, international federations, multinational companies, etc.). The spread of these modes of normativity, particularly on account of the economic and financial stakes involved and its consequences for the sovereignty of States, raises many questions : to what extent can they be qualified as legal⁶ ? How do they relate to the norms of state legal systems ?

- 6 Finally, in some geographical areas, the renewal of normative questioning has been stimulated by the rehabilitation of local communities, their relationship with the world, and their mode of coordination. Several factors have worked to this effect : the long-term effects of decolonization ; the search for alternative modes of participation in normative production ; reactions to the destructive effects of the deployment of economic and industrial activities on local populations and their environment, etc. At the normative level, so-called indigenous communities have not only been granted specific rights, and mechanisms for participation in decisions that affect them subject to a principle of *free and prior informed consent*⁷, but also areas of normative autonomy. The United Nations Declaration on the Rights of Indigenous Peoples of September 13, 2007 is undoubtedly the most significant expression of this circulation at the international level. At the national level, in addition to the traditional adjustments, by the constitution or by law, of relations to customs and other forms of local normativity, their inclusion has also been the subject of specific agreements signed between the States and the communities concerned. Some were then formalized in legislative texts⁸. In some States, we are witnessing the drafting of “multicultural constitutions”⁹ that combine the recognition of specific rights, the development of normative autonomy, and the constitutional shaping of concepts that have traditionally structured communities (*Pacha mama, Sumak Kawsay...*)¹⁰. These initiatives inevitably raise questions as to the ways in which local regulations are linked to state law, or even international law, and international human rights law in particular.
- 7 These various phenomena push us to refine our views on the expressions of normativity and in particular, to reconsider the binary categorizations that usually apprehend it : law/non-law, law/infra-law, formal/informal, valid/non-valid, hard/soft law, normative/non- normative. It is therefore necessary to consider, without *a priori* seeking to reduce, the plurality of expressions of legal normativity and its relationship with other modes of normativity. For, while some actors may want to reject the influence of the legal form¹¹, ultimately proving indifferent to the qualification of the modes of normativity with which they operate, the important thing being the effects produced or obtained, in many cases the recognition of the quality of law also constitutes one of the challenges of normative confrontations. These comparisons also raise questions as to the very criteria used for defining and identifying the law. They are also factors involved in normative circulation. This can either leave each of the modes of normativity unchanged, or be a factor of normative transformation, i.e., in the literal sense, of the passage from statements of normative forms to others (I). This transformation may consist in the integration of normative statements into forms traditionally associated with law (e.g., the classic phenomenon of the integration of moral or religious norms into legal systems). It may also manifest itself in the reception in law of forms of normativity that were hitherto foreign to it, leading to the transformation of the forms of legal normativity itself (II).

I Law as a space for encounters and normative transformations

- 8 Lawyers have not remained passive in relation to the phenomena of normative circulation. However, on the one hand, the focus has essentially shifted towards its

internal manifestations within legal normativity (A). The opening up of legal anthropology to normative pluralism therefore needs to be further explored (B).

A Intra-legal circulation

- 9 Several factors have contributed to the growing attention paid to the phenomena of normative circulation within the law. The development of European Union law and its Court of Justice, the increasing activity of the European Court of Human Rights in Europe and the Inter-American Court of Human Rights on the American continent have led to a great deal of work being conducted on the modalities for the acceptance of international and regional standards into national legal systems and, conversely, on the role played by the latter in the production of international concepts and standards¹². In addition to promoting interactions between national laws, this normative circulation has also fueled a renewal of comparative law. The reference to comparative law has even become an argument – the “comparative law argument”¹³ – which is leveraged in an instrumental way. Nevertheless, contemporary investment in comparison activity has produced substantial developments, on the one hand, in its methods and very purposes¹⁴ and, on the other, on the modalities of the circulation of standards from one legal order to another. From the programmatic, quasi-messianic approach of the comparative law of the colonial era, when comparative law consisted in freeing families from the law and had as its mission the massive “transplant” from one normative corpus to another (for example, the export of the Napoleonic Code to Africa, the Caribbean or Japan, etc.), new far more pragmatic and sophisticated comparative approaches have developed. Invested in a normative perspective, the comparison of laws can thus be geared at harmonizing legal systems or placing them in competition with one another. Approached in an explanatory way, the comparison of rights consists, rather, in establishing, for specific subjects of analysis, what are identified as functional equivalents between legal systems, or in identifying the modes of circulation and reception of normative content from one legal system to another.
- 10 If, therefore, intra-legal normative circulations are already the subject of a certain investment, the relationships between legal normativity and other modes remain less well-understood, and, if they are, in very variable ways. What is not considered in the relationship between plural and differentiated normative modes is not only perceptible in scholarly literature. It can also be seen in the field. For example, reading the requirements and objectives laid down in cooperation and development programs, such as international standards for the evaluation of national public policies, often reveals significant discrepancies between these normative forms and the national or local modes of normativity for which they are intended. The effects go beyond language. Shifts in normative forms and language reduce the ability to achieve objectives or produce expected effects. Some NGOs often report difficulties in obtaining the expected results in the field for the defense of rights. These difficulties often appear to be linked to a lack of preparation or “conditioning”¹⁵ to express local claims in national or international legal formats¹⁶. Equally, the evaluation of “good justice” in some African States by means of European standards, such as “reasonable time”¹⁷, may lead to a disregard for local specificities of relationships to time and justice. The length of time taken to reach a decision, the absence of a decision or the absence of a dismissal of cases is not necessarily a sign of a dysfunction in the judicial system, nor even of a failure to resolve the case. The case may thus have been resolved in the formats of

another normative mode (local dispute resolution); and the absence of striking off may, for its part, be linked to the desire not to do violence to the parties who have entrusted their case to the court or to a personally identified judge.

- 11 To account for these discrepancies, as well as, conversely, to identify forms of normative interaction, it is therefore proposed here that the law be considered as a point of meeting, circulation, passage, and, lastly, of transformation between several modes of normativity. In other words, from complex cases where these modes are expressed, competing or combining, it is necessary to analyze their forms of encounter, and in particular the modes of reformulation and transformation of the normative expressions at work.

B From legal pluralism to the plurality of modes of normativity

- 12 Situations in which normative expressions coexist are usually addressed through the concept of legal pluralism. Though it is clearly subject to various conceptions and variations, it is most often understood to reflect the equal claim of normative orders to govern an activity or behaviors. In this sense, “legal pluralism is the situation for an individual in which legal mechanisms of different orders are likely to apply to that situation”¹⁸. The categorization of the plural normativity involved is often underpinned by more or less explicit hierarchical operations resulting from the persistence of ethnocentric conceptions of law¹⁹. The classic oppositions of law/infra-law, state law/marginal law, top/bottom law, formal/informal normativity, and official/unofficial normativity are its expression by definition.
- 13 In recent years, a significant effort has been made to overcome these oppositions and their assumptions²⁰. Some legal anthropologists even invite us to abandon references to the concept of legal pluralism, not only in order to emerge definitively from the ethnocentric hierarchies with which it has been weighed down, but also to shine a light on the very existence of a plurality of legal pluralisms²¹. It is in this sense, in particular, that Etienne Leroy seeks to promote the concept of “multi-legalism”²².
- 14 This approach based on legal pluralism(s) constitutes a valuable starting point but for the fact that that it tends to reduce the plurality of modes of normativity observed in the law, the challenge being to rehabilitate the legal character of modes and forms of normativity to which this quality has been denied by ethno- or stato-centrism. The effort to refine and differentiate the various modes of normativity must therefore continue. It will then be necessary not to consider them *a priori* as the expression of an extended legal normativity, but rather to place in perspective how the forms associated with it become a space for meeting and exchanging various modes of normativity which the actors involved present as differing from it on account of its authorities and production procedures, its forms, content, prescriptive content, effect, and so on.
- 15 The consideration of the plurality of modes and corresponding forms of normativity is intended to complete the movement away from the traditional oppositions between formal/informal, official/unofficial, central/peripheral, law/infra-law, state law/marginal law, top law/bottom law... insofar as, as mentioned above, they underlie operations of hierarchization or, at the very least, of valorization and devalorization of the various modes of normative expression²³. On the contrary, each mode of normativity is considered on an equal footing; all have their own forms that need to be identified and characterized and by which they are shaped. Their encounters produce

transformations in the etymological sense of the term, where they modify the initial forms ; they hybridize them. In this case, the legal formatting is carried out in a plural way : the drafting of international, constitutional, legislative and contractual texts, circulars, judicial and arbitral decisions to stick to the corpus, and so on.

- 16 In situations involving normative conflicts – the fields taken as examples in this case, as in others²⁴, particularly highlight this –, the legal status of the forms of normativity in circulation is subject to various appreciations, even controversies. The very identification of what may or may not be considered as law, i.e., as having one of the layouts associated, specifically or not, with legal normativity, will depend on the context in question. In other words, the very qualification of what is legal is not always stabilized, both among the actors concerned and in scholarly literature. This is not only an intellectual issue, but also, and above all, a question of the expected normative effects. To account for this, the question of the definition of the law will not be decided *a priori* here using criteria pre-established by a general theory of law²⁵. Rather, one must take as the object of study the heterogeneity of the conceptions and qualifications that the actors confer on the different forms of normativity that they face and with which they operate. This choice will then lead to the identification, according to the contexts, of the differentiated assessments of what is legal and what is not, and to an analysis of the equally differentiated modes of adjustment and transformation – change of form – of the modes of normativity presented, according to the qualifications provided to them by the actors. In other words, it is necessary to consider the dynamics of pluralization, differentiation, prioritization, qualifications/disqualification, valorization/devaluation, or evaluation/devaluation of modes of normativity.
- 17 Therefore, while from the point of view of analysis the modes of normativity that are expressed do not methodologically need to be prioritized, the actors who mobilize them frequently proceed, for their part, to prioritize : opting, for example, for a mode of government by legal norms rather than by commercial or managerial standards, by local customs, and vice versa. These hierarchies are not necessarily fixed once and for all, nor are they the same in all situations. They are “mobile”²⁶, as Riccardo Guastini would say. They express changing attitudes towards the modes of normativity presented according to the contexts, the actors, the object of the controversies, the objectives pursued : the horizon of justice, common construction or a search for any kind of efficiency. Certain situations can thus lead to endeavors geared at promoting legal normativity : the enhancement of the “human rights” format set out in constitutions or international conventions by the corresponding devaluation of managerial standards or forms of local justice²⁷. On the contrary, other situations may lead to the expression of the devaluation or depreciation of the passage through the legal form produced by the State, the invocation of local norms or standards thus being considered as more favorable, fair, or effective. This is particularly the case with the discourse concerning the devaluation of state law held by so-called globalized actors (economic agents or NGOs) intending to replace it with a normative mode of government by standards deemed more flexible and suited to their activities. This is also the case for the discourse defending local or local forms of normativity or proximity against the influence of state law, which has sometimes lost its own effective modes. In some “Third World” countries, Jacques Vanderlinden has observed that “The state order has weakened to the point of becoming inoperative” ; “there coexist many legal orders of a very diverse nature, including many described as informal, that nevertheless represent the reality of the legal experience of populations, while the law

of the State, despite its claim to regulate most of the behavior of its citizens, is nothing more than an empty shell regulating only a tiny fraction of the legal relations of individuals”²⁸.

- 18 Once the plurality of modes of normativity and their forms of expression have been highlighted, the characterization of the processes of borrowing, appropriation, reformatting, “remodeling” or even the chains of transformations that take place in and through law still needs to be refined.

II Forms and dynamics of normative encounters

- 19 In legal literature, situations of normative encounters do not suffer from a lack of designation but, on the contrary, a hypertrophy of terminology: (inter)penetration, interdependence, relationship between systems, inter-normativity, reception, interaction, circulation, transfer, transplant, and so on. The selection of one or the other of these terms is sometimes carried out in a quasi-synonymic way, without any precise delimitation of their meaning, or, therefore, of the possible singularities of the forms of normative circulation to which they refer. Here, we have elected to make use of the all-encompassing term of the “encounter” of modes of normativity, which can result in several types of transformations, and several forms of hybridization. To understand these encounters it is necessary to determine, on the one hand, how they can be carried out in accordance with the law (A) and, on the other, what the outcomes may be (B).

A The means of encounter : preparation, mechanisms and actors

- 20 The concomitant presence of several modes of normativity does not, *a fortiori*, ensure their encounter in a legal format. Modes of normativity, including over long periods of time, can coexist in parallel, either peacefully or by causing shocks of normativity: village or urban facilities facing the claim of private or public property titles²⁹; the ancestral cultivation of the “coca” leaf in the face of new drug legislation³⁰, and so on.
- 21 The failure of the law to meet modes of normativity may result both from an ignorance of the law by the actors concerned, and from an indifference or inability to express a situation in a legal form. The proposal made to local populations to become owners of their land, for example, presupposes that they have an understanding of concept of ownership and that they eventually establish their relationship to the land through it, in other words – the conceptual leap is not a small one – that the land becomes, in their eyes, a good subject of appropriation³¹. The pathway through the law is also sometimes met with resistance. Some people will refuse to serve as test subjects and have their cases transformed as a cause³²; others may not wish to resort to and give effect to legal normativity: in the case of areas usually referred to as no-law zones, which do not, however, exclude any form of normativity; in the case of inhabitants or communities who do not wish to bring proceedings before State or international judicial authorities, either because they prefer, out of habit, to resort to local arrangements, or because they consider their cause to be lost in advance in the face of conflict resolution methods whose normative implementation is foreign to them. In the event of conflict, if these situations of ignorance or resistance are not resolved by one mode of normativity or another, their outcomes may be more or less violent: the impossibility

of expressing the occupation of land or housing in terms of the right to property, housing or, conversely, to give meaning to an act of expropriation, can be resolved by the arrival of bulldozers³³.

- 22 The meetings between different modes of normativity, and the circulation of one to the other, therefore call for a preparation of the actors concerned. In other words, the intensity of normative encounters, and their dynamics of transformation, are based on a work of mutual preparation that will lead the actors to consider forms of composition, accommodation or compromise with co-existing normative activities. To draw upon the previous examples, this process of preparation opens up the possibility of a personal case being transformed into a general cause, in which a claim or a specific relationship to things and persons (occupation of land, housing) may be expressed in the form of rights and freedoms. The question then arises as to how, in each individual case, claims, demands, or grievances are transformed and expressed in the format of the law. In other words, how in a normative architecture is the shaping of a demand into “rights” carried out and how is it located ?
- 23 These encounters and transitions from one mode of normativity to another are not simple spontaneous and disembodied writing games. First and foremost, they engage devices that act as an interface. Certain administrative or judicial functions may be specifically provided for this purpose by setting up processes of functional duplication likely to lead to a hybridization of the selected normative decisions. In Canada, the state judge has jurisdiction to apply Aboriginal custom³⁴. In Africa, state judges may be confronted with modes of local normativity based on magic. In Côte d'Ivoire more specifically, the sub-prefect is both an administrative authority (state representative) and a customary authority (customary chief, traditional chief). His mission to ensure social peace, inherited from the colonial period, can lead him not only to apply custom and state law in their respective order, but also to deal with both different modes of normativity. Generally speaking, in decision-making bodies, the modes of composition (pluralistic or, on the contrary, socio-culturally homogeneous representation, whether “bearers” of the different modes of normativity involved are present), the procedures of information, participation or prior consultations with associations, and local elites, are not without effect. The question of the social profile of Latin American state representatives in international forums has thus been raised, with very few, if any, indigenous people being included in international forums to decide on issues that relate to multiculturalism or their rights.
- 24 For, any system also inexorably involves actors. The forms, intensity, and outcome of the normative meetings will depend on their social and professional trajectories, their training and, consequently, how prepared they are for dealing with several modes of normativity, in other words, their ability to become facilitators³⁵.
- 25 At the local level, attention to state or international standards will be all the higher as local elites have been trained to think and act with them. In some States, particularly Muslim ones, it is through religious education that the question of relations to the law can be prepared at an early stage and lead to specific modes of articulation. This preparation also often comes, in formerly colonized States, from national or foreign university education. In this respect, Felix Houphouët-Boigny, a former French parliamentarian and minister before Côte d'Ivoire gained independence, played a significant role in promoting French law, in particular its Civil Code and Constitution. The training in French law of Ivorian elites who hold positions of state authority on the

territory is one of the elements that make it possible to understand not only the specific relationships between state law and custom, but also the references to French law and its doctrine by Ivorian lawyers or judges³⁶. Conversely, preparation can also occur during the training of lawyers, for example, by requiring them, as in Ecuador, to undertake an internship in so-called marginal districts or indigenous communities. This type of experience increases their ability to reformat local situations and complaints in the language of law. More generally, the methods of intervention of NGOs, associations, lawyers, and the establishment of local trust with local populations or individual victims are decisive for the formulation of expressions of injustice in the format of “rights”. Depending on the types of organization and their operations, the cultures of action in the field and the preparations for it (NGOs composed of employees and/or volunteers, religious or civil NGOs, NGOs focused on immersing their members in local life³⁷ or maintaining a distance from it), reports to local actors and the legal shaping of their situation will vary greatly. Some will favor involvement in an action before the local administration or justice, while others will take the cause directly to the national or international level.

- 26 While the preparation of the actors and the presence of interface devices as such do not make it possible to draw any *a priori* conclusions on the forms of hybridization or compromise that will generate, they appear to be essential for the circulation of modes of normativity. Their defect can be a powerful factor for failures: the failure of international cooperation projects filing or transplanting a foreign mode of normativity in a destination State; the ineffectiveness of evaluations carried out on the basis of standards that do not take into account local mechanisms³⁸; the failure of satisfaction of community³⁹ or individual claims⁴⁰ because there are directly formulated in the language of law.

B The outcomes of the meeting : which compositions are involved ?

- 27 In addition to the plurality of modes of normativity that exist, there is also a plurality of forms of circulation and meeting between these modes. In other words, the plural forms of normativity present (custom, local customs, local customs, state law, standard, etc.) are subject to differentiated forms of arrangement. On the one hand, as mentioned above, the actors involved in these meetings present different faces: State, international, local or customary authorities, arbitrators, ad hoc committees, sub-prefects, NGOs, etc. On the other hand, it is the forms and degrees of composition between the normativities involved that vary.
- 28 *Status quo*. The most basic level of composition would be that of a status quo. Norms coexist but they do not meet each other; they do not circulate. As far as possible, the actors concerned allow a situation of patch work or normative juxtaposition to continue, because they are either unwilling or unable to deal with the different modes of normativity that arise for them. The lack of will may be related to the prospect of being able to mobilize the mode deemed most appropriate to achieve a specific goal. It is in this sense that practices of *law or forum shopping*, which are now widely analyzed⁴¹, are developing. Incapacity may result from ignorance, be it out of choice or unpreparedness, of co-existing modes of normativity: a village community does not give any effect to property titles issued by state authorities⁴²; a raw material extraction company continues to operate despite ancestral claims to the land of local populations,

etc. In these cases, the actors remain frozen in their usual normative mode. The normative juxtaposition is then likely to produce situations of conflict and blockage or, in the end, to open up to other forms of composition.

- 29 *Hierarchization and prioritization.* Faced with a plurality of competing modes of normativity, actors can engage in *hierarchization or prioritization operations*. These outcomes are classic in the legal field. In the first scenario, the actors accord one of the standards in question a legal value higher than that of those with which it conflicts, which may lead to the invalidation of the standard considered to be inferior. In the second scenario, actors use meta-principles of normative conflict resolution (*lex posterior derogat priori, lex specialis legi generalis....*) which make it possible to justify an application priority among two standards of the same levels, both of which will remain valid. More broadly, when it is different modes of normativity that are in competition, actors tend to favor the one with which they usually operate : the primacy of state or colonial law over local practices for state authorities ; the primacy of customary law for village leaders ; the primacy of private or transnational standards for global actors, and so on. The respective hierarchizations of the actors can lead to situations of deadlock and *status quo*. To be overcome, they must rely on a shift in conflict resolution towards external actors who can resolve conflicts either by operating their own hierarchy, or by engaging in forms of composition leading to a hybridization of the modes of normativity involved.
- 30 *Normative compositions.* The meeting of the modes of normativity can give rise, finally, to various modalities of internormativity⁴³. Each mode results transformed or hybridized to varying degrees. We must therefore focus on what one mode of normativity does to another.
- 31 In this respect, it should first be noted that any type of standard can be the receptacle for external normative deposits. From the point of view of local norms, customs, for example, may be faced with requirements of respect for physical integrity in the form of constitutional or international rights and freedoms. From the point of view of legal normativity, laws, administrative or jurisdictional decisions, international conventions or the constitution may incorporate indigenous peoples' normative production methods or the expression of their relationship with the world : *buen vivir, Pacha mama*. International conventions in the social field may incorporate the expression of modes of normativity from transnational private actors⁴⁴.
- 32 Secondly, there are several channels through which composition and hybridization are likely to occur. These can firstly be achieved, as mentioned above, through the participation of representatives or spokespersons of composite modes of normativity in the production of state standards. Hybridization can also be produced by interpretation. Normative content is interpreted in the light of another normative standard, possibly seeking coherence or compromise between the modes of normativity involved. Custom can thus be interpreted in such a way as to be in conformity with state law, the formulation being carried out here at the level of the content of the norm rather than that of its form. Hybridization can still occur at the stage of the statement of facts. Such a hybridization will consist, for example, in formatting local practices into legal categories (classification of ownership as various forms of land occupation or use of property). However, for hybridization to take place, the qualification must not lead to a complete reduction of the normative order understood in the pre-established categories of law. The dynamics of the encounter

must produce a shift in legal categories. Conflicts involving the category of ownership once again provide an example of the possible permeability of the law to various forms of claims, occupation, and investment of land, habitats or space.

- 33 Finally, the normative arrangements and forms of hybridization that they are likely to generate are obviously multiple, and each one depends on the modes of normativity in question. In other words, each of these modes presents distinct ways of shaping the composition it operates⁴⁵. With regard to compositions, more particularly, in and through law, three forms of composition can be identified.
- 34 Legal normativity may be granted external normativity by modifying its content or by making its reception conditional on its conformity with its higher principles. For example, a state authority interprets local normativity in the light of the constitution or international requirements and thus transforms its content recognition of local customs subject to national or international requirements for corporal punishment. Conversely, a local authority interprets or integrates state or international standards in the light of its normative mode and adjusts their scope. The Universal Islamic Declaration of Human Rights of September 19, 1981 provides an example in which the format of law, and in this case that of the Declaration of Human Rights, is used but with a normative content hybridized by a mode of religious normativity.
- 35 The mode of legal normativity can also internalize an external normativity not by modifying its content but by reformatting its *instrumentum*. To remain in the same register of examples, local standards can thus be placed in the format of state law through their integration into administrative acts, laws, codes, or even the constitution. The drafting of “collections of African customary law”⁴⁶ has thus given customs a written format and a systematic approach that were not initially their own. Some constitutions have incorporated concepts that shape the world view of indigenous peoples (*Pacha mama, buen vivir...*). In so doing, this results not only in a recognition by constitutional law of rights in favor of indigenous communities but also a deposit, in a legal form, of a concept usually expressed in a form relating to another mode of normativity, such as a ritual one. All that remains is to identify what normative effects can produce this type of internalization and change in the normative environment of the concepts deposited. Does it allow, in this case, the conception of the concept of *Pacha mama* to remain intact, or does it, integrated into a state and constitutional framework that is initially foreign to it, see its meaning transformed, the change in format then also involving a change in normative content ?
- 36 The encounters between modes of normativity can ultimately produce complete hybridizations, in the sense that they generate changes in both format and normative content: the State-ization of the customary mode, legalization of standards, localization or standardization of state mechanisms for conflict resolution. The most advanced form of hybridization would thus be that in which the reciprocal alteration of the existing modes of normativity ends up producing a new mode of normativity. One of the most significant examples is provided nowadays by the meeting of standards produced by transnational private actors (multinational companies, NGOs, etc.) and national or international laws, particularly those that require respect for rights and freedoms or the environment.
- 37 Three forms of hybridization can be identified. The first concerns support. The drafting of codes of conduct and ethical charters can be analyzed as the product of a hybrid of the form “convention” or “constitution” and the forms “internal regulations” or

“corporate objectives”. The second form of hybridization relates to effects : the binding effect of charters or codes is due to the desire to remain credible with regard to the commitments announced and not to incur legal sanctions for their non-observance, a hybrid product between external legal constraints (sanction by the judge, the bailiff...), and the trust that shapes the business world. Finally, the third form of hybridization involves content, i.e., the actual wording of the norm : the language of the prohibition or, conversely, of the obligation is replaced with that of a commitment to respect certain objectives.

- 38 The outcome of these meetings between modes of normativity can be chosen, reflected, or calculated according to the desired goal. Yet it can also be subject to and result from various types of constraints. Finally, it can express an individual or collective commitment on the part of actors prepared to seek a compromise solution or to build a “common” goal.

NOTES

1. See, V. Champeil-Desplats, J. Porta, L. Thévenot, *Introductory remarks* from this dossier.
2. For a similar approach, see V. Forray, S. Pimont, *Describing the law... and transforming it. Essay on the description of the law (Décrire le droit... et le transformer. Essai sur la déécriture du droit)*, Paris, Dalloz, coll. Méthodes du droit, 2017.
3. See, N. Bobbio, *Essays on Legal Theory (Essais de théorie du droit)*, Paris, 1998.
4. Public report of the Conseil d'Etat, *Etudes et Documents du Conseil d'Etat*, n° 43, Paris, La Documentation Française, 1991, p. 32.
5. Décisions n° 2004-500 DC, 29 July 2004, *rec.* 116 ; n° 2005-512 DC, 21 April 2005, *rec.* 72 ; CE 18 July 2011, *Fédération nationale des chasseurs et Fédération départementale des chasseurs de la Meuse*, *AJDA*, 2011, p. 1527, note C. Groulie.
6. See, B. Frydman, « How to think global ? (Comment penser le droit global ?) », in J.-Y. Chérot, B. Frydman, *The science of law in globalisation (La science du droit dans la globalisation)*, Bruxelles, éditions Bruylant, 2012, pp. 20 et s ; G. Teubner, *Constitutional fragments. Societal constitutionalization in the era of globalization (Fragments constitutionnels. La constitutionnalisation sociétal à l'ère de la globalisation)*, Paris, Classiques Garnier, 2016.
7. See the interview with Marcus Colchester in this dossier.
8. See, for example, the Peruvian law of September 6, 2011 on the rights and consultation of indigenous peoples.
9. D. Bonilla Maldonado, *La constitución multicultural*, Bogotá, Siglo del Hombre Editores, 2006.
10. See the Ecuadorian and Bolivian constitutions of September 28, 2008 and February 7, 2009.
11. See the case of the actors involved in oil palm production in Indonesia analyzed by Laurent Thévenot and Emmanuelle Cheyns in this dossier.
12. See, for example E. Dubout, S. Touzé, (dir.), *Fundamental rights : hinges between orders and legal systems (Les droits fondamentaux : charnières entre ordres et systèmes juridiques)* Paris, Pedone, 2010 ; B. Bonnet (dir.), *Treaty on the relationship between legal orders (Traité des rapports entre ordres juridiques)*, Paris, LGDJ, 2016,
13. See, for example, F. Melleray (dir.), *L'argument de droit comparé en droit administratif français*, Paris, Bruylant, 2007.

14. See, in particular, E. Zoller, « What to do with comparative constitutional law ? » (Qu'est-ce que faire du droit constitutionnel comparé ?), *Droits*, n° 32, 2000, p. 121 ; H. Muir-Watt, « The subversive function of comparative law » (La fonction subversive du droit comparé), *RIDC*, n° 3, 2000, p. 503 ; O. Pfersmann, « Comparative law as an interpretation and theory of law » (Le droit comparé comme interprétation et comme théorie du droit), *RIDC*, n° 2, 2001, p. 275 ; M.-C. Ponthoreau, « The comparative law in question(s). Between pragmatism and epistemological tool » (Le droit comparé en question(s). Entre pragmatisme et outil épistémologique), *RIDC*, 1-2005, p. 8 ; M. Reimann, « Beyond National Systems : a comparative Law for the international Age », *Tulane Law Review*, 2001, vol. 75, p. 1105 ; G. Samuel, « Comparative Law and Jurisprudence », *International and Comparative Law Quarterly*, vol. 47, Van Hoecke M., Warrington M., « Legal Cultures, Legal Paradigms, Legal Doctrine : Towards a New Model for Comparative Law », *International Comparative Law Quarterly*, vol. 47, 1998, p. 498.
15. See J. Tavo-Debaugé, « The defects of an inconsequence leading to the impotence of French anti-discrimination policy. Part 2 : Preparing a path to the right and making categories for public action » (Les vices d'une inconséquence conduisant à l'impuissance de la politique française de lutte contre les discriminations. 2^{ème} Partie : Apprêter un chemin au droit et confectionner des catégories pour l'action publique), *Carnets de bord*, n° 7, 2004.
16. See, in this regard, the contributions of Mathias Pécot, Emmanuelle Cheyins and Laurent Thévenot as well as the interview with Marcus Colchester in this dossier.
17. See the contribution of Joëlle Affichard in this dossier.
18. J. Vanderlinden, « Legal pluralism » (*Les pluralismes juridiques*), Bruxelles, Bruylant, 2013, p. 94.
19. C. Plançon, « Elements of field method in the plural study of legal cultures » (Éléments de méthode de terrain dans l'étude plurale des cultures juridiques), in G. Otis, o. cit., p. 103.
20. G. Otis, « Methodology of legal pluralism » (*Méthodologie du pluralisme juridique*), Paris, Karthala, 2012.
21. J. Vanderlinden, « Legal pluralism » (*Les pluralismes juridiques*), Bruxelles, Bruylant, 2013.
22. E. Le Roy, « The hypothesis of multi-legalism in the context of an emergence from modernity » (L'hypothèse du multijuridisme dans un contexte de sortie de la modernité), in A. Lajoie, R. A. Macdonald, R. Janda and G. Rocher et al (ed.), « Theories and emergence of law : pluralism, over-determination and effectiveness » (*Théories et émergence du droit : pluralisme, surdétermination et efficacité*), Bruxelles, Bruylant, Thémis, 1998, pp. 29 and s.
23. See B. de Sousa Santos, « El estado y el derecho en la transición posmoderna : por un nuevo sentido común sobre el poder y el derecho », in C. Courtis (dir.), *Desde otra mirada*, Buenos Aires, Eudeba, 2^{ème} ed., 2009, p. 49.
24. J. Vanderlinden, « Thirty years of long progress towards legal pluralism » (*Trente ans de longue marche sur la voie du pluralisme juridique*), Paris, Khartala, coll. « Legal Anthropology Journals » (Les cahiers d'anthropologie du droit), 2003.
25. For a similar approach as a condition for thinking and conceptualizing global law, see B. Frydman, « How to think about global law ? » (Comment penser le droit global ?), in J.-Y. Chérot, B. Frydman, « The science of law in globalization » (*La science du droit dans la globalisation*), Bruxelles, Bruylant, 2012, pp. 20 et s.
26. R. Guastini, « Lessons in Constitutional Theory » (*Leçons de théorie constitutionnelle*), Paris, Dalloz, collection Rivages du droit, 2010.
27. See the contributions of Joëlle Affichard on the standards of good justice and Carolina Vergel Tovar on the legal formatting of damages suffered by women in this dossier.
28. J. Vanderlinden, « Legal pluralism » (*Les pluralismes juridiques*), Bruxelles Bruylant, 2013, p. 108.
29. See the contributions of Aline Aka for Côte d'Ivoire and Mathias Pécot on the case of Guayaquil in this dossier.

30. See Conseil d'Etat colombien, sentence N. 19001-23-31-000-1999-01134-01 ; Peruvian Constitutional court, TC Ass. Plén. 11/06/08, 006-2008-PI/TC.
31. See the interview with Marcus Colchester in this dossier.
32. See the contribution of Carolina Tovar Vergel in this dossier and C. Vergel Tovar, « Militant and institutional practices regarding the cause of women victims of armed conflict in Colombia », *Les usages militants et institutionnels à propos de la cause des femmes victimes du conflit armé en Colombie*, Université Paris Ouest-Nanterre, July 12, 2013.
33. See Mathias Pécot's contribution in this dossier.
34. G. Otis, « The figures of pluralist theory in legal research » (Les figures de la théorie pluraliste dans la recherche juridique), in G. Otis, *Methodology of legal pluralism (Méthodologie du pluralisme juridique)*, op. cit., p. 14.
35. In this respect, S. Bellina refers to the concept of "interlocutors, see S. Bellina,, « The plural analysis of the law epistemological issues and the responsibility of the young researcher » (L'analyse plurale du droit enjeux épistémologiques et responsabilité du jeune chercheur), in G. Otis, op. cit. , p. 43. ; J.-G. Belley, *Soluble law. Quebecan contributions to the study of inter-normativity (Le droit soluble. Contributions québécoises l'étude de l'internormativité)*, Paris, LGDJ, coll. « Droit et société », 1996, p. 15.
36. See N. Silué, "The contribution of French law to the Ivorian law of non-discrimination in labour relations" (L'apport du droit français au droit ivoirien de la non-discrimination dans les relations de travail), *Revue de droit comparé du travail et de la sécurité sociale*, 2013/1, p. 20.
37. See Mathias Pécot's contribution in this dossier.
38. See Joëlle Affichard's contribution in this dossier.
39. See the contribution of Laurent Thévenot and Emmanuelle Cheyns in this dossier.
40. See Carolina Vergel Tovar's contribution in this dossier.
41. See B. Frydman, *A small practical manual on global law (Petit manuel pratique de droit global)*, Brussels, Royal Academy of Belgium, 2014.
42. See Aline Aka's contribution in this dossier.
43. S. Bellina, "The plural analysis of the law epistemological issues and the responsibility of the young researcher" (L'analyse plurale du droit enjeux épistémologiques et responsabilité du jeune chercheur), in G. Otis, op. cit. , p. 43. ; J.-G. Belley, *Quebecan contributions to the study of inter-normativity (Le droit soluble. Contributions québécoises l'étude de l'internormativité)*, Paris, LGDJ, coll. « Droit et société », 1996, p. 15.
44. See Jérôme Porta's contribution in this dossier
45. See the case of the actors involved in oil palm production in Indonesia analyzed by Laurent Thévenot and Emmanuelle Cheyns in this dossier.
46. G. Otis, « Les figures de la théorie pluraliste dans la recherche juridique », in G. Otis *Méthodologie du pluralisme juridique*, op. cit., 2013, p. 14 ; voir J. Poirier, « La rédaction des coutumes juridiques en Afrique d'expression française », in J. Gilissen *La rédaction des coutumes dans le passé et dans le présent*, Bruxelles, Editions de L'Institut de sociologie, 192, pp. 271-278.