[Published in *Diogenes* 2015, Vol. 60(3–4): 3–11]; translation of « Pratiques de justice. Catégories, procédures, stratégies », *Diogène*, 2012/3 - n° 239-240 : 3-15 (publ. 2013)]

/p. 3/

Introduction.
Practices of Justice: Categories, Procedures and Strategies

Daniela Berti, Centre for Himalayan Studies (CNRS, France)
Gilles Tarabout, Laboratoire d'Ethnologie et de Sociologie Comparative (CNRS - University Paris West Nanterre, France).

This collection of studies aims to contribute to a better understanding of the relationships between justice and the exercise of power in various societies of Africa, Asia and Europe. The growing awareness that we have of judicial practices around the world leads to a renewed questioning of their link with the actual power relationships structuring the socio-political field. The stakes are all the more important in view of recent changes: the influence of groups of citizens prompted by a renewed perception of the notion of justice, the will to reform on the part of certain governments, reference to international standards, are all together creating new judicial situations which point to changing power relationships within diverse societies and likewise in the relationships of the latter with a more general globalization. In this context, if the promulgation of laws and rules on the one hand and the resistance or processes of adjustment to these by people at local levels of society on the other hand are the object of regular in-depth studies, there is still often the need to better understand the interactions between the standards promoted by the state and the effective modalities that are in place for the arbitration of conflicts.

Today we are seeing in these phenomena the growing hold that the judicial sector is acquiring in numerous politically and economically diverse countries, a process described as a judicialization or 'juridicization' of the social and political realms (Commaille,

Dumoulin and Robert, 2010). This process has given rise in France to several comparative analyses (see also Commaille and Kaluszynski, 2007) at the boundary between sociology and political science, whereas studies in the English-speaking world, which tend to have a historical and anthropological focus, emphasize rather the effects of globalization and the potential resistance that judicial systems, when considered as a hegemonic vehicle for elites, could arouse (see for example Lazarus-Black and Hirsch, 2010). The implicit risk in the latter approach is to draw undue attention to a contrast, notably found in formerly colonized countries, between a state apparatus perceived as 'foreign' and customs seen as being 'indigenous'. Such a dichotomy has indeed been regarded critically by some historians and anthropologists who have emphasized the fact that justice and the legal subject should not be considered in terms of legal juxtapositions or hybridity but as elements of a social **/p. 4/** and political interaction (Singha, 1998; Mukhopadhyay, 2006). Recent studies have cast light on the interlocked legal frameworks which shape and reconfigure the interactions between law and the state (Randiera, 2007). Similarly, Benton (2002) has shown the historical role that pluralist conceptions of law have played in the very elaboration of the colonial state; as this author suggests, the process that has made legal pluralism centred on the state a model for governance may have intensified the artificial divisions between the 'modern' and 'traditional' spheres. Indeed, in Michael Anderson's view, 'The distinction between "indigenous" and "alien" presupposes a sociocultural uniformity on either side of the dichotomy which probably does not exist. There are also good reasons to suspect that a kind of dissonance between state and community forms of authority existed well before the onset of colonial rule, and amounts as much to a matter of political structure as one of cultural hiatus' (Anderson, 1990: 172).

It is within this framework that this current collection of articles is positioned, with two major preoccupations. One bears upon the impact that the definition of juridical categories can have on the notion of truth, on the procedures that allow it to be established in the course of a judicial process and on the fluctuating balance of the relationship between justice and politics. It is indeed in these terms that the protagonists perceive developments and tensions, which presupposes the demand for justice to be accorded a certain autonomy from politics. Yet the fact that juridical categories – as well as judicial procedures – are able to generate such tensions precisely suggests that

they themselves possess a profoundly political dimension.

The second preoccupation bears on the articulation between state justice and 'customary' procedures for the resolution of conflicts. The studies gathered together in this issue describe contrasting situations, ranging from a relationship of antagonism to one of asserted complementarity. Beyond these differences there is a common issue at play: should one reason in terms of individual responsibility in reference to a guilty person, of a juridical truth exclusive of the complexity of social relations, of punishment (the moral connotations of which have been pointed out by Foucault), or on the other hand should one seek an arrangement which will allow the parties in conflict to go on living together within a hierarchically ordered social space? Therein lie two separate visions of justice, but also two sociological realities of the exercise of power which are drawn to mutually take one another into account – whether it be for working around each other or for linking with each other.

These two themes necessarily coincide in that they address from different angles one and the same problem – that of judicial truth as an exercise of a power which is by nature political. In this sense, the collection of articles here closely follow the tradition of anthropological studies which have explored the relationship between agency, power relationship and the resolution of disputes (Mertz and Goodale, 2012: 84). They nevertheless seek to transcend the classical opposition between the law as a set of rules and the law as a process. Indeed, a major trend in current studies consists precisely in drawing out the close link that exists between 'abstract' juridical categorizations and concrete socio-political interactions.

The contributors to this volume are for the most part anthropologists, but include jurists, sociologists and historians specializing in different parts of the world (Africa, Asia, Europe). This comparative project is the result of a workshop which took place in November 2010 at the Centre for Himalayan Studies in Villejuif, France, under the auspices of a project financed by the ANR (the French National Research Agency), devoted to the theme of 'Governance and Justice in Contemporary India and South Asia'.[1] Several of the articles in this volume come from this workshop, and are supplemented with a few invited contributions.

To ensure greater clarity, the articles in this volume are

organised into four distinct sections, a distribution which is mostly a matter of convenience since contributions echo each other and testify to the close link between the themes addressed here.

/p. 5/ In the first section, three articles relating to three different contexts (Italy, India, Afghanistan) address the question of how justice negotiates a space of legitimacy between state institutions and demands arising out of society. Such an issue inevitably also raises fundamental questions concerning the way democracy functions, or even becomes established. The declared intention of the judiciary, in Italy as in India, to shape social and political interactions has broadened its range of action but also poses questions of legitimacy and authority with relation to other state powers. In these two countries, this judicial activism is built around deep social demands, on surges of opinion calling for more justice. In India the legal activism of members of civil society having recourse to judicial action is explicitly aimed at achieving gains on a political and social level (Anderson, 1990: 159). To the reformist scheme of judges seeking to translate these aspirations and actions into new juridical categories but who in doing so create tension with the legislative and executive arms of government, may be contrasted the opposite dynamic that characterizes the situation in Afghanistan. Here the political authority is trying to set up a judicial system that conforms to the hopes of the international community but must balance this with sometimes quite different social expectations. Yet despite this apparent contrast, it is possible to discern at the heart of these dual developments similar concerns around the articulation of the role of justice in state governance and the progressive but as yet incomplete detachment of individuals from the 'social structures which, over many centuries, have framed their lives' (Kaluszynski, 2007: 19), a process that is frequently linked to the expansion of (neo-)liberalism, a crucial issue today but one which is beyond the scope of this present collection.

In Italy as in India, these developments have brought about a considerable widening of the field of action of justice, which is not without creating structural tensions within the mechanisms of power. In her study of anti-Mafia trials, Deborah Puccio-Den points out that the judges stand accused, by both politicians and jurists, of failing to heed the elementary rules of the democratic state: the establishment of new penal categories which allow convictions for association with the Mafia to be entered against persons who have not personally

committed crimes but have ordered them or were associated with the organization, is seen as a distortion of the indispensable principle of the Italian (and, more generally, international) legal system, that being the strictly personal character of penal responsibility. This is one of the crucial points in the articulation between state justice and 'customary' modes of conflict resolution, and it is paradoxical to see how the need to fight against the Mafia is leading to a reshaping, within certain limits, of this fundamental ideological principle of 'modern' law. One should compare this discussion with the contribution of Sarbani Sen: in initiating a new procedure, the Public Interest Litigation, the justices of the Indian Supreme Court departed considerably from the equally fundamental principle of *locus standi* to permit any bona fide member of the 'public', a notion that they equally brought in, to seek intervention from the court when a matter of 'public interest' is involved: it clearly illustrates that judges deliver their decision in consequence of the image they hold of 'the place of their institution within the social body', which also corresponds to the 'quest for a new public space' (Kaluszynski, 2007: 15, in relation to the Dreyfus Affair). In so doing, the judges validate their own authority as being the highest-level guarantor of public well-being, a move that has been criticized as imposing the views of a non-elected professional body above those of the representatives of the political system (Sen). The courts are thus drawn into the exercise of a power which is not without paradoxical implications in a democratic system. More broadly speaking, one sees how the definition of new penal or procedural systems is to be replaced within the framework of a 'moral economy' (Puccio-Den).

The contestation of the legitimacy of the political action of judges, within the state apparatus, emphasizes the dual exteriority of their position, both in relation to politicians and the administration as in relation to society as a whole: concerning the latter, the challenge, as Antonio de Lauri points out here, is to counter the widespread sentiment, at least in Afghanistan, that 'the courts have nothing to do with justice'. In that country, it is the international community that has been behind **/p. 6/** the development of a new constitution and a new legal code; but the categories set out for these stand in marked contrast to the effective norms of society, and the government itself has suggested that they be circumvented. As the author demonstrates, the normal judicial approach is characterized by looking for a balance between established custom, religious principles and codes of law. In

practice, the legitimacy of the judges and courts is based on their own respect for 'customary' procedures and categories, as well as on their deference to forms and positions of authority that are recognized in society.

This position of a tenuous balance between the political power and the public space that justice is constrained to assume, and which particularly stands out in the definition or imposition of new legal categories, suggests the need to take a nuanced approach to its role as an instrument of state power. Though it is undeniable that the categories and procedures themselves define frameworks of constraint directed towards social and political control (Samaddar, herein), it appears, as various articles in the present collection show, that when put into operation effectively, these categories are not applied to the letter, whether because of the impossibility of doing so, or voluntarily. After all, as an Afghan judge said in relation to the establishment of evidence, 'the advice of a wise man may be more useful than a document […] I try to base my decisions on facts, but the facts are not always clear' (De Lauri).

A second collection of articles puts forwards a reflection on the procedures that allow a judicial truth to be reached, looking at three contrasting situations (India, France and China). Ranabir Samaddar's article, which looks back over the issues at stake and the historical conditions that prevailed when the Indian Evidence Act was elaborated during the colonial period, highlights the link between the definition of legal categories and the setting up of specific procedures, all within the framework of strengthening state control. The definition of the individual as a legal category, together with the idea of their individual responsibility, was at the heart of the exercise of colonial power and implied the development of a particular evidential regime. Its establishment brought together the normative and the performative: proving a 'fact' is the object of a script which fixes the conditions of its receivability. The procedure was supposedly the guarantee of a new meaning of justice that was imposed by the colonial authority: 'Truth was nothing if there was a lack of procedure, and procedure had to be marked by evidence, because evidence signalled fairness.' But the evidence has to be constructed, and the judicial machinery aims at producing it in the form of a narrative, a 'literal passage from reality into fiction'. To judge according to the law corresponds then to a parcelization and a decontextualization of human relationships, according to a logic that is not always perceived as desirable and 'just'

in all quarters in India (Bordia).

Procedures, despite their vocation for making the rules explicit and 'transparent' to permit judgements to be made according to the law, seek to impose a set of presuppositions and values which arise from relationships of power. The situations to which they are applied, however, lead to their being complemented, or even circumvented, by bringing in other appreciative factors which are left non-explicit: the very nature of language – for the establishment of convincing evidence is itself a rhetorical process – and emotion. Samaddar indicates how the latter is a constitutive component of evidence, whereas the Evidence Act is presented as being founded on 'reason'. What the author analyses as a dramaturgy is not just a characteristic of trials being conducted according to an adversarial procedure (as is the case in India and more generally in systems of common law or those which derive from them): Véronique Bouillier emphasizes that generating emotion is also at the heart of trials undertaken in France and aims in particular at influencing juries in the Assize Courts. Counsel and prosecutors direct their attention to the jurors' capacity for feeling; it is essential for the accused to be convincing with regards his sincerity by playing on the emotional register. Judgement is established on the basis of an 'intimate conviction', directly determined by the extent **/p. 7/** of empathy: beyond the often analysed theatrical aspects of the judicial ritual, a dramaturgy is present at the very heart of the establishment of the truth.

The possible presence of a jury, as representatives of the 'people' intended to counterbalance the power of the professional judges is thus shown to be profoundly ambiguous. In India, after their controversial introduction during the second half of the 19th century (Wadia, 1897), juries were removed in 1960 because their members were often seen as being interested parties (through their social relations) in the cases being examined, or as corruptible and hence partial. In France, outside Assize high courts, the attempt by the Sarkozy government to introduce popular juries at the level of the lower or district courts gave rise to acute anxieties on the part of magistrates as well as on the part of the political body, who saw in this reform a populist measure aimed at reinforcing a more repressive judicial policy than that of professional judges, since in their view it would be more based on emotion and instinct. The article by Bin Li on China, where juries have been introduced, shows that the official argument also invokes the necessity of bringing justice closer to the

people, as a way of reinforcing the legitimacy of the justice system (and through it, that of the regime). But whereas, in principle, procedures are there to guarantee the impartiality of the judges, it was precisely the existence of a general disavowal (which echoes that found in other contributions to this issue) that drove the political authority to bring in the participation of citizens so as to enable a substantive justice to prevail over a procedural one, that is to say by departing from procedures based on pure 'reason' and by taking more account of social relations – and emotions. The Chinese situation is, however, particular in that the justice system is not fully independent of the ruling party and the executive so that juries, far from counterbalancing the power of judges, find themselves on the contrary confined to a subordinate role of providing advice: their value seems to be more one of legitimation than of counterbalance. According to Bin Li, the reorganization of the system of assessors and of the popular jury consequently has not attained its objective of restoring legitimacy in the exercise of judicial power.

There are considerable intellectual and political stakes in regarding the law less as a transcendental force which is applied to everyone equally than as a system having the potential to establish truths, and to see in 'justice' a manifestation of state power (without necessarily implying that this power is monolithic) in relation to a public. The regime of truth established by state justice, of which the Indian Evidence Act is an example, is far from exercising the hegemony that one may be tempted to attribute to it. Several authors have pointed to the local dimension of legal processes (Mertz and Goodale, 2012: 85) and to their intersection with what Sally Falk Moore has called 'semi-autonomous fields' of arbitration practice (a point to which the author returns in this volume).

What emerges from very diverse political and social contexts is an articulation between a process founded on the establishment of a judicial truth leading ultimately to a judicial decision, a process which is often perceived as long, costly and of unforeseeable outcome, and a logic of seeking arrangements. The latter can itself take place both in opposition to the court, or at the latter's instigation, or even under its authority (in India, for example, judges are mediators in the arbitration meetings of the 'Lok adalat'). The third section in this issue examines three variants (in India, China and Burkina Faso) of this relationship between the letter of the law and compromise. In these arrangements, these compromises, an idealized validation of the necessity of

continuing to 'live together' in spite of the legal disputes sometimes tends to obscure the reality of a society where inequality is endemic and structured by relations of coercion at local level: social 'harmony' can thus be the fruit of resignation. The relationship between justice and compromise therefore varies greatly. Daniela Berti's article, in reference to criminal trials in North India, points to considerable tension between the courtroom and the village or suburban space. She highlights relations of domination and economic and physical threats which forced the (underage) victim of a rape to withdraw **/p.8/** her initial testimony, retracting from the complaint which had been lodged, subsequently rendering impossible any conviction of the perpetrator. Paradoxically, it was the rules for establishing proof which prevented this conviction, even though the judge was intimately convinced of the reality of the facts and the culpability of the accused. What brought the victim to deny before the judge the very existence of the assault that she suffered for years (an obstacle that judges in Italy met in Mafia trials) was the coercion exercised by the family of the accused, which enjoyed a position of dominance at village level and to which the family of the victim was entirely subservient.

In such a situation, 'living together' means largely reproducing a system of domination – which nevertheless did not render the court necessarily without purpose, for the trial carried weight in the process of compensation at local level. There were two interacting 'spheres of authority' present there rather than two legal cultures, to the extent that the authority of the dominant group is not perceived as being of the same order as that of a legal system.

The criminal case that Berti examines is complicated by the fact that it also falls within the domain of a law that criminalizes interactions of exploitation, harassment or discrimination based on caste. This reflects a pro-active state policy, inscribed in the Constitution and shaped by successive legislative acts, a policy which has effectively contributed to the spreading of a culture of law and of legal activism among the vulnerable or disadvantaged classes of society. This political and legal voluntary approach, however, comes up against interactions of persistent exploitation at local level, as in the case at hand. One can thus see the limitation of any potential interpretation in terms of hegemony of the state or the 'elites': on the one hand, the state or the elites do not in fact present such homogeneity on this level (a point already emphasized by Anderson, 1990: 173); on the other hand, the 'resistance' to such hegemony that

various authors have perceived as a weapon of the weak is not in this instance that of the oppressed members of the local society but that of the local dominant class. These aspects have in fact long been addressed by authors who have studied the manner in which, in India, justice can effectively function in the face of multiple coercive spheres of authority. Berti's article confirms that the villagers are aware of both the possibilities and the limits that access to the courts or, conversely, local forms of compromise, may offer to them (Cohn, 1959; Galanter, 1992). It shows the importance of taking into account both the 'legal awareness' and the 'multiple subjectivities' of the protagonists (Moore, 1994; Merry, 2003).

The study by Fu Hualing of changes in legal services in China underlines the complexity of relations and the widening gap between the development of legal professions with gradually better training but with strong competition given the market-driven logic, and rural society. If village committees are supposed to resolve most disputes (and there is no room for doubt that these rulings reflect local power relationships), the emigration of the village workforce has weakened their authority. An ever-increasing number of conflicts are thus being brought before 'legal workers' or judicial institutions. The legal services themselves are made up of different layers that are more or less professionally trained and which encourage to varying degrees recourse to mediation or mutual arrangements, or on the other hand the need for a verdict handed down within a logic of confrontation. It is thus under blanket of government authorities that mediations are undertaken by legal workers with little formal training but who are seen as being closer to the population, whereas lawyers tend to sort out matters by taking a procedural approach which generally ends up in a trial – they are consequently perceived as being increasingly removed from rural society. It is in the gap between these two that, in China like elsewhere, the contrast between different spheres of authority comes into play, even though the ideology of the pursuit of social 'harmony' remains dominant and it would be difficult, in that case, to speak of juridical pluralism. Might the solution to this be political, as the author suggests? The comparison with the Indian situation calls for prudence in drawing any particular conclusion.

/p. 9/ The gap which exists between a system of established law and practices for the settlement of conflicts, due to the overlapping of different spheres of authority, does not concern only the courts set up by the state. In the cases studied by Maud Saint-Lary,

in Burkina Faso, a state with a secular constitution which accords a lot of room to informal procedures for the resolution of conflicts (through leading members of local communities, heads of extended families, priests, imams, social workers, police officers), it is within the customary Muslim procedures themselves (which co-exist with courts of positive law) that an explicit distinction is created between the principles of sharia law, which are not all necessarily applied, and the desire to favour arrangements around the wish for an amicable co-existence. As a customary chief quoted by the author affirmed, 'When it comes to judgements, if they are done with *shari'a*, the truth is sought. Seeking the truth will disrupt cohabitation. So to avoid disrupting cohabitation, an agreement is sought' – a striking contrast with the perceptions held about the official courts which are seen as imposing a 'solution by force'. Maintaining understanding amounts to a veritable social imperative, in particular in the cases of divorce studied by Saint-Lary, an imperative which asserts itself over and above the Islamic normative system (and the state courts) and appears as the main principle for the resolution of disputes.

These three studies, therefore, show that normative systems, whether of the state or not, must compose with social realities that they can regulate only partially and with respect to which they sometimes demonstrate a certain vulnerability. As Pierre Bourdieu pointed out (1987: 840):

> There is no doubt that the law possesses a specific efficacy, particularly attributable to the work of *codification*, of formulation and formalization, of neutralization and systematization, which all professionals at symbolic work produce according to the laws of their own universe. Nevertheless, this efficacy, defined by its opposition both to pure and simple impotence and to effectiveness based only on naked force, is exercised only to the extent that the law is socially recognized and meets with agreement, even if only tacit and partial, because it corresponds, at least apparently, to real needs and interests.

The potential competition between different systems for the resolution of conflicts should not, however, mask the fact that these systems benefit in practice only part of the population, to the exclusion of the most disadvantaged categories (Moore, 1993). There exists a convergence of values and interests which has the effect that, when there is no particular conflict of authority, these procedures

mutually support each other rather than entering into confrontation. The contributions to the last part of this collection of articles are directed towards analysing different forms of continuity and complementarity (rather than tensions) between non-official practices of reconciliation and the functioning of the courts of state justice.

In order, moreover, for the latter to appear as legitimate and to acquire a moral authority which the national government cannot confer on them, they must often depend on local power networks and on the accepted conceptions around the manner of resolving conflicts that these networks impose. Yazid Ben Hounet's study highlights the fact that non-official practices of reconciliation in Algeria and the Sudan not only do not stand in opposition to state justice, but neither are they necessarily a sign of the deficiency of the latter. As one of his interviewees in Algeria stated: 'reconciliation is the foundation, because otherwise justice cannot be done; to be implemented correctly, justice needs the overall atmosphere of appeasement that *sulh* provides.'.

The author thus proposes to address judicial practices from a holistic perspective and to combine with the analysis of judicial court processes that of social practices 'that operate alongside them, in a certain sense orienting the exercise of justice', while in return 'judicial practices influence the parallel reconciliation modalities'. In the cases that he studies, there exists a close connection between the official legal mechanisms and the non-official ones where both are engaged **/p. 10/** to deal with one and the same case, and concerning which it must be considered that they form a whole. Following Anderson (1990: 163) it is possible to see the working of such a system as a problem of structural distribution of authority, which British jurists would have formalized in the colonial period in India in terms of a social tension between 'custom' and 'law'.

It should be noted that in the cases studied by Ben Hounet, the final arrangement sought was not one purely at 'personal' level, since it affected the close kin or even the clans of both the victim and the perpetrator. In such a situation a homicide is not evaluated purely on the basis of individual responsibility, but according to an imperative of solidarity among closely connected human groups. This immediately gives it a political dimension. The latter is particularly evident in the case analysed by Devika Bordia, whose conclusions are in keeping with, and illustrate, the theses of Comaroff and Roberts (1981: 244), for whom an individualization of the judicial field

distinct from the political one is eminently problematic: it is not only that there coexist modes of dispute resolution that are at times apparently more 'political' and at others seemingly more 'legal'; it is that these modes are, as the authors point out, '*systematically* related' (ibid.). Together they constitute the transformations of a single and unique logic.

Bordia's study shows how, historically, the relations between state authority and local deliberative procedures mutually supported each other during and after the colonial period (a fact well demonstrated for several colonial societies by Benton (2002)). In the tribal region of North-West India, agents of the state – police, judges, administrative personnel – are largely dependent, even today, on customary procedures for negotiated arrangements between extended kin groups, in a context that is strongly marked by relationships of clientelism and electoral calculation. The 'resolution' of a conflict around a murder is shown to be one of the ways of doing politics, with the court being just one actor among others. In customary procedures, there is no particular discussion about 'evidence' but difficult negotiations on the amount of compensation that should be paid to the family group of the victim; imprisonment of the perpetrators is a means of exerting pressure during the negotiation, as are other more 'traditional' means of intimidation or possibly resorting to the police. The heads of the two kin groups in conflict mobilize and check in this situation the respective loyalties of other leading members of their lineage; reaching an eventual compromise leads to instruct the witnesses that they should retract from their initial testimony, forcing the court to declare the murderers not guilty. Trials are thus moments in the shaping and expression of the power and authority of local leaders, both between themselves and in relation to the state apparatus. Such a case clearly demonstrates that the notion of 'co-existence', which is an ideal that is sought in various societies, may cover manifestations of power relationships on the one hand, and on the other a shrewd understanding of, and utilization of, institutions (see also Anderson, 1990: 171).

In the final contribution to the volume, Sally Falk Moore clearly sets out various themes and theoretical propositions that she has presented over the course of her work. In Tanzania, tribal traditions have allowed the legitimation of a space for autonomy within the national political and legal system. There, jurisdictions vary and the diversity of meanings for the notion of 'custom' in relation to

them has been regularly modified over time with economic development and the successive reforms of the state judicial procedures. Since 1973, the author has been proposing to analyze this situation by using the concept of semi-autonomous social fields (a notion that has been largely picked up since then) provided with their own systems of rule generation and of coercive measures, where 'the economy of social practice' would consist in attaining its goals by preferring recourse to well-tested methods – unless necessity required following, or even inventing, another. Moore insists on the need for a holistic approach to a 'a single working social system in which the two bodies of rules and institutions are completely intertwined in everyday life. They are both drawn on as resources as local people strategize their way through the maze of local competition and contestation.' In this perspective, justice is definitely a form of politics. It relies on a structural /p. 11/ differentiation, but also on the complementarity of processes of judgement, with their procedures, their forms of truth, their structure of power.

Translated from the French by Colin Anderson

Note

1. Project ANR 08-GOUV-064, December 2008 – January 2013, directed by Daniela Berti and Gilles Tarabout, with the support of the Fondation Maison des Sciences de l'Homme, of the Institut des Hautes Études sur la Justice and of the South Asian Studies Council of Yale university.

References

Anderson ,M.R., 1990, "Classifications and coercions: themes in South Asian legal studies in the 1980s", *South Asian Res.*, 10: 158–177.

Benton, L., 2002, *Law and Colonial Cultures. Legal Regimes in World History, 1400–1900*. New York: Cambridge university Press.

Bourdieu, P., 1987, "The force of Law: toward a sociology of the juridical field" (transl. by R. Terdiman), *The Hastings Law Journal* 38: 805–853.

Cohn, B.S., 1959, "Some notes on law and change in North India", *Economic Development and Cultural Change* 8(1): 79–93.

Comaroff, J.L. and S. Roberts, 1981, *Rules and Processes. The Cultural Logic of Dispute in an African Context*. Chicago: University of Chicago Press.

Commaille, J., Dumoulin, L. and C. Robert (eds), 2010, *La Juridicisation du politique*. Paris: LGDJ.

Commaille, J. and M. Kaluszynski (eds), 2007, *La Fonction politique de la*

justice. Paris: La Découverte.

Galanter, M., 1992, "The aborted restoration of 'indigenous' law in India", In M. Galanter, *Law and Society in Modern India* (introduction by R Dhavan). Delhi: Oxford University Press, pp.37–53.

Kaluszynski, M., 2007, "La fonction politique de la justice: regards historiques. Du souci d'historicité à la pertinence de l'historicisation", In J. Commaille and M. Kaluszynski (eds), *La Fonction politique de la justice*. Paris: La Découverte, pp.9–23.

Lazarus-Black, M., and S.F. Hirsch (eds), 2010, *Contested States. Law, Hegemony and Resistance*. New York/ London: Routledge.

Merry, S.E., 2003, "Rights talk and the experience of law: implementing women's human rights to protection from violence", *Human Rights Quarterly* 25(2): 343–381.

Mertz, E.E., and M. Goodale, 2012, "Comparative anthropology of law", In D. Clark (ed.), *Comparative Law and Society Elgar Series: Research Handbooks in Comparative Law*. Northampton, MA: E. Elgar, pp.77–91; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988908.

Moore, E.P., 1993, "Gender, Power, and Legal Pluralism: Rajasthan, India", *American Ethnologist* 20(3): 522–542.

Moore, H., 1994, "The problem of explaining violence in the social sciences", In P. Harvey and P. Gow (eds), *Sex and Violence: Issues in Representation and Experience*. London: Routledge, pp.522–542.

Moore, S.F., 1973, "Law and social change: the semi-autonomous social field as an appropriate subject of study", *Law & Society Review* 7: 719–746.

Mukhopadhyay, A., 2006, *Behind the Mask. The Cultural Definition of the Legal Subject in Colonial Bengal (1715–1911)*. Delhi: Oxford University Press.

Randeria, S., 2007, "The state of globalization: legal plurality, overlapping sovereignties and ambiguous alliances between civil society and the cunning state in India", *Theory, Culture and Society* 24(1): 1–33.

Singha, R., 1998, *A Despotism of Law: Crime and Justice in Early Colonial India*. Delhi: Oxford University Press.

Wadia, S.P.N., 1897, *The Institution of Trial by Jury in India*. Bombay: Fort Printing Press.