

Center for New Institutional Social Science

Presentation

The New Institutionalism of Legal Pluralism

Social Norms, Legal Rules, and Political Bargaining

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Introduction

This paper is an extract from a larger project about the interaction between formal and informal institutions. The broader project aims to formalize the logic of this phenomenon as the result of strategic interaction between political actors. There exist a variety of phenomena that can be studied within this framework.¹ Nevertheless, it has been traditionally hard to instrumentalize the relevant parameters and, as I hope the reader will see after what follows, the case of legal pluralism delimits the problem in such a way that the dynamics involving change of specific institutions (i.e. legal systems) become tractable.

Summing up, in what follows, I limit myself to presenting this framework and show how its immersion into the literature of legal pluralism provides a compelling route to study the dynamics between formal and informal institutions as byproducts of strategic interactions

¹Some of these phenomena will be mentioned during the oral presentation. The one I am currently working on (the larger version of this paper) is the incorporation of informal systems of rules into official legal frameworks.

between purposeful actors.

1 Formal and Informal Institutions

Briefly, it is worth addressing the conceptual distinction between formal and informal institutions. *Prima facie* it seems obvious that there is a difference between the formal institutions of a society like laws, decrees, contracts, etc., and informal institutions like social norms, uses, customs, culture, etc. Nevertheless, as it is the case with many terms in the new institutionalist literature, different authors have drawn the conceptual line between formal and informal institutions in different and often divergent places, and we can hardly find a consensus around what these terms should stand for.²

The purpose of this paper is hardly to offer a definitive solution to this divergence in understandings. Rather, I adopt the following definitions by Helmke and Levitsky, since I find it conceptually useful and directly related to the arguments of the present paper. According to these authors:

informal institutions [should be understood as] *socially shared rules, usually unwritten, that are created, communicated, and enforced outside officially sanctioned channels*. By contrast, formal institutions are *rules and procedures that are created, communicated, and enforced through channels that are widely accepted as official* (Helmke and Levitsky, 2006, 5, some emphasis added).³

The most important feature captured by these definitions is the distinction between the

²For a discussion of this and other challenges for the new institutional literature see Ostrom (2008).

³Similar although hardly coextensive understandings of formal and informal institutions are found in Lauth (2000); Keefer and Knack (2008); Knight (1992); Calvert (1995); Raiser (1997); de Soysa and Jütting (2007). These views emphasize the enforcement by a third party in the case of formal institutions, and the self-enforcement that characterizes informal institutions. Nonetheless, I agree with Helmke and Levitsky in pointing out that solely focusing on enforcement leaves out rules that intuitively seem to be informal but that require a third party to enforce them. The mafia is an example of this. For this discussion, see Helmke and Levitsky (2006, 4-6).

official features of formal rules and an *unofficial* features of informal rules. Since I am particularly concerned with how is it that informal institutions may or may not be incorporated into official legal frameworks, this definition of formal and informal institutions is adequate to my argument. Formal institutions refer thus to *official* channels, while informal institutions refer to *unofficial* channels.

Readers that consider the distinction between formal and informal institutions to be an artificial or unclear one, may find the reference to ‘official’ or ‘unofficial’ channels to be troublesome. Nevertheless, even if artificial, the distinction is still analytically useful; since even in the most extreme cases where it may be problematic to find a clear-cut differentiation between the ‘official and unofficial channels’, it more or less seems to be the case, that there are players who can claim possession of the power to formalize and enforce certain rules under the auspice’s of an audience’s recognition of such player as an official actor (while other players often cannot make the same claim without contestation).⁴

Nevertheless, I acknowledge that the category may be conceptually troublesome to some readers, and ultimately it may be treated as an assumption analytically justified by its usefulness to explain how certain social norms become incorporated into societies’ legal framework.

2 Legal Pluralism as New Institutionalism

The relationship between formal and informal systems of rules has been studied by authors from the literature on ‘legal pluralism’. Broadly speaking, this literature is an interdisciplinary effort to explore the characteristics and consequences of the interrelationship between ‘official or constitutional law’, and what is often called ‘customary law’ (good reviews

⁴This recognition may be a byproduct of the existence of a relevant audience recognizing them as fulfilling a particular function. In fact, this relates to the conceptual issue of defining political representation discussed by Andrew Rehfeld (2006), and more generally, to the philosophical discussion of what constitutes a social fact, see Searle (1995).

of the legal pluralistic literature are found in Griffiths, 1986; Woodman, 1998, 1999). Although quite generally, we could say along with John Griffiths—one of the founders of this tradition—that ‘legal pluralism’ is “the presence in a social field of more than one legal order” (Griffiths, 1986, 1); the fact that this literature is composed by scholars from different places of the academic spectrum (see for instance Hooker, 1975; Chiba, 1998, 1986; Sheleff, 1999; Yeates, 2002; Perez, 2004; Anderson, 2005; Bunn-Livingstone, 2002), makes it somewhat hard to say that there exists a consensus over one definition.⁵ Keeping this in mind, it should be said that the label is sufficiently known and extended to grant its usage.

While reviewing the contributions of Hooker (1975) and Vanderlinden (1971), Woodman offers the following words which in my view, very clearly illustrate why legal pluralism provides a good context to explore the interaction between formal and informal rules, while at the same time illustrating the problems of this academic tradition:

The many instances of legal pluralism given in these works fall into two general categories. The first consists of those instances in which there are two bodies of norms within the law of a state. An example is the laws of many African states which provide for Africans to be governed by African customary law, and Europeans by a body of received law. This will be referred to as *state law pluralism*. The second category consists of instances in which the elements are, respectively, the law of the state, and the normative orders not directly associated with the state. Such is, for example, the case given by Vanderlinden of the normative order of a group of separatists at war with the state. This will be referred to as *deep legal pluralism*.

⁵Griffiths himself later reflected on whether legal pluralism was indeed the best possible term to study the phenomenon in question; in his words: “I must confess that I cannot get very excited about this terminological issue, although in retrospect, to avoid misunderstanding, I think it might indeed have been better to call the new idea ‘normative pluralism’. The issue is a moot one, since given the way in which the whole idea emerged from the context of colonial legal pluralism there was never really any question of it being called anything else” (Griffiths, 1999, ix).

This second category is formulated on the assumption that there exist bodies of law with no necessary relationship to the state. This view arises from a sociological, rather than a technical legal notion of law. (Woodman, 1999, 5-6).

In the context of my larger project, the distinction between *deep legal pluralism* and *state law pluralism* is very important. But for the purposes of the present paper, it will suffice to analyze the characteristics of a situation of deep legal pluralism, and test whether we can characterize it as the byproduct of a strategic interaction, and thus coextensive with an institutional interpretation.

Before doing that, it is worth noticing an analytic confusion in which many legal pluralist authors incur and which is illustrated by the last paragraph of the Woodman quote. In a nutshell: it treats informal rules like those derived from cultures, religion, etc. as coextensive with 'law'.⁶ Indeed, the problems of the legal pluralism scholarship have been clearly studied by Brian Tamanaha, according to whom:

The analytical problems go to the heart of legal pluralism, and consist of two related aspects. While they agree on the initial proposition that there is a plurality of law in all social arenas, legal pluralists immediately diverge on what this assertion entails because there is no agreement on the underlying concept of law (Tamanaha, 2002, 297).⁷

Legal scholars who aim at finding a correct jurisprudence of the sources of law are particularly guilty of this problem (see for instance Anderson, 2005; Shah, 2005).⁸ An important exception is the major comparative law study by M.B. Hooker (1975), according to whom:

⁶This conceptual-analytical problem has been recognized within the legal pluralistic literature before. Under this view, the prevalence of the term 'legal pluralism' is explained by historical reasons (Griffiths, 1999). See *supra* note 5, also Chiba (1989). Also, very interesting revisions of the conception are found in Tamanaha (2002) and Vanderlinden (1989).

⁷See also Tamanaha (1993).

⁸Anthropologists of law also incur in this problem by seeing the *legal* world of a society as a more or less plural system of rules governing social interactions.

Laws are valid only in so far as they are acknowledged in some way by the *organs of the state* (...) The written, rational state system is the only one which is ‘properly law’ (Hooker, 1975, 1, emphasis added).

Hooker explains that this conception of law requires a more or less homogenous society, but that “such societies are the exception rather than the rule” (Hooker, 1975, 1-2). In this manner, Hooker goes on to argue that *obligation* may arise from the different systems of rules coexisting in a society (cfr. Hooker, 1975, 2-5). It is important to notice this, because it shows that although legal dynamics may indeed be complicated and indeed, subject to the official political organs of the state and even influenced by the informal institutions of a society; this is different from saying that all of those rules governing the behavior in a state are law. Rather, it only means that from an internal point of view (Hart, 1997), the members of the state experience certain obligations as binding. But this does *not* need to imply that all obligations are *legal* obligations.

Furthermore, for the majority of legal pluralists, pluralism in systems of legal rules follows from the existence of “non-state law, unofficial law, people’s law, local law, tribal law, (...) customary law, traditional law, indigenous law, folk law, primitive law, native law, etc” (Chiba, 1989, 2). But it is important to notice that, on a sociological/explanatory level, if all of these different examples of ‘unofficial law’ can be considered as law in the first place, it must be the case that they must have been recognized as sources by the official organs constituting a legal system. Consequently, it follows that they cannot be unofficial. Indeed, a state of affairs characterized by ‘state law pluralism’ (see above) is one where those traditional, indigenous, etc. rules have become officialised for whichever reason. That is why a situation of state law pluralism should be understood as one where (previously) informal rules are recognized by the official organs becoming, thus, official law.⁹

⁹Nonetheless, as Lovett (2002) persuasively argues, although an informal rule is not law in a strict static sense, it may still be interpreted as forming part of a legal system broadly understood. And insofar as they

In comparison, a state of affairs of ‘deep legal pluralism’ is characterized by the existence of informal institutional rules that have not been recognized by the official organs of the state (or equivalent) but that, nevertheless, permeate and frame social interactions of agents bound by the obligations that these informal rules produce.

In this manner, the point is that under the best interpretation of legal pluralism that we can make, rules in general, should be first of all distinguished from law. Laws are a subset of formal institutions. Like other formal institutions, laws are “created, communicated, and enforced through channels that are widely accepted as official” (Helmke and Levitsky, 2006, 15). This requires that our understanding of ‘official’, be linked to the the actors and powers structuring a society’s system of formal rules.

On the other hand, the set of informal institutions includes those systems of rules that when recognized and sanctioned¹⁰ by the official organs of the state, can then be understood as customary law, traditional law, indigenous law, folk law, primitive law, native law. In other words, all informal systems of rules could become formal if the relevant official players acknowledged their incorporation into the formal legal apparatus of the state. That is how a situation deep law pluralism becomes one of state law pluralism.

Now, notice that this implies introducing a political dimension to the problem. The questions are, how can we explain that the purposeful actors in charge of the official organs of the state will find it in their interests to recognize (or incorporate) informal systems of rules into the official body of rules? Similarly, what is the strategic logic behind the existence of informal systems of rules binding individuals? Why do they emerge, and continue to exist

are understood as social facts, informal rules (or conventions as Lovett calls them) dynamically contribute, to the Rule of Law idea.

Notice also that this doesn’t imply that there will never be contradictions between newly incorporated/reconized rules and the classic constitutional official rules; or even between newly officialised traditional rules. In fact, we should recognize that contradictions are likely to appear with the incorporation. Nevertheless, legal interpretation by courts and judges is one of the ways in which these problems are solved. Although hardly the only or most desirable one given how outcomes are achieved in a political society permeated by disagreement and conflict. On this last point see Sunstein (1996).

¹⁰Lovett (2002).

along formal legal systems of rules? I now proceed to answer these questions.

2.1 A Political-Institutionalist Approach to Legal Pluralism

What I here call ‘a political-institutional approach to legal pluralism’ introduces a strategic dimension to the institutionalist understanding of official and unofficial legal rules that was given above in the context of the legal pluralism literature. Within a more general framework, the ‘Law & Society’ movement (for an analysis see Friedman, 1986), has incorporated not only institutionalism to the analysis of the law, but also a strategic/political dimension¹¹, and in fact, a lot has been learned from this scholarship regarding the institutional and political dynamics that underly legal processes (see for instance Dahl, 1957; Segal and Spaeth, 1993; Epstein and Knight, 1997*a*; Epstein, Knight and Martin, 2001).

With few exceptions, for the more specific case of legal pluralism, the importance of institutions (Suchman and Edelman, 1996) and the strategic dimension of the problem (Van Cott, 2000*b*) hasn’t been sufficiently studied; although it probably should have, given the increasing interest of theories of institutions in understanding processes of change at the aggregate-level¹² as well as the advantages found in the legal pluralism literature not only conceptually, but also regarding the available data gathered by scholars who have studied it in the past.

As I mentioned above, the relevancy of institutionalism for the study of legal pluralism was first recognized by Suchman and Edelman (1996). According to these authors:

at times, the state will actually grant the full force of law to (...) local regimes; however, even when the state retains formal authority, local gossip and ostracism generally supplant official legal penalties as the primary sanctions in most communities (...). A corollary of this pervasive legal pluralism is the finding that

¹¹See the interesting debate between Gillman (1996) and Epstein and Knight (1997*b*).

¹²To a large extent, I believe that this have been the case because of the status of the theories of institutions. Nonetheless, the developments achieved in the last decade are getting closer to providing plausibility to this endeavor. To name only a few: Ménard and Shirley (2008); Greif (2006); North (2005).

formal rules are, themselves, transformed by the local communities of regulators and regulateds [sic] that must implement them (Suchman and Edelman, 1996, 931-932).

Given the purposes of their essay, the quoted authors do not explore this issue further. In the rest of this paper, I would like to comment on one point that will be useful in setting up the framework to study legal pluralism as an institutional phenomenon: In order to understand the interrelationship between formal rules and unofficial ones, we first need to analyze the strategic aspect of deep legal pluralism. That is, why does a system of unofficial rules emerges and coexists side to side dominant official legal institutions? In other words, what is the strategic logic leading to this state of affairs?

2.1.1 Informal Rules are Byproducts of Formal Rules

In this section I will present how can we interpret a situation of deep legal pluralism as conditional on institutional dynamics. That is, why do informal rules held by minority groups coexist vis-à-vis an official system of rules? In other words, If any, what kind of equilibrium (see below) constitutes a situation of deep legal pluralism?

An attempt to answer these questions leads us to the complicated problem that divides new institutional scholars into different groups. For a variety of reasons¹³, I favor institutional explanations that are coextensive with a game-theoretic framework.¹⁴ Now, favoring this approach requires that explanations deal with the problem of multiple equilibria by relying on some mechanism of selection to account for why one outcome, and not another, resulted from a strategic interaction.¹⁵ As Farrell states:

¹³Most of these reasons are found in Johnson (1996, 2002); Elster (1989); Lovett (2006); Knight (1992, 1998).

¹⁴Other authors, take, for instance, a constructivist (Checkel, 1998), or a historical institutional approach (Pierson, 2004). For a good discussion of these and other approaches in the context of a discussion about constitution building in the European Union see Farrell and Héritier (2003).

¹⁵For a discussion on this issue see Knight (1998).

the relationship between informal and formal institutions (...) cannot properly be understood through a focus in one-shot interactions. Instead, it is necessary to turn to ‘folk theorem’ results and mechanisms of equilibrium selection such as bargaining power (Knight, 1992) to explain how the formal rules (...) have led to the creation of informal institutions, and how these, in turn, have affected the course of constitutional change (Farrell and H  ritier, 2003, 578).¹⁶

The mentioned bargaining approach focuses in the asymmetries of power (bargaining resources) among players in order to explain why is it that one equilibrium outcome becomes institutionalized over another (Knight, 1992). As a mechanism of selection, asymmetric bargaining resources are indeed better suited to explain the legal pluralism phenomenon. After all, like Donna Lee Van Cott accurately states: “the simultaneous existence of distinct normative systems within a single territory [is] a condition usually associated with colonial rule” (Van Cott, 2000*b*, 209). And indeed, even in those cases where legal pluralism did not result from a colonial experience—when it derives from the existence of religious or national minorities, immigration, or from former slave populations, for example—the existence of differentiated normative orders for different groups in a same state, implies a political process that can be interpreted as an equilibrium.

In this manner, the equilibrium that I am trying to understand is the one constituting a situation of deep legal pluralism. In a nutshell, the claim is the following: the status of a system of rules as informal or unofficial, is the result of the same bargaining process between purposeful actors¹⁷ that gave origin to the institutionalization of another system of rules as official. Upon interaction, unofficial or informal systems of rules may indeed later influence and be incorporated into official or formal legal systems (a process identified and explained in section ?? below). But by formalizing a system of rules as the official one, the

¹⁶It should be mentioned that in the referred piece, Farrell is trying to explain how informal institutions in the the European Union’s condecision process between the Parliament and Council affect the formal ones.

¹⁷See *supra* note ??.

bargaining process in question also excludes other systems of rules from acquiring the same status of official. For instance, if a colonial regime establishes laicity of education among a traditionally religious population; it is excluding the religion in question from being taught in schools under protection of the official organs of the state.¹⁸

Now, although this may sound trivial it has important analytical implications. First, we assume that for each set of rules there is at least one group sharing, creating, communicating, and enforcing them—through the relevant official or unofficial channels.¹⁹

Second, and more importantly, in the bargain against other players, actors with more power succeed in claiming control over the mechanisms that determine the official rules of a society (what I called the official organs of the state). And correlatively, the disadvantaged condition of the players with less power in the bargaining game, leads them to accept an arrangement where they won't have the capacity to decide what rules are formalized or not. Of course, this does not mean that the winning interests necessarily belong to a homogenous group. In fact, constitutional conventions are an illustration of how different interests may come together in order to formalize one legal order. These two points are meant to show that there is a group identified with the possibility to decide which rules are official, and consequently which rules are not. Also, that this group can be treated as a purposeful actor. Of course, the particular agents in control of this power change from time to time, as in a democratic regime where different interests take possession of this power depending on electoral results.

For instance, if a foreign power successfully establishes a colonial government, the colonial rulers can now claim the capacity to determine which rules are the 'official' ones. The relevant indigenous group, on the other hand, cannot *ipso facto* decide which rules are 'official'

¹⁸Of course, as a matter of fact or practice it might still be taught. But notice that this practice would constitute a reason for official sanction or prosecution, even if this never occurs.

¹⁹Institutions are a human and social phenomenon, and without agents acting within the contexts framed by them, it wouldn't make sense to talk about their existence.

(created, communicated, and enforced by the official organs). At most, an indigenous group may continue to abide by those unofficial rules regulating their inner interactions (informal institutions), and perhaps contest the colonizer's power through criticism, rebellion, or other manifestation of conflict. *Ceteris paribus*, and since they have less bargaining resources, they are in a disadvantaged position which causes the unofficial treatment of their traditional system of rules vis-à-vis the official rules of the society.²⁰

Perhaps with some justification it might be possible to add a third implication of understanding the status of unofficial rules as the result of a political struggle; is that if the group in control of the official organs has a sufficient amount of resources and power, it is more or less possible for it to determine the form and *content* of a society's *informal* institutions insofar as the player with more bargaining power within the group find it in their interests to preserve them. As several scholars have shown for cases of countries with a colonial history, many of the traditional rules and norms of minority groups and tribes are in fact influenced by external social changes, which produce distributional changes within the community (see for instance Ensminger and Knight, 1997; Knight and Ensminger, 2001). Other authors have gone farther by saying that “traditional law or customary law was a creation of the colonial period” (Fitzpatrick, 1984, 20. Similar views are held by Van Cott (2000*b,a*); Bundy (1988, 1972)).

Although how general these views are, is subject to controversy, a better or more general way to accommodate them is looking at the problem through Brian Barry's argument that most of the times those who struggle for the preservation and differential treatment of traditional cultural rules, are the ones who benefit the most from the status quo (cfr. Barry, 2001).

²⁰Although they can indeed negotiate with the government, a point that I will discuss below.

Notice also that establishing a set of rules as official—in this case a colonial legal system—does not say anything about the level of enforcement of the official or unofficial rules. In fact, there may be instances where rules will become ‘dead letter law’, or ‘dead practices’ and lose their former influence over actors. Nonetheless, it is more or less assumed that, for the case of the official system of rules, their enforcement and sanction is left to official channels; while informal rules will be self-enforced by the relevant minority group.

And this would be true for the actors with more bargaining power within the community (as argued by Knight and Ensminger, 2001), and also for those in the government (or colonial power) who having the resources to do otherwise, have preferred to preserve these rules and practices as informal to the discretion and self-enforcement of the community in question.

In this manner, the claim is that informal or unofficial rules characteristic of deep legal pluralism, are byproducts of a previous political process from which they can frame the social interactions of the relevant (minority) group in a way that maximizes the interests of the actors with more bargaining resources within and outside of it. In other words, it is not enough to model the process at the interior of the community, or to assume absolute governmental decision-making power. Rather, we must consider the strategic interaction more broadly.

The claim that unofficial rules that are often labeled unofficial law are byproducts of a power relation and not only of ancestral traditions, culture, or revelation; may be uncomfortable to some. Nevertheless, there are plenty of cases that illustrate how many of the unofficial rules that informally shape the behavior of groups within a state, were in fact given by colonizers, dictators, and politicians, at some point in history, or resulted as unintended consequences of official institutional rules that powerful members of a community preferred to preserve.

Just to mention some examples²¹, the requirement that indigenous men should wear a white outfit, and a red belt around their waist in some regions of Mexico, was created by the colonial power in order to formalize a lower status in the social scale for indigenous men. Today, under a democratic regime and many years after the end of the colonial rule; many of the descendants of these indigenous peoples, proudly wear the outfit in question, and consider it as part of their traditional indigenous culture. Although, in fact, the obligation to wear the outfit has more to do with the official rulers' interests at that time than with

²¹Future iterations of this paper will expand on these cases.

those of the indigenous population.

Similarly, in many regions of the same country, members of several indigenous groups are bound by an obligation to participate in a practice of non-remunerated communitarian labor known as *tequio* (see Carlsen, 1999; Ávalos Tejeda, 2001; Ríos Morales, 2001). This practice is considered an ancient one. And although this may indeed be the case, the state of poverty and depravation that the colonial rule imposed on the indigenous population, and the subsequent government's failure to improve the conditions of living for these persons, seems to be a better explanation for why the practice has survived over time. Indeed, if this is the case, the obligations derived from the informal unofficial rule of *tequio* are indeed byproducts of the institutions and policies that colonial rulers and posterior governments have enacted, along with the preference to preserve the rule by the leaders of the community.²²

There are other cases like the ones just mentioned. For example, Van Cott (2000*b*) discusses some informal rules that were byproducts of political dynamics in Colombia and Bolivia; while Fitzpatrick (1984), and Bundy (1988, 1972) discuss the colonial origins of customary law in South Africa. These, among other studies ²³, have argued for similar explanations to the one I here endorse (although to different extents).

I recognize that my claim is indeed stronger. For I consider that in general these dynamics apply not only to the traditional systems of rules of national or indigenous minorities, but also for the case of unofficial religious rules in regions of conflict, and countries where immigration has allowed the introduction of informal systems of rules religious or not. Similarly, I take this to also be the case with rules informally governing economic interactions.

That said, we should be careful before generalizing from cases like the aforementioned

²²This preference may result from their capacity to capture resources (see for instance the interesting study by Araujo et al., 2008); or perhaps from the capacity to sustain the networks of power on which leadership depends. A similar practice, the *harambee*, is described by Ensminger (2003) for the case of the Orma in Kenya. Both of this practices constitute contribution to private goods and are illustrations of solutions to collective action through informal institutions under conditions of asymmetry of resources within the community. See also Knight and Ensminger (2001); Ensminger and Knight (1997).

²³See also Ensminger (1992).

ones.²⁴ For instance, we may give an account of how informal economic practices become incorporated into the official institutional structure of one society. But before anything else, we should ask: can we generalize this explanation to different societies and different types of informal rules? Additionally, how can we test the validity of this generalization? This is why the topic of legal pluralism is interesting: it offers an opportunity to generalize within the reasonable boundaries of legal rules. That is, my claims about informal institutions are limited to those cases of the legal realm, where unofficial rules are in a state of ‘contest’ with the official rules of the state.²⁵

This indeed limits the extents of the arguments here presented. But even within these limits, the process still captures a vast amount of social interactions. Furthermore, most of the times this process is straightforwardly observable, documented, and indeed, it seems to be a byproduct of political processes.²⁶

Conceptually, the claim can be summarized in the following way: as ‘potential’ legal rules, social norms acquire their status of unofficial from the sanctioning and recognition of other rules (and not them) by the official channels and the relevant player within the community.²⁷

²⁴In a similar context, von Benda-Beckmann (1984) warns about this.

²⁵Furthermore, it offers a reasonable way to categorize our variables: i.e. ‘legal rules that were formerly unofficial social norms’; while allowing for some variation within a sample. Nevertheless, it is true that it will not be possible to incorporate every informal rule we think may exist in a society.

²⁶Within this context, it is possible to see that in cases of conflict where groups are trying to officialize rules of a religious order, for instance; the process can be modeled as one where religious sentiments are being exploited for the sake of power. A similar argument has been defended by Fearon and Laitin (2000) related to ethnic identities and ethnic violence. Within a game-theoretic interpretation there seem to be reasons to think that ethnic identities cannot be separated from a conception of social norms as equilibriums. Consequently, I believe we can think on the two cases—formation of ethnic identities and establishment, maintenance, and change of unofficial rules—as two sides of a same coin.

²⁷Additionally, as Vanderlinden says, it is the individual who “finds himself in a situation of legal pluralism. It is his behavior which is governed by multiple and various regulatory orders, be they legal or non-legal in nature (...) It is he who will have to make a choice between these mechanisms in determining his behavior” (Vanderlinden, 1989) through which, I should add, a situation of deep legal pluralism becomes one of state law pluralism. With this in mind we may understand internal claims denying the political origin of unofficial rules (religious ones included) as instances of adaptive rationality (Elster, 1985), at least for those cases related to legal institutions. This does not deny that religious rules, as many other informal institutions, may have other origins or sources of maintenance.

In this manner, unofficial rules are not exempt from politics, internal contestation, or influence from mainstream society and its rules (see Van Cott, 2000*b*, 212-213). Understanding this relationship and its details is the general aim of the broader project I am currently pursuing.

3 Further Comments on the Broader Topic

In this paper, I have offered a new institutional framework that will be useful to understand the aggregate-level logic of the interaction between formal and informal institutions without leaving aside the strategic aspect of the situations. With bargaining as a selection mechanism, the topic of legal pluralism offers a great opportunity to instrumentalize this logic and address its consequences for a wide variety of social phenomena.

The specific topic that I am currently working on answers to the question: How are informal rules incorporated into formal legal frameworks? In order to do this I formally show if there is one equilibrium that can be interpreted as a situation of deep legal pluralism. Second, I show the dynamic process by which the relevant parameters change such that informal systems of rules become part of the broader legal system.

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