



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Law at its limits

Citation for published version:

Anders, G 2015, 'Law at its limits: interdisciplinarity between law and anthropology', *The Journal of Legal Pluralism and Unofficial Law*, vol. 47, no. 3, pp. 411-422. <https://doi.org/10.1080/07329113.2015.1110909>

Digital Object Identifier (DOI):

[10.1080/07329113.2015.1110909](https://doi.org/10.1080/07329113.2015.1110909)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

The Journal of Legal Pluralism and Unofficial Law

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Law at its limits: interdisciplinarity between law and anthropology

Gerhard Anders, University of Edinburgh

The social-scientific study of law is a heterogeneous, interdisciplinary field where social scientists and legal scholars come together. Whilst sharing a keen interest in the law as social fact, both shaping and being shaped by ideas and behaviour, they do so drawing on different epistemological and methodological foundations. Especially, between legal studies and socio-cultural anthropology there seems to be a divide in terms of research questions, epistemology and methodology. These differences led Geertz to conclude that legal anthropology ought not fuse legal studies and anthropology to form a 'centaur discipline'. Franz von Benda-Beckmann, trained both as lawyer and anthropologist, took issue with this dictum and saw legal anthropology in terms of 'riding the centaur'. This article will examine different approaches addressing the relationships between the law, legal anthropology and the social-scientific study of law in light of his work.

Introduction

What kind of animal is legal anthropology? This is one of the questions Franz von Benda-Beckmann addressed both at a practical and a theoretical level throughout his long and distinguished career. At both levels his answer was consistent, erudite and unwavering, shaped by his training in law in Germany during the 1960s and his 'metamorphosis from lawyer to anthropologist in the Department of Anthropology in Zurich in the early 1970s' (Benda-Beckmann 2008: 85) as well as his long-term fieldwork in Indonesia, often in tandem with his wife, Keebet von Benda-Beckmann (Benda-Beckmann 1979; Benda-Beckmann and Benda-Beckmann 1994; 2007; 2013). After their move to the Netherlands in 1978 Franz and Keebet joined a circle of scholars studying folk law and became involved in Dutch debates on customary law in Indonesia known as *adat* law. This engagement with Dutch academic debates and the social-scientific study of legal phenomena in Indonesia shaped Franz' outlook. This article will use Franz' approach to the social-scientific study of law to address general questions about interdisciplinarity and the boundaries between law and anthropology that have been of concern to lawyers and social scientists who are interested in legal anthropology.

Franz' positioning of legal anthropology took issue with Geertz, who argued against a 'centaur discipline' (Geertz 1983: 169) combining law and social-cultural anthropology. According to Geertz, a 'specialized, semi-autonomous subdiscipline' (Geertz 1983: 169) is the wrong way of relating law to anthropology. Franz' response to this challenge developed over the years into a nuanced unpacking of taken-for-granted categories. In three languages (German, Dutch and English) he examined the similarities and differences between legal anthropology, sociology of law, comparative law and other branches of law in a string of publications (Benda-Beckmann 1981; 1986; 1990; 1991; 2008). In these and other publications (Benda-Beckmann 2006; Benda-Beckmann and Kirsch 1999) he also drew attention to an important distinction missed by Geertz, that between academics and practitioners. The ability to engage both academics from different disciplines and practitioners and policymakers loomed large in Franz' work. Throughout his career Franz addressed practical questions and provided advice to development agencies and policymakers.

Taking its cue from Franz' work at the limits of the law and his efforts to explore common ground between legal studies and legal anthropology this article examines the field of social-scientific studies of law, the relation between legal studies and anthropological studies of law and the influence of Dutch studies of *adat* law on Franz' conception of law and approach to legal anthropology. The article will situate his approach in relation to wider debates on interdisciplinarity and the identity of academic disciplines, with a special emphasis on the United States, the United Kingdom, the Netherlands and Germany.

Social-scientific studies of law: field or non-field?

Talk about interdisciplinary and multidisciplinary academic research and teaching has become ubiquitous but it can be quite challenging to actually operationalize these ambitious intentions. Interdisciplinary encounters often reveal considerable theoretical, epistemological and methodological differences that might not be as easily bridged as anticipated in a research proposal or call for papers. With regard to the study of law the challenges of interdisciplinarity have appeared particularly daunting. What do lawyers and social scientists such as sociologists and anthropologists actually have to say to each other and how can they learn from each other? The common interest in law is deceptive as epistemological and methodological outlooks can differ significantly. In fact, problems often arise already with regard to defining the very subject matter of the interdisciplinary enterprise. Franz was acutely aware of these differences and traced them back to the definition of law (Benda-

Beckmann 1981; 1986; 1991; 2002; 2008). He advocated a ‘concept of law that is not linked to the state by definition and that is broad enough to include “legal pluralism”’ (Benda-Beckmann 2002: 40), the ‘*theoretical possibility* of more than one legal order or mechanism within one socio-political space, based on different sources of ultimate validity and maintained by forms of organization other than the state’ (Benda-Beckmann 2002: 37). He recognized that this broad definition for analytical purposes was at odds with other definitions of law that equate law with state institutions exercising legitimate authority by coercion.

Interdisciplinary engagements between social scientists and lawyers do often indeed result in situations ‘where each side merely wonders, now wistfully, now sceptically, whether the one might have something somewhere that could be of some use to it in coping with some of its own classic problems’ (Geertz 1983: 169). Geertz’ observation only referred to the relation between law and anthropology but it speaks to interdisciplinary encounters general. In fact, this relationship cannot be easily framed in terms of a space between two clearly distinguishable disciplines and requires some unpacking. Within what appear to be unified disciplines there are a range of specializations and schools of thought resulting not in a clearly defined space in between two or more academic disciplines but an uneven landscape of different approaches broadly falling within academic disciplines but with distinct identities. These interdisciplinary and intradisciplinary relationships differ considerably from country to country. Related to this is the question whether legal anthropology belongs to a distinct interdisciplinary field of social-scientific studies of law that includes sociology of law, socio-legal studies as well as law and society approaches.

Law is a very broad denominator encompassing distinct fields such as criminal law, private law, constitutional law and public international law. Another important distinction is that between academic and more practice-oriented fields. Obvious examples of the former are philosophy of law, legal theory, sociology of law and legal history as well as more specific ones such as law and economics or theory of comparative law, for instance. The core of the curriculum at law schools would consist mainly of black-letter law courses in public law, criminal law, private law, administrative law and constitutional law as well as more specific ones such as tort law or law of treaties in public international law. This differentiation is of particular importance to understand interdisciplinary encounters with law as academic discipline as well as with the legal profession.

Schools of law are professional schools like schools of medicine and education. In this they tend to differ markedly from the social sciences as they are primarily devoted to train practitioners (Collier 1997: 125). Research at law schools is of course much broader than this but research questions tend to have a more normative character. Normative thinking perceives law as object, as something that can be isolated from social and political context. Normativity in this regard has a two-fold meaning: on the one hand, it refers to lawyers focus on legal norms and, on the other, a normative outlook on the law's capacity to effect social change (Anders 2004: 44). According to Franz, legal research generally focuses on 'interpretations of general legal abstractions with respect to concrete problematic situations (cases) and/or philosophical reflections on what and how law should be' (Benda-Beckmann 2008: 94). Franz probably had German legal studies in mind when he differentiated 'dogmatic' and 'non-dogmatic' legal studies (Benda-Beckmann 2008: 94) as in Germany the exegetic studies such as legal doctrine are distinguished from the non-exegetic studies such as philosophy of law or legal history. In Germany with its strong positivistic tradition this difference is particularly pronounced but it is also known in France or even Common Law countries.

This observation highlights that law as academic discipline and practice varies considerably from country to country and legal system to legal system. Law schools train professionals to work within the national legal system and even the outlook of international law departments is shaped by debates within the country they are based in. And even though lawyers of all stripes and in particular international lawyers are used to engage peers across national boundaries there are considerable differences in tradition, debates and attitudes. These national and regional differences affect the interdisciplinary encounters between law and the social sciences.

Closely related are the differences between schools of thought or approaches that vary considerably from country to country. For the purposes of this article I limit my scope to those pertaining to the social-scientific study of law. In fact, the term social-scientific study of law was coined in the Dutch context to denote the growing convergence between legal anthropology and sociology of law during the 1970s and 1980s as Franz points out (Benda-Beckmann 2008: 95; in more detail see Griffiths 1986; Benda-Beckmann 1991). In the United Kingdom, the study of law from social science perspectives is known as socio-legal studies (Harris 1983; Hillyard 2002), which is seen as distinct from the sociology of law. The former has been more associated with legal studies while the latter has been mainly seen as belonging

to sociology although there have been calls to merge the two fields (Banakar and Travers 2005: xi). In the United States, legal realism has been an influence on critical legal thinking since the 1920s and 1930s and shaped the law and society movement gathering ‘scholars from law, the fields of social science – sociology, anthropology, psychology, criminology, political science, history – and the humanities, scholars who locate their work both nationally and internationally’ (Nader 2002: 104). In the 1980s, the kindred Critical Legal Studies (CLS) movement emerged and promoted the critical analysis of the ideology undergirding Anglo-American law. The situation in Germany differs from the United States as there the sociology of law and legal anthropology have remained by and large separated in spite of Franz’ and others’ call for a convergence of social-scientific studies of law (Benda-Beckmann 1991; Wrase 2006). Of course, there are also examples of transnational movements such as New Approaches to International Law (NAIL) that has been mainly driven by representatives of CLS in the US but also received significant input from European scholars (Beneyto and Kennedy 2013).

This sketch of the situation in four countries is by no means meant to be an exhaustive overview. It merely aims at illustrating national differences in the social-scientific study of law. Nader points out that in the United States lawyers, anthropologists, sociologists and other social scientists actually formed an interdisciplinary movement (Nader 2002: 109-110). By contrast, in the United Kingdom it seems that socio-legal studies consists overwhelmingly of legal scholars. For instance, Banakar and Travers report that 87% of the participants in the 2003 annual conference of the British Socio-legal Studies Association were based at law departments (Banakar and Travers 2005: xi). Whilst both law and society and socio-legal studies mainly belong to legal studies the former seems more interdisciplinary due to the fact of bringing scholars from various disciplines together rather than bringing together legal scholars who draw on social sciences.

Differentiating between these two forms of interdisciplinarity is important. A situation where lawyers actually engage anthropologists, sociologists, political scientists differs from a situation where legal scholars employing anthropological and sociological methods come together. Both types of encounters can be challenging. The former might result in disagreement about basic premises and a ‘we raid you, you raid us, and let gain lie where it falls, approach’, according to Geertz (1983: 170). The latter might result in the distortion of the other discipline beyond recognition in an attempt to render it useful for different

conceptual and analytical purposes. Nader was characteristically outspoken when she expressed her scepticism about lawyers drawing on social and cultural anthropology:

Indeed, I am sceptical, if not contemptuous, of lawyers who claim the title of anthropologist merely because they are studying the law of everyday life or native peoples; they may find the experience stimulating, but they have little grasp of what ethnographic work entails.' (Nader 2002: 72).

Her observation certainly does not do justice to lawyers who have become anthropologists by undergoing extra training, conducting long-term field research and contributing to scholarly debates such as Franz but she has a point in criticizing the adoption of mere labels without much substance. Nader's critique would only seem to apply to lawyers who try to pass as anthropologists or sociologists since social scientists would find it more difficult to present themselves as lawyers. Professional schools such as law schools act as effective means of controlling membership of the profession. Learning to speak and think like a lawyer is a long process of socialisation in law school that is not easily emulated by outsiders (cf. Mertz 2007). As a consequence, lawyers deploying the vocabulary of the social sciences do not have to fear sanctions save the occasional walkout whereas social scientists hesitate to employ legal analysis let alone engage in legal practice. Anthropologists, for instance, are usually only allowed into the legal field in strictly defined roles such as expert in asylum cases (Good 2007) or international criminal trials (Anders 2014).

The differences existing within apparently unified disciplines and the salience of national boundaries result in a wide range of interdisciplinary engagements between law and the social sciences. For instance, a British anthropologist who is inspired by Foucauldian notions of power and discourse might find it easier to connect to CLS scholars in the United States who examine the ideology of US law than to his peers who do not share his or her theoretical preferences. This experience might be mirrored by a lawyer who is part of the law and society movement who finds an exchange with social scientists more stimulating than discussions with his colleagues at the school of law. Meetings and research projects thus take different shapes, ranging from those of mainly lawyers working interdisciplinarily to those that bring together social scientists and lawyers employing social science methods. Again, these are mere examples illustrating the various configurations of the relationship between law and the social sciences.

One further aspect of these configurations has not been addressed in detail yet. The social-scientific study of law attracts academics as well as practitioners and activists who are interested in applied research. For instance, the Commission on Legal Pluralism, an international association devoted to further knowledge of legal pluralism explicitly aims at ‘assisting in making sympathetic and constructive contributions to the solution of problems connected with the interaction of folk law and state law, and thus to the future of indigenous, ethnic and social groups, governed by folk law, in the modern world’, according to its statutes. For more than two decades Franz played a central role in the Commission on Legal Pluralism and he actively sought to shape policymaking and the implementation of development policies (Benda-Beckmann 1993; Benda-Beckmann *et al.* 1995; Benda-Beckmann 2006). For instance, he developed a close relationship with the German Development Agency, which he advised on the development of policies that take informal forms of social security into account (Benda-Beckmann and Kirsch 1999). This approach did not envisage a fundamental divide between academic and applied research but rather a cross-fertilisation between the two and an unequivocal commitment to the protection of the rights of marginalized groups and so-called target populations of development interventions undermining local legal systems.

Engaging policymakers and practitioners is a challenging endeavour with many pitfalls. Anthropologists in particular have been grappling with demands to make their knowledge useful. For instance, anthropologists who testify as expert witnesses in court proceedings have expressed ethical and epistemological concerns with legal techniques of validating evidence and cross-examination that often appear fundamentally at odds with the social-scientific epistemology of anthropology with its keen eye for cultural difference (Anders 2014; Good 2007; Kandel 1992; Rosen 1977; Sapignoli 2008). These challenges are by no means limited to anthropologists as expert witnesses. They are experienced to varying degrees by anthropologists and other social scientists acting as consultants or advisers to development agencies, as well (Mosse 2004).

In summary, we can speak of the existence of a separate yet highly heterogeneous field of social-scientific studies of law consisting mainly of lawyers employing social-scientific concepts or methods but including also anthropologists, sociologists, political scientists. Due to the international collaborations in the field it is justified to speak of a transnational field although national differences clearly matter and shape interdisciplinary encounters in social-

scientific studies of law. To be more precise it would make sense of speaking of a range of different fields loosely connected across national borders. These fields include both academics and practitioners engaged in academic as well as applied research. Whilst the social-scientific study of law is interdisciplinary in varying degrees (more with regard to law and society in the US, for instance, and less with regard to socio-legal studies in the UK) it is mainly shaped by lawyers rather than anthropologists.

Law, anthropology and legal anthropology

Anthropologists have often been sceptical about the viability of legal anthropology as separate subdiscipline. According to Collier, by the 1960s legal anthropology had become established as subfield of social and cultural anthropology (Collier 1997: 118) but failed to develop into ‘a recognized subdiscipline’ (Collier 1997: 122). This is very much in line with Geertz who argued against a ‘centaur discipline’ as ‘specialized, semi-autonomous subdiscipline within anthropology or law (Geertz 1983: 169). Laura Nader adopted a similar position. She takes issue with the concept of an interdisciplinary field combining law and anthropology (Nader 2002: 72). Instead, Geertz suggests a ‘hermeneutic tacking between two fields, looking first one way, then the other, in order to formulate moral, political, and intellectual issues that inform them both’ (Geertz 1983: 170). Nader states that she has ‘never sought to make an interdisciplinary field out of law and anthropology (although my work is informed by other disciplines), nor have I hoped to amalgamate the work of lawyers and anthropologists (although we inform each other’s work)’ (Nader 2002: 72). Annelise Riles (2001) takes this criticism of a separate subdiscipline further. According to Riles, proponents of legal anthropology as separate subdiscipline ‘imagined a wide gulf between law and anthropology’, which ‘led to an entire generation of work dedicated to exploiting a space between disciplines by imagining that the disciplines, their subject matter, or their component parts somehow needed to be “related” to one another’ (Riles 2001: viii). Echoing Geertz she sees her study of Fijian activists preparing for the 1995 UN World Conference on Women in terms of ‘its movement beyond the explicit topics of “law” and “culture” to other subjects, which will have resonance for lawyers and anthropologists of law alike, albeit in somewhat different ways’ (Riles 2001: viii).

According to Collier, by ‘the 1990s, the old subfield divisions had been largely replaced by a more fluid and diverse set of topical labels’ (Collier 1997: 129). A cursory inventory of professional associations bears testimony to the continued relevance of legal anthropology at

least as focus area if not a clearly defined subdiscipline. The Association for Political and Legal Anthropology (APLA) is an active section of the American Anthropological Association (AAA) publishing a dedicated journal, the Political and Legal Anthropology Review (PoLAR), and the European Association of Social Anthropologists' (EASA) network on the anthropology of law and rights serves as hub for EASA members interested in legal anthropology. In fact, since the 1990s the anthropological study of law has experienced a 'welcome, exciting renaissance', according to John Comaroff. This can mainly be attributed to the global expansion of human rights since the 1990s and the growth in anthropological studies of human rights it entailed. The anthropology of human rights attracted anthropologists in large numbers and transformed the anthropology of law by bringing the multifarious connections between the global and the local into focus and by examining the various modes of adopting human rights discourse (e.g. Goodale 2006; Merry 1992; 2006).

Franz was very much at the forefront of this new wave of legal anthropological research (Benda-Beckmann *et al.* 2005; 2009) but his position with regard to the desirability of legal anthropology as interdisciplinary subdiscipline remained unchanged (von Benda-Beckmann 1981; 1991). In the article titled 'Riding or killing the centaur? Reflections on the identities of legal anthropology' (Benda-Beckmann 2008) he defended legal anthropology as a separate subdiscipline that is different from legal studies understood as normative and positivistic but combines a range of social science approaches to studying law. In some ways Franz himself resembled a centaur. Trained as lawyer in Germany, conducting his PhD research on legal institutions in Malawi, later joining an anthropology department in Switzerland and conducting ethnographic research in West-Sumatra he was both lawyer and anthropologist. And whilst being an academic with theoretical focus he was also always keen to reach out to practitioners and assist in designing development policies that took seriously the actually existing or 'living' law of people affected by these attempts at social engineering.

Dutch legal anthropology and the legacy of *adat* law studies

Franz' approach was heavily influenced by his academic socialisation. In particular his double identity as lawyer and anthropologist, his extended research in Indonesia and his position in Dutch academia shaped his position on the relationship between law and anthropology. In 1978, he and Keebet moved from Zurich to the Netherlands. In Zurich, he had been a lecturer in legal anthropology at the department of anthropology and Keebet a research fellow at the

faculty of law with the section on sociology of law. In 1974 and 1975 they had conducted extensive ethnographic fieldwork in Minangkabau where they studied social change and in particular local law, also known as *adat*. *Adat* law denotes ‘an often undifferentiated whole constituted by morality, customs, and legal institutions’ (Benda-Beckmann and Benda-Beckmann 2011: 171) at the village level in many parts of Indonesia. The focus on *adat* proved to be crucial for Franz’ development. Discussions about the nature of *adat* law and how to study it had a long tradition in the Netherlands, which shaped his take on legal anthropology and law in general.

During the colonial era, Dutch research on what was then known as Dutch East India broadly fell into three categories: anthropology, the study of Islam and the study of customary law or *adat*. According to Trouwborst, by the 1920s this had developed into a ‘strict division of labour’ (Trouwborst 2002: 673) with only very limited interaction and exchange between the three fields. Together, they constituted an academic training programme for colonial civil servants but they were considered to be autonomous disciplines. According to the division of labour between the three fields, anthropology was mainly devoted to the empirical study of what was then referred to as primitive peoples without a sense of history. With regard to the Dutch East Indies, the discipline’s focus was on indigenous culture that was differentiated from foreign influences such as Hinduism or Islam even though these permeated virtually all aspects of people’s everyday lives (Trouwborst 2002: 679). During the 19th century, anthropology and the study of Islam were often combined but with the rise of anthropology as a separate discipline the study of Islam had become the exclusive domain of philologists or Orientalists who were well versed in Arabic. According to Buskens and Kommers (2002), this development was partly influenced by perceptions of Islam as a threat to colonial rule in the Dutch East Indies that were common especially among colonial officials. By contrast, the local rules and institutions of *adat* were seen by some in Dutch colonial circles in a much more positive light. Cornelis van Vollenhoven, a law professor at Leiden University, recognized the importance of *adat* law in people’s everyday lives and led efforts ‘to capture and systematise the totality of legal universes, ideally of all native peoples’ (Benda-Beckmann and Benda-Beckmann 2002: 696-697). Van Vollenhoven established what came to be known as *adat* law school. The study of *adat* law by van Vollenhoven and his students, many of them colonial officials, was seen as an independent discipline and clearly distinguished from anthropology and the study of Islam in the Dutch East Indies (Trouwborst 2002: 681-682).

The *adat* law school was a peculiar creation, a real centaur discipline that has to be seen in the context of Dutch colonial rule in South-east Asia. In fact, the very concept was a hybrid, borrowed by Dutch scholars and colonial administrators from societies in the Indonesian archipelago. The word was by no means used universally in the Dutch East Indies but van Vollenhoven and his followers were convinced that it could be applied across the archipelago to denote a fairly uniform body of indigenous law (Strijbosch 1980: 53-54; Benda-Beckmann and Benda-Beckmann 2011: 170-171). *Adat* law was both an analytical and normative concept. Seen by van Vollenhoven as a useful analytical concept to describe the multitude of indigenous legal orders he also promoted it as normative concept aimed at ensuring the recognition of these local legal orders vis-à-vis the colonial administration, on the one hand, and Islam, on the other (Benda-Beckmann and Benda-Beckmann 2011).

According to Strijbosch (1980) and Trouwborst (2002), van Vollenhoven and the scholars of the *adat* law school considered their field to be independent of anthropology although they employed ethnographic methods. Most members of the *adat* law school were lawyers and colonial officials and, according to van Trouwborst (2002), their perspective and style was quite different from that of anthropologists. Van Vollenhoven's principal objective was the reform of the colonial legal system. He aimed at creating a fair and effective legal system for the native population that recognized their rights (Strijbosch 1980: 32). According to van Vollenhoven, the unwritten rules of popular *adat* were best suited to realize this objective and he resisted the codification of customary law and the introduction of Dutch private law (Benda-Beckmann and Benda-Beckmann 2011: 173).

Franz was actually deeply influenced by van Vollenhoven's approach. Trained as a lawyer and passionate about doing fieldwork in Indonesia he resembled van Vollenhoven in some ways. The group of scholars in the Netherlands Franz and Keebet joined in the 1970s also displayed some similarities with the scholars of the *adat* law school, whose mantle they took up. This group, the folk law circle (*volksrechtskring*), was led by Geerit van den Steenhoven, a professor in folk law at the Faculty of Law at the University of Nijmegen, and attracted mainly lawyers who were interested in the anthropological study of *adat* law in Indonesia and customary law in Africa and elsewhere (Benda-Beckmann and Benda-Beckmann 2002: 703-705). There were also other continuities with the *adat* law school. For instance, Franz and Keebet passionately defended van Vollenhoven against critics who accused him of

Orientalism and reifying Dutch ideas about *adat* (Benda-Beckmann and Benda-Beckmann 2011). In their eyes van Vollenhoven was a precursor of Dutch legal anthropology, employing ethnographic methods in accurately describing what he referred to as ‘living law’. In particular they praised his ‘broad analytical concept of law, which is not by definition tied to the organization of the state’ that allowed for the possibility of legal pluralism (Benda-Beckmann and Benda-Beckmann 2008: 171).

Van Vollenhoven’s definition of law displays many overlaps with Franz’ definition. Franz aimed at developing an analytical category of law allowing for cross-cultural comparison. Franz distinguishes law in a general form and a concrete form. The former ‘is usually expressed in the form of a conditional formula, “if-then” propositions’ (Benda-Beckmann 1986: 97) whilst the latter would be a concrete ‘reasoned proposition’ as, for instance, a court’s decision (Benda-Beckmann 1986: 98). He differentiates three dimensions of law, the existence of general rules, the content of these rules, and the degree of mandatoriness that might vary depending on the society (Benda-Beckmann 1986: 98-99). Central to Franz’ concept of law is the co-existence of multiple legal orders in one social-cultural setting. According to Franz, the legal order of the modern state is usually not the only legal order governing peoples’ lives in societies that are never monolithic. According to Franz, this was merely a statement of fact that could guide empirical and comparative research of legal complexity as at ‘a certain level of generality, there is thus no reason to make much of the sensitising concept of legal pluralism or of the insight that in most societies there is a plurality of legal orders’ (Benda-Beckmann 2008: 97).

It was however the very idea of the ‘theoretical possibility of more than one legal order or mechanism within one socio-political space’ (Benda-Beckmann 2002: 37) that proved to be highly contentious. Mainly legal scholars took issue with the idea of law that existed outside the scope and authority of the institutions of the modern bureaucratic state with its ‘codes, courts and constables’, as Malinowski (1926: 14) famously put it. Franz often crossed swords with Simon Roberts (1998; 2005), Brian Tamanaha (1993; 2000) and other legal scholars who took an interest in the social-scientific study of law. In a series of articles Franz engaged these critics and promoted his analytical-comparative concept of law that explicitly allowed for legal pluralism (Benda-Beckmann 1981; 1986; 1991; 2002; 2008). It is striking that this debate played out in legal studies journals and the specialized *Journal of Legal Pluralism* drawing in mainly scholars with a legal background who either were in favour of or against

legal pluralism. Anthropologists had much less difficulty with accepting the theoretical possibility of legal pluralism but since the 1970s anthropologists have tended to employ the concept for the empirical study of institutions such as courts that clearly have a legal character. This shift in focus to institutions recognized as legal both by the society in question and the anthropologist sidesteps the fundamental theoretical questions about a cross-cultural definition of law that Franz was addressing. In fact, Franz harked back to the Bohannan-Gluckman debate about the challenges of finding an analytical language to describe societies where legal institutions and institutions do not easily fit Western categories (Moore 2000/1978), which is examined in more detail by Good in this collection. Taking his cue from Gluckman Franz aimed at developing an analytical concept of law that was independent of the Western folk model of law as the product of the state.

Conclusions

Franz' insistence on the 'theoretical possibility of legal pluralism' was bound to generate more controversy among scholars with a legal background than among anthropologists. For many anthropologists it simply does not matter whether an institution, an idea or a practice is legal or not as long as they succeed in examining it within wider webs of social relations and practices to understand how it subtly shapes people's ideas and behaviour and is, in turn, shaped by them. By contrast, for legal scholars 'the idea of legal pluralism offered a powerful tool to criticise the hegemonic assumptions of the state and its laws' (Buskens and Kommers 2002: 748). In unequivocally positioning his work in relation to anthropology whilst engaging legal scholars on their territory Franz was truly riding the centaur, transcending the idea of a space in between law and anthropology. The opportunity to address different audiences was for Franz one of the main reasons to promote the social-scientific study of law as a distinct sub-discipline including lawyers and anthropologists as well as other social scientists. From his perspective, this disciplinary diversity would be lost if legal anthropology would simply be subsumed under social and cultural anthropology.

In the light of the survey of the interdisciplinary fields of social-scientific studies of law and the fraught relationship between law and anthropology it seems that a proliferation of fields and the blurring of disciplinary boundaries has resulted in a situation bearing striking similarity with situations of legal pluralism. Scholars and practitioners from a wide range of academic disciplines engage each other in debates about law as one aspect of social and cultural life. In doing so they simultaneously seek to develop a common language whilst

being inevitably shaped by their respective disciplinary and national background. This entails multiple processes of translation, a constant seesaw between disciplines and idioms, straddling reflexivity and normativity, that is challenging but ultimately rewarding as it pushes the law as well as the manifold ways of studying it to the limit.

Literature

ANDERS, Gerhard

- 2004 'Lawyers and anthropologists: a legal pluralist approach to global governance.' Pp. 37-56 in Ige F. Dekker and Wouter Werner (eds.) *Governance and international legal theory*. Leiden: Nijhoff.
- 2014 'Contesting expertise: anthropologists at the Special Court for Sierra Leone.' *Journal of the Royal Anthropological Institute* 20(3): 426-444.

BANAKAR, Reza and Max TRAVERS

- 2003 'Introduction.' Pp. ix-xvi in Reza Banakar and Max Travers (eds.) *Theory and method in socio-legal research*. Hart: Oxford.

BENDA-BECKMANN, Franz von

- 1979 *Property in social continuity: continuity and change in the maintenance of property relationships through time in Minangkabau, West Sumatra*. The Hague: Martinus Nijhoff.
- 1981 'Ethnologie und Rechtsvergleichung.' *Archiv für Rechts- und Sozialphilosophie* 67: 310-329.
- 1986 'Anthropology and comparative law.' Pp. 90-109 in Keebet von Benda-Beckmann and Fons Strijbosch (eds.) *Anthropology of law in the Netherlands*. Dordrecht: Foris Publications.
- 1991 'Unterwerfung oder Distanz: Rechtssoziologie, Rechtsanthropologie und Rechtspluralismus aus rechtsanthropologischer Sicht.' *Zeitschrift für Rechtssoziologie* 12(1): 97-119.
- 1993 'Scapegoat and magic charm: law in development theory and practice.' Pp. 116-134 in Mark Hobart (ed.) *An anthropological critique of development: the growth of ignorance*. London: Routledge.
- 2002 'Who's afraid of legal pluralism?' *Journal of Legal Pluralism* 47: 37-82.

- 2006 'The multiple edges of the law: dealing with legal pluralism in development practice.' Pp. 51-86 in World Bank (ed.) *The World Bank legal review: law, equity, and development, vol. 2*. Washington, DC: The World Bank.
- 2008 'Riding or killing the centaur? Reflections on the identities of legal anthropology.' *International Journal of Law in Context* 4(2): 85-110.
- BENDA-BECKMANN, Franz von and Keebet von BENDA-BECKMANN
- 2002 'Anthropology of law and the study of folk law in the Netherlands after 1950.' Pp. 695-731 in Han Vermeulen and Jean Kommers (eds) *Tales from academia: history of anthropology in the Netherlands. Part 2*. Saarbrücken: Verlag für Entwicklungspolitik Saarbrücken.
- 2011 'Myths and stereotypes about adat law. A reassessment of Van Vollenhoven in the light of current struggles over adat law in Indonesia.' *Bijdragen tot de Taal-, Land- en Volkenkunde* 167(2-3): 167-195.
- 2013 *Political and legal transformations of an Indonesian polity: the Nagari from colonialism to decentralisation*. Cambridge: Cambridge University Press.
- BENDA-BECKMANN, Franz von, Keebet von BENDA-BECKMANN and Anne GRIFFITHS (eds.)
- 2005 *Mobile law, mobile people: expanding legal relations in a contracting world*. Aldershot: Ashgate.
- 2009 *The power of law in a transnational world: anthropological enquiries*. Oxford: Berghahn.
- BENDA-BECKMANN, Franz von, Keebet von BENDA-BECKMANN and H.L. Joep SPIERTZ
- 1995 'A training programme in anthropology of law designed for research in water law in India and Nepal.' *Newsletter of the Commission on Folk Law and Legal Pluralism* XXV: 74-77.
- BENDA-BECKMANN, Franz von and Renate Kirsch
- 1999 'Informal security systems in Southern Africa and approaches to strengthen them through policy measures.' *Journal of Social Development in Africa* 14: 21-38.
- BENEYTO, José Maria and David KENNEDY (eds.)
- 2013 *New approaches to international law: the European and the American experiences*. The Hague: T.M.C. Asser Press.
- BUSKENS, Léon and Jean KOMMERS
- 2002 'The delayed reception of colonial studies about *adat* law and Islamic law in Dutch

- anthropology', in Han Vermeulen and Jean Koppers, eds. *Tales from academia: history of anthropology in the Netherlands. Part 2*, pp. 733-755. Saarbrücken: Verlag für Entwicklungspolitik Saarbrücken.
- COLLIER, Jane F.
- 1997 'The waxing and waning of "subfields" in North American sociocultural anthropology.' Pp. 117-130 in Akhil Gupta and James Ferguson, eds. *Anthropological locations: boundaries and grounds of a field science*. Berkeley: University of California Press
- GEERTZ, Clifford
- 1983 *Local knowledge: further essays in interpretive anthropology*. Basic Books.
- GOOD, Anthony
- 2007 *Anthropology and expertise in the asylum courts*. Abingdon: Routledge-Cavendish.
- GOODALE, Mark
- 2006 'Ethical theory as social practice.' *American Anthropologist* 108(1): 25-37.
- GRIFFITHS, John
- 1986 'Recent anthropology of law in the Netherlands and its historical background.' Pp. 11-66 in Keebet von Benda-Beckmann and Fons Strijbosch (eds.) *Anthropology of law in the Netherlands*. Dordrecht: Foris Publications.
- HARRIS, Donald R.
- 1983 'The development of socio-legal studies in the United Kingdom.' *Legal Studies* 3(3): 315-333.
- HILLYARD, Paddy
- 2002 'Invoking indignation: reflections on future directions of socio-legal studies.' *Journal of Law and Society* 29(4): 645-656.
- KANDEL, Randy Frances
- 1992 'A legal field guide for the expert anthropologist.' *National Association for the Practice of Anthropology Bulletin* 11(1): 53-76.
- MALINOSKI, Bronislaw
- 1926 *Crime and custom in savage society*. London: Routledge and Kegan Paul.
- MERRY, Sally Engle
- 1992 'Anthropology, law and transnational processes.' *Annual Review of Anthropology* 21: 357-379.
- 2006 'Transnational human rights and local activism: mapping the middle.' *American Anthropologist* 108(1): 38-51.

MERTZ, Elizabeth

2007 *The language of law school: learning how to “think like a lawyer”*. New York: Oxford University Press.

MOORE, Sally Falk

2000 ‘Chapter 4: Comparative Studies’, Pp. 135-148 in Sally Falk Moore. 2000. *Law as process: an anthropological approach*. Hamburg and Oxford: Lit Verlag and James Currey.

MOSSE, David

2004 ‘Is good policy unimplementable? Reflections on the ethnography of aid policy and practice.’ *Development and Change* 35(4): 639-671.

NADER, Laura

2002 *The life of the law: anthropological projects*. Berkeley: University of California Press.

RILES, Annelise

2001 *The network inside out*. Ann Arbor, MI: University of Michigan Press.

ROBERTS, Simon

1998 ‘Against legal pluralism: some reflections on the contemporary enlargement of the legal domain.’ *Journal of Legal Pluralism* 42: 95-106.

2005 ‘After government? On representing law without the state’, *Modern Law Review* 68(1): 1-24.

ROSEN, Lawrence

1977 ‘The anthropologist as expert witness.’ *American Anthropologist* 79(3): 555-578.

SAPIGNOLI, Maria

2008 ‘Indigeneity and the expert: negotiating identity in the case of the Central Kalahari Game Reserve.’ Pp. 247-268 in Michael Freeman and David Napier, eds. *Law and anthropology*. Oxford: Oxford University Press.

STRIJBOSCH, Alphonsus K.J.M.

1980 *Juristen en de studie van volksrecht in Nederlands-Indië en anglofoon Afrika*. Nijmegen: Instituut voor Volksrecht in der Faculteit der Rechtsgeleerdheid.

TAMANAH, Brian Z.

1993 ‘The folly of the “social-scientific” concept of legal pluralism.’ *Journal of Law and Society* 20: 192-217.

2000 ‘A non-essentialist version of legal pluralism.’ *Journal of Law and Society* 27: 296-321.

TROUWBORST, Albert

2002 'Anthropology, the study of Islam, and adat law in the Netherlands and the Netherlands East Indies, 1920-1950.' Pp. 673-694 in Han Vermeulen and Jean Koppers, eds. *Tales from academia: history of anthropology in the Netherlands. Part 2*. Saarbrücken: Verlag für Entwicklungspolitik Saarbrücken.

WRASE, Michael

2006 'Rechtssoziologie und law and society: Die deutsche Rechtssoziologie zwischen Krise und Neuaufbruch.' *Zeitschrift für Rechtssoziologie* 27: 289-312.