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State-Building as Lawfare

The View from Above and from Below

How does the state manage to impose the rules that regulate everyday life? The answer to this question, first broached by Joel Migdal, defines state-building through the distribution of social control. Following this view, social control is the main resource or "currency" for which the state and different social forces compete.[1] Even in "strong states" like the United States, social control is contested. For example, diamond trade in New York City is largely regulated through the Orthodox Jewish community's emphasis on Scripture and the enforcement of collective reputation.[2] Furthermore, the Brooklyn Hasidic community has its own rabbinic court system, which even handles criminal allegations.[3] There are also various Christian religious groups in the United States that have obtained enormous power through arbitration clauses. The *New York Times* reported:

> For generations, religious tribunals have been used in the United States to settle family disputes and spiritual debates. But through arbitration, religion is being used to sort out secular problems like claims of financial fraud and wrongful death. Customers who buy bamboo floors from Higuera Hardwoods in Washington State must take any dispute before a Christian arbitrator, according to the company's website. Carolina Cabin Rentals, which rents high-end vacation properties in the Blue Ridge Mountains of North Carolina, tells its customers that disputes may be resolved according to biblical principles.[4]

[1] Migdal, *Strong societies and weak states*; *State in society*.
[2] Bernstein, "Opting out of the legal system."
[3] Aviv, Rachel. "The outcast." *New Yorker*. November 3, 2014.
[4] Corkery, Michael, and Jessica Silver-Greenberg. "In religious arbitration, scripture is the rule of law." *New York Times*. November 2, 2015.

In states that face "strong societies" based on ethnic, religious, familial, and other group solidarities, social control is fragmented, and numerous systems of justice can operate simultaneously. Under these conditions, state-building takes the form of lawfare: the pragmatic use of different, potentially conflicting legal forums by politicians and individuals. In this chapter, I will outline a theoretical guide for studying peripheral state-building through the lens of lawfare.

First, I discuss the building blocks of peripheral state formation: legal pluralism, nested sovereignty, gender cleavage, and armed conflict. Legal pluralism is about fragmented social control. State–society struggles for social control are complicated because both state and society are internally divided. The concept of nested sovereignty highlights how the state is divided in both imperial and federal settings. Society, too, is fragmented among many lines. The most influential theories of state formation emphasize class divisions and elite factions. Instead, I focus our attention on gender as the central societal cleavage of state formation. Armed conflict disrupts preexisting political and social orders, sharpens the gender divide, and intensifies the struggle for social control. Building on this foundation, the second part of the chapter theorizes state-building lawfare from above. In particular, I outline when and why central and peripheral authorities promote non-state legal systems, as well as how conflict changes the political logic of legal pluralism promotion. The third part of the chapter is about state-building lawfare from below – focusing on individual choices between state and non-state legal systems. It also speculates about how conflict transforms the driving forces behind these choices – in identities and social norms – as well as resources, interests, and hierarchies, with a special focus on gender relations.

The proposed theoretical framework is tailored to state peripheries, but this can be seen as an advantage rather than a limitation, because focusing on remote peripheries allows us to travel back in time and see how the modern state penetrates de facto stateless societies and identify the local conditions that promote or impede this process. The context of armed conflict is crucial here because it brings to life the Hobbesian state of nature. Legal pluralism further approximates the state of nature with its multiple systems of competing rule-making authority – state, religion, community, and family that all operate in parallel at the same time.[5]

[5] Here I build on Mampilly, who wrote: "Though this is not commonly understood, Hobbes believed that the state of nature was not just the absence of government, but *the state of plural governance*, a situation he considered inherently unstable and in need of

This layout is, of course, imperfect because of changes in the international system and in the very meaning of the state over time, but it can nevertheless be theoretically fruitful as it allows us to see state-building both from above and from below, and highlights the parts of the story that often cannot be found in the classic accounts of state-building, such as seemingly petty family disputes. I will argue that these petty disputes have implications for understanding large political processes.

STATE-BUILDING BLOCKS IN THE PERIPHERY

Legal Pluralism

The concept of legal pluralism was introduced in the 1970s and quickly became one of the central notions in legal anthropology and socio-legal studies.[6] At the same time, the concept has become a subject of emotionally loaded, heated debates. For example, legal scholar Brian Tamanaha wrote an influential critical article titled "The folly of the 'social scientific' concept of legal pluralism." On the other side, anthropologist Franz von Benda-Beckmann published an article "Who is afraid of legal pluralism?"[7]

The fundamental issue at stake in this debate is the definition of "law." What is law? Can non-state systems of private ordering be considered law? The origin of the debate can be traced to one of the classics of anthropology, Bronislaw Malinowski's *Crime and custom in savage society*, where he investigated how "primitive societies" maintained order without European law. Malinowski concluded that law among the Trobriand of Melanesia was not to be found in "central authority, codes, courts, and constables," but rather in social relations or regularized conduct and patterns of behavior. In the same spirit, anthropologist Leopold Pospisil concluded that "every functioning subgroup in the

transcendence." See Mampilly, Zachariah Cherian. *Rebel rulers: insurgent governance and civilian life during war*. Cornell University Press, 2012: 36.

[6] Galanter, Marc. "Justice in many rooms: courts, private ordering, and indigenous law." *Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (1981): 1–47; Griffiths, John. "What is legal pluralism?" *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55; Hooker, Michael. *Legal pluralism: An introduction to colonial and neo-colonial laws*. Oxford University Press, 1975; Merry, Sally Engle. "Legal pluralism." *Law and Society Review* 22 (1988): 869–896; Tamanaha, "Legal pluralism explained."

[7] Tamanaha, Brian. "The folly of the social scientific concept of legal pluralism." *Journal of Law and Society* 20 (1993): 192; von Benda-Beckmann, Franz. "Who's afraid of legal pluralism?" *Journal of Legal Pluralism and Unofficial Law* 34, no. 47 (2002): 37–82.

society has its own legal system," and Laura Nader and Harry Todd stated in their book on disputes: "Not all law takes place in courts."[8] The problem with this approach to law, however, is that it is so broad that it often makes it indistinguishable from social norms.

I follow the realist approach that defines law through enforcement. Max Weber, the founder of this tradition, wrote that "an order will be called law if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, will be applied by a staff of people holding themselves specially ready for that purpose."[9] Legal anthropologist E. Adamson Hoebel extended this definition to capture non-state legal systems. He wrote: "A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognized privilege of so acting."[10] Hoebel's definition delinks custom from culture by emphasizing the role of authority and sanctions in the functioning of non-state legal systems.[11] Following this tradition, I understand both state and non-state systems of justice, based on custom and religion, as *legal systems* insofar as they include sets of procedural and substantive rules, institutions, and personnel for inducing or enforcing compliance with their rules. Customary and religious legal systems, though, have a distinct nature, and there are important caveats to be made to this claim.

The scholarship in law and society studies shows that in many instances what is labeled "customary law" is not customary or traditional, but instead the product of colonial encounters and imagination.[12] For example, Francis Snyder has shown how French colonizers created "customary law" in Senegal to advance their economic interests through their own ideology of land ownership. Mahmood Mamdani has argued

[8] Malinowski, Bronislaw. *Crime and custom in savage society*. Transaction Publishers, 1926; Pospisil, *Anthropology of law*, 1974; Nader and Todd, *The disputing process*.

[9] Weber, Max. *On law in economy and society*. Simon and Schuster, 1954: 5.

[10] Hoebel, E. Adamson. *The law of primitive man: A study in comparative legal dynamics*. Harvard University Press, 1954: 28.

[11] Belge, Ceren. *Whose law? Clans, honor killings and state-minority relations in Turkey and Israel*. PhD diss., University of Washington, 2008: 158.

[12] Chanock, Martin. *Law, custom, and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press, 1985; Mamdani, *Citizen and subject*; Moore, Sally Falk. *Social facts and fabrications. "Customary" law on Kilimanjaro, 1880–1980*. CUP Archive, 1986; Snyder, Francis. "Colonialism and legal form: The creation of 'customary law' in Senegal." *Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (1981): 49–90.

that the colonial powers' appropriation and transformation of customary law strengthened local elites – chiefs, who dramatically increased their despotic power. More generally, the codification and selective interpretations of customary law by colonial powers and their local intermediaries fundamentally changed the nature of indigenous dispute resolution. Consequently, customary law, as we know it in its contemporary manifestation, should be considered as a historically specific product of colonialism. Thus, one has to be careful when talking about the "customary" in customary law. However, this does not mean that customary law must be rejected as a legal system altogether. Substantive norms of customary law are often based on the principles of agnatic kinship. Most importantly, customary law assumes that the subject of law is the family or clan, rather than the individual. Perhaps the best known example of customary law is the Pashtun tribal code *Pashtunwali*. Customary law, though, is not necessarily tied to lineage groups and can be organized territorially.[13] Authorities in charge of customary dispute resolution are usually lineage or community elders and chiefs of different names. Enforcement in customary law is based on social pressure, withdrawal of social status, ostracism, and direct violence, for example through blood feuds.

Similarly, there is the issue of whether religious arbitration can be recognized as *legal* in the full sense of the term. We saw that this is often the case with religious arbitration in the United States, in the beginning of the chapter. Religious organizations in postcolonial situations usually have even larger regulatory power through a combination of elaborated norms, specialized authorities, and enforcement. This is especially pronounced in the case of Islam. Muslims around the world view Sharia as a "total discourse,"[14] that is, the most encompassing regulations of all spheres of life, including the legal sphere. As Mounira Charrad states, "Being a Muslim entails accepting a system of jurisprudence."[15] Sharia is based on the *Koran* and *Sunna* – the sayings and deeds of the Prophet Muhammad. Historical and anthropological research has shown that Sharia is not just a set of rules, but also a set of social practices, institutions, and personnel.[16] Islamic law has been characterized as a broad

[13] Murtazashvili, *Informal order and the state in Afghanistan*.

[14] Messick, Brinkley. *The calligraphic state: Textual domination and history in a Muslim society*. University of California Press, 1996: 2.

[15] Charrad, *States and women's rights*, 29.

[16] Bowen, John Richard. *Islam, law, and equality in Indonesia: An anthropology of public reasoning*. Cambridge University Press, 2003; Hallaq, Wael. *The impossible state: Islam, politics, and modernity's moral predicament*. Columbia University Press, 2014; Hefner,

cultural system, which determines ideas about truth, rights, and specialized personhood.[17] Matthew Erie in his study of the interrelationship between state law and Sharia in China argues that locals perceive Sharia as law and, therefore, that it should be considered law. One of his interlocutors put it very sharply: "We consider it law. If we fail to abide by what the Qur'an says in this life, then we will be punished in the afterlife …. If you don't think these are law, then you don't understand Islam."[18]

After going through these murky conceptual issues of legal pluralism, the next challenge is to decide how to study it. Many theoretical accounts of legal pluralism across disciplines focus on the description of the complex relationships between state and non-state legal systems. For example, there is a lasting theoretical distinction between weak and strong legal pluralism.[19] The former occurs when the state regulates or even incorporates non-state legal systems, and the latter when state and non-state legal systems operate in parallel independently from each other. However, any society under legal pluralism is characterized by the profound mutual influence of state law and non-state legal systems. Anthropologist Sally Falk Moore highlighted these interdependencies with the concept of the *semi-autonomous social field*.[20] To reflect these interdependencies, I assume that state and non-state legal *systems* jointly constitute legal *order*.

In political science, Gretchen Helmke and Steven Levitsky conceptualize legal pluralism in their typology of the interactions between formal

Robert W., ed. *Shari'a politics: Islamic law and society in the modern world*. Indiana University Press, 2011; Hussin, Iza. *The politics of Islamic law: Local elites, colonial authority, and the making of the Muslim state*. University of Chicago Press, 2016; Massoud, Mark Fathi. *Shari'a, Inshallah: Finding God in Somali legal politics*. Cambridge University Press, 2021; Messick, Brinkley. *Shari'a scripts: A historical anthropology*. Columbia University Press, 2017. There is a distinction between Sharia as the divine path or God-given justice and *fiqh* (lit. "understanding") of Islamic jurisprudence as applied by jurists.

[17] Rosen, Lawrence. *The anthropology of justice: Law as culture in Islamic society*. Cambridge University Press, 1989.

[18] Erie, Matthew S. *China and Islam: The prophet, the party, and law*. Cambridge University Press, 2016: 16.

[19] Griffiths, "What is legal pluralism?"

[20] Moore wrote that semi-autonomous fields "can generate rules and customs and symbols internally, but that it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded." See Moore, Sally Falk. "Law and social change: the semi-autonomous social field as an appropriate subject of study." *Law and Society Review* 7, no. 4 (1973): 720.

and informal institutions. They distinguish four patterns of interactions: complementary, accommodating, competing, and substitutive. The authors put legal pluralism in the box of competing interactions, since state and non-state legal systems embody qualitatively different principles and procedures and, as a result, "adherence to custom law at times required a violation of state law (and vice versa)."[21] Another typology, developed by Geoffrey Swenson, distinguishes between combative, competitive, cooperative, and complementary paradigms of legal pluralism.[22] These approaches provide good descriptive frameworks, but leave little space for analyzing the motivations of actors who have to navigate state and non-state legal systems: politicians, government officials, communal elites, families, and individuals. Without attending to the actors, we cannot fully understand where state and non-state institutions come from, how they are sustained, and why they change.

To capture the agency dimension of legal pluralism, I borrow Mark Massoud's concept of *legal politics*. Massoud defines legal politics as "the use and promotion of legal tools, practices, arrangements, and resources to achieve political, social, or economic objectives."[23] Legal politics can be both top-down – carried out by state rulers and other elites – and bottom-up or associated with individual uses of a legal system to advance one's interests and rights. Taken together, legal politics from above and from below are a rough equivalent of the anthropological notion of *lawfare* as the use of law to achieve political ends.[24] I apply the concept of lawfare to the conditions of legal pluralism. I thus focus on the use of both state and non-state legal systems, especially in situations of jurisdictional conflicts between them. Related to this is the historical notion of *jurisdictional politics*, understood as "conflicts over the preservation, creation, nature, and extent of different legal forums and authorities."[25] In this book, I use the concepts of lawfare, legal politics, and jurisdictional politics interchangeably to study and explain how political actors and lay individuals navigate legal pluralism. Legal pluralism is about the

[21] Helmke, Gretchen, and Steven Levitsky. "Informal institutions and comparative politics: A research agenda." *Perspectives on Politics* 2, no. 4 (2004): 729.

[22] Swenson, Geoffrey. "Legal pluralism in theory and practice." *International Studies Review* 20, no. 3 (2018): 438–462.

[23] Massoud, *Law's fragile state*, 24.

[24] Comaroff, Jean, and John L. Comaroff, eds. *Law and disorder in the postcolony*. University of Chicago Press, 2008.

[25] Benton, Lauren. *Law and colonial cultures: Legal regimes in world history, 1400–1900*. Cambridge University Press, 2002: 10.

fragmented nature of social control — the horizontal division of power between the state and non-state social forces. Next, I consider the vertical divisions within the state itself.

Nested Sovereignty

State-building understood through the lens of social control – as the capacity to penetrate society – relies on the classic Weberian notion of the state as "a monopoly of authoritative binding rule-making, backed up by a monopoly of the means of physical violence."[26] One of Weber's key requirements for the modern state is separation of public law from private law, that is, non-state legal systems. Even though this approach is canonical, it can be productively criticized for relying on an overly simplified idea of the state. For instance, historian Paul Halliday wrote, "For all legal pluralism's sharp critique of state centrism, that critique was made possible only by accepting the hoariest conception of the state: the so-called Westphalian model of internally coherent, territorially defined states."[27] This model of exclusive state control over political decisions made on state territory has always been more of an ideal or myth than reality.

Migdal too has criticized the view of the state as if it were "a coherent, integrated, and goal-oriented body."[28] This view, Migdal stresses, is about the *image* of the state. State practices are very different from this image and may even directly contradict it. In practice, various parts or fragments of the state might ally with societal groups outside the state to advance their political and economic interests. This distorts the neat distinction between the private and public spheres. It also leads to the paradoxical situation in which the state is an internally contradictory entity, parts of which can work in contrary directions and support conflicting forms of social control, which thus seem to undermine state sovereignty. Anna Grzymala-Busse and Pauline Jones argued that this perspective is true for the post-communist state, which is neither centralized nor coherent, and characterized by multiple centers of authority-

[26] Mann, Michael. "The autonomous power of the state: Its origins, mechanisms and results." *European Journal of Sociology* 25, no. 2 (1984): 188.
[27] Halliday, Paul. "Laws' histories." In *Legal pluralism and empires*. New York University Press, 2013: 259–278.
[28] Migdal, *State in society*, 12.

building. In addition, the boundary between state and society is often blurred.[29]

In this book, state sovereignty is envisioned as nested. I focus on the territorial organization of the state – whether in the guise of empire and colonialism as in the past, or in the guise of federalism as in the present. While it is true that even unitary states are internally fragmented, the formalization of this nested sovereignty in empire and federalism crystallizes state fragmentation.

The classic form of nested sovereignty is empire. Nowadays empires have been replaced by nation-states, but throughout history, empires have been the dominant form of political organization and occupied the central place in political imagination. Historically, legal pluralism was often the product of empires. Lauren Benton and Richard Ross have noted that empires "invariably relied on layered legal arrangements within composite polities."[30] This is not surprising given that the very concept of empire assumes that different peoples within the polity will be governed differently. In other words, managing diversity was a major governing principle of empire. Furthermore, law as "the cutting edge of colonialism" was a key tool for organizing this difference and maintaining social, religious, ethnic, and racial boundaries in imperial projects.[31]

Empires were legally plural both in their core regions, which were considered "homeland" (for example, provinces in France, confessional assemblies in the Ottoman Empire, corporations in England and the Netherlands), and in their overseas colonies.[32] Historical sociologist Karen Barkey writes that "Empires were forced to deal with this plurality because of the manner in which they expanded, incorporating and accommodating local cultures at different times and under different circumstances in a piecemeal way."[33] As an example, she explores how the Ottoman Empire ruled religious minorities through the *millet* system – community self-governance that included religious courts for Christian and Jewish subjects of the sultan.

[29] Grzymala-Busse, Anna, and Pauline Jones Luong. "Reconceptualizing the state: Lessons from post-communism." *Politics and Society* 30, no. 4 (2002): 529–554.

[30] Benton, Lauren, and Richard J. Ross, eds. *Legal pluralism and empires, 1500–1850*. New York University Press, 2013: 1.

[31] Chanock, *Law, custom, and social order*, 4.

[32] Burbank, Jane, and Frederick Cooper. "Rules of law, politics of empire." In Benton and Ross, *Legal pluralism and empires*, 281.

[33] Barkey, Karen. "Aspects of legal pluralism in the Ottoman Empire." In Benton and Ross, *Legal pluralism and empires*, 83.

Jane Burbank and Frederic Cooper, other leading historians of empire, have highlighted that "In legal matters, as in military and economic ones, the most critical challenge for empires was securing the effective and loyal service from intermediaries."[34] They have shown that imperial intermediaries could take on different guises: a governor, a general, a tax collector, as well as a tribal representative, a cleric, a colonial official, a local notable, a judge – indeed, of anyone in charge of actual day-to-day governance. Empires always had multiple legal arenas: courts, advisory councils, religious institutions, imperial commissions, regional administrations, etc. In all of these venues, intermediaries were caught in contradictory positions that required them "simultaneously to maintain their own community's law and to yield to the law of the imperial power."[35]

In empires, local authorities sometimes sought "to broaden jurisdictional claims of the colonizers in order to push for cultural inclusiveness" and sometimes defended and reinvented "traditional authorities" as a way to increase their own autonomy by "creating special status" regimes.[36] Preserving cultural and legal differences made the intermediaries' work indispensable to the metropole and local population, and so re-entrenched their authority. This fluid and complex nature of imperial legal orders further gave local leaders room to maneuver *vis-à-vis* the metropole, other local elites, and the population in general. Thus, local political elites were key players in the formation of legal pluralism. For example, Iza Hussin documents how local elites in India, Egypt, and Malaysia negotiated the scope, content, and application of laws with the British colonial authorities. Hussin clearly shows that the autonomy these local elites negotiated over the matters of family life, religion, and culture, became the major source of their power.[37]

Even after empires left the world stage in the mid-twentieth century, nation-state has not simply become the only form of political organization. Federalism is another major contemporary political alternative. A federation can be defined as "a layered form of sovereignty in which some powers rest in separate political units while others are located at the center."[38] The most prominent theories of federalism link it to the historical experience of the United States and highlight its contractual nature.

[34] Burbank and Cooper, "Rules of law, politics of empire," 282.
[35] Barkey, "Aspects of legal pluralism in the Ottoman Empire," 101.
[36] Benton, *Law and colonial cultures*, 9. [37] Hussin, *The politics of Islamic law*.
[38] Burbank, Jane, and Frederick Cooper. *Empires in world history: Power and the politics of difference*. Princeton University Press, 2010: 10.

However, the majority of the world's population today live in federal polities that emerged as a result of post-imperial transformations and devolutions (e.g., India, Pakistan, Brazil, South Africa, Russia, Malaysia). This fact allows historian Alexander Semyonov to argue that federal political arrangements are "a direct consequence of imperial diversity" and that they "often reveal the same challenges of ethno-territorial nationalism, uneven development, and *de facto* layered citizenships."[39] Thus, the link between legal pluralism and federalism is no less theoretically relevant than the role of legal pluralism in empires. In both arrangements, local rulers – intermediaries between the metropole, the federal center, communal elites, and the rest of the population – are cemented as the key actors of the politics of legal pluralism. This reiterates the wisdom that "all state formation is in essence local."[40]

Gender Cleavage

State-building lawfare is especially contested in the domain of family law. This calls for a gendered perspective on state-building. I rely on the definition developed by Mala Htun and Lauren Weldon: "Gender is not just an attribute of individual identity or a type of performance but a collection of institutions: a set of rules, norms, and practices, widely held and somewhat predictable – though not uncontested – that constructs what it means to be or to belong to a particular sex group."[41] Contestations over these rules, norms, and practices constitute the key cleavage of state-building lawfare.

The state was a latecomer to the regulation of family life. Htun and Weldon described this process in the following way:

> Historically, family law consisted of rules, norms, and decisions over kinship and reproduction that were interpreted and administered by traditional rulers including chiefs, heads of clans, and religious officials. The decision to impose central power over family law, or to delegate its administration to traditional and religious authorities, marked a crucial juncture in the state building process.[42]

[39] Semyonov, Alexander. "The ambiguity of federalism as a postimperial political vision: editorial introduction." *Ab Imperio*, no. 3 (2018): 30.

[40] Taylor, Brian. *State building in Putin's Russia: Policing and coercion after communism*. Cambridge University Press, 2011: 23.

[41] Htun, Mala, and S. Laurel Weldon. *The logics of gender justice: State action on women's rights around the world*. Cambridge University Press, 2018: 4 This section heavily relies on Htun and Weldon's systematic review of family law across the world.

[42] Ibid.: 124.

State rulers indeed chose different trajectories of state-building in the domain of family law. For example, Mounira Charrad has shown how the leadership of postcolonial Morocco adopted a conservative version of Islamic family law to appease the patriarchal interests of the rural tribal elites, while central leaders in Tunisia, who were relatively autonomous from kin groupings, introduced secularized egalitarian family law to further undermine tribal authorities.[43]

Jurisdictional conflicts over family life have large distributional consequences. The dominant interpretations of customary law are often explicitly discriminatory toward women.[44] For instance, in Morocco under the 1900 version of some customary codes, Berber women had no inheritance rights, no property rights, no right to consent, no minimum marriageable age, and no right for divorce. Similarly, according to Kabyle customary law, which was applied among the Berbers of Algeria until the national Family Code was enacted in 1984, women had no rights to inheritance, no property rights, and practically no custody rights over their children.[45]

It is widely believed that Islamic law also puts women in a disadvantaged position. Originally Sharia brought a major improvement in women's status over the customary practices prevalent in pre-Islamic Arabia. For instance, women obtained a right for a fixed share of inheritance and were allowed to own and manage property, including the dower. Historical and anthropological research has also shown that Islamic law gives women agency to protect their rights: women often successfully mobilize Islamic legal notions to improve their living conditions.[46] At the same time, gender inequality remains an integral part of Islamic family law, especially when it is appropriated and enforced by the state.[47] As Charrad shows, "Islamic family law places women in

[43] Charrad, *State and women's rights*.

[44] Hudson, Valerie M., Donna Lee Bowen, and P.L. Nielsen. "Clan governance and state stability: The relationship between female subordination and political order." *American Political Science Review* 109, no. 03 (2015): 535–555.

[45] Charrad, *State and Women's Rights*: 47; Wyrtzen, Jonathan. *Making Morocco: Colonial intervention and the politics of identity*. Cornell University Press, 2016: 223.

[46] Ahmed, Leila. 1992. *Women and gender in Islam: Historical roots of a modern debate*. Yale University Press; Hirsch, Susan. *Pronouncing and persevering: Gender and the discourses of disputing in an African Islamic court*. University of Chicago Press, 1998; Mahmood, Saba. *Politics of piety: The Islamic revival and the feminist subject*. Princeton University Press, 2005; Mir-Hosseini, Ziba. *Marriage on trial: A study of Islamic family law*. IB Tauris, 1993; Osanloo, Arzoo. *The politics of women's rights in Iran*. Princeton University Press, 2009.

[47] Sezgin, *Human rights under state-enforced religious family laws in Israel, Egypt and India*.

subordinate status by giving power over women to men as husbands and male kin."[48] Women are required to obey their husbands, care for children, and do housekeeping. Men have the right to control their wives' behavior, such as when and how they go out in public. Women receive half of the amount of inheritance of male shares. Polygamy is an obvious factor of gender inequality, too. Men also enjoy far greater rights to divorce and are the legal guardians of their children. In some places, state codifications of Islamic law reformed these provisions toward greater equality, but according to Htun and Weldon's analysis, Muslim women's legal disadvantages persist.[49]

Western civil and common law systems also have been explicitly discriminatory toward women for the greater part of history. The Napoleonic Code adopted in many countries stated that the wife owes obedience to her husband. A husband had control over the property and activities of his wife. Most Catholic countries in Europe and Latin America did not permit divorce until the mid- to late-twentieth century.[50] Western statutory codes started to move toward gender equality in the late nineteenth century. However, the changes were incremental and slow, and in some places, for instance, Switzerland, were not completed until the late twentieth century.[51]

Colonialism brought Western statutory law overseas and imposed it onto indigenous legal systems. As a result, the link between family and gender and state-building has been profoundly shaped by colonialism. Colonial powers codified diverse and fluid indigenous practices of family law, thereby also inventing the traditions and forging the communities that this law was applied to. What was codified were often conservative versions of the kinship rules. For example, Iza Hussin documented how local matriarchal laws in some parts of colonial Malaysia were replaced by more patriarchal customs by the British.[52] In addition, colonialism endowed traditional leaders with the authority to apply these conservative rules. And precisely because colonialism made traditional leaders impotent in all other domains, these traditional rulers fell with even more gusto on the policing of gender and family relations, which had become indispensable for their preservation as local elites.

[48] Charrad, *State and women's rights*: 28.
[49] Htun and Weldon, *The logics of gender justice*: 273–285.
[50] Htun, Mala. *Sex and the state: Abortion, divorce, and the family under Latin American dictatorships and democracies*. Cambridge University Press, 2003.
[51] Htun and Weldon, *The logics of gender justice*.
[52] Hussin, *The politics of Islamic law*.

According to Htun and Weldon, the experience of communism had the opposite effect to that of colonialism. Guided by ideological doctrine, communist governments "sought to reduce religious power and expand women's rights. They replaced conservative family laws with egalitarian models, which endured for the most part into the postcommunist era."[53] For example, Vietnam's *Marriage and Family Law* of 1959 banned forced marriages, child marriages, and polygamy as well as introduced equality between men and women in rights, obligations, property, and parenting. Communist transformations of family law aimed to destroy the power of traditional and religious elites, as well as to ensure women's participation in the labor force.

The struggles for social control in family matters have always been especially politicized in the peripheries where the population is culturally distinct. For example, Jonathan Wyrtzen documents how French colonial authorities in Morocco used discrepancies in women's status in customary and Islamic legal systems to reify an ethnic division between Berbers and Arabs.[54] Moreover, local communal authorities have a lot at stake in these classification struggles. Ceren Belge shows that the power of the clans in the Kurdish periphery of Turkey and the Palestinian periphery of Israel rests on "certain family practices, such as early, arranged, endogamous and polygamous marriages, the withholding of inheritance rights from women, and under certain conditions, the murder of female members that harm the family reputation."[55] Thus, communal authorities and extended families, along with women often organized in groups or involved in movements, are the crucial actors of gendered state-building lawfare.

Both the gender cleavage (key societal divide) and the nested sovereignty (key political divide) are actualized in response to the armed conflict. Thus, conflict is the last building block we need to have for a theory of state-building lawfare.

Order, Conflict, and Violence

Internal armed conflict might seem like the exact opposite of state-building, understood as bringing social and political order. Yet, conflict and order are not just opposites, but also interrelated phenomena. Dan Slater has explained the divergence in state-building forms in Southeast Asia drawing on the legacies of contentious politics, including internal

[53] Htun and Weldon, *The logics of gender justice*: 123.
[54] Wyrtzen, *Making Morocco*: 222. [55] Belge, *Whose law?*: 22.

armed conflict.[56] Douglass North and his coauthors similarly claim that social order arises from elite efforts to curb violence.[57] These studies have challenged the consensus that internal conflicts are the "wrong kind of wars" for state-building in contrast to external warfare, which has long been theorized as a major driver of state formation, at least in Europe.

Furthermore, order exists amidst conflict. Ana Arjona has highlighted that despite the fact that conflict is associated with chaos, order is often established and maintained at the community level through "social contracts" between rebels and civilians.[58] Relatedly, Zachariah Mampilly writes that rebels acting as a counterstate can produce social and political orders by constructing effective governance structures.[59] Both authors distinguish dispute resolution systems as a key strategic element in rebel social order. Developing this line of reasoning, Paul Staniland argues that the absence of the monopoly on violence does not mean "disorder" or "incomplete state-building," but instead represents "its own distinctive form of order."[60] Order established during conflicts naturally leaves some mark even after the conflict. For example, Regina Bateson shows how experiences of violence during armed conflict affected postwar social order in the practices of dealing with crime in Guatemala.[61]

I focus on the social and political legacies of separatist conflict. Separatist armed conflict is a culmination of the struggle for local autonomy between the center and the periphery. Separatism fractures sovereignty and politicizes the issue of law and more generally, the system of governance emerging in the periphery. The legacies of separatist conflict actualize in the behavior of government officials, social organizations, and individuals during contestations for social control. It is important to note though that conflict is not just about violence. It is a complex phenomenon that embodies many components and takes many different forms, including mobilization, recruitment, military organization, territorial control, etc. In order to make conflict legible for further analysis, I rely on Elisabeth Wood's framework of the social processes of conflict. Wood defines the social processes of conflict as "the transformation of

[56] Slater, Dan. *Ordering power: Contentious politics and authoritarian leviathans in Southeast Asia*. Cambridge University Press, 2010.

[57] North, Douglass, John Joseph Wallis, and Barry Weingast. *Violence and social orders: A conceptual framework for interpreting recorded human history*. Cambridge University Press, 2009.

[58] Arjona, *Rebelocracy*.

[59] Mampilly, *Rebel Rulers*.

[60] Staniland, "States, insurgents, and wartime political orders."

[61] Bateson, *Order and Violence in postwar Guatemala*.

social actors, structures, norms, and practices, that happen as a result of civil war violence."[62]

Conflict manifests differently at the different levels of aggregation of social life. Often the society-wide master cleavage, including the separatist conflict that contests sovereignty, is not meaningful at the local level, where vendettas and political competition might dominate the nature of violence in particular communities.[63] Similarly, the social and political processes of civil war differ at the different levels of aggregation. At the individual and community levels, the most pronounced social processes of war are triggered by violence against civilians. Although there are many forms of violence and many actors who perpetrate it, I concentrate primarily on collective violence perpetrated by the state. Collective violence is a form of targeting civilians based on group identity (e.g., ethnicity X) or community (e.g., village Y).[64] Collective violence is especially likely to leave lasting social legacies for individuals and communities. For example, historian Max Bergholz highlights how the collective violence in Bosnia during World War II was "a generative force in transforming the identities, relations, and lives of the many."[65] The secessionist nature of conflict makes it more likely that the state will employ collective violence based on an ascriptive identity that lay behind separatism rather than individual political allegiance and behavior.[66]

The legacies of violence are conditioned by local political and social contexts. The social context of violence is determined first and foremost by the characteristics of communities. Community is a key level of analysis in the study of political violence because the state victimizes communities with its collective violence and the communities often serve as the organizational knots of resistance. Victimization at the community level is not merely an aggregation of individual victimizations because it affects

[62] Wood, Elisabeth Jean. "The social processes of civil war: The wartime transformation of social networks." *Annual Review of Political Science* 11 (2008): 540.

[63] Kalyvas, Stathis. *The logic of violence in civil war*. Cambridge University Press, 2006; Balcells, Laia. *Rivalry and Revenge*. Cambridge University Press, 2017.

[64] Gutiérrez-Sanín, Francisco, and Elisabeth Jean Wood. "What should we mean by 'pattern of political violence'? Repertoire, targeting, frequency, and technique." *Perspectives on Politics* 15, no. 1 (2017): 20–41; Steele, Abbey. *Democracy and Displacement in Colombia's Civil War*. Cornell University Press, 2017.

[65] Bergholz, Max. *Violence as a generative force: Identity, nationalism, and memory in a Balkan community*. Cornell University Press, 2016: 6.

[66] Mampilly, *Rebel rulers*.

not only individuals, but also the relations between them: social networks, roles, hierarchies, and authority structures.[67]

The macro-perspective on separatist conflict is about who won the war – the center or the periphery – and no less importantly, how the war ended. International relations scholars have shown that the form of war termination determines the postwar distribution of power resources.[68] The major distinction drawn in this scholarship is between decisive military victory and negotiated settlement or stalemate. This multilevel conceptualization of conflict allows me to encompass the transformations of both political and social orders that lay the foundation for peripheral state-building. Let me start with political order.

POLITICAL ORDER: LEGAL POLITICS FROM ABOVE

Usually, political order is understood as stability – the absence of coups, civil wars, and upheavals. Yet as I mentioned above, order is not just the opposite of conflict and can take many forms, including those compatible with violent conflict. I adopt Staniland's approach to political order which focuses on the structure and distribution of authority: "who rules, where, and through what understandings."[69] Political order in this conceptualization is essentially a set of relationships between the ruler, other relevant elite actors, and the population; and is ultimately about bargaining, coalition formation, and legitimation.

Political orders differ in the degree and form of legal monopoly, or in other words, how much social control they have or even would like to have. Some rulers aspire towards legal centralism, others settle for hybrid legal orders in which state statutory law is intermixed with custom and religious legal systems. I link the regulation of social life through dispute resolution with the regulation of political power through the management of alternative legal systems.

[67] Finkel, Evgeny. *Ordinary Jews: Choice and survival during the Holocaust*. Princeton University Press, 2017; Petersen, Roger. *Resistance and rebellion: Lessons from Eastern Europe*. Cambridge University Press, 2001; Marks, Zoe. "Gender, Social Networks and Conflict Processes." *feminists@ law* 9, no. 1 (2019).

[68] Toft, Monica Duffy. 2009. *Securing the peace: The durable settlement of civil wars*. Princeton University Press, 2009; Walter, Barbara. *Committing to peace: The successful settlement of civil wars*. Princeton University Press, 2002.

[69] Staniland, "States, insurgents, and wartime political orders": 247.

The Politics of Legal Pluralism

The standard view, derived from Max Weber's work, suggests that rulers should seek to monopolize social control and oppose alternative non-state legal institutions. As Yüksel Sezgin puts it: "the ability to establish a monopolistic control over the legal affairs of a subject population has come to be viewed as an inseparable aspect of stateness."[70] Yet, political leaders adopt different approaches toward non-state legal systems. Most generally, a ruler who governs a society under legal pluralism has three broad potential policy approaches toward non-state legal systems:

1) suppression, 2) promotion, and 3) tolerance or nonintervention.[71]

The *suppression strategy* is the most consistent with the Weberian ideal of state-building. Gradual suppression of non-state legal systems was a path to state-building for many European states. Ataturk's abolishment of Sharia law in Turkey and Nyerere's ban of customary law in Tanzania are more recent examples of the suppression strategy.

The *promotion strategy* requires active government support for non-state legal systems. This support can be either formal – through the official recognition of non-state legal forums and constitutionalization of them, like in Namibia, Ghana, Uganda, or Israel – or informal, through *de facto* support, for instance, of the provision of material and symbolic benefits to non-state authorities and concessions in the cases of jurisdictional conflicts.

The *tolerance or nonintervention strategy* occurs when the government in charge of state law neither suppresses nor promotes non-state legal systems. This approach describes a situation in which state and non-state legal institutions function in parallel, like the state and traditional authorities in contemporary Afghanistan.

What factors determine the approach a leader would take? The most obvious factor is *state capacity*. Some states just do not have the coercive capacity to eradicate non-state legal forums and lack the administrative

[70] Sezgin, *Human rights under state-enforced religious family laws in Israel, Egypt and India*: 20.

[71] There are more nuanced typologies of potential government strategies toward non-state legal systems, but these typologies can be generalized into suppression, promotion, and tolerance. See Sezgin, *Human rights under state-enforced religious family laws;* Swenson, "Legal pluralism in theory and practice"; Ubink, *Traditional authorities in Africa*.

capacity to build an effective state legal system.[72] Weak state capacity is therefore likely to be associated with either tolerance or promotion approaches. A version of this argument is the *path dependence* explanation, which proposes that places with established forms of non-state authority in the past, often as a result of colonialism, will continue to have them subsequently.[73]

Leaders' or more broadly regimes' *ideology* also affects the adoption of an interventionist approach: either suppression or promotion.[74] From the standpoint of a progressive ruler, the presence of customary or religious law might be seen as a legacy of colonialism, an indicator of backwardness, and a form of discrimination against religious, ethnic, and other social groups. These considerations motivated some post-independence political leaders to suppress non-state legal institutions and unify the legal system. Examples of this ideology-driven approach can be found across the world from India and Indonesia to Tunisia and Nigeria. The Marxist-leaning leaders who ruled Tanzania, Ethiopia, Guinea, and Mozambique were especially radical in their attempts to eradicate "the rudiments of the past." In contrast, if a leader holds a strong traditionalist or religious ideology, they are likely to preserve legal pluralism and promote legal systems based on religion and custom. Rulers might also promote legal pluralism if they hold an exclusionary ideology that aims to "preserve and reinforce existing ethnic, sectarian, and linguistic divisions among their subjects."[75] Most colonial regimes and contemporary Israel and Lebanon exemplify this situation.

[72] Herbst, Jeffrey. *States and power in Africa: Comparative lessons in authority and control*. Princeton University Press, 2000; Hooker, *Legal pluralism*. For a comprehensive overview of the concept of state capacity and the analysis of compliance with state rules as its manifestation, see Berwick, Elissa, and Fotini Christia. "State capacity redux: Integrating classical and experimental contributions to an enduring debate." *Annual Review of Political Science* 21 (2018): 71–91.

[73] De Juan, Alexander. "'Traditional' resolution of land conflicts: The survival of precolonial dispute settlement in Burundi." *Comparative Political Studies* 50, no. 13 (2017): 1835–1868.

[74] Pisani, Elizabeth, and Michael Buehler. "Why do Indonesian politicians promote shari'a laws? An analytic framework for Muslim-majority democracies." *Third World Quarterly* 38, no. 3 (2017): 734–752; Sezgin, Yüksel, and Mirjam Künkler. "Regulation of 'religion' and the 'religious': The politics of judicialization and bureaucratization in India and Indonesia." *Comparative Studies in Society and History* 56, no. 2 (2014): 448–478.

[75] Sezgin, *Human rights under state-enforced religious family laws in Israel, Egypt and India*: 29.

A policy toward non-state legal systems can also be a response to *popular demand*. In a democratic polity in which the median voter prefers legal institutions based on tradition and religion, a ruler is likely to promote them in order to win the popular vote. Kate Baldwin refers to this idea as "the most simple" explanation for political promotion of traditional authorities in the wake of democratization across different African counties. It goes as follows: "rural dwellers have inherent preferences for a strong chieftaincy, and therefore, governments that depend on rural support will empower traditional leaders as a direct response to rural preferences."[76] Donna Lee Van Cott similarly attributes the resurgence of informal justice in Latin America to the intense pressure from indigenous organizations.[77] Politicians might also promote legal pluralism to win the support of traditional and religious elites, who can act as brokers for electoral mobilization.

State capacity, ideology, and popular demands all matter for the politics of legal pluralism. However, existing explanations of the persistence of legal pluralism rare out the conditions of nested sovereignty and conflict environment. I argue that under these conditions, local rulers' policies toward non-state legal systems can be best understood as a part of their quest for political control in the periphery.[78]

Legal Pluralism and Political Control in the Periphery

In the most general terms, legal pluralism can be presented as the struggle for social control between state and society. However, as I outlined above, this view is too simplistic. "State" and "society" can hardly be taken as unitary actors. The conditions of nested sovereignty especially complicate the picture. The cast is simply too multifarious, including at the very minimum 1) the metropole or the federal center, 2) the local ruler or intermediary of the center in the periphery, 3) local elites who function as communal authorities in charge of non-state dispute resolution as well as other elite groups, and 4) the general population with diverse preferences for social order.

[76] Baldwin, *The paradox of traditional leaders in democratic Africa*: 64. Baldwin's own analysis highlights a much more complex role of chiefs as development brokers.

[77] Van Cott, "A political analysis of legal pluralism in Bolivia and Colombia."

[78] Hassan, Mattingly, and Nugent defined political control as an umbrella concept that covers "any tactic through which the state seeks to gain compliance from society." The authors note: "In more authoritarian regimes, however, political control is often in service of the survival of the ruling elite." I use the concepts of political control and political survival interchangeably. See Hassan, Mai, Daniel Mattingly, and Elizabeth Nugent. "Political control." *Annual Review of Political Science* 25 (2022): 6.1–6.20.

In the past, imperial and colonial authorities often promoted legal pluralism due to weak state capacity or ideology, or as a part of a divide-and-rule policy. At present, many central political authorities are driven by similar motivations as well as by popular demand. However, contemporary states are also bound by the image of stateness and as a result are more likely to prefer the promotion of state law as the law of the land to ensure control over the periphery. Contrastingly, communal elites in peripheries are more likely to promote non-state legal systems. Sandwiched between the metropole and the communal elites are local state rulers. These rulers have to strategically reconcile demands of the state and those of the communal elites and segments of the population in these peripheral regions. Thus, they form the central focus of my analysis. This is in line with the historical analysis of nested sovereignty that has highlighted the crucial role of imperial intermediaries and the notion that all state-building is local.

Local rulers in the periphery are caught in what international relations theorist David Lake has called the State-Builder's Dilemma.[79] Lake emphasizes that local rulers have to make a trade-off between loyalty to the interest of the metropole and legitimacy in the eyes of the local population. The radical version of this dilemma under legal pluralism occurs when the metropole demands a strict monopoly for state law and the local population demands non-state justice based on tradition and religion. Lake's focus is on the central state-builder, for whom there is no solution to the dilemma. In contrast, I focus on the local ruler. For the local ruler, the solution to the problem rests on their relative dependency on the metropole versus popular support. If a ruler has room to maneuver, then the promotion of legal pluralism might be their best bet. Legal pluralism can increase a local ruler's legitimacy and curb the enthusiasm of the central authorities to intervene in their domain.

However, in addition to managing vertical power relations – upward with regard to the center and downward with regard to the population – the local ruler also has to navigate horizontal relations with other local elites. From these other elites, the ruler has to form coalitions of support. At the same time, these other elites can politically challenge the ruler and destabilize the local political order. We thus run into another crucial dilemma. If a ruler empowers non-state legal forums, say to make the population happy or to keep the central authorities at bay, these forums may be hijacked by potential challengers to their rule or even become the

[79] Lake, David. *The statebuilder's dilemma: On the limits of foreign intervention*. Cornell University Press, 2016.

challengers themselves. In other words, the strategy of promoting legal pluralism can have a "Frankenstein" effect. William Reno formulated this sentiment in its most general way. He wrote that the key reason that leaders prefer weak formal and informal institutions "lies in their fear that enterprising rivals could use control over successful institutions" to challenge their rule.[80] This dilemma calls one to consider the local ruler's coalition formation and the balance of power between the local ruler and other elites. Thus, I propose focusing on three key areas in which legal and political orders overlap and where a local ruler's political survival is determined: legitimation, boundary control, and coalition-building.

Typically, the first thought that comes to mind when we want to explain a ruler's promotion of non-state legal systems is that of legitimacy. The reasoning here is that non-state legal institutions rooted in custom and religion ensure a local ruler's control over the masses because they often enjoy high legitimacy. Yet, legitimacy is a "mushy" concept that can lure social scientists into a trap of tautological explanation.[81] In the case of the promotion of non-state legal systems, understanding legitimation is relatively straightforward. It is an appeal to authority — such as religion or tradition — external to the claimant making an appeal. In other words, a local ruler "borrows" legitimacy from religion and tradition. This reasoning relies on the assumptions that tradition and religion enjoy high support among the population, and that this support is independent from the government's promotion of the authorities in charge of religious and traditional institutions. If these assumptions are not met, then reference to legitimacy falls into the category of circular explanation.

Second, political power within nested sovereignty necessitates the establishment and maintenance of local autonomy – insulation from challenges from the center. This is a key consideration for the subnational regimes in federal polities that need to protect themselves from interventions by the central government. But it is also relevant for postcolonial nation-states because external actors, such as former metropoles, international organizations, and corporations, all play important roles in local state–society relations and struggles for power.

[80] Reno, William. "Shadow states and the political economy of civil wars." In Mats Berdal and David M. Malone (eds.), *Greed and grievance: Economic agendas in civil wars*. Boulder, CO: Lynne Rienner, 2000: 53.

[81] Wedeen, Lisa. *Ambiguities of domination: Politics, rhetoric, and symbols in contemporary Syria*. University of Chicago Press, 1999: 12.

Edward Gibson, who developed a theory of *boundary control*, claims that "In any large-scale system of territorial governance political institutions are entangled across space. Strategies of political control are thus never limited to any single arena."[82] In other words, the rulers must navigate challenges from local opposition as well as the threat of external intervention. In order to survive these two types of threats, Gibson argues, the leaders of subnational regimes are constantly engaged in strategies of boundary control – e.g., maximization of incumbent influence over local politics and prevention of external intervention in local affairs.

I argue that boundary control can also be achieved by the promotion of legal pluralism. The promotion of legal pluralism serves as a tool of "parochialization of power" in Gibson's terms. In the case of a postcolonial national political unit, a ruler who promotes customary or religious law distances their country from the former colonial power or "international community" that usually stands for "the rule of law," commonly understood as Western statutory law. In the case of a subnational political unit, a local ruler who promotes customary or religious law increases the autonomy of their region from the federal center that stands for the national legal system. For instance, in Nigeria, politicians from the Northern states at different points in time promoted Sharia as a means of ensuring their autonomy from the center, which was dominated by Christian administrative and economic elites.[83]

Third, support for non-state legal systems can serve as a tool in the ruler's coalition-building and more broadly, relations with other elite actors. Support for non-state legal systems can be used to co-opt the communal authorities into the ruler's political machine. In other words, governments can strengthen traditional and religious authorities to create powerful brokers who can use coercion, deference, and material incentives to mobilize support for the rulers.[84]

[82] Gibson, Edward. *Boundary control: Subnational authoritarianism in federal democracies*. Cambridge University Press, 2013. Gel'man and Ross applied the framework of subnational authoritarianism to explain political development in Putin's Russia. See Gel'man, Vladimir, and Cameron Ross, eds. *The politics of sub-national authoritarianism in Russia*. Ashgate Publishing, Ltd, 2010.

[83] Kendhammer, Brandon. *Muslims talking politics: Framing Islam, democracy, and law in Northern Nigeria*. University of Chicago Press, 2016; Laitin, David. "The Sharia debate and the origins of Nigeria's second republic." *The Journal of Modern African Studies* 20, no. 03 (1982): 411–430.

[84] Pisani and Buehler, "Why do Indonesian politicians promote shari'a laws?"

In this light, it is not surprising that cooptation of communal elites has been a common strategy for many political leaders across time and space. For example, Daniel Mattingly presents a comprehensive account of how the Chinese state uses communal elites and associations such as clan lineages and religious groups in order to ensure informal political control in rural areas.[85] This strategy, moreover, is not limited to authoritarian states. For instance, in post-Suharto Indonesia, state elites accommodate Islamist movements by enacting Sharia regulations in order to increase their symbolic capital, gain economic benefits, and mobilize the electorate.[86] In South Africa the ruling party African National Congress supports customary law arbitration by chiefs because chiefs are effective agents of electoral mobilization.[87] Similar alliances have been historically common in many other sub-Saharan African countries, where chiefs have been placed in charge of both dispute arbitration and electoral mobilization.[88]

However, not all elite actors are prone to cooptation. State-building from above often takes the form of elite competition. Grzymala-Busse and Jones centered this insight in their definition of state formation as "elite competition over the authority to create the structural framework through which policies are made and enforced."[89] Therefore, it is crucial to consider *the balance of power* or relative strength of the local ruler *vis-à-vis* potential elite challengers and the composition of these potential challengers. I assume that if their rule is consolidated and there are no viable challengers, a local ruler is likely to promote non-state legal systems to gain additional legitimacy, increase its autonomy from the metropole, and co-opt communal elites. China and the dominant party regime in South Africa illustrate the point that strongly consolidated regimes engage in the promotion of legal pluralism and non-state authorities.

If the ruler dominates the potential challengers in terms of political power, but a potential challenge is still viable, the ruler can be expected to

[85] Mattingly, Daniel. *The art of political control in China*. Cambridge University Press, 2020.

[86] Buehler, Michael. *The politics of Shari'a law: Islamist activists and the state in democratizing Indonesia*. Cambridge University Press, 2016.

[87] De Kadt, Daniel, and Horacio A. Larreguy. "Agents of the regime? Traditional leaders and electoral politics in South Africa." *The Journal of Politics* 80, no. 2 (2018): 382–399.

[88] Boone, *Property and political order in Africa*; Cruise O'Brien, Donal. *The Mourides of Senegal: the political and economic organization of an Islamic brotherhood*. Oxford. Clarendon Press, 1971.

[89] Grzymala-Busse and Jones Luong "Reconceptualizing the state": 531.

abstain from promoting non-state legal institutions or even to suppress them out of the fear that these alternatives forums of power might be hijacked by a challenger or pose a challenge themselves. For example, in Egypt, Nasser abolished religious courts in part to "break down the independent political power of religious authorities who had opposed his revolutionary agenda."[90] In turn, if the ruler is rather weak or challenged, then their approach toward legal pluralism is conditional on who is behind the challenge. If traditional authorities support the challenge, the ruler is likely to try to suppress them. If the challenge comes from elsewhere, the ruler can promote non-state legal authorities in order to build an alternative ruling coalition. For instance, in Sudan in 1983 President Nimeiri imposed Sharia law in "a futile attempt to save his failing presidency" after economic crises and a challenge from the liberal opposition.[91]

All dimensions of the politics of legal pluralism are closely interdependent. For example, the greater the ruler's control over the population and elites, the more autonomy the ruler can ensure from the metropole. In order to separate these factors and analyze the role of the balance of power on the strategic use of legal pluralism, I focus on the transformative effects of conflict. Conflict presents a shock to entrenched political systems. It influences the dimensions of political order such as autonomy from the center, legitimacy, and the ruler's coalition-building. Focusing on these changes allows one to observe the relationships between different components of political order, and thus further explore the seemingly intractable dilemmas of state-building.

Legal Pluralism and Political Control after Conflict

Separatist conflict as a culmination of the confrontation between center and periphery is likely to make local autonomy the key political issue. Therefore, the strategies of boundary control become vital. If the separatists win, they will typically want to ensure their victory by institutionally promoting legal systems that are outside of the center's system of justice. If the separatists lose, the postwar local rulers imposed by the center will have to signal at least some autonomy to show that they are not just puppets. For example, the imposition of Sharia law by the Indonesian

[90] Sezgin, *Human rights under state-enforced religious family laws in Israel, Egypt and India*: 9.
[91] Massoud, *Law's fragile state*: 213.

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state became the guarantee of local autonomy in Aceh in the context of the prolonged separatist conflict.[92]

Conflict also affects the nature of the elite coalitions that rulers need to secure their political survival. Perhaps the most important elite transformation is driven by the *militarization of authority*. Conflict ultimately increases the role that the military plays in politics: it may bring military personnel to top political positions or make them key members of the ruling coalition.[93] Professional militaries in many countries hold secular modernist views and might therefore push against non-state legal systems. Separatist conflict, however, brings to the political arena non-state armed actors too – warlords and former rebels.[94] The incorporation of these actors into governmental processes in many post-conflict societies leads to the rise of a distinct type of government official that I call *rebel-bureaucrats*. These former rebels usually are not socialized through standard military or bureaucratic routines and might hold strong religious and communal identities developed during the conflict. Such officials are thus often less likely to follow the letter of the law and to prefer non-state dispute resolution. A ruler's policy toward non-state legal systems has to take into consideration the preferences of this "constituency with the guns."

Conflict outcomes at the macro-level can alter the coalition-formation process by changing the relative strength of the local ruler *vis-à-vis* the potential challengers. If the separatist conflict ends with a decisive military victory on one side, then the local regime established in the aftermath is likely to be consolidated. If the conflict ends with a negotiated settlement or a stalemate, the peripheral ruler is likely to face many serious elite challengers and may end up quite weak. In other words, conflicts, depending on the mode of the resolution, can produce very strong and very weak rulers who are both likely to engage in the promotion of legal pluralism albeit for different reasons. Nevertheless, a top-down imposition of legal order is an endeavor with far from certain results. To a large degree it depends on lay individuals' legal beliefs and behavior. In the next section, I explore state-building lawfare from the bottom-up.

[92] Aspinall, Edward. *Islam and nation: Separatist rebellion in Aceh, Indonesia*. Stanford University Press, 2009: 209–213.

[93] Eibl, Ferdinand, Steffen Hertog, and Dan Slater. "War makes the regime: Regional rebellions and political militarization worldwide." *British Journal of Political Science* 51, no. 3 (2021): 1002–1023.

[94] Driscoll, *Warlords and Coalition Politics*; Mukhopadhyay, Dipali. *Warlords, strongman governors, and the state in Afghanistan*. Cambridge University Press, 2014; Marten, *Warlords*; Staniland, "States, insurgents, and wartime political orders."

SOCIAL ORDER: LEGAL POLITICS FROM BELOW

Social order is one of the most fundamental social science concepts that deals with the question "what is it that glues societies together and prevents them from disintegrating into chaos and war?"[95] Social order is often understood in two related ways: as predictable patterns of behavior and as cooperation. Some scholars use the concept of social order very broadly to encompass "a web of all social, political, and economic institutions that characterize a society."[96] I take a narrow view of social order as the distribution of social control that comes from the aggregate of individual beliefs and behavior toward resolution of everyday disputes. The intricate link between law and social order has been emphasized by theorists since Plato and Aristotle. In some recent studies, dispute resolution was also highlighted as a major component of social order. For instance, David Skarbek has stressed that adjudication of disputes is "perhaps the most important form of governance" that prison gangs provide for the social order of the criminal underworld.[97] My understanding of social order starts from the question of how people relate to law and choose between forums of justice.

How Do People Choose among Forums of Justice?

How and why do people turn to law? How do people choose between state and non-state legal systems? Law and society scholarship documents that disputing is a complex multi-party and multistage process. For example, Laura Nader and Harry Todd distinguished three stages: the grievance stage in which an individual recognizes their injury, the conflict stage in which the individual confronts the other party, and the dispute stage in which the conflict is brought to the public arena for adjudication.[98] Related is the influential pyramid model of disputing that goes through naming, blaming, and claiming stages.[99] Disputing can take many different avenues: lumping it, self-help, informal negotiation, alternative dispute resolution. Formal litigation is always a tiny fraction of the

[95] Elster, Jon. *The cement of society: A survey of social order*. Cambridge University, 1989: 1.
[96] North, Wallis, and Weingast, *Violence and social orders*.
[97] Skarbek, *The social order of the underworld*, 146.
[98] Nader and Todd, *The disputing process*.
[99] Felstiner et al., "The emergence and transformation of disputes."

disputing forms. Legal pluralism further complicates the picture: individuals can draw on multiple alternative legal systems to resolve their disputes. I thus focus on people's choice of arbitration systems – whether state or non-state – along with what they say about these multiple systems.

Law as seen from below is often represented by the closely related concepts of *legal mobilization* and *legal consciousness*. Legal mobilization is primarily about behavior – employing law to express a grievance, desire, or demand.[100] Legal consciousness encompasses legal beliefs, popular understandings of right and wrong, perceptions of legal entitlements, and moral foundations behind the pursuit of redress.[101] Under legal pluralism, these beliefs and behaviors reflect the everyday choices made between alternative forums of justice. This bottom-up perspective allows scholars to emphasize the agency of lay individuals against a backdrop of large structural forces behind legal pluralism, such as colonialism.[102]

Legal beliefs and behaviors are in a complicated relationship though.[103] Behaviors are collectively negotiated through interaction and are context dependent, "meaning that they belong to situations as much as individuals."[104] Thus, legal behavior does not always follow from legal consciousness. Acknowledging this complexity, I assume that legal beliefs and behavior under legal pluralism are in part shaped by both normative considerations and instrumental forces.

Normative considerations are driven by beliefs about what are appropriate behaviors given a situation, role, and identity. What ought to be done is the guiding principle. This principle is informed by beliefs,

[100] McCann, Michael. *Rights at work: Pay equity reform and the politics of legal mobilization*. University of Chicago Press, 1994; Zemans, Frances. "Legal mobilization: The neglected role of the law in the political system." *American Political Science Review* 77, no. 3 (1983): 690–703.

[101] Ewick, Patricia, and Susan S. Silbey. *The common place of law: Stories from everyday life*. University of Chicago Press, 1998. I follow primarily what Ewick and Silbey call "liberal" tradition that suggest that consciousness emerges out of the aggregated attitudes of individuals (p. 36).

[102] Sartori, Paolo. *Visions of justice: Sharīʿa and cultural change in Russian Central Asia*. Brill, 2016: 9. Sartori insightfully applied the concept of legal consciousness to the social order of Muslim subjects of colonial Central Asia under the Russian rule.

[103] Lehoucq, Emilio, and Whitney Taylor. "Conceptualizing legal mobilization: How should we understand the deployment of legal strategies?" *Law & Social Inquiry* 45, no. 1 (2020): 166–193.

[104] Jerolmack, Colin, and Shamus Khan. "Talk is cheap: Ethnography and the attitudinal fallacy." *Sociological Methods & Research* 43, no. 2 (2014): 178–209.

routines, habits, and social norms. Normative choices are often based on fast, automatic, instinctive, and emotional cognition. For example, many individuals often opt out of using courts in order to preserve good relations with their family members, neighbors, and communities.[105] Normative choices are especially likely to prevail in the domain of moral issues.

The appropriateness of a legal system is determined by perceptions of procedural fairness and by group identification.[106] If these group affiliations are associated with distinct legal systems, then this implies that the salience of such affiliation will influence legal preferences and behavior. For instance, people with a very strong religious identity might always choose religious law, irrespective of any practical considerations. Identity and legal consciousness are thus mutually constitutive.[107]

The normative perspective on legal choices corresponds to insights from cultural theories of law. Sally Merry highlighted that state law and non-state legal systems are not just a set of rules and enforcement mechanisms, but also "a system of thought by which certain forms of relations come to seem natural and taken for granted."[108] One of the founders of this tradition Clifford Geertz showed how the understanding and the use of law and custom reflect cultural codes for interpreting the world, and construct facts, truth, justice, responsibility, and causality.[109] Relatedly, John Bowen showed how state law, Sharia and customary law in Indonesia serve as repertoires of reasoning about how "family" is to be understood and reproduced.[110] Thus, in this perspective, legal choices reflect norms, social meanings, patterned social interactions, and other aspects of reality that are taken for granted.

In contrast to the normative approach, *the instrumental approach* is about interests. It assumes that if alternative legal systems lead to divergent outcomes, individuals will be inclined to engage in forum-shopping

[105] Merry, Sally Engle. *Getting justice and getting even: Legal consciousness among working-class Americans*. University of Chicago Press, 1990; Hendley, Kathryn. *Everyday Law in Russia*. Cornell University Press, 2017.

[106] Tyler, Tom R. "The psychology of procedural justice: A test of the group-value model." *Journal of Personality and Social Psychology* 57, no. 5 (1989): 830; *Why people obey the law*. Princeton University Press, 2006.

[107] Chua, Lynette J., and David M. Engel. "Legal consciousness reconsidered." *Annual Review of Law and Social Science* 15 (2019): 335–353.

[108] Merry, "Legal Pluralism": 889.

[109] Geertz, Clifford. "Local knowledge: Fact and law in comparative perspective." *Local Knowledge: Further Essays in Interpretive Anthropology* 175 (1983): 215–234.

[110] Bowen, *Islam, law, and equality in Indonesia*: 8.

and choose the legal system that best serves their own interests. Forum-shopping is pervasive in many contexts, from international trade arbitration to choosing customary forums in western Sumatra.[111] The concept of self-interest is potentially so inclusive as to be "too big to fail." I operationalize it as following the logic of consequences – getting the most favorable judgment or verdict in a dispute. Individual self-interest is idiosyncratic, but group interests can serve as a good proxy. Legal pluralism has large distributional consequences along group lines determined by age, class, and social status. For instance, customary law gives a lot of power to older generations. Therefore, it is plausible to assume that older people will be more likely to support customary law.

The most important group interest under legal pluralism is gender. As I discussed above, gendered family law disputes have large distributional consequences. There is empirical evidence that when women have the option to choose, they are indeed more likely to prefer the state dispute resolution system to traditional justice.[112] Intersectionality of gender with race, political position, age, and class surely complicates this picture. But in general, women and other groups marginalized by religious and customary law have an instrumental motivation to rely on state law.

Instrumental considerations include not only the favorability of the expected outcome, but also calculations of the costs. Scholars have explained the marked preference for customary justice forums over state judiciary by their accessibility – in terms of travel and material costs – among other more normative factors like perceived transparency and congruence with local values.[113] Costliness of access to formal state law demands attention to the role of resources, from material to social capital, in determining legal choices.

Social pressure is the major cost that individuals have to bear in mind when making legal choices. For this book, the most important consideration is that families and communities led by powerholders who are the

[111] Busch, Marc. "Overlapping institutions, forum shopping, and dispute settlement in international trade." *International Organization* 61, no. 4 (2007): 735–761; von Benda-Beckmann, Keebet. "Forum shopping and shopping forums: Dispute processing in a Minangkabau village in West Sumatra." *The Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (1981): 117–159.

[112] Cooper, Jasper. "State capacity and gender inequality: Experimental evidence from Papua New Guinea." *Unpublished Manuscript* (2018); Sandefur, Justin, and Bilal Siddiqi. "Delivering justice to the poor: theory and experimental evidence from Liberia." In *World Bank Workshop on African Political Economy, Washington, DC, May*, vol. 20, 2013.

[113] Lubkemann et al., "Neither state nor custom."

beneficiaries of customary and religious law, impose social sanctions, including sanctions as severe as ostracism and violence, upon individuals who utilize state law. Community cohesion determines the effectiveness of such social pressure.

I assume that legal choice is based to a significant degree on the relative prevalence of normative versus instrumental considerations: norms, identities, and routines versus interests, resources and costs. I argue that legacies of conflict can affect the balance of these considerations and therefore shape legal choices. In particular, experiences of conflict might actualize group interests though the wartime transformation of social roles, especially in gender relations; redistribute material and social capital; raise the salience of ethnic and religious identities; and change the effectiveness of social pressure by influencing community cohesion. This framework allows me to formulate two major logics for understanding the role of legacies of conflict in individual legal choices. I turn to these two logics next.

How Conflict May Affect Legal Choices

Recent political science scholarship has consistently concluded that experiences of conflict affect ethnic, religious, and political identities.[114] Laia Balcells has shown that victimization experiences during the Spanish civil war led to the rejection of the state. Lisa Blaydes, drawing on research in Iraq, argues that when state repression is collective and severe, individuals come to believe that they share a "linked fate" with their fellow group members, which increases group identity and solidarity. Noam Lupu and Leonid Peisakhin trace how the intensity of family victimization during the forced deportation of Crimean Tatars affected Tatar ethnic identity and attitudes towards the Russian state. Arturas Rozenas and his coauthors find a similar pattern at the community level: they show that communities that were subjected to indiscriminate violence during Stalin's deportation campaign in western Ukraine during the

[114] Balcells, Laia. "The consequences of victimization on political identities: Evidence from Spain." *Politics & Society* 40, no. 3 (2012): 311–347; Blaydes, Lisa. *State of Repression: Iraq under Saddam Hussein*. Princeton University Press, 2018; Lupu, Noam, and Leonid Peisakhin. "The legacy of political violence across generations." *American Journal of Political Science* 61, no. 4 (2017): 836–851; Nair, Gautam, and Nicholas Sambanis. "Violence exposure and ethnic identification: Evidence from Kashmir." *International Organization* 73, no. 2 (2019): 329–363. Rozenas, Arturas, Sebastian Schutte, and Yuri Zhukov. "The political legacy of violence: The long-term impact of Stalin's repression in Ukraine." *Journal of Politics* 79, no. 4 (2017): 1147–1161.

1940s are now significantly less likely to vote for "pro-Russian" parties. These studies support *the logic of alienation*: individuals who experience violence become alienated from the perpetrators of the violence. States are often the primary perpetrators of violence during civil wars. It is thus plausible to assume that such victimization will lead to alienation from state law.

The impact of victimization on attitudes toward the state versus its alternatives is conditional on which side inflicted the harm and also on the subjective attribution of blame. Victimization is then translated into alienation through a process of collective identity formation. I assume that individual blame attribution and collective identity formation are mutually reinforcing and serve as filters between victimization and alienation. The formation of a collective identity allows victimized individuals to overcome fear and actively reject the state.

Alienation logic dominates the recent political science literature. However, in addition to the psychological trauma and change in the salience of communal identities that lay in the foundation of alienation logic, conflict also fundamentally reshuffles societal structures and challenges or outright destroys preexisting forms of social control. Here I once again build on Migdal, who points out that armed conflict, along with revolutions, migration, natural disasters, and epidemics, is the major source of disruption of non-state social orders.[115] Importantly, conflict does not only weaken non-state authorities – the supply side of justice provision; it can also form the demand for state law by disrupting the existing social hierarchies and thus actualizing group interests. I thus contrast the alienation logic with *the logic of disruption of social hierarchies*.

I focus on gender hierarchies in particular. As mentioned above, family disputes that determine control over female sexuality are the key areas of contestation between the state and other social forces. As a result, gender typically features as the central group interest in legal pluralist contexts. Another reason is that armed conflict often has a transformative effect on gender relations. Historical research has shown that the World Wars led to women's empowerment in both economic and political spheres in advanced industrial counties such as the United States and the United Kingdom.[116] For instance, Russian women gained suffrage and equal

[115] Migdal, *Strong Societies and weak states*: 270.
[116] Goldstein, Joshua. *War and gender: How gender shapes the war system and vice versa*. Cambridge University Press, 2003.

legal rights after World War I and the Revolution of 1917. Recent studies have also shown that civil wars too can disrupt and reorder gender relations, spurring women's political representation.[117] For example, Aili Mari Tripp's analysis shows that the largest increase in women's political representation has happened in those African countries that have experienced the most enduring and intense conflicts.

The literature outlines several potential mechanisms behind conflict-induced women's empowerment. These factors are interconnected and the lines between them are quite porous. The first is *a demographic shift*, i.e., changes in the sex ratio or household composition due to the loss of men in armed conflict. As a result, one should expect a link between the share of women and share of female plaintiffs in state courts.

The second mechanism is *a cultural shift* caused by an increase in experiences of agency among women. During a conflict, women often play important combat roles as well as roles in the support networks of the rebellion.[118] Women also engage in social movements against violence. Elisabeth Wood highlights that as a result of war, women often become the interlocutors between their families, communities, and the military actors.[119] This heightened sense of agency potentially changes women's image of their potential roles and their group interests. A realization of their group interests can in turn switch women's preferences toward state law.

The third potential channel of change is *an economic shift*. Conflict kills men and distracts them from economic activities. As a result, women often become the principal breadwinners in their households. This gives women resources to pursue their rights in state courts, which is a costly endeavor. In addition, the experience of inhabiting the breadwinner position is likely to heighten women's self-esteem and thus strengthen the cultural shift mechanism. Tripp puts it the following way:

> economic disruptions had consequences for women's status in the household, which in turn affected women's political standing in the community, and both

[117] Berry, Marie. *War, women, and power: From violence to mobilization in Rwanda and Bosnia-Herzegovina*. Cambridge University Press, 2018; Cockburn, Cynthia. *The space between us: Negotiating gender and national identities in conflict*. London, UK: Zed Books, 1998; Tripp, Aili Mari. *Women and power in post-conflict Africa*. Cambridge University Press, 2015; Viterna, Jocelyn. *Women in war: The micro-processes of mobilization in El Salvador*, 2013.

[118] Parkinson, Sarah Elizabeth. "Organizing rebellion: Rethinking high-risk mobilization and social networks in war." *American Political Science Review* (2013): 418–432.

[119] Wood, "The social processes of civil war."

of these types of changes had ideational and symbolic outcomes in terms of what became part of the realm of the possible for women in many other spheres.[120]

The fourth mechanism is *an institutional shift* made possible by legislative changes that aim to improve women's rights and cause a proliferation of women's rights organizations. Quotas for women in the positions of power are perhaps the most widely known of these formal institutional changes. However, others include the passage of land rights for women and legislation against gender-based violence. Taken together, these mechanisms of change suggest that experiences of conflict increase the likelihood that women will choose state law over alternative legal systems.[121]

It is worth noting that not all forms of victimization can be expected to lead to women's empowerment. For example, sexual violence may alienate women and their communities from the perpetrators but also diminish women's status in their communities.[122] It is also important to note that conflict often spurs hypermasculinity, including violence against women and a backlash against women's potential advancement.[123] As a result of this backlash – when women are "forced back to kitchens and fields" – there should be no observable gender differences in legal preferences and behavior.

War-induced transformation of gender relations is just a part of the more general process of transformation of social hierarchies. All kinds of hierarchies are ruined in the process of community disintegration that war often brings. Violence, displacement, and the polarization of political identities diminish community and family social control, as well as weaken generational and clan hierarchies. As a result, families and communities are less able to force their members to rely on customary and religious justice systems. This can lead to more individuals turning to the

[120] Tripp, *Women and power in post-conflict Africa*: 35.

[121] I understand women's empowerment in a rather thin way – that is, as an outcome of the process of transformation of gender roles characterized by an increase in women's sense of agency, social status, material resources, and access to political and legal institutions. Feminist scholarship has developed a richer understanding of women's empowerment as "the process by which women redefine gender roles in ways which extend their possibilities for being and doing." The latter approach also stresses that "struggles for empowerment tended to be collective efforts." See Mosedale, Sarah. "Assessing women's empowerment: Towards a conceptual framework." *Journal of International Development* 17, no. 2 (2005): 243–257.

[122] García-Ponce, Omar. "Women's political participation after civil war: Evidence from Peru." Unpublished manuscript, 2017.

[123] Berry, *War, women, and power;* Pankhurst, Donna. *Gendered peace: Women's struggles for post-war justice and reconciliation.* Routledge, 2012.

state. When individuals go to state courts in large numbers, it constitutes what I call state-building from below.

The logic of alienation, of course, assumes the opposite – that communities that experience violence will become more cohesive, reinforce their hierarchies, boundaries, and sense of belonging, and thus experience a bolstering of non-state social control. At the same time, the logics of conflict-induced alienation and disruption of hierarchies are not necessarily incompatible. It is entirely plausible that conflict reshapes the identities of some people and thus pushes them toward non-state legal systems, while at the same time disrupting social hierarchies and so allowing other individuals to pursue their interests in state courts.

The social ordering of legal pluralism from below and the political ordering from above are obviously interconnected. For instance, the salience of group identities affects both individual choices among alternative legal systems and the local ruler's legitimation strategies. If conflict leads to alienation from state law, a local ruler can gain legitimacy by promoting non-state legal systems. In contrast, if conflict leads to the disruption of traditional hierarchies, the local ruler can build their legitimation by either siding with the empowered women and other marginalized groups or by attempting to reestablish the pre-conflict social order to win the support of men and other privileged groups.

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The theoretical sketch presented in this chapter analyzed the process of state-building in the periphery in terms of lawfare. It looked at the competing orders of social control and political power. Legal pluralism, nested sovereignty, gender cleavage, and separatist conflict were taken as key factors in state-building at the periphery. Legal pluralism was seen to reflect the fragmented social control. Struggles for social control are especially contested in gender relations and the family law domain, which makes gender the key societal divide. Nested sovereignty, whether in the form of empire or federalism, reveals the heterogenous nature of the state and the contradictions of center–periphery relations. Separatist conflict fractures sovereignty even further and actualizes gender divide. It also politicizes group identities, brings new groups such as former rebels into the political arena, and redetermines the distribution of political power among the peripheral rulers, the metropole, and local challengers. I thus argued that state-building on this shaky ground can be productively analyzed as legal politics from both above and below.

The view from above focuses on governmental strategies toward non-state legal systems. I contrasted the role of state capacity, ideology, and popular demand with the logic of local political control. I outlined how the promotion of non-state systems can help local rulers win legitimacy, increase autonomy from the center, and build a coalition out of elite groups. In turn, the view from below pictures social order as the aggregate of individual choices regarding state versus non-state legal systems. I contrasted normative and instrumental forces behind legal choices and outlined two logics as to how conflict might affect social ordering. The logic of alienation postulates that individuals and communities who experience state violence in the course of a separatist conflict will heighten their commitment to religion and tradition and ultimately reject state law. The logic of disrupted hierarchies states the opposite: experiences of conflict will weaken non-state social control and thus lead to an unintentional state-building from below driven by those who benefit from state law.

Of course, this theoretical sketch does not claim to provide definitive answers to the fundamental, enduring – perhaps even philosophical – questions raised here: what drives individual interests, what holds a society together, how are identities built, how do governments control societies, etc.? These questions will always be unanswerable. This book is just one small addition to the library that precedes it. Furthermore, what I have borrowed from this library was to a large degree shaped by what I experienced in the field. In short, this chapter presented a carefully curated and stylized theoretical framework. The next chapter presents ethnographic narratives from my immersion in Chechen social life which form the foundation of my understanding of the local knowledge and local perspectives of the theoretical phenomena I studied.