



Collaboration, Innovation and Resilience: Championing a Digital Generation

Brisbane, Australia 6-10 April

# Legal Pluralism as a Lens to Understand Legal Frameworks

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April 2025

No.373 09/04/2025 14:00 - 15:30 Surveying & Geospatial Opportunities with First Nation People: Joint Session AP CDN & C 7



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## What is legal pluralism as a phenomenon?

*Legal pluralism occurs when two or more legal systems coexist*

- Official state legal systems
  - Statutes
  - Common law
  - Case law
- Alternative normative legal systems e.g.
  - Customary law
  - Systems derived from indigenous law
  - Informal
  - Religious
  - .....

## What approach is suitable?

- analytical and **empirical** investigations (*what is*)
  - examine reality on its own terms – without bias
  - case study strategy – how, why, what, who, when? (as per author Yin)

### preferred over

- normative investigations (*what should be*)
  - goals
  - change management, gap analysis
  - etc.



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## Franz von Benda-Beckmann – problems affecting our understanding of legal frameworks:

- Where **complex relationships** between post-colonial state control and collective property rights exist, legal pluralism is used as a tag-descriptor for complex mixed-law systems without deep understanding
- Political and institutional economics has driven a ‘powerful, nearly hegemonic discourse’ leading to a **normative policy orientation**
- The issues between the institutional frameworks and practices are obscured by the **primary focus on rules and rights** – especially in considering the triad of objects-rights-subjects

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## A legal pluralism lens and empirical approach can help ..

- to **understand the existing legal framework** and address land admin challenges esp. in complex contexts as required in FFPLA, implementing LADM ... etc.
- **avoid bias**
  - western/formal law
  - political and institutional economics
  - ‘ideal’ rules and rights focus
- **shift the discourse**
  - contribute to decolonializing the global legal order with respect to land administration systems

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Let us look at some **key aspects** of a legally pluralist lens ....

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## 1. Myth of state centrism

- **challenges** view that
  - law and policy are created and managed only by the state
  - the state is crucial to economic growth and social development

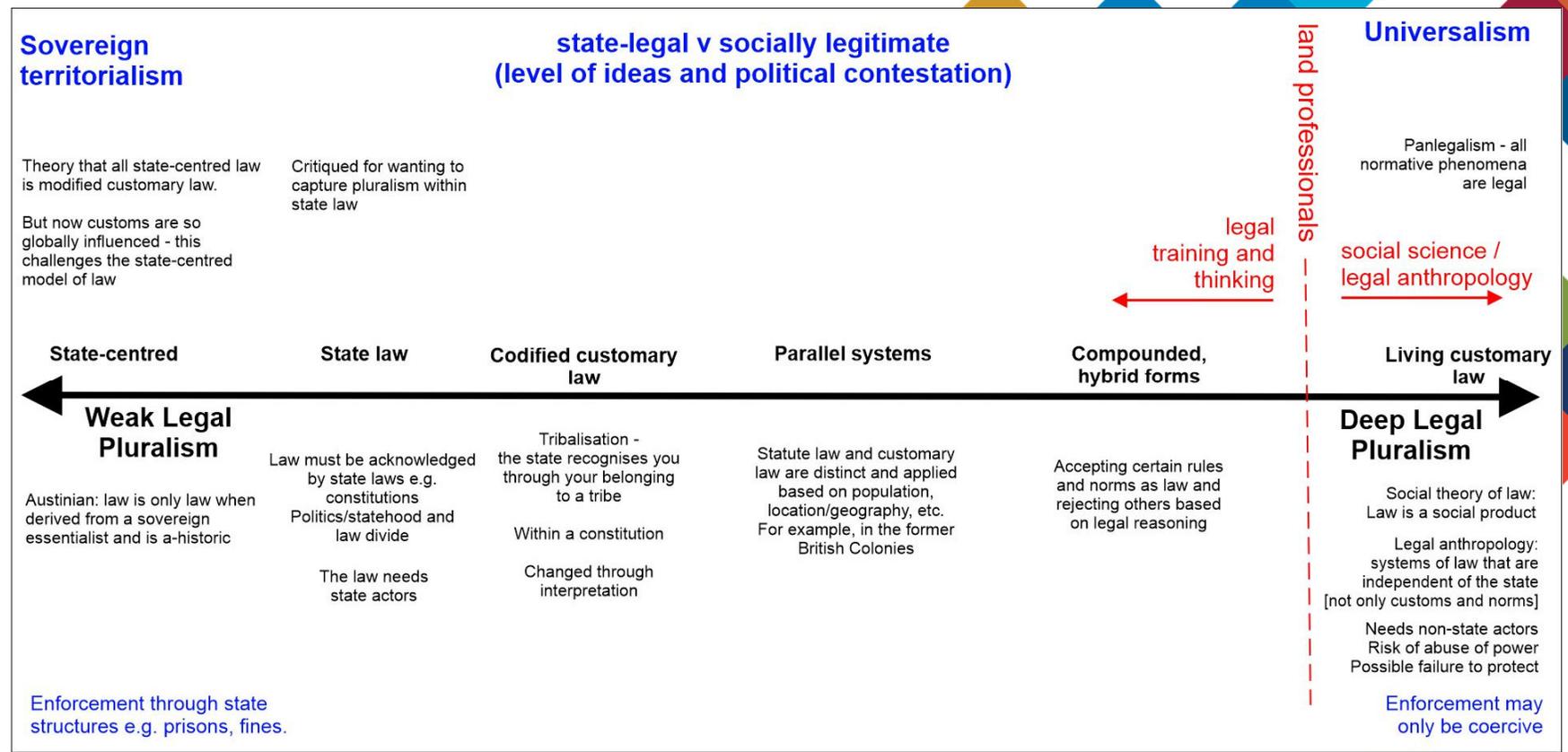
### INSTEAD

- source of law and legality is **not limited to the state**
  - state capacity is limited and reduced: austerity & internationalization
  - failed states
  - customary law develops independent of states

## 2. Binaries should be avoided

- categories vs continuum of legal pluralism
- formal/informal
- uniform / complex legal systems
- aligned law vs conflicting law

## Legal pluralism continuum



### 3. Differential weighting of legal orders

Official **and** alternative normative legal systems

- do not co-exist in parallel – they are not independent but mutually constructive (interlegality) – fuzzy boundaries
- have different relative weight depending on the context
  - official systems do not always hold more weight
  - alternative normative legal systems are not always weak and dependent

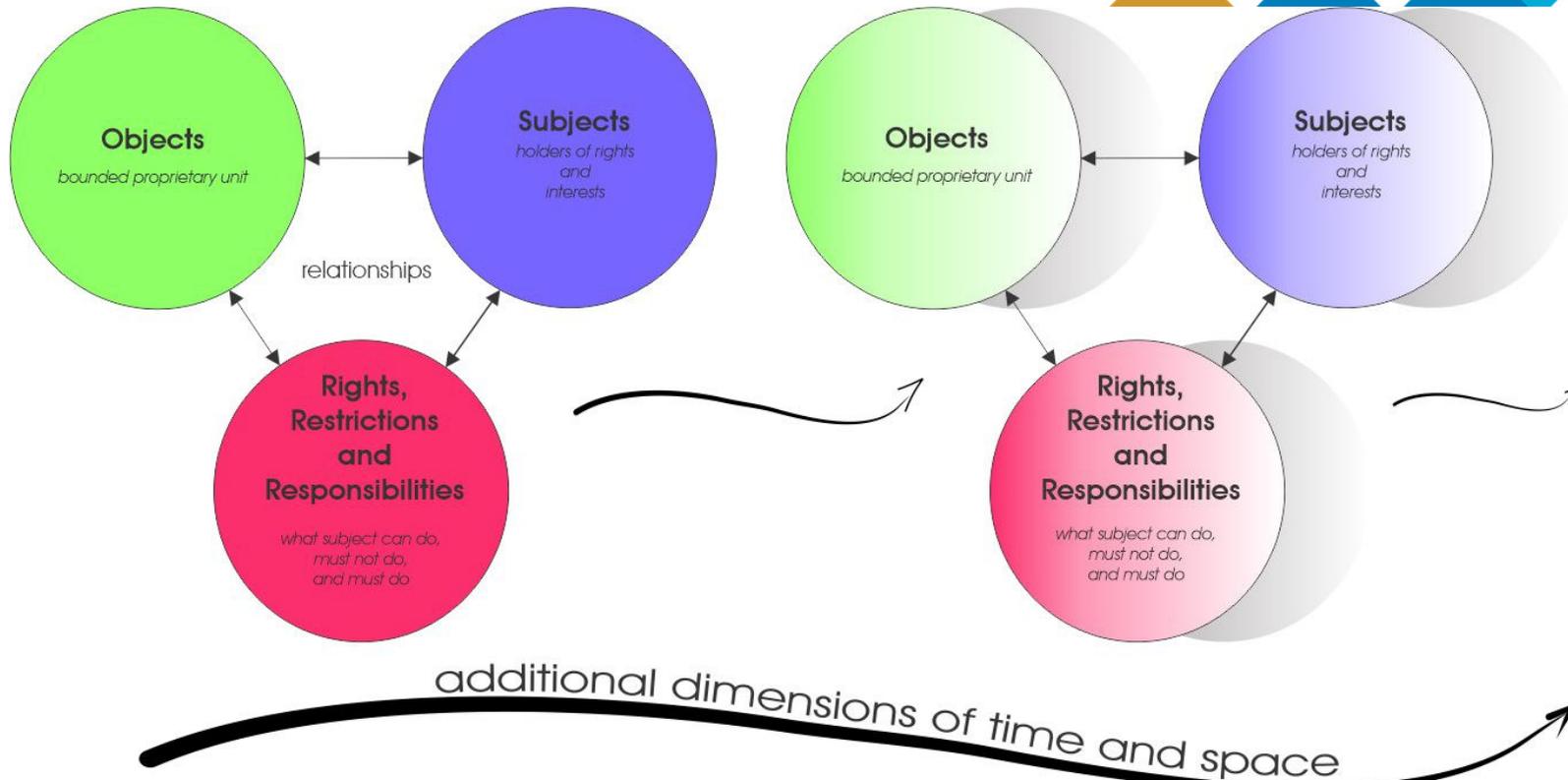
## 4. Knowledge, education and training, practice, & justice differ widely

- official state legal systems
  - legal profession
  - surveying & geospatial profession
  - procedural justice
- alternative normative legal systems
  - traditional/indigenous leaders/authorities and knowledge systems
  - religious leaders
  - community leaders/grassroots organisations/citizen science (e.g. mapping)
  - substantive justice
- needs to be mutual respect and cooperation

## 5. Nature of plural legal systems

- derived from the historical context
  - complex and non-uniform
- resilient in the face of pressure (incl from the state) – contributes to their longevity
  - adaptive
  - law is plastic and fluid – changing over time and place/space
- state law and alternative law are nested/overlapping – assumption that official state law is ‘better’
- uncertainty
  - forum shopping – decide which system to use for development and land claims

## 6. Triad of object, subject and RRRs & time and space dimensions



## CONCLUSIONS – a plural legal lens ...

- may help us to gain a deeper understanding of how alternative normative legal systems **interact** with official state legal systems
- when combined with empirical studies, may help researchers and practitioners in the land administration sector to gain a **deeper understanding of legal systems in plural law contexts**
- may help to **avoid** the western/formal law **bias** that is associated with the dominant normative property law lens
- may assist in **shifting the discourse** and contribute to decolonializing the global legal order with respect to land administration systems

## The most relevant SDGs related to the presentation and theme of this session



**SUSTAINABLE DEVELOPMENT GOALS** | International Federation of Surveyors supports the Sustainable Development Goals



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STEP 1: SELECT HERE THE THREE MOST RELEVANT SDGs
STEP 2: COPY THE SDG INTO PREVIOUS SLIDE

Grid of 17 Sustainable Development Goals (SDGs) with icons and titles: 1 NO POVERTY, 2 ZERO HUNGER, 3 GOOD HEALTH AND WELL-BEING, 4 QUALITY EDUCATION, 5 GENDER EQUALITY, 6 CLEAN WATER AND SANITATION, 7 AFFORDABLE AND CLEAN ENERGY, 8 DECENT WORK AND ECONOMIC GROWTH, 9 INDUSTRY, INNOVATION AND INFRASTRUCTURE, 10 REDUCED INEQUALITIES, 11 SUSTAINABLE CITIES AND COMMUNITIES, 12 RESPONSIBLE CONSUMPTION AND PRODUCTION, 13 CLIMATE ACTION, 14 LIFE BELOW WATER, 15 LIFE ON LAND, 16 PEACE, JUSTICE AND STRONG INSTITUTIONS, 17 PARTNERSHIPS FOR THE GOALS.

