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[Review] Brian Z. Tamanaha, Caroline Sage and Michael Woolcock (editors) (2012) Legal pluralism and development: scholars and practitioners in dialogue

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Book Review

Legal pluralism and development: scholars and practitioners in dialogue, edited by Brian Z. Tamanaha, Caroline Sage and Michael Woolcock, New York, Cambridge University Press, 2012, xix + 250 pp., £60/\$99 (hardback), ISBN 978-1-107-01940-9

This book comes at a time of significant policy interest amongst international organisations in legal pluralism and its contribution to development debates. Published a year after the International Development Law Organization's own series of books on customary justice and legal empowerment (Harper 2011a, 2011b; Ubink and McInerney 2011), this book is the product of a gathering of scholars and practitioners instigated by members of the World Bank's Justice for the Poor Program on the topic of legal pluralism. The value and uniqueness of the book lies in its bringing together a number of leading scholars and experienced practitioners, highlighting the contemporary relevance of long-standing theoretical debates within legal pluralism to development policy – and vice versa.

The aim of the book, as the editors describe it, is “to enhance the analytical rigor underpinning the development community's engagement with legal pluralism ... [and to] demonstrate to scholars and practitioners of legal pluralism the mutual benefit of engaging in sustained dialogue ...” (3). The scholar–practitioner dialogue is reflected in the structure of the book itself. Part one – “Origins and Key Ideas”, and Part two – “Theory and Concepts”, explore the topic of legal pluralism within the development context from a variety of theoretical and disciplinary perspectives. Part three – “Application and Practice” provides a practitioner response to these, addressing some of the key practical and policy challenges confronting those engaged in legal development programming. Throughout the book the contributors reflect on the implications of legal pluralism for development activities.

The theoretical contributions offer fresh perspectives on key concepts within legal pluralism studies as they may be brought to bear in tackling development issues. William Twining's chapter provides a succinct discussion of theoretical concepts within legal pluralism, particularly useful for development practitioners. One recurring theme in the book is whether legal pluralism itself represents an obstacle or an opportunity for the rule of law, particularly in the context of fragile or failed states. The chapters by Brian Tamanaha, Patrick Glenn and Gordon Woodman in particular provide some important reflections on the tendency of development projects to privilege state law within the concept of the rule of law and to use the state as a vehicle for institution-building and change. This, despite the fact that in many situations the state or state law may be ineffectual, viewed by the populace as corrupt or lacking legitimacy.

The papers explore the positive and negative implications of the reality of legal pluralism for the rule of law. Tamanaha, for example, argues that in countries where legal systems have developed along a different trajectory from that of Western countries, legal pluralism is “an alternative constellation of law within society ... that can operate in ways that meet the needs of the community” (46). He also observes that there may be increased legal uncertainty between contrasting legal regimes, where social and political power becomes highly significant in dispute resolution. All three authors call for greater sensitivity to the particular contexts in

which development projects are proposed. Development projects, Tamanaha argues, “must be sensitive to and anticipate the implications of legal pluralism” (47).

Another important theme in the book is how to improve access to justice for poor or marginalised social groups in plural legal contexts. Several authors point to the significance of social and political power structures and the role of human rights activism in addressing this issue. Taking a historical perspective, Lauren Benton argues that progressive institutional change requires a reordering of power and legal authority within a “multijurisdictional field” of legal pluralism (30). This is echoed in Sally Engle Merry’s case study of women’s courts in India, which highlights ways in which access to justice may be enhanced by addressing the nature of legal culture, consciousness and mobilisation, as part of legal reform measures.

The practitioner responses to these theoretical debates draw upon research and policy work from South Africa, Bolivia, Niger, Sierra Leone, Peru, Papua New Guinea, Liberia and Southern Sudan. The papers reflect on how practitioners should approach the inherently difficult task of policy formulation. Each in various ways emphasises the importance of local knowledge and once again – sensitivity to the specific social and plural legal contexts in which development practitioners find themselves working. As Christian Lund suggests: “policy makers and operators could do worse than ask: What processes involved in peoples’ efforts to change their lives can be identified, identified with, and furthered by policy?” (211).

This is an excellent edited collection of papers that moves forward a number of longstanding debates within legal pluralism as today’s scholars and practitioners increasingly focus on its practical implications for legal reform. Although the contributions are written as stand-alone chapters, the richness of the debate that runs through all the papers means that the reader will benefit much from reading the book from cover to cover. The contributions draw upon a variety of disciplinary backgrounds – anthropology, history, law, political science and sociology – as well as development practice. As a whole they challenge the reader – whether scholar or practitioner – to engage with alternative and new perspectives on legal pluralism. This book paves the way for further scholar–practitioner dialogues and signals future directions in legal pluralism scholarship. It is to be hoped that it will also serve to inform the design and implementation of legal development programmes in practice.

References

Harper, E. 2011a. *Customary Justice: From Program Design to Impact Evaluation*. Rome: IDLO.

Harper, E., ed. 2011b. *Working with Customary Justice Systems: Post-Conflict and Fragile States*. Rome: IDLO.

Ubink, J., and T. McInerney, eds. 2011. *Customary Justice: Perspectives on Legal Empowerment*. Rome: IDLO, Van Vollenhoven Institute.

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