Globalisation and legal pluralism
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For a long time the concept of legal pluralism was strictly rejected by legal theorists who insisted that the law of the nation state was the only relevant kind of law in modern society. But with the recognition that international law does not merge seamlessly with national laws and that a body of transnational law is emerging that has little to do with the law of nation states, the term has become acceptable. Legal pluralism is not a new phenomenon and includes far more than just national, international and transnational law. Research in legal anthropology has long since dealt with constellations of legal pluralism involving also customary legal orders, various types of religious law, and newly created local law. Legal pluralism resulted to a great extent from colonial expansions, missionary movements and migration. More recently, research has shown that legal pluralism is also common in industrial societies, where local communities and industrial and commercial offshoots create their own law. The transnational law that is emerging under the processes of globalisation of the second half of the 20th century therefore does not create legal pluralism, but adds to the already existing constellations of legal pluralism.

Globalisation is a complex set of processes of increasing global connectedness differing in extent, intensity, velocity, and impact. Globalisation of law achieved quite high degrees of extension and intensity in earlier periods, especially during the period of colonisation since the late eighteenth century. The colonial empires introduced their laws in regions that stretched over all continents. New in the present process of globalisation is its velocity, made possible by modern transport and communication technology. New also is that far more mediating participants are involved than before. There is, however, no one universal development towards ever more connectedness. The process is full of contradictory developments, and as Held et al. warned, it is not possible to conclude from globalising developments in one domain that the same developments take place in other domains of social

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life. Nor, I should add, is there only a development towards more connectedness. After the demise of the Soviet regime, for instance, connectedness between many regions in the north of Siberia reached such a low degree of intensity as to virtually disappear.

The aim of this comment is to take a closer look at the emerging complex legal landscapes under processes of globalisation from a perspective of legal pluralism. Globalisation creates and changes complex legal configurations. These complex constellations of legal pluralism are typically contested, hierarchical, unequal and ambivalent. I shall also argue that there is a growing, highly diverse institutional framework mediating the globalisation of law and complicating the constellations of legal pluralism. These institutional networks have their own hegemonic and counter-hegemonic impact on the globalisation of law. This poses questions about democracy and democratic control of legislation.

**Actors and institutions of globalisation**

Law does not globalise by itself; it needs actors that use law and institutions through which law is mediated. There has been an immense increase in the institutions involved in the globalising processes, extremely diverse and differing widely according to social and economic domain. I shall briefly discuss four types of actors: commercial corporations, law firms and legal counsel; state agencies; international organisations; NGOs and social movements.

As Gessner points out, there are a large variety of institutions involved in the globalisation of commercial law. Transnationalisation in commercial law seems to occur in the first place by means of contracts between companies themselves. There is much evidence that these transnationally operating companies only rarely turn to either national or transnational institutes of dispute management. They create their own law. Instead, the fear of losing one's reputation and the wish to stay in business are quite effective sanctioning mechanisms. Large transnationally operating law firms have been important agents of globalisation of commercial law as providers of legal advice. They have also become active in the development of new modes of conflict management through arbitration and mediation. This field is growing, diversifying and expanding throughout the world. Law firms are also expanding into the field of private damage claims. Here transnationalisation takes the form of expanding jurisdiction, especially that of the US, far beyond its territory. In response, the national law of the countries in which damages occur is often changed.

Many national states themselves actively contribute to the globalisation of law. Western states have been and continue to be very active in exporting their law to post socialist and developing countries alike. They also globalise law through development cooperation. As development cooperation is directed at changing the
conditions of the poor and underprivileged, the explicit aim of much development cooperation is to change existing structures of rights and obligations. But even primarily technical development cooperation introduces modes of decision making and procedures that are alien. International organisations such as the IMF, World Bank and the Regional Development Banks also play an important globalising role in development cooperation. Development cooperation often introduces legal elements of the international organisation, a bi-lateral development agency and the implementing consultancy at the same time. Together these networks of organisations are influential agencies of globalisation that contribute to legal pluralism through implementation of development projects. Such project law, the rules, procedures, and criteria for in- and exclusion and all sorts of rights to resources, is a source of legal pluralism in itself that has as yet received little attention. Local communities trying to defend their interests against this influential coalition, have to organise and to mobilise NGOs in order to obtain the political influence necessary to be heard. This is in itself an effect of the globalisation of law. Such organisation also has an impact on their internal relationships and their customary law.

International organisations such as the UN and its specialised organisations, but also the numerous specialised treaty organisations play a crucial role in the globalisation of law. Transnational human rights law is one such legal field. This is not to say that the human rights catalogue is equally accepted everywhere, let alone effective. But its influence is widespread, and extends to where alternative modes of human rights are being developed. The debates about African, Asian, or Islamic human rights are a direct response to the expansion of the UN human rights. Globalisation is made possible because of the expanding institutional set up of international human rights law, especially within the UN structure, in particular the Commission on Human Rights and its committees and the working group on indigenous peoples. These institutional conditions have been conducive to the spread of human rights. But the extent, intensity and impact have also been a result of the active involvement of extensive networks of local, national, regional and transnational human rights NGOs. Networks of international academic and activist lawyers play a crucial role here. The constellations of these networks develop over time. While globalising in the earlier years occurred mainly through European and American networks of lawyers and institutions of development cooperation, there has been an impressive increase of South-South networks that directly exchange information and support. In contrast to the networks of corporate lawyers, these networks are explicitly emancipatory in character. They have, e.g., created more room for indigenous groups in many countries. But this has changed the internal structure of these same indigenous groups, in a way that resembles the changes in traditional leadership due to the colonial experience. New brokers of power,
information and of considerable financial flows have come to exist side by side with traditional authorities. This has in turn affected the customary laws of these indigenous groups. Not all human rights institutions are sufficiently aware of these effects of their involvement. As a result, the constellation of legal pluralism has become more complex, diffuse, and at times also contested.

The field of environmental protection is another vastly expanding domain in which law is globalising rapidly. Again, international organisations are important and here, too, the NGO world plays an important role. But there are important differences in the ways in which it affects local populations and has an impact on local law. While human rights law in general seeks to limit state control and creates additional rights vis-à-vis the national state, environmental law expands administrative control and in many ways curtails the rights of local people. International environmental organisations have established a new property regime to goods that have been created by that same regime (environment, natural reserves, ecological hot spots, emission rights, etc.). Under that regime local populations have been effectively expropriated in that it severely limits the use of land, forest, or water resources. Many environmental NGOs and other agencies have come into conflict with local populations because they have not paid attention to existing legal structures. Local people often mobilise human rights NGOs to protect their interests. The hegemonic aspirations of environmental law have not only forced changes on national legislators. They have also forced local populations to change their customary law to cope with the environmental intrusion.

What is loosely labelled “the world of NGOs” is extremely complex and diverse. It involves specialised internationally operating organisations, regional, national and local organisations both secular and religious. But it also includes more loosely structured social movements. Levels of professionalisation are extremely diverse. Globalisation in important ways occurs through networks of such organisations, in which the specialised and professional international agencies are linked to local NGOs and indigenous organisations. Through these networks substantive transnational law is widely spread. But in its wake decision making procedures, rules for accounting, and legal concepts are also globalised. Modern communication technology has greatly intensified these networks and the speed with which information is exchanged is quite remarkable. Moreover, the network structure seems to be changing. While many local NGOs still depend financially on national and transnational NGOs based in industrial societies, international south-south linkages are becoming more prominent.
Extent and impact
Despite the institutional expansion, the spatial extent of the globalisation of law has been uneven. From the normative claim that a law is valid throughout a country it is concluded that it is actually used throughout that territory. This is problematic as anthropological research has established. In the first place, much law is directed at specific sectors of social and economic life. Laws regulating international trade, for example, are effectively relevant in specific places only, usually in industrial areas near the large cities and seaports, with or without a special legal and fiscal status. Secondly, law has to be known throughout the territory. While in industrial societies most people are only vaguely aware of most of the state legislation, this is all the more the case in other countries, where the majority of the population is totally unaware of most laws. The claim that law is valid throughout the country is not even potentially a basis for social behaviour unless actors somehow are aware of its existence. Thirdly, law has to be used in actual practice. There are many instances in which local populations choose not to use state legislation, even though or because they know it exists, but continue to use, for example, customary law. This is very often the case for land transactions in rural areas. Reasons for not following state law may be unfamiliarity with or incapacity to employ the procedures, the expense involved, religious or other moral convictions, or, most importantly, scepticism about the advantages legislation may bring. Here state law does offer a potential normative structure that exists next to other normative orders.

A long tradition of research in legal anthropology has shown that constellations of legal pluralism are highly dynamic. Not only may the relative importance of each of the available normative structures change over time, but the normative structures themselves change in response to each other. It has been well documented that the involvement of the colonial administration fundamentally changed the traditional leadership in former colonies. And this had an effect on the content of customary land law as well. Thus, though in land law, state legislation often was not used, state law nevertheless had an important more indirect impact on customary land law. So much so, that many scholars have claimed that what is called customary law in fact is a product of colonial rule. Conversely, colonial law was in many ways affected by customary laws.

These issues are not problems of the past. Customary law continues to play an important role in present day rural societies in developing countries. Many African countries are experimenting with new roles for traditional leadership. And indigenous groups are more and more successful in claiming some kind of self-determination. Two developments are of special interest. One is that the internal relationships among members of these indigenous groups is strongly changed in the process, as a response both to the national legal system and international human
rights law, but especially in response to all the organisations and institutes involved in the process. The other important development is that these processes typically involve a scaling up of the spatial jurisdiction of customary law. Small local communities that each had similar, though separate normative orders now embark on the process of forming one customary law for the common territory. The process is going on in Latin America, New Zealand, Papua New Guinea, Indonesia and Namibia, to name only a few regions. Though this scaling up is internally contested and as yet incomplete, the process is in full swing. These developments have been induced by transnational law and can only be understood by the involvement of networks of NGOs. The effect is that customary law is gaining importance, but in the process it is changed and with it, the landscape of legal pluralism is changed.

Religious law
In similar ways the relationship between customary law and religious law, especially the laws of the global religions, has been dynamic and diverse. The history of religious expansion shows remarkable similarities with the expansion of colonial law. Religious law also adjusted to customary law it found on its way, and in turn had an impact on customary laws. The degrees of adjustment and change differ widely and are subject to a dynamic process. In some regions and at certain periods, religious law remained a body of law that was clearly demarcated from customary law, while in other regions the two were merged.

The situation is not quite the same for each of the “global” religions. This has to do with the internal institutional structure of these religions. The Roman Catholic Church has kept legislation and interpretation strictly under hierarchical control, though this has not prevented it from adjusting to local customary law. Protestant Christianity has no central authority. This also goes for Hinduism and Buddhism. And what is officially called Hindu law in India is a code made by the British colonial government. Islamic law has been canonised since the 13th century, but authority is not centralised. There have always been authoritative centres in the Arab world and regional centres elsewhere, where the learned versions of religious law were developed and from where this learned religious law was disseminated. Students from all over the world have come to these centres of learning and have brought back the interpretations to their home country. These centres have been important nodes in networks through which religious law has been globalised. Travelling to the religious centres is an old tradition, but the intensity has varied, depending on wealth and political circumstances. Indonesia, for example, has repeatedly known waves of intensified fundamentalisation as well as modernisation induced by people who had trained in academic and religious centres in Cairo or Baghdad or in Saudi Arabia. Modern transport and communication technology
have increased the intensity and velocity to an unprecedented level. Especially powerful devices in the process of globalisation are audio and video cassettes containing preachings in which among other things interpretations of religious law are provided. These cassettes are widely sold. Likewise, centres of religious learning of other religions attract students who carry the messages and interpretations back home. Video and audio cassettes are sold and spread among the community of believers.

The landscape of religious law has from early on been pluralistic, consisting of official, authoritative versions and local varieties that may exist side by side, influencing each other, but also subject to change in response to local customary law and to the law of national states. The recent intensification of globalisation has undermined the hierarchy of authority, since the centres have no control over these communication chains. As a result, religious legal pluralism has become even more complex.

Concluding remarks
The process of globalising of law thus involves both secular and religious laws of widely diverse kind. A good understanding of this process requires us to look not only at law of nation states and the newly emerging transnational law. The analysis also has to deal with customary laws, newly emerging local law, law created and maintained by industrial branches. Practising lawyers may ignore these legal orders in so far as they are not recognised under state or international law and focus on what is called lawyers' legal pluralism; analysts of globalisation of law have to look at the full landscape of strong legal pluralism. The globalisation of law has certainly speeded up and intensified, but the extent, intensity, velocity and impact are not at all uniform. The emerging constellations of legal pluralism are uneven, and while the institutional networks are expanding rapidly, the constellations differ widely. The most important institutions through which law is being globalised, national and international agencies, transnational law firms, or NGOs establish chains and networks of hegemonic and counter-hegemonic power. While some may herald the expansion of civil society, a close look at these institutional constellations shows that important issues of equality and democracy are at stake. These institutions not only spread law; they are all in one way or another involved in law making. But this production of law is typically not democratically controlled. Globalisation of law therefore only comes about to a limited extent through democratic procedures. And the emerging fields of legal pluralism therefore consist only to a limited extent of law that is made by democratic procedures.