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Introduction: The dynamics of power and the rule of law in Africa and beyond: Theoretical perspectives on chiefs, the state, agency, customary law, and violence

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Introduction:

The dynamics of power and the rule of law in Africa and beyond

Theoretical perspectives on chiefs, the state, agency, customary law, and violence

by Wim van Binsbergen

This collection of essays is conceived as a Festschrift honouring Emile Adriaan B. van Rouveroy van Nieuwaal on the occasion of his retirement from institutional academic life. Its contributors have been drawn from the various spheres in which he has operated as a scholar in the course of his career. Our aim is to contribute to the various fields of study in which this scholar has been active:

- the study of conflict and its resolution by largely judicial means, in rural, kinship-dominated rural settings in Africa;¹
- the study of African land tenure in the context of the post-colonial state;²
- the study of chieftaincy, in its local and regional dynamics but particularly in the national context of the post-colonial state, its strategies of legitimation and its policies of decentralisation;³
- the study of legal pluralism and the sociology of law;⁴ and finally

¹ Cf. van Rouveroy van Nieuwaal 1976b, 1976c, 1989b, 1989c, 1991a; van Rouveroy van Nieuwaal & Baerends 1976a, 1977b, 1981b, 1984. A full bibliography of the work of van Rouveroy van Nieuwaal is presented at the end of this book.

² Cf. van Rouveroy van Nieuwaal 1975d, 1977a, 1979a, 1994; van Rouveroy van Nieuwaal & Améga 1979.

³ Cf. Brempong, Ray, & van Rouveroy van Nieuwaal, 1995; Ray & van Rouveroy van Nieuwaal 1996a; van Rouveroy van Nieuwaal 1976b, 1976c, 1980a, 1985c, 1987b, 1989a, 1992a, 1992b, 1993a, 1993b, 1993b, 2000a, 2002b; van Rouveroy van Nieuwaal, Baerends & Griffiths 1987; van Rouveroy van Nieuwaal & Reijne 1999a; van Rouveroy van Nieuwaal & van Dijk 1999; van Rouveroy van Nieuwaal & Zips 1998.

⁴ Cf. van Rouveroy van Nieuwaal 1975a, 1979d, 1980b, 1985b, 1995, 1998a.

- ethnocinematography.⁵

Editorial policy has been to keep the personal and anecdotal element in the contributions to an absolute minimum, so that this collection can stand on its own as a scholarly text rather than forming a birthday present. However, the uniting element in the contributions is the reference to van Rouveroy van Nieuwaal's work. In many ways his career and his scholarly output reflect significant developments, and contradictions, in African Studies and in legal anthropology in the second half of the twentieth century, both in the Netherlands and internationally. It is therefore fitting to have a look at the scholar and his work, before we proceed to discuss the contributions in this book and their specific contributions to the study of the dynamics of power and the rule of law.

Emile Adriaan B. van Rouveroy van Nieuwaal: The itinerary of a legal anthropologist

Van Rouveroy van Nieuwaal was born at the beginning of World War II, and the war cast a deep shadow over his aristocratic family. His grandfather had held a prominent position at the Dutch royal court, and an element of noble distinction (with such virtues as hospitality, generosity, insistence on quality, a strong identification with the law, and an even stronger sense of independence) has been characteristic of van Rouveroy van Nieuwaal throughout his life. This also brought him closer to the African chiefs and kings on whom his research was to concentrate especially in the second half of his career. Perhaps it was the same family tradition which inspired him to earn a military decoration for valour during the final days of the Dutch presence in western New Guinea. Another distinctive characteristic he must have picked up and developed during fieldwork in Africa: his love of land and animals, and his insistence on combining an academic career with a part-time livelihood as a small farmer in

⁵ Cf. van Rouveroy van Nieuwaal's ethnographic films as listed at the end of this book, and: Séminaire sur le documentaire socio-scientifique en Afrique francophone, Amsterdam, the Netherlands, organised by van Rouveroy van Nieuwaal in 1980. This conference, however, never led to a publication. I regret that van Rouveroy van Nieuwaal's cinematographic side had to remain largely undiscussed in this book. This was for three interconnected reasons: lack of scholarly texts in which the cinematographer himself would bring his cinematographic product within the orbit of text-based scholarship (with van Rouveroy van Nieuwaal 1985a as the only exception – most films were accompanied by booklets setting out the film's spoken text and general background, but without discussion of method, selection, representativeness, manipulation of facts and their relative weight, the implications of the use of deliberately posed and staged scenes, etc.); lack therefore of an obvious format in which to bring these films into the present book's discussion; and finally, lack of time and competence to so do even from a non-cinematographer's perspective.

the eastern, rural part of the Netherlands, a train journey of several hours away from Leiden. Yet Leiden University was to become his *alma mater*. It is also the seat of the Netherlands' national African Studies Centre, where van Rouveroy van Nieuwaal was to be employed as a researcher, immediately after taking his master's degree in law.

Van Rouveroy van Nieuwaal joined the African Studies Centre as the one and only Ph.D. student ever of Hans Holleman,⁶ an internationally renowned professor of customary law in Leiden University. Holleman was also the Centre's director for almost ten years after its upgrading, in 1958, from a documentation centre to an academic research centre. In the 1960s, Africa, African Studies, and Dutch society, were all going through a phase in which time-honoured authority and ascriptive privilege were severely questioned. Participatory power and self-determination were the slogans of the day. Holleman had been a benevolent but strict senior civil servant and magistrate in minority-ruled Southern Africa, and (although succeeding his brilliant and domineering father in the Leiden chair as a typical Leiden professor's son)⁷ he had come to identify primarily with the English and Afrikaans intellectual circles of the Southern African sub-continent. Increasingly a stranger at the Leiden scene, he was succeeded as director (subsequently designated 'general secretary') of the African Studies Centre by Gerrit Grootenhuis in 1967. The latter was a professional administrator who had served as a civil servant, not in Africa but in New Guinea; he derived from this background an effective network, all over Dutch academia and the senior civil service, from which the African Studies Centre greatly benefited over a long period until his early retirement in 1990.⁸ Effectively, Holleman's chair of customary law was discontinued upon its incumbent's retirement, although the Leiden University Fund instituted a parallel special chair of 'Constitutional law in Africa' which, as it worked out, could very well serve as a replacement despite the unmistakable difference in designation.

In many respects van Rouveroy van Nieuwaal's work was a continuation of themes in Holleman's work: interaction between chiefs and the state, the details of customary judicial procedure, the analysis of trouble cases, etc.⁹ But there were also marked differences. Selection of Togo, West Africa, as a research site for his first research (and as van Rouveroy van Nieuwaal's main African pied-à-terre in decades to come) implied a totally different set of French colonial and constitutional practices, and of academic traditions, as compared

⁶ Cf. Holleman 1952, 1964, 1981.

⁷ Cf. Holleman 1927.

⁸ Cf. van Binsbergen 1981a.

⁹ Cf. Holleman 1964-1965, 1969, 1973.

to those of English and Afrikaans speaking Southern Africa. The language barrier between English and French, then even deeper than today, already ensured that the academic networks of Holleman and van Rouveroy van Nieuwaal would scarcely overlap. The choice for West Africa also meant that, by contrast to the legally fairly indifferent Christianity that had been imported into Southern Africa¹⁰ in recent centuries, Islam¹¹ was to enter van Rouveroy van Nieuwaal's work as the main world religion in the background of northern Togo, deploying a well developed legal tradition whose effect on customary law at the local level could not be ignored. Other major points of difference between Holleman and van Rouveroy van Nieuwaal must be mentioned. The latter came to the field as a full-time legal anthropological researcher, not as an administrator or magistrate – he was primarily a observer, not a partisan participant, and he could therefore study the judicial process on the basis of a different engagement with the local social process from Holleman's. And van Rouveroy van Nieuwaal proved a very perceptive and engaging participant. Not all of his great love and insider understanding of local village life could be accommodated in his academic writings, and he was almost forced to look for an additional mode of expressing his intercultural encounter with West Africa. This he found in ethnocinematography, where much of the beauty and the meaning of West African life could be conveyed in a direct, compelling and often moving way. In the course of the 1970s van Rouveroy van Nieuwaal was to develop his skills as an ethnocinematographer to international professional standards, which is a rare achievement for any Dutch anthropologist. The final point of difference is that throughout the first half of his academic career, van Rouveroy van Nieuwaal formed a stimulating and productive conjugal and intellectual team with his first wife, Els Baerends. Most of van Rouveroy van Nieuwaal's publications of that period were co-authored with her. A few lucky others (e.g. the von Benda-Beckmanns, both of them contributors to the present book; and the Comaroffs) have succeeded in keeping up such a vulnerable multifarious union despite the pressures from academia towards individual appointments and individual career mobility. Not so the van Rouveroy van Nieuwaal–Baerendse team, which broke up at some point in the 1980s.

By the middle of the 1970s van Rouveroy van Nieuwaal found himself in a great predicament. Having written a better legal-anthropological PhD thesis

¹⁰ This is not to deny that, for several centuries, Islam was a major religious expression among the Cape Malayans, the descendants of forced immigrants into South Africa hailing from the Indian Ocean or the Indonesia. Also, Islam has been a minority expression among Africans in Malawi and Zimbabwe for centuries, as it was throughout the twentieth century among Indian migrants. However, the expansion of Islam to become a truly major world religion in Southern Africa only dates from the last few decades of the twentieth century CE.

¹¹ Cf. van Rouveroy van Nieuwaal & Baerends 1975, 1986.

than any Dutch Africanist of his generation,¹² and brimming with ambition, he had ended up as the intellectual crown prince to a king without a kingdom (Holleman), and moreover as prince had exiled himself geographically and linguistically to far outside the whimsical and authoritarian king's former realm. At the time, largely as an inheritance from the Holleman period, legal research was an important focus at the African Studies Centre, with (in addition to van Rouveroy van Nieuwaal) such researchers as Barbara Bond and Jules Rijnsdorp, seconded by the methodologist Rudo Niemeijer and the linguist Vernon February, all just returned from a comprehensive research project in Sierra Leone. By the end of the 1970s the jurist Gerti Hesseling (now director of the African Studies Centre) would join their ranks, still pursuing her PhD work under Leo Prakke, with Wim van Binsbergen as external examiner. Van Leynseele and Baesjou touched on related themes elsewhere in Africa. Under van Rouveroy van Nieuwaal's leadership a Law Section was beginning to articulate itself within the loosely structured, loosely supervised African Studies Centre research, when in 1980 the Centre came under heavy public attack from the then professor of African anthropology in Leiden University, Adam Kuper.

South African born and subsequently naturalised British Kuper was the nephew of the anthropologists Leo and Hilda Kuper, keen to emulate if not to surpass their international fame, and to carry on the torch of South Africans' leadership in social anthropology which dated back to the days of Radcliffe-Brown. If he had been a Dutchman or had internalised Dutch assumptions about the exercise of institutional power, his attack on close academic colleagues in front of the representatives of their government funding agencies had been inconceivable. But more was at stake than mere cultural insensitivity – although this is a remarkable trait in an anthropologist. A foreigner like most of his predecessors in the chair (the Ghanaian Busia and the Briton Beattie), Kuper was after all a Leiden professor, and his attack revealed a structural contradiction between Leiden University and the African Studies Centre, going back to the late 1950s. While being a national research institution on whose board all universities of the Netherlands were represented, the Centre rented accommodation within the premises of Leiden University, and Leiden senior staff enjoyed considerable privileges in the Centre's administration; e.g. the chairperson of the Centre's board was stipulated to be a Leiden professor. When Adam Kuper acceded to the Leiden chair of African anthropology (1976), he found the development sociologist van Lier and later the linguist

¹² By the logic of an asymmetrical division of reproductive and productive labour too often attending two-career marriages, nearly two decades separated van Rouveroy van Nieuwaal's PhD thesis and that of Els Baerends, based on their joint fieldwork (Baerends 1994). By the time the latter thesis was completed, their intellectual collaboration had been over for a decade.

Voorhoeve in the chair of the Centre's board. In vain, Kuper made attempts to mobilise the considerable resources of the African Studies Centre so as to add to the minimum personnel and financial resources attaching to his own chair. His denouncement of the Centre partly reflects his frustration. Admittedly, however, Kuper was also speaking out of genuine concern about the archaic state of research at the Centre at the time: the absence of long-term research planning and of intellectual leadership, the low productivity of some of the tenured researchers, and the paucity of conspicuous international publications.

The Centre responded quickly by enacting a totally new structure, with two tightly organised research departments encompassing the great majority of ongoing research on the basis of elaborate and integrated long-term research planning. Thus emerged the Department of Socio-Economic Studies, headed by the psychologist Jan Hoorweg (who had established a very promising interdisciplinary food and nutrition research project in Kenya); and the Department of Political and Historical Studies, headed by the anthropologist Wim van Binsbergen, who (having joined the Centre after acting in the Leiden chair of African anthropology) had just served as Simon Professor of Social Anthropology in the University of Manchester, United Kingdom. These two research directors, with the Centre's Librarian Koos van der Meulen, and under the continued managing directorship of Gerrit Grootenhuis, were to constitute the executive management of the Centre for the next decade. Kuper had done the Centre a great service in disguise: when within a few years it became imperative for Dutch research institutes and universities to have integrated, long-term research programmes as a precondition for government funding, the Centre was found to be exemplary in this respect.

What then followed was a social drama of the type studied by legal anthropologists with the technique of 'extended case analysis',¹³ and best exemplified by Victor Turner's famous description of the vicissitudes surrounding the controversial Zambian villager Sandombu in *Schism and continuity in an African society*.¹⁴ Perhaps the demonised insider-outsider is a

¹³ Van Velsen 1967.

¹⁴ Turner 1957. Insiders of the Manchester School (1948-1975) claim that, under Gluckman's stimulating but highly demanding and occasionally oppressive leadership, the Sandombu role was also played by one of the senior members of this circle. Turner himself is a likely candidate for the role: he was the only one to leave his Manchester phase radically behind him and pursue a totally different approach concentrating on symbolism and ritual, which brought him world fame. But there are other candidates, such as Avner Cohen, Ronald Frankenburg, and F.G. Bailey. In many respects, Emrys Peters was the odd man out in Manchester anthropology in the 1960s-1980s, but although his insistence on the ideological and constructed nature of Arab representations of agnatic kin groups fitted in well with the transactionalist environment of Manchester, with his 1951 Oxford PhD (Peters 1951) he was not a student or client of Gluckman's. Of course, any correspondence between Leiden and Manchester is merely accidental and does not suggest that the protagonists in the scholarly dramas on either side of the Channel were of comparable stature.

necessary ingredient of any human group or community. Frazer, Freud, Girard, and in their steps Simonse, have explored the possibility that in such insider-outsidership lies the formation of kingship, even of human society in general.¹⁵ While the social and political parameters differ, the underlying pattern of the drama is similar. If Africanists unblinkingly analyse the games of power, succession, secession, and individual independence at the African village level, without implying that the protagonists involved in these dramas are anything less or more than just human, I see no reason to be squeamish about the details of an episode that provides the key to van Rouveroy van Nieuwaal's career. However successful ultimately, in its progress that career would remain puzzling without knowledge of these details. They illustrate instructively the social anthropology of competition and reconciliation at the academic village level, show the protagonists in a revealing but not necessarily negative light, and add a dimension of reflexivity to our scholarly work which makes it more readily recognisable (and credible) as a relentless and impassive pursuit of truth.

By 1981 it was clear that the African Studies Centre's new organisational structure left no room for a separate, relatively small, Law Section. In hindsight I admit, as one of the protagonists in the evolving drama, that the new and inexperienced academic directors of the Centre were too immersed in the task of building their respective departments and in coaxing the (still somewhat anarchistic) members into a measure of compliance – in other words, were too much preoccupied with the survival of the Centre as a whole, than that they could challenge Grootenhuis' determination to push van Rouveroy van Nieuwaal to the Centre's periphery. For years a struggle (at times vicious) was waged about the Law Section's place in the organisation.

Trends in the background suggested already a particular outcome for this struggle. For in the wake of Africa's decolonisation in the 1960s, of the performance of the post-colonial states ever since (in terms of decline, one-partyism, corruption, military coups), of the continent's economic decline and of the concomitant increase in intercontinental development co-operation, the study of Africa was undergoing a shift from the legal field to political science, geography, and economics. Although anthropologists would continue to dominate African Studies for another decade, also in their field the general shift just indicated could be noticed. Paradigmatically this development was furthered by a shift from structural functionalism to transactionalism (e.g. of the Manchester School variety, of which I will say more below), and to Marxism. The times were over when the debates between legal anthropologists could captivate the whole of the Africanist profession (as had been the case in

¹⁵ Frazer 1957; Freud 1913; Girard 1972; Simonse 1992.

the context of the Gluckman-Bohannan debate¹⁶ on the admissibility of established North Atlantic analytical concepts in the study of African law – an early version of the later, more general debate on *emic* and *etic*).¹⁷ In 1974 the African Studies Centre had still been the scene of a massive ‘International Seminar on New Directions in African Family Law’,¹⁸ but such an event was unlikely to be repeated in the near future. Gluckman had still gone out of his way to argue the relevance of African legal anthropology in terms understandable to USA students of current, North Atlantic positive law.¹⁹ Soon however, John L. Comaroff and Simon Roberts²⁰ would clamour that Africanist legal anthropologists should move away from the study of rules (which was still much indebted to, and congenial to, the positive legal studies as pursued at North Atlantic law faculties), and towards a much more comprehensive attention for socio-legal processes, for the most part extra-judicial, involving the community and beyond. In the same time, the leading anthropologist Geertz was to raise ‘serious concerns about the ability of anthropologists and legal

¹⁶ Gluckman 1969c; Bohannan 1969.

¹⁷ Headland et al. 1990; Pike 1954. In a nutshell,

‘*emic* and *etic* express the distinction between an internal structuring of a cultural orientation such as is found in the consciousness of its bearers, on the one hand, and, on the other, a structuring that is imposed from the outside. *Etic* has nothing to do with ethics in the sense of the philosophy of the judgement of human action in terms of good and evil. Pike’s terminology is based on a linguistic analogy. In linguistics one approaches the description of speech sounds from two complementary perspectives: that of phonetics (hence *-etic*), which furnishes a purely external description, informed by anatomical and physical parameters, revolving on the air vibrations of which the speech sounds consist; and the perspective of phonology, whose basic unit of study is the phoneme (adjective: ‘phonemic’, hence *-emics*): the smallest unit of speech sound that is effectively distinguished by language users competent in a particular language, basing themselves on the distinctive features of that speech sound. (...) Pike thus codified the two-stage analytical stance (both *etic* and *emic*) of the classic anthropology that had emerged in the second quarter of the twentieth century with such proponents as Malinowski, Evans-Pritchard, Fortes, Griaule and Leiris.’ (van Binsbergen, in press).

¹⁸ Cf. Roberts 1977. At the time, Simon Roberts was a legal anthropologist of good standing (cf. Roberts 1970, 1971, 1972a, 1972b), but he was only distantly connected with the African Studies Centre, and his editorship was only decided upon at the end of the conference, whereas he had not organised it. Van Rouveroy van Nieuwaal was still writing his PhD thesis and was apparently considered not yet eligible as editor of an authoritative international collection.

¹⁹ Gluckman 1965, 1969b.

²⁰ Comaroff & Roberts 1981. At the time, my friend John L. Comaroff was considered one of the most promising exponents of what was left of the Manchester School after Gluckman’s death (1975). Later work led him and his wife Jean Comaroff to Foucault-inspired, visionary analyses of nineteenth-century Tswana society (Comaroff & Comaroff 1991, 1997). However, the extent to which he continued to identify with legal anthropology is manifest from the memorable words he spoke – with the modesty he and I have always had in common – during a Leiden seminar in November 2002, when a question on legal anthropology was raised from the audience: ‘I *am* legal anthropology’. (*L’État, c’est moi*, is a famous adage attributed to King Louis XIV of seventeenth-century CE France.)

thinkers to combine their approaches as part of an interdisciplinary project'.²¹ The future looked bleak for Africanist legal anthropology as pursued by someone who by his pre-PhD training was primarily a positive jurist.

Also, on the personal level, in an environment then largely functioning on the basis of academic patronage and old-boys ties, van Rouveroy van Nieuwaal could not count on any patronage extended to him by his former academic supervisor, who was *persona non grata* with the African Studies Centre's managing director to boot. Moreover, van Rouveroy van Nieuwaal had concentrated on a national audience for the marketing of his earliest academic products, and on ethnographic films (however sensitive and innovative). Working (however diligently) from his distant small farm he skipped no opportunity to advertise his double role as intellectual *cum* farmer. All this scarcely added to his strategic resources in academia.

By the time when the other members of the Law Section had either left or been incorporated into the two main departments, van Rouveroy van Nieuwaal found himself utterly isolated, with the national network of legal anthropologists (the 'Folk Law Circle', established in 1976) as his only remaining strategic resource and source of intellectual inspiration. John Griffiths, Franz von Benda-Beckman, and Keebet von Benda-Beckmann *née* Drooglever-Fortuyn were among van Rouveroy van Nieuwaal's prominent fellow-members of this circle. Strongly represented on the nation-wide committee that was to appoint the new, part-time, unremunerated special professor in African constitutional law in Leiden University, the members of the 'Folk Law Circle' understandably showed their loyalty.²² In 1984 van Rouveroy van Nieuwaal was appointed in this position.²³ It was a move that further isolated him from the Centre where he continued to enjoy full-time paid employment, – another example of the structural contradictions between Leiden University and the African Studies Centre. The great significance of this professorial appointment as a personal confirmation of authority and prestige will be obvious to most African and European readers, but it may need special mention to USA readers, used as the latter are to a situation where pecuniary remuneration is the main gauge of success, and where the great majority of academic staff boast the title of professor, instead of only a few per

²¹ Cf. Geertz 1983; Nixon n.d.

²² Another display of loyalty was the allegation, by another prominent member of the 'Folk Law Circle' namely John Griffiths, to the effect that the study of law at the African Studies Centre, Leiden, had been destroyed by the recent reorganisation. Cf. Griffiths 1983, 1984; van Binsbergen 1984.

²³ van Rouveroy van Nieuwaal 1985c.

cent (like in the Netherlands). In some ways, a Dutch professorship is comparable to an African kingship or chieftainship.²⁴

In the process, van Rouveroy van Nieuwaal largely abandoned the research on land tenure and the post-colonial state in Africa, which had earlier been formulated as the intended backbone of a Law Section under his direction. Instead, in extensive preparation for his Leiden 1985 inaugural lecture, he concentrated on the study of African chieftaincy in the colonial and post-colonial context, thus amplifying a line of research which has already been part of his PhD work and a major interest of Holleman's. With this new research endeavour, with his new, albeit part-time, responsibilities for lectures and PhD supervision, with difficult patches in his personal life, and with the conflictive relations surrounding him at the African Studies Centre, a decade was to elapse before he made another ethnographic film in Africa.²⁵

Van Rouveroy van Nieuwaal's research on chiefs was an increasing success, and in time justified the credit which had been extended to him through his professorial appointment. Given the re-orientation of Africanist research sketched above, the topic initially struck the majority of his colleagues as anachronistic and irrelevant. Apparently there were so many more topical issues to be pursued by a specialist in customary law. Inevitably, also, many Africanists shared the positivist expectations of most Independence legislators to the effect that for the chiefs' ascriptive privileges there could be little or no room within a new Africa constitutionally modelled after British and French examples. The decline of African post-colonial state systems, and the resilience of African chiefs, proved these expectations wrong. Meanwhile, over the years, by means of an incessant stream of articles, special issues of journals, and ultimately also international conferences,²⁶ books, and films, van Rouveroy van Nieuwaal managed to establish himself, nationally and internationally, as 'Mr Chiefs'. The continued interest of high ranking international specialists, both in Africa and in the North Atlantic, was ensured, also by the diversification of the

²⁴ While the two terms have vastly overlapping semantic fields and therefore are difficult to separate, in this book 'chieftaincy' is in principle used to designate the general African, and comparative historical, institution for the exercise of traditional authority, whereas 'chieftainship' is in principle reserved for a *particular instance, in time and space*, of the institution of chieftaincy. Thus we will speak of 'chieftaincy in post-colonial Africa', but of 'the late-twentieth century revival of the chieftainship of *Mwene* Shakalongo in western central Zambia' (see below).

²⁵ Cf. van Rouveroy van Nieuwaal 1981b, 1983a, 1992c; van Rouveroy van Nieuwaal & Baerends 1981a.

²⁶ Van Rouveroy van Nieuwaal (co-)organised the following conferences on the theme of chieftaincy in Africa: Conference on the contribution of traditional authority to development, human rights and environmental protection: Strategies for Africa, Accra, Ghana (1994); Chieftaincy in Africa, Leiden: African Studies Centre and Netherlands Ministry of Foreign Affairs (1996); and: Chefferie traditionnelle et l'État post-colonial en Afrique de l'ouest, Niamey, Niger (2002).

topic into such related fields as the role of the post-colonial state, decentralisation, and legal pluralism. In the process, van Rouveroy van Nieuwaal came to rely increasingly on English, although his latest authored book²⁷ is in French again.

Success was achieved despite the fact that the productive relationship with Els Baerends had shipwrecked, and that van Rouveroy van Nieuwaal, in principle, had to work single-handedly. No personnel or financial benefits attached to his Leiden chair; the personal salary and research funds from the African Studies Centre continued to form van Rouveroy van Nieuwaal's main resource. Increasingly defining African fieldwork as the making of films, and having early on adopted professional standards as far as shooting, sound recording and cutting were concerned, van Rouveroy van Nieuwaal's fieldwork became more and more expensive. Even under the warmest intra-staff relationships an institution like the African Studies Centre could not have afforded to furnish the full subsidy needed for an ethnographic film of half an hour or longer. However, already in the 1970s van Rouveroy van Nieuwaal had learned to find his way in the tricky marshlands of external funding agencies. Also, his proven talent for joint research and joint publishing (a quality rarely found among anthropologists, but one undeniably conducive to scientific productivity, intersubjectivity, objectivity, and the avoidance of personal myopia in research) now turned to other partners, both internationally and at the African Studies Centre itself, even if this meant involving anthropologists without much of a legal specialisation.

Once the conflict over the discontinuation of the Law Section had subsided, towards the end of the 1980s, van Rouveroy van Nieuwaal came to engage in productive collaboration with his colleagues in the Department of Political and Historical studies (notably Wim van Binsbergen and Piet Konings), those in the department's successor the Theme Group on Globalisation (e.g. Rijk van Dijk), and with the Centre's visiting fellows from Africa (e.g. Francis Nyamnjoh and Nicodemus Awasom). There is much reassuring irony in the fact that van Rouveroy van Nieuwaal's most productive years were the last five or six of his institutional career, when in the security and inspiration he enjoyed as a respected senior member of the Theme Group on Globalisation, he actively participated in collegial debate, greatly contributed to the Theme Group's output, and received full institutional backing in the making of two more films.²⁸

Other productive relations arose from his personal link with Leiden University (e.g. Peter Skalník, Barbara Oomen), from his PhD and MA

²⁷ Cf. van Rouveroy van Nieuwaal 2000b.

²⁸ Cf. van Rouveroy van Nieuwaal & van Rouveroy van Nieuwaal 2000, and in preparation.

supervision (e.g. Leo de Haan and M. Reijne, and from Africa Cyprian Fisiy and Athalia Molokomme, among others), and from interaction with international fellow-specialists in the study of chieftaincy: John Griffiths, Donald Ray, Chief Nana Brempong (formerly known as Kwame Arhin), and Werner Zips. From the ranks of his own family came his son Maarten van Rouveroy van Nieuwaal, who as a budding film maker collaborated with his father in the latter's two most recent ethnocinematographic projects.

When we add to these names those of international colleagues working on chieftaincy and related topics (e.g. Cathérine Baroin, Insa Nolte, Trutz von Trotha) then all contributors to the present book have been accounted for.²⁹ Having sketched what brought them together, in the next section we will look at their contributions, under the following headings:

- The interaction between chiefs the state in the colonial and post-colonial periods
- Is the interaction between chiefs and the post-colonial state a zero-sum game?
- Structure or agency?
- The nature of customary law, and
- The role of violence.

The interaction between chiefs and the state in the colonial and post-colonial periods

Many African chieftainships, and the collectivities (often conceived in terms of ethnic groups) ruled by them, are recognised to be colonial creations. However, the majority of African chieftainships have roots in a more distant, pre-colonial past, under very different political and economic conditions from those obtaining under the colonial and post-colonial state. Most authors in this collection agree that, as a result, fundamental transformations have taken place in African chieftaincy in the course of the twentieth century CE. Several papers describe these transformations in detail, and seek to interpret them systematically.

Thus, INSA NOLTE's article reflects van Rouveroy van Nieuwaal's research both in the choice of the topic and in the line of reasoning. It examines the encounter between nationalist and traditional politics on a local level in

²⁹ I would have much preferred to include Moussa Djiré in this list, who contributed greatly to van Rouveroy van Nieuwaal's latest film project in Mali. However, due to unforeseen technical difficulties the distance between Mali and Europe, and between French and English, could not be bridged in time given the tight schedule under which this book was prepared.

colonial and post-colonial Nigeria. It concentrates on the relationship between two groups of power-holders in Ijebu-Remo, a former district in the west of Nigeria, and on the agency of Remo-born Obafemi Awolowo, leader of one of Nigeria's three national post-independence parties. Awolowo intervened in the traditional politics of the district through the cultural organisation *Egbe Omo Oduduwa* and through party politics. He was also involved in traditional politics in his hometown Ikenne, where he manipulated the installation of the *oba* (traditional ruler) against considerable opposition in 1950.

Nolte argues that Awolowo's activities and the Ikenne dispute were part of an intense struggle in which both traditional rulers and nationalist politicians attempted to gain legitimacy in each other's political arena. While this process reflects the fact that traditional rulers became increasingly embroiled in post-colonial politics – a point often made in van Rouveroy van Nieuwaal's writings – it also demonstrates that members of the newer nationalist elite desperately attempted to appropriate traditional authority. The complex reasons for this process are explored in Nolte's argument. A striking contradiction becomes apparent: in his role as modern politician, Awolowo publicly expressed a highly critical view of traditional rulers, but this did not prevent him from interference in the dispute over the district throne; he even went as far as accepting a chieftaincy title himself. Clearly, Awolowo's personal status was in itself highly involved with traditional authority, both in his home community and beyond.

Nolte's analysis yields an important conclusion:

'...in so far as traditional authority claims legitimacy and authenticity, it remains subject to grassroots criticism and demands for the representation of local interests and communal aspirations. The very rootedness of traditional authority continues to make it a significant aspect of state power in Nigeria, and van Rouveroy van Nieuwaal's description of traditional rulers as mediators between the locality and the state makes an important point.³⁰ On the basis of the findings from this paper, I would even suggest that traditional authority actively contributes to the negotiation and configuration of local, regional and even wider political identities, thus actively shaping Africa's political landscape below and beyond the level of state politics.'

In this way, a refrain is introduced which we will hear at many points in this collection:

- *In twentieth-century Africa, chiefs sought to obtain authority and security in the domain of the modern national state, just as the modern national state, and its prominent actors, sought to derive traditional authority from chieftaincy.*

³⁰ Van Rouveroy van Nieuwaal 1999: 34f (reference in the original).

While Nolte offers the illuminating image of the modern African state as the scene of a struggle between old and new elites, PIET KONINGS in his contribution shows how between these two elites there is often a convergence of interest and action. Konings' paper is set within the wider issue of privatisation as a key instrument in the stabilisation and Structural Adjustment Programmes (SAPs) imposed on Africa by the World Bank and the International Monetary Fund. While there is now an abundance of literature on the role of chieftaincy in African post-colonial states, Konings' article is the first study to examine the role of chieftaincy in current privatisation projects. Leading specialists, including van Rouveroy van Nieuwaal, have been more interested in the role of chieftaincy in political liberalisation than in economic liberalisation. Konings focuses on the virulent opposition of Bakweri chiefs in Anglophone Cameroon to the government announcement on 15 July 1994 concerning the privatisation of the Cameroon Development Corporation (CDC), one of the oldest and largest agro-industrial parastatals in the country. These chiefs claimed Bakweri ownership of CDC lands. They felt betrayed at not having previously been consulted about the CDC privatisation, and warned the government that the corporation could not be sold to non-natives without Bakweri consent and compensation. Konings seeks to demonstrate that the current resistance of the Bakweri chiefs to CDC privatisation is part of their long-standing struggle for the return of the vast Bakweri lands that were expropriated during German colonial rule for the purpose of plantation agriculture and later, in 1946, leased by the British Trust Authority to the newly created CDC. In this endeavour, the chiefs have always been assisted by the Bakweri 'modern' elite who, like their chiefs, felt aggrieved by the dramatic loss of their ancestral lands. Following the announcement of the privatisation of the CDC, the Bakweri chiefs have received support from other sectors of the 'traditional' and 'modern' elite in Anglophone Cameroon. The latter are inclined to perceive the privatisation of the CDC as a renewed onslaught by the Francophone-dominated post-colonial state on Anglophone identity and colonial heritage. This alliance of the 'traditional' and 'modern' elites forms a mighty force to ensure that justice will prevail on the issue of the Bakweri lands. It has forced the government to repeatedly postpone the actual privatisation of the CDC, and to finally enter into negotiations with the landowners.

It is interesting to see how a new phase in the large-scale, capitalist expropriation of land (notably, the privatisation of plantations) lends the chiefs the opportunity to revive, after half a century, the time-honoured notions of collective land tenure and of the chief as custodian of the land on behalf of his people. But this apparent re-sourcing from a pre-colonial world-view goes not

without a profound transformation, for, in the ensuing conflict, the chiefs primarily appear under the guise of landowners in a modern capitalist sense!

Konings' argument adds substantially to our understanding of Bakweri chiefs in Cameroon:

'Geschiere has pointed out two reasons for the integration of chieftaincy, which was more or less a colonial creation, into Bakweri society: (1) chieftaincy was strengthened during British indirect rule and, even more significantly, (2) it became a potential rallying point against the 'strangers' who invaded the Bakweri territory in large numbers, attracted by the plantation economy created by the Germans.³¹ My study suggests that (3) the persistent struggle of the Bakweri chiefs since the 1940s for justice with regard to the expropriated Bakweri lands may have been an even more important factor for rooting chieftaincy in local society. While chiefs in Anglophone Cameroon have been officially transformed into 'auxiliaries' of the state in the aftermath of independence and reunification and most chiefs maintain close links with the ruling party,³² my case study proves that *Bakweri chiefs cannot be characterised as mere puppets of the regime.*³³

Three further important themes emerge here that will return in other chapters:

- *The African chief has his own, considerable power base which is in principle independent from the modern national state and cannot be reduced to the latter.*
- *Transformations during the colonial and post-colonial period have given chiefs the opportunity to pose as the true and obvious representatives of their people, thus bridging any cleavages of class, exploitation and violence which in all likelihood characterised the relations between the population and today's chiefs' pre-colonial predecessors, in the eighteenth and nineteenth centuries CE.*
- *Increasingly, the interaction between African chiefs and the outside world, especially the post-colonial state, takes place indirectly, via the medium (or interface) of non-governmental formal organisations (particularly: ethnic and regional associations,³⁴ political parties, and North Atlantic dominated NGOs³⁵), whose formal constitutional*

³¹ Geschiere 1993: 165-166 (reference in the original).

³² Geschiere 1993: 166-169; Fisiy 1995: 57-59 (reference in the original).

³³ Van Rouveroy van Nieuwaal 1996: 39 (reference in the original); italics added, WvB.

³⁴ This aspect is also stressed in Nyamnjoh's contribution to the present book. For a detailed recent study of the interaction between African chiefs and non-governmental ethnic and religious organisation, see also: van Binsbergen 1999, 2003.

³⁵ Cf. the settlement of the Nanumba/Konkomba conflict in northern Ghana by the intercession of international non-governmental organisations, as described in the Peter Skalník's contribution to the present book.

structure and logic makes them workable in the modern world, while their membership, implied ideology, and informal actual functioning can still accommodate time-honoured particularities of ethnic and chiefly allegiance.

I shall come back to the last point below, under the heading of agency; there I shall offer a theoretical explanation why formal organisations should play this particular role.

These themes also reverberate in the contribution by NICODEMUS AWASOM. He examines the vacillating fortunes of twentieth century Mankon *fons* (kings) in Cameroon vis-à-vis the colonial and post-colonial state. He does this from the converging perspectives of power relations, legitimacy and legality. The traditional rulers of Mankon derive their legitimacy and authority from pre-colonial roots, while the modern nation state is a creation of, and the successor of, the imposed colonial state. Van Rouveroy van Nieuwaal has examined the hybrid role of African chieftaincy and the judicial poverty or void to which the institution is exposed. He has perceived the evolution of power relations between African chiefs and the modern state as ‘a zero-sum game’, in that the expansion of state power mostly seems to take place at the expense of that of the chiefs. This view implies the progressive erosion of traditional authority, their only condition of survival being their ability to adapt to the changing reality, both inwardly towards their own people, and outwardly towards the state. Traditional rulers are thus regarded as units that are continuously in the process of satisfying both the state and their subjects, and that attempt to strike a balance between the two for their own survival.

Awasom examines how the twentieth-century *fons* of Mankon have demonstrated extraordinary resilience, by continuously adopting to new forces that often threatened to marginalise or obliterate the *fons*’ existence. In the colonial era, the relationship between the *fons* of Mankon and the state quickly evolved from symmetrical to asymmetrical, as a result of the rise of new forces that emanated from rapid globalisation, and the deliberate violation of colonial statutes in favour of *Realpolitik* or pragmatic administration.

Awasom’s paper has interesting cross-linkages. The author’s namesake (Stephen Anye Awasom: presumably his father, uncle or grandfather) features as one of the modern educated elite mediated, in the 1950s, between two members of the traditional elite. And the Mankon *fons* also return in another contribution to this book, by Francis Nyamnjoh.

Awasom particularly reveals the dangers of the African chiefs’ common entry into national modern politics:

‘Since the introduction of the new multiparty culture in the 1990s, however, the *fons*’ sacred position has been subjected to aggressive demystification. This has been the direct result of their open involvement in the new multi-party politics on the side of the government party, which was highly contested by the overwhelming majority of the people. As the *fons* have been unable to please both their subjects and the government simultaneously, they have thus found themselves caught between Scylla and Charybdis. Ultimately, neither the people of Mankon nor the modern state could reliably and fully guarantee the traditional integrity of the *fons*. The *fons* on the other hand had to depend upon both to legitimise their position, but due to the fact that they often tended to favour the state, they ultimately became labelled as puppets.’

Another theme emerges from Awasom’s paper:

- *While it is an accepted view in the study of African chieftaincy that chiefs and the state are engaged in a battle over each other’s legitimacy, we should not overlook another struggle for legitimacy: that among the chiefs themselves.*

The colonial state made no secret of the fact th³⁶at it was a repressive conquest state with adequate military backing. It was less interested in legitimating itself in the eyes of the African subjects (as distinct from citizens), than in controlling – through a policy of divide and rule – the chiefs as potentially dangerous sources of a local, parochial power. Succession disputes and disputes over areas of jurisdiction and competence received ample attention from the part of the colonial administration and thus found their way into the archives. Among twentieth-century African national states, the Republic of South Africa has persisted longer than any other in maintaining the repressive features just outlined, and it can be no accident that Barbara Oomen in her contribution to this book signals the following trend:

‘The existence of two rival chiefs forces both to gain the support of the populace, through decisions that the public opinion can perceive as wise, and through policies that the public opinion can perceive as acceptable. If support is not found, people can, and will, change sides. *In these subtle processes, the [South African] state, for all its heterogeneity, generally supports the candidate whose reign is disputed by his subjects.*³⁷

Is the interaction between chiefs and the post-colonial state a zero-sum game?

Like Nolte, Awasom makes reference to a cherished idea of van Rouveroy van Nieuwaal: the conception of the interaction between chiefs and the post-

³⁶ Van Rouveroy van Nieuwaal 1999c: 24-26.

³⁷ Italics added, WvB.

colonial state as a zero-sum game, which apparently leaves the chiefs no option but to adapt virtually unconditionally to the state. Awasom confirms the zero-sum-game interpretation but his own findings meanwhile suggests a rather more complex picture:

‘The *fons* survived, not through direct confrontation with the colonial state, but by persistently asserting their claims to traditional legitimacy. They did so by seeking legal redress through petitions and by falling back on their subjects for defence, while avoiding any direct confrontation with the state. In the post-colonial era, the *fons* of Mankon successfully blended modernity and traditionalism by compromising with the constitutional and legislative instruments of the modern state while still adorning themselves with the traditional support structures of their power.’

This is clearly not the description of a zero-sum game, because it implies not one stake (e.g. ‘the overall amount of legitimated power within society’), but at least two different stakes (on the one hand constitutional legal authority, on the other hand traditional authority), in a game whose outcome and rules are not entirely defined by the state but are subject to change, negotiation and initiative from both sides as the game evolves.

The point is of considerable importance, for the assumption of a straightforward, simple zero-sum game immediately implies that we are at a loss to understand the remarkable survival and resilience of chiefs in twentieth-century Africa, and after. For surely, if it were so simple, *why does the state not once for all annihilate the chiefs and impose, one-sidedly, and on the basis of its rationalistic logic, its own compelling conditions on the national political and ideological process?*

Figure 1 is a schematic rendering of a zero-sum game. Two parties A and B are in competition over a limited resource, C. Out of the entire range of possible outcomes, the figure singles out three: (1) A wins nearly all of C, at B’s expense; (2) A and B take equal shares of C; (3) B wins nearly all of C, at A’s expense.

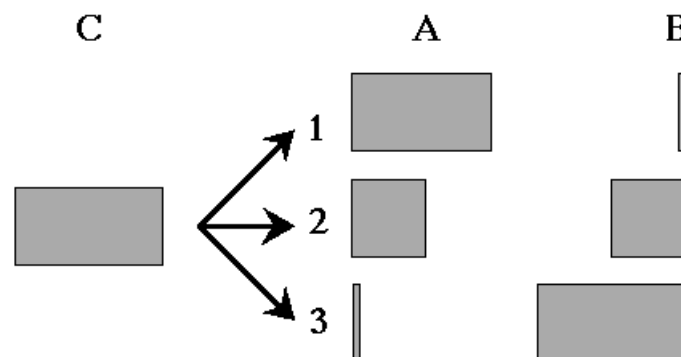


Figure 1. Minimum representation of a zero-sum game.

Applied to the specific case of twentieth-century African chieftaincy, Figure 1 can be said to present a simple zero-sum game model for the interaction between

- A: the post-colonial state and
- B: the chiefs, over
- C: the overall amount of legitimated power within society.

Three outcomes are envisaged:

1. Virtually all legitimated power within society goes to the post-colonial state;
2. post-colonial state and chiefs have each an equal share of legitimated power within society;
3. virtually all legitimated power within society goes to the chiefs.

Underlying such a zero-sum model is a highly mechanical, aggregate conception of the process of legitimate power in any society, without taking into account the complex and contradictory nature of ideological and legitimization processes. Why should the state seek legitimation? Mainly,

- in order to constrain open conflict within its territory to manageable proportions, and
- in order to secure for its senior personnel (on the basis of their being perceived as empowered by ‘the will of the people’) recognition by and access to international bodies which judge a state’s acceptability by criteria of constitutional performance, observance of human rights, democratic exercise of power, rightful exercise of justice, etc.

Without such legitimation, no rule of law can be claimed to exist. Such legitimation, in terms of what Weber³⁸ defined as legal authority, is of a very different nature from that which the chiefs claim as basis of their own position. The chiefs’ exercise of power and justice amounts to traditional authority, in other words it is legitimated because their position (provided the proper procedures of selection, enthronement, and subsequent protocol were observed) is seen as the embodiment of the fundamental structure of society and of the world. The chief is considered to be at the hub of a cosmology that regulates the dispensation and circulation of power among humans and in the world at large. This cosmology sets the conditions for order, fertility, morality and

³⁸ Weber 1969.

purity, and in its turn depends on these conditions for a proper functioning. Under twentieth-century conditions of state incorporation, most African chiefs have come to depend on state recognition for their functioning at the regional and national level. However, their legitimation derives from the local level in the first place, to such an extent, that chiefs may defy state recognition and still be chiefs.

Related examples from western central Zambia³⁹ may demonstrate this point. The lands of western central Zambia were incorporated in the Lozi (Barotse) state, during and after the Kololo intermezzo (1840-1864) and right into the first decades of the twentieth century, when Barotseland was a Protectorate within the then Northwestern Rhodesia. In the process, some local rulers (belonging to a dynastic cluster that was increasingly associated with the emerging ethnic name of 'Nkoya') came to be considered as senior members of the Lozi aristocracy; as a result they shared in the state subsidy stipulated by the Barotse Treaty of 1900. Other local rulers however saw their titles abolished. Their legitimacy was thus denied by both the Lozi indigenous state and by the colonial state. The most prominent of these titles was *Mwene* ('king', 'chief') Shakalongo of the Luampa valley. However, ideologically and ritually these apparently abolished chieftainships lived on, albeit that they were temporarily invested in what for the outside world were mere village headmen. In the last quarter of the twentieth century, the Nkoya went through an intensified ethnic revival. Partly through the action of the Kazanga Cultural Association (a creation of the Nkoya urban elite), the Shakalongo title was formally reinstated, after almost a century. The same Nkoya militant action brought the recognised chiefs *Mwene* Kahare and *Mwene* Mutondo, and their increasingly vocal educated and urban followers, in direct confrontation with the Lozi chieftainship of Naliele. The latter chieftainship had been provocatively created by the Lozi Paramount Chief smack in the middle of Nkoyaland in the 1930s; in the 1950s-1960s its incumbent was Chief Mwendaweli, who prior to his accession had been Gluckman's principal research assistant around 1940. The 1980s-1990s saw much violent action, the sudden death of the chief of Naliele under suspicious circumstances, mass detention of Nkoya militants, the discontinuation of the Nkoya chiefs' state subsidy, and the refusal, on the part of the Lozi Paramount Chief, to recognise the new (by local standards perfectly regular) incumbents in the thrones of Kahare and Mutondo. But regardless of such outside recognition, these chiefs continued to be considered as eminently legitimate by their people, and they have functioned as rallying points in the ethnic struggle even more than ever before.

These examples could be multiplied by the thousand, from all over twentieth-century Africa. Clearly, the interaction between chiefs and the (senior personnel of the) post-colonial state is not about one monolithic scarce good; it is not about 'the overall amount of legitimated power within society'. Both categories of actors appear to be in pursuit of a different specific mix of scarce goods such as generally recognised in their national society and far beyond (e.g. power, prestige, honour, blessing, wealth, security, health, sexual gratification, self-esteem), and one side often features as a resource for the

³⁹ van Binsbergen 1992, 1999, 2003.

other side. Once again, there cannot be a zero-sum game if the players play for different (if overlapping) stakes, and play by different and changing (if overlapping) rules.

Beyond this formal point, it is important to realise that legitimation is essentially a quality of being found to be in accordance with a set of rules and meanings held collectively by a particular set of people. Which set? I have highlighted one such set as consisting of (the functionaries serving at) international bodies, but this set is largely irrelevant at the level of chieftaincy; hence the news value of the *Meru Land Case* which we shall discuss below. Senior state personnel at the level of the modern national state constitute another such set, and although they largely determine legitimation vis-à-vis the state, their relevance for local-level legitimation is slight. A Zambian chief who has not been gazetted in his country's *Government Gazette* cannot claim legitimacy from the perspective of the state; hence he cannot enjoy a state subsidy, or membership of a representative body such as the House of Chiefs, cannot claim government transport at the regional level, etc. But the legitimacy he carries in the eyes of his subjects is scarcely if at all effected by his not being gazetted. To be precise, *in the eyes of his subjects the chief's legitimacy is only negatively effected by state rejection in so far as the state's conceptual framework of legal authority has been internalised by the subjects*. The extent of such internalisation differs with education, class, profession, urban or rural residence and experience, etc. What has been true for a rural backwater like western rural Zambia throughout the twentieth century (the idea that a chief's legitimation cannot depend on state recognition), may well have been already obsolete among highly urbanised and educated sections of the population of Nigeria or Cameroon in the 1950s, as some of the studies in the present book suggest.

The reverse perspective also applies, and I suspect it to have been applicable to much of Africa during much of the twentieth century. A rural majority, and a sizeable minority of urban traditionalists, assess the state and its personnel from the same perspective of traditional authority as these people apply to their own chiefs. The consequence can only be that they deny the state all legitimacy.⁴⁰ For no coherent, time-honoured cosmology underlies the state's procedures, or the selection and performance of its incumbents. Instead, these procedures are generally known to be used for self-enrichment and other

⁴⁰ This is not an imposed, outsider's *etic* argument from first principles. I am rendering here, in discursive text, the ideas and arguments which I have heard express by hundreds of interlocutors in the course of very close association (eventually as Mwene Kahare Kabambi I's adopted son, under the name of Tatashikanda) with royal and traditionalist circles in the chiefly capitals and commoner villages of Kaoma district, Zambia, throughout the 1970s, 1980s and 1990s. Also cf. van Binsbergen 1986b, 1995, and in press.

forms of gratification, and to be invaded by venality. And as a result (at least, this is what the traditionalist logic sees as the result), the state does not create order but chaos and bloodshed; does not enhance fertility but brings about drought, crop failure and AIDS; does not seek or establish purity but borders on sorcery; and threatens rather than enforces morality. Viewed from a traditionalist chief-centred perspective, the post-colonial state is utterly illegitimate, and devoid of cosmological meaning.

Realising that this is the perspective of many national citizens, the state can do one of two things. It has the long-term option of grooming these people to a greater internalisation of legal authority, through education and intensive participation in such formal organisations as schools, hospitals, state courts, churches, and enterprises. This solution has much to recommend it, notably the constitutional history of Western Europe over the past two centuries, when a similar itinerary was followed. There is however the risk that Africans, enlightened to the letter of legal authority, will object to its free and selfish interpretation in the hands the state personnel, and oust them from office.

Although introducing elements of hybridity and contradiction which in principle upset the modern state's rationality (but so do clientship, corruption, mismanagement, coups, civil war, warlordism, and genocide), the short-term solution for the state's lack of traditional legitimacy is much cheaper, and far less risky. It has been increasingly popular among post-colonial African states: *co-opt the chiefs as sui generis sources of traditional authority, and use them to prop up the state's legitimacy in the eyes of the rural and traditionalist population.*

As a result the chiefs in post-colonial Africa often yield far greater power than in fact is assigned to them according to the modern constitution of the national state.

In the light of these considerations, Figure 2 appears to be a more adequate rendering of state/chiefs relations. Not some unique scarce good conducive to a zero-sum game is at stake, but at least two irreducibly different scarce goods, one controlled by the state personnel, the other by the chiefs.

This model allows for a great variety of outcomes of chiefs/state interaction, far more complex than the zero-sum game model. For instance (see Figure 2):

- The power domain of the post-colonial state and that of the chiefs interpenetrate to a great extent and one reinforces the other⁴¹ – it is

⁴¹ Examples of this may be found in the present book. For instance in Nolte's detailed discussion of Nigerian chieftaincy it becomes clear that:

difficult to say whether the post-colonial state legitimates the chiefs or, alternatively, the chiefs legitimate the post-colonial state, but the effect is that both thrive and expand;

- the post-colonial state has all but eclipsed the power sphere of the chiefs, and such little power as the chiefs retain is largely accommodated to the post-colonial state;⁴²
- the post-colonial state and the chiefs have each retained a rather distinct sphere of power, with little overlap and little mutual accommodation.

The African chiefs can only add extra legitimation to the state (or, reversely, can only expose the shallow legitimation of the state), to the extent to which in the eyes of all involved (i.e. the state personnel, the chiefs, the latter's subjects, and the population at large) there is a very close identification between the chiefs and their people. Such identification is, for instance, a central theme in Perrot & Fauvelle's splendid recent collection on African chieftaincy, *Le retour des rois*.⁴³ The point of WIM VAN BINSBERGEN'S paper is that such identification, although often taken for granted in the literature on African chieftaincy, may largely be a recent construct, notably a product of

'traditional authority actively contributes to the negotiation and configuration of local, regional and even wider political identities, thus actively shaping Africa's political landscape below and beyond the level of state politics.'

and in de Haan's contribution:

'Later, in the first years of French colonial rule, Gourma society underwent further transformations. The French clearly realised that, although they did have a much larger physical presence in the region than the Germans had ever had, they could only rule with the aid of local chiefs. (...) The French thus actively interfered in the nomination of these chiefs and local chiefs became pillars in the collection of taxes, the recruitment of forced labourers, maintenance of roads, health control, justice and the introduction of cash crops. As a result the power of local chiefs increased: backed by the colonial administration they exploited their new tasks for their individual and family's benefit.'

Incidentally, the latter passage seems to suggest that the chiefs' power did not already change radically under German rule, to begin with. This is not very convincing, in the first place because any superimposition of an over-arching colonial state is a radical infringement on the power of pre-existing local rulers; and secondly, because the Germans, in the first decades of European colonial expansion in Africa, tended to violently interfere with local social, political and productive matters. For a Tanzanian parallel case of early German colonial rule, cf. Huijzendveld 1996.

⁴² Cf. Awasom in the present book:

'Throughout the twentieth century the *fons* of Mankon have been entangled in a web of nation-statism inaugurated by the colonial presence. As this article has shown, the *fons* have found it extremely difficult to manage their political space. The presence of an all-encompassing modern state clearly implies the limitation of the *fons*' scope of action within new politico-legal frameworks.'

⁴³ Perrot & Fauvelle 2003.

twentieth-century state incorporation. It need not reflect a constant cultural feature dating back to pre-colonial times. In line with the twentieth-century transformation of African chieftainship which is generally acknowledged throughout this volume, he addresses two forms of discontinuity which often have gone unrecognised:

- discontinuity (ethnic, linguistic, cultural, ideological, symbolic) between chiefs and people, and
- discontinuity between precolonial, colonial and post-colonial chieftaincy.

Van Binsbergen demonstrates that the elaborate and seductively beautiful culture of royal courts in western central Zambia in the eighteenth and nineteenth centuries was based on exploitative and terrifying violence exerted by the courts upon the commoner villages, as the radical denial of the self-regulating, pacifist kinship order of the commoner villages.⁴⁴ This leaves him to explain how, a century later, people and chiefs have come to be identified so inseparably:

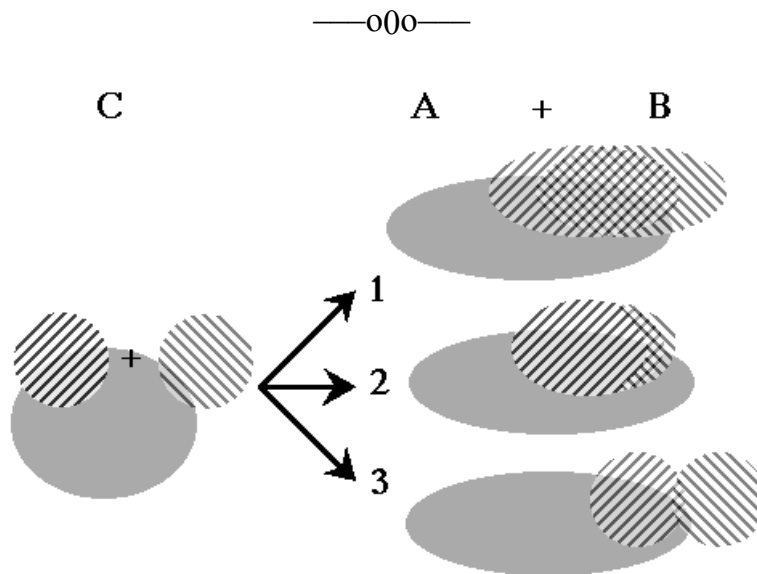


Figure 2. The relations between chiefs and the post-colonial state conceived as the interaction between at least two irreducibly different defined, sui generis forms of legitimate power

A = the post-colonial state (///) and its legitimate power on the basis of legal authority. B = the chiefs (\\) and their legitimate power on the basis of traditional authority. Continuous grey: various other sources of economic, media, religious, domestic, parental, etc. power in society. C = the inherently heterogeneous, perspectival, kaleidoscopic complex of power in society.

⁴⁴ Cf. van Binsbergen 2001.

‘It is very likely that the successive incorporation, more or less at minority status, in the wider state systems of the Kololo, Luyana and British, served to blur the cultural and structural distinctions between the ‘Nkoya’ court and the local villages, since now the court was no longer the exploitative ‘other’ but, to the contrary, the instance from which the local population increasingly derived their ethnic name and identity amidst the inimical and exploiting wider world. From an exploiting and terrifying stranger, the *Mwene* had become the hallmark of local ethnic identity.’

Structure or agency?

The contributions discussed so far have sought to present a combination of historical narrative and structural explanation. In the latter respect they are indebted (directly or distantly) to the tradition of classic mid-twentieth century anthropology, associated with the names of Evans-Pritchard and Fortes, and with the model of social organisation these authors explored in their ethnographies.⁴⁵ However, that tradition scarcely outlasted the generation that produced it. Before the 1950s were over, the major works of the Manchester School had been published or at least written (in the form of PhD theses awaiting publication). In those works not enduring and anonymous social structure was stressed, but *the inchoate nature of the social and political process*. In this innovative perspective, actors were no longer considered to act out, blindly and docilely, a script dictated to them by some all-encompassing, eminently authoritative ‘social structure’ or ‘society’ (*à la* Durkheim⁴⁶). Instead, actors were depicted as groping to find their way between the multiple and often contradictory opportunities offered to them by power relations, formal rules, economic constraints, the accumulated effects of earlier social events, and pure chance. The anonymous fiction of ‘society’ gave way to an image of the social process as a complex and essentially unpredictable social drama, whose protagonists had to be studied in great detail over years, paying attention to all the resources that kinship, locality, and political manoeuvring offered them; to the historicity of the shifts in these resources; and to their manifold accumulated effects, over time. *Agency* had, *avant la lettre*, entered the anthropological study of Africa, and of African law. Abandoning the idea of a set societal script, also meant that legal rules were relegated to the status of manipulable ideological resources, and that the road was open towards a new conception of African customary law. Not the rules but the process, both in court and outside, came to occupy the centre of scholarly attention. Since rules were manipulable, any formalised statement of ideal or practicable norms and rules would have to be deconstructed and critiqued just like any other actors’

⁴⁵ Evans-Pritchard 1967 (first published 1940); Evans-Pritchard & Fortes 1940; Fortes 1945, 1949.

⁴⁶ Durkheim 1912.

statements. Instead, the underlying structural regularities, the room for manoeuvre as well as the firm constraints, had to be detected by the researcher's own 'extended analysis'⁴⁷ of the social process, and particularly of such contradictions as come to the fore in conflicts and their settlement.

In these developments, which were at the heart of Gluckman's Manchester School,⁴⁸ Gluckman himself played a somewhat ambivalent role. As supervisor and senior colleague, he extended great theoretical and methodological inspiration as well as editorial and institutional support towards such authors as Clyde Mitchell, Victor Turner and Jaap van Velsen. Yet Gluckman's own ethnographic work, based on fieldwork in South Africa and Zambia in the 1930s and early 1940s, occasionally fell back upon an earlier, classic position and does not always offer the best illustrations of Manchester methods and insights.⁴⁹

We shall come back to these issues below when discussing African customary law. At this point, let us signal that the shift from structure to agency, while unavoidably implied in those contributions to this book that present an historical narrative of chiefs' performance in the colonial and post-colonial period, is particularly noticeable in the contribution by LEO DE HAAN. His paper on changing livelihoods in northern Togo continues a line of work implicit in that of van Rouveroy van Nieuwaal: the general anthropological description of West African societies within a time perspective. De Haan takes exception with a popular contemporary view. He argues that merely linking up with globalisation (i.e. getting connected to the global flows of information, capital, goods etc.), is not sufficient to make people in developing countries more successful in organising a decent livelihood. The logic of the neo-liberal consensus holds that poor communities need to be opened up in order to profit from globalisation and thus to develop. However, against the background of current globalisation studies, de Haan's paper argues that successful or unsuccessful linking up with the world system is not a matter of simply opening up, but the result of a delicate articulation of external economic and political forces and local livelihoods. Repeatedly, and rather convincingly, de Haan invokes the agency of labour migrants and elders in order to explain the results detectable through historical analysis.

Yet one suspects that there is another side to this coin. It would be eminently possible (and in the light of previous work,⁵⁰ decidedly tempting) to rephrase de Haan's analysis in the structural terms of the articulation of modes

⁴⁷ Van Velsen 1967.

⁴⁸ Cf. Werbner 1984.

⁴⁹ Cf. Brown 1979; Gulliver 1978; Kuper 1970; Macmillan 1995; van Binsbergen 1977.

⁵⁰ Meillassoux 1975; Gerold-Scheepers & van Binsbergen 1978; van Binsbergen & Geschiere 1985.

of production in Northern Togo. He seems to play with the idea himself; occasionally he cannot help himself and lapses into using the very word ‘articulation’. A balanced combination of agency with structure would do justice to the complexities and internal contradictions of the situation.

Agency is even more of an explicit concern in FRANCIS NYAMNJOH’s contribution on chiefs in Cameroon and Botswana. The situation of chiefs in twentieth-century Africa would become crystal-clear if we could only discard any assumption of enduring patterns of social organisation – patterns marked by inertia, in other words by the tendency to perpetuate and reproduce themselves, – and instead invoke an unbounded and apparently unstructured field of general agency, in which chiefs freely rub shoulders with national modern politicians, university graduates, journalists, members of cultural associations, etc. Such an approach would reveal the chiefs to be simply one category of actors in a vast and well-lit arena. Making the best of their resources, such chiefs could truly be said to be among the main forces to ensure, in Nyamnjuh’s words, that

‘Africans are simultaneously modernising their traditions and traditionalising their modernities’.

Following this lead we would be in a position to fully appreciate what van Rouveroy van Nieuwaal has treated under the heading of ‘syncretism’: the compromise between traditional local values and procedures, on the one hand, and, on the other, the forms imposed by the state. Van Rouveroy van Nieuwaal has identified such ‘a synthesis between antagonistic forces stemming from different state models, bureaucracies and world views’, as an important aspect of the transformation of twentieth-century chieftaincy:

‘If we consider chiefs as agents and chieftaincy as dynamic institutions, we are likely to be more patient towards ongoing processes of negotiation, accommodation and conviviality between continuities and encounters with difference and innovation on the continent. We would be less keen on signing a death warrant for or seeking to bury chieftaincy alive. Cameroonians and Batswana, like other Africans, have been quick to recognise the merits and limitations of liberal democracy and its rhetoric of rights, because of their lack of might under global consumer capitalism and because of the sheer resilience and creativity of their cultures. With this recognition has come the quest for creative ways of marrying tradition and modernity, ethnicity and statehood, subjection and citizenship, might and right.’⁵¹

However, while there is considerable truth and persuasion in Nyamnjuh’s analysis, one wonders whether such a radical shift of perspective, towards agency in an apparently unbounded homogeneous field, is enough to render

⁵¹ Nyamnjuh, contribution to the present book.

obsolete (to reduce to the status of non-issues) some of the questions that (however much Nyamnjoh dismisses North Atlantic Africanist scholarship) have occupied the intercontinental study of Africa for decades. *On the basis of what resources do the chiefs display their agency? Why is it that they appear, in their own eyes, in the eyes of their subjects, of the state, and of many others, as endowed with an independent power base which cannot be reduced to the modern national state? Why are the respect and the fear which chiefs inspire throughout Africa, able to survive in the face of state incorporation, even though all the basic assumptions of chieftaincy run counter to the modern state's rationalist logic of legal authority: ascription, inequality, cosmology, supernatural election and sanctioning, control over land and other natural resources, the responsibility to combat witchcraft, the association⁵² with witchcraft at the same time?*

Only a structural analysis can answer the question as to the power base of the chiefs' agency, in so far as this does not derive from recognition by the modern national state but lies in a dextrous display of traditional authority. Such an analysis would need to recognise a few home truths:

- *The socio-political field where the chiefs' agency is being exercised, is inherently complex, heterogeneous, and wrought with contradictions;⁵³*
- *while being in some respects continuous and of world-wide extension, that socio-political field is also, in other respects, compartmentalised and parochial; and*
- *in addition to the state and the forces of globalisation – and in direct response to the latter – local forces of identity and self-definition are at work; they use tradition not merely as an essentialist escape from reality (although, admittedly, any form of ethnic, regional or national consciousness tends to essentialism and needs to be analysed as such), but as a means to defy the alienating imposition of foreign form, the destruction of local meaning, and the denial of historical collective pain and humiliation.*

⁵² Cf. van Binsbergen 1987, 2001.

⁵³ 'Complex, heterogeneous, and wrought with contradictions'... While agency-centred transactionalism, with its implications on unbounded social space, general access, and in general the irrelevance of institutionalised social boundaries (assumptions which have come back to us in today's globalisation studies) cannot theoretically accommodate these unmistakable features of chieftaincy and of so many other aspects of contemporary African societies, there is at least one elaborate theoretical model which can: that of the articulation of modes of production. Cf. van Binsbergen & Geschiere 1985b (which contains an extensive interpretation of a Zambian chief's court from this theoretical perspective); van Binsbergen 1981b, 1992; and for the persisting theoretical merits of this approach: van Binsbergen 1998. It is for this theoretical reason, and not for any nostalgia vis-à-vis Marxism as such, that this approach returns in this Introduction, and also informs van Binsbergen's chapter in the present book.

We need to explicitly acknowledge the contradiction between two empirical givens:

- The state on the one hand, the chiefs (and the rural society they stand for) on the other, are caused to be in constant interaction with each other (which makes for merging and blurring of boundaries in actual political and economic practice, and creates the suggestion of a continuous field of interaction merely inviting strategies of agency, *à la* Nyamnjoh),
- yet at a level of the explicit conceptualisations, by the actors involved, the constant movement back and forth between what they *construct to be a distinct traditional domain as against a distinct modern domain*, warrants the view that two fundamentally different modes of socio-political organisation are involved here.

Table 1 presents the *etic* outline of an actors' model which, from the point of view of many traditionalist African actors, would seem to sum up the structural differences between chiefs and the post-colonial state :

post-colonial state	chief
legal authority (the letter of the written word)	traditional authority
impersonal	personal
universalist	particularist
imported within living memory	considered as local
culturally alien	considered as culturally familiar, self- evident
defective legitimation	self-evident legitimation
lack of cosmological anchorage	cosmological anchorage

Table 1. A model contrasting chiefs and post-colonial state from the viewpoint of traditionalist African actors today.

This model allows us to make an important point. *At least in the traditionalists' own perception, any interaction between post-colonial states and chiefs involves bridging two fundamentally different structures.* Ethnicisation, the elaboration of ethnic identity through invented traditions and formal self-organisation, is a familiar idiom in which such bridging takes place. But why should it be able to do the trick? The answer becomes clear once we have defined more closely what such bridging consists of. It amounts to the negotiation of aporetic conceptual boundaries (i.e. boundaries that are essentially non-negotiable in terms of the formal premises at play). Such

paradoxical negotiation takes place *through concrete interaction*. In this operation, objects and people are positioned at the conceptual boundaries between two systems, where they can serve as interfaces between the two. In the dialectics of social praxis, conceptually different domains are drawn, first, within such contradictory perceptions, motivations and exchanges as each single actor is capable of; and secondly, these contradictions are to be made convergent, predictable, and persistent over time by their being imbedded in the social organisation of these individual actors.

In other words, structural bridging inevitably requires, beyond conceptualisation, effective social organisation. The structure of the extended field within which the chiefs' agency is realised, is in the first place the social organisation of modern life in terms of formal organisations. These include the formal organisation of the state, but also the formal organisation of the chief's capital, of ethnic and cultural associations, of non-governmental organisations such as churches and development agencies whose actors interact both with the state and the chiefs. The *modern formal organisation* corresponds morphologically with the organisational logic of the state; at the same time, in the fields of ideology, symbolism, and personnel, it can maintain as much continuity as is needed towards structural domains that are conceived in terms of a logic totally different from that of the state (such as chieftaincy). Therefore the mode of mobilisation which structurally bridges state and chiefs had to take the form of a formal voluntary association.

Another example, taken from contemporary North Atlantic society, may further drive home the implications of this theoretical explanation. Even under conditions of high levels of commodification of public life, where a capitalist logic has penetrated many spheres of experience such as recreational behaviour, sexual behaviour, care for the sick and the dead, yet most people have insisted on perpetuating (in fact, in actively reconstructing and protecting) domains of personal and collective self-realisation where conscious measures are taken so that the capitalist logic of commodification, however all-pervasive, cannot dominate there. Love, friendship, the nuclear and extended family, healing, prayer, scholarship, come to mind as likely examples. The amazing thing is even that the entire demographic reproduction of the public sphere (in other words, the production of its human personnel) has always taken place in such secluded domains of intimacy. At this level of abstraction, we need not be surprised any more about the survival of African chieftaincy in the face of the logic of the state: in the North Atlantic region, the survival, not only of obsolescent remnants of aristocracy, but of such a massive and vital phenomenon as the nuclear family, is essentially in the same analytical bracket. While the nuclear family is (as yet) indispensable for demographic reproduction, it interfaces with the state and the public sphere through formal

organisations such as schools, hospitals, churches, recreational associations, commercial enterprises and enterprises offering paid or voluntary employment. These formal organisations, on the one hand, emulate the organisational logic of the state and capitalism, on the other hand, in terms of contents, personnel recruitment, and their underlying ideology, can be finely tuned to the (always changing) cultural values implied in family life.

So far, in a nutshell, a possible structural analysis serving to complement an analysis of contemporary African chieftaincy in terms of agency. However, even a structural analysis would need to be brought to life by the application of such lessons concerning agency as Nyamnjoh's contribution contains.

Much of the early work of van Rouveroy van Nieuwaal was concerned with the exploration of processes of adjudication in chiefs' courts in northern Togo. This led him on the one hand to extensive and seminal studies of chieftaincy, on the other hand to reflection on the nature of law in Africa. It is to the latter topic that we now turn.

The nature of customary law

BARBARA OOMEN's paper deals with local laws that concern the power and authority of traditional leaders in Sekhukhune, in northern South Africa, and their dynamic relationship with official 'state law'. In addition to the topics discussed above, Oomen thus addresses another leading theme in van Rouveroy van Nieuwaal's oeuvre: the interaction between formal, codified state law and local living norms. Taking her cue from his ideas on 'syncretism', the paper assesses how local, customary legislation exists in relation with official state legislation. It does this by examining legislation that determines the position of traditional leaders in post-apartheid South Africa, in the area of Sekhukhune. It is argued that local, customary law is continuously negotiated. In a subtle manner she describes the complex legal scene at Sekhukhune. She provides apt, original and convincing illustrations of some of the most fundamental insights which have been gained in the field of African customary law over the past few decades, including the processual nature of local law, and the dependence of legal resources on general community resources. She manages to take some of these insights considerably further. As a window on how, at the local and regional level, law is shaped by the recent (post-apartheid) transformation of South Africa, and how law in its turn helps to shape that transformation, the article is very illuminating. It introduces a number of useful distinctions that may well find their way into the wider literature.

Oomen notes the obsolete rigidity with which the South African state and its Government Anthropologists (apparently even years after the attainment of majority rule) have, almost fetichistically, clung to the conception of customary law as the straightforward application of rules (rules which, moreover, are supposed to be highly specific and distinctive for a particular ethnic group as once defined under the apartheid state):

‘In practice, the department’s anthropologists check the candidates against the files of genealogies they possess – which are already computerised at national level – and against the relevant anthropological handbooks and customary law textbooks. If the candidate put forward does not comply with the requirements of the official customary law contained in these texts, a candidacy will generally be refused.’

In this light, a new application is found for the insight⁵⁴ that succession, in the context of South Central and Southern African chieftaincy, amounts to the selection, from among a pool of eligible candidates, of the candidate who is most suitable in terms of such contemporary concerns as personal achievement (education, experience, character etc.), while the outcome is yet pretended to be ascriptive and rule-driven. One wonders, however, whether this is really such a timeless general principle as Oomen suggests:

‘The Sekhukhune succession disputes demonstrate how people try to couple ascription and achievement and pursue good governance by first selecting – from among a limited pool of candidates – the best candidate, and subsequently legitimising his claim in terms of customary law.’

For, given the South African state’s fixation on succession rules, and its control over the recognition of chiefs, an alternative interpretation of the evidence might be the following. South African chiefs and their electors have no choice but to stress, before the state, that chiefly election, once made, was entirely determined by the traditional ascriptive rules. However, in other contexts when the state officials are not breathing down their necks, the electors might be prepared to consciously admit that an element of achievement and agency does play an important role. Would not the insistence on ascription be partly a product of the recent history of South Africa, notably its heritage of a particularly vicious, paternalistic and racist state? In that case one would expect that the emphasis on ascription as the ultimate factor in succession is not laid to the same extent as in South Africa in other parts of the rather continuous cultural region of Southern and South Central Africa. It is my impression that such an expectation is borne out by the ethnographic evidence.

⁵⁴ Cf. Gluckman 1963; Goody 1966; Holy 1986; Parson 1990; van Binsbergen 1992.

If legal syncretism includes the borrowing of cosmopolitan or colonial forms in order to revive and contest local institutional contents, than another example of this phenomenon is presented in CATHERINE BAROIN's paper. She describes how, on the southeastern slopes of Mt. Meru in Northern Tanzania, a small tribe of Bantu-speaking farmers, the Rwa (or Meru), became famous in 1952 for challenging the British in a legal case brought to the UNO in New York, the *Meru Land Case*. One outcome of this struggle was that the Rwa created an apparently brand-new 'traditional' form of chieftaincy of their own, in order to thwart the official colonial power operating through established but disputed local chiefs. From the start, this new form of chieftaincy was associated with a 'constitution', following an idea first suggested by the British, as they endeavoured to set up 'local governments' for each 'tribe' they were ruling in Tanzania. Baroin outlines the history of both this new format of chieftaincy and its written constitution, which still operate to this day and play a significant part in local public life.

In a context where the common African custom of deferment of bridewealth payment raises puzzled comment, one does not expect a strong historical awareness of pre-colonial local forms of authority. As a result, the alternative form of Rwa chieftaincy is depicted as a contemporary innovation which came entirely out of the blue. Also the British-inspired, formal constitutional format by which this institution is underpinned, suggests a thoroughly recent thing. Yet I believe that underneath these contemporary trappings a long-term historical process can be detected that has occurred widely in Africa. It consists in the tension between two forms of socio-political organisation which in many parts of Africa appeared in succession in the process of pre-colonial state formation:

1. Pacifist reconciliation and sanctuary based on a ritual relation with the earth – in the symbolic elaboration of this legal-political institution (usually at the sub-national, clan level) androgynous themes may be observed, as well as oath-taking, and leopard(-skin) symbolism;⁵⁵ as against,
2. A violence-based, tributary legal order in the hands of rulers – in the symbolic elaboration of this legal political institution (usually situated at the

⁵⁵ The specific ethnographic cases include North African saints (Gellner 1969); the Nuer leopard-skin chief (Evans-Pritchard 1967); and Zambian rain shrines (Colson 1960; van Binsbergen 1981b). My projection of the Zambian Nkoya case (see my contribution to the present book) onto the Rwa situation is not without grounds. The Nkoya show continuities with northeastern Tanzanian political institutions, e.g. an early Nkoya ruler Likambi was known as 'the Mangi' (a term meaningless in the contemporary Nkoya context but the generic term for ruler among the Rwa), while the *kazanga* royal harvest festival is also reported under the same name from northeastern Tanzania (van Binsbergen 1992; Huijzendveld 1996). Under this extended royal complex I suspect South Asian influences, which are also hinted at by the name Mt. Meru itself – identical to the world mountain of South Asian mythology.

national level, above individual clans) masculine themes are emphasised, as well as formal court proceedings, and lion symbolism.⁵⁶

Considered in this light, the legal syncretism of the Rwa case as described by Baroin appears to have a further dimension in that the modern constitutional form revives a mode of pacifist reconciliation that has existed on Tanzanian soil for hundreds if not thousands of years, until it was eclipsed by pre-colonial rulers or colonial chiefs of a more articulate royal type.

The Rwa apparently realised that, if they were to supplant the existing form of colonial-backed chieftaincy by another chiefly institution of their own preference, they would need the best possible outside patronage they could get: the state itself. I suggest that it may have been this agency-driven strategy, as much as what Baroin invokes as ‘the strength of the national feeling in Tanzania, which is a prevailing attitude throughout the country’, which explains the wonderful phenomenon of an older form of informal clan chieftaincy being revived through a modern constitutional format.

Not legal syncretism, but the very nature of disputes and dispute processes – which has always been at the core of legal anthropology – is the topic of KEEBET VON BENDA-BECKMANN’s contribution to the present book. Over time, legal anthropologists have advanced different reasons as to why disputes should be important to them. The work of van Rouveroy van Nieuwaal is argued to reflect these shifts: starting out with his doctoral dissertation on marriage and inheritance disputes in northern Togo, his work, especially that on chieftaincy in West Africa, has reflected the more general move, away from an interest in institutions of dispute management, and towards the wider political contexts in which the validity of various normative orders are reconstituted, contested, and merged.⁵⁷ Against this background, Keebet von Benda-Beckmann traces the general development in the study of dispute behaviour in legal anthropology. She reminds us how in the more recent literature, courts of law are no longer primarily considered as institutions of conflict settlement:

‘Rather than continuing to accept that people carry out disputes because they simply wish to settle them, it became clear that people have a variety of reasons for taking their particular dispute to a particular institution. It was pointed out that some people have for instance political motivations for going to court; others may have more personal reasons; and yet others simply wish to have their day in court and be publicly heard, whatever the outcome of the trial; and some, indeed, wish to settle their dispute. On the whole it was no

⁵⁶ Cf. van Binsbergen 1981b, 1992, in press, and contribution to the present book.

⁵⁷ Van Rouveroy van Nieuwaal 1987, 1996, 1998; Ray & van Rouveroy van Nieuwaal 1996a.

longer taken for granted that the role of courts and court-like institutions was dispute settlement.’

In particular, Keebet von Benda-Beckmann highlights the increasing emphasis on the environments (social, political, legal) in which disputes evolve:

‘Over time the environments in which disputes are carried out have been increasingly recognised to be important for the understanding of disputing behaviour. *Over the past thirty years the analysis of disputes has become increasingly sophisticated.* These environments have a temporal and a local perspective. They also have normative and cognitive aspects. The contexts in which people operate in disputes and outside them, are made up of persons, who explicitly or implicitly argue and operate in different idioms referring to normative or legal orders that often are highly fragmented. The combinations in these plural settings are often contested and are not always fully understood by the participants of disputes themselves.’⁵⁸

Assuming a growth of sophistication, our author implies an optimistic, Popperian view of the steady and unilineal accumulation of scientific insight. Such a view has not exactly gone uncontested in recent decades.⁵⁹ Keebet von Benda-Beckmann seems to suggest that the phenomena under study (disputes in African court contexts) have remained fairly constant, while as a result of much scholarly scrutiny and reflection the true nature of these phenomena was more and more revealed to legal anthropologists. However, legal anthropologists are actors on the local, regional, national and international scene in Africa, just like the people they study in and out of court. The disputes on which legal anthropologists focus, focus less, or no longer focus, are set within a continuously changing and widening African socio-political context whose structure has undergone tremendous changes. In the course of the twentieth century it has become trapped more and more in the clutches of globalisation, with the concomitant decline of African national states and economies.

I submit that it is not only the legal anthropologists who have changed their mind, but that also the very disputes they have studied have undergone fundamental changes over the decades. Did the earlier legal anthropologists have it all wrong, or did the colonial chiefs’ courts really revolve around conflict settlement to a markedly greater extent than they do today? Did the earlier legal anthropologists simply overlook forum shopping and the wider social process (in Keebet von Benda-Beckmann’s terms, ‘the environment of disputes’) in which any particular court case would be embedded? Or was the relative autonomy of the court vis-à-vis its local social environment more of an empirical fact in colonial times (when conceptions of power and justice were

⁵⁸ Italics added, WvB.

⁵⁹ Foucault 1969, 1970, 1980; Kuhn 1962; Lakatos & Musgrave 1970; Popper 1959.

little negotiable, backed up as they were by the colonial conquest state), than it can ever be today, with the decline of the post-colonial state, the people's greater internalisation of legal authority, the onslaught of globalisation, the effective expansion of a cash economy geared to globally circulating manufactured products, and the increasing deepening of ethnic and regional conflict, in the final quarter of the twentieth century?

The final contribution on legal anthropology is by FRANZ VON BENDA-BECKMANN. He returns to a theme that has dominated the Dutch 'Folk Law Circle' for decades and that has also played an important role in van Rouveroy van Nieuwaal's work: legal pluralism. Franz von Benda-Beckmann's paper is ethnographically rooted in Indonesia, but it takes a comparative view, and addresses a problematic that has great relevance for van Rouveroy van Nieuwaal's fieldwork area in northern Togo, and indeed for Africa as a whole. The paper looks at the role of Islamic law, and seeks to define the lessons that the study of legal pluralism could draw from the case of Islamic law. Religious law, and Islamic law in particular, has largely been neglected in discussions of legal pluralism. In Indonesia, for instance, most attention has been given to the discrepancies and struggles between, on the one hand, the local, regional and/or ethnic laws (usually called *adat* or '*adat* laws'), and, on the other hand, the law of the colonial Netherlands East Indies, and of the post-colonial state of Indonesia. That country provides interesting counterpoints to the history of Islamic law in African and Arab countries, and indicates additional variations of plural legal constellations within one state. Franz von Benda-Beckmann's paper is based on ethnographic research conducted in two very different regions of Indonesia: Minangkabau in West Sumatra, and the Island of Ambon, in the Central Moluccas, Eastern Indonesia. In these two areas, Islam and Islamic law have different meanings in the daily life of villagers. At a general level of social organisation, the relationships between state law, *adat*, Islamic law, and on Ambon also Christian law, are quite different. In fact, they are counter-intuitive. For despite the strong cultural basis rooted in the common *adat* of both Islamic and Christian villages on Ambon, the relations between *adat* and the religious life differ considerably. The relation between *adat* and Islam in Minangkabau turns out to be quite different from that on Ambon, and in fact much more resembles the relation between *adat* and Christianity as found in the latter context.

From his analysis, Franz von Benda-Beckmann extracts five points that are of considerable relevance for the study of Islamic law in African contexts of legal pluralism, and that are likely to find their way into the wider comparative literature on the subject:

- 'First, in many regions of the world, Islamic law was present, and had to find an accommodation with pre-Islamic and non-Islamic laws, *before* the introduction of a state and state law of the European, colonial type. Legal pluralism usually antedates the establishment of a modern state. (...)
- Secondly, Islamic law has its own ideology of legal centralism. (...) It should therefore be taken into account that in plural legal conditions there can be a plurality of legal constructions that demarcate the respective spheres of validity of legal systems. (...)
- Thirdly, Islamic law appears to be a wide umbrella encompassing quite different constructions of what Islamic law is.'
- Fourthly, Franz von Benda-Beckmann points to a factor which we have already encountered repeatedly above under the heading of 'syncretism': 'to some extent, local traditional ideas about family relations, inheritance or contracts could be incorporated into Islamic law by creating new legal forms or fictions that gave Islamic legal validity to originally non-Islamic forms of contract. (...)
- Fifthly, Islamic law is transnational law. Hybridisation, creolisation and glocalisations of transnational law have been frequent phenomena throughout the legal histories of those societies and states in which Islamic law was present.'

With these contributions to legal anthropology in the narrower sense, the persistent core of van Rouveroy van Nieuwaal's work has been addressed interestingly and constructively. Let us now turn to a topic which is rather an implied aspect of disputes and chieftaincy in Africa: violence.

The role of violence

Violence sets the background for PETER SKALNIK's evaluation of the coexistence of the two ethnic groups, the Nanumba and the Konkomba, which have been co-residing in the territory of the Nanumba district, northern Ghana, for more than fifty years. Most of this time the coexistence was peaceful though tense, some years however were marked by armed conflicts (1981, 1994, 1995). In particular, the role of the British colonial and various Ghanaian governments vis-à-vis the relationship between the Nanumba and the Konkomba is analysed, as the quality of the coexistence turns out to have depended, at any one time, on the particular political regime at the national level.

Violence also turns out to be the limiting factor of the Tanzanian case described by Baroin, although a further analysis had to remain outside the scope of her contribution to the present book:

'However, tribal unity was greatly jeopardised in the early 1990s by a violent conflict that erupted among the Rwa over the control of the Lutheran diocese on Mt. Meru. (...) A lingering dispute followed between the authorities of the official Lutheran church on the one hand, and the 'rebels' who started a new independent church on the other hand. It resulted in so much social disruption that development projects could no longer be

implemented, and the proper working of the Rwa's political institutions was greatly hindered.'

Violence (particularly such violence as surrounds the male kings who supplanted earlier queens and clan leaders) is the central issue in Wim van Binsbergen's approach to state formation in western central Zambia from the seventeenth century CE onwards. Violence could play this role since it amounted to pursuing, at the royal courts, cultural norms and practices that constituted the most radical departure from the norms and practices governing life in the commoner villages. The many villages surrounded the few courts, and fed the latter with tribute, including food, and with much of its personnel, including slaves. The purpose of Wim van Binsbergen's paper is to present this reading of the Nkoya pre-colonial past, and to begin to explore the extent to which violence can be said to underlie any form of state formation in pre-colonial Africa. A vignette derived from a nineteenth-century travelogue (according to which the Lozi king Sipopa fed an innocent old man to the crocodiles) helps to focus on the main issues, but is only meant as an illustration. Although the juxtaposition between village life and court life is argued in detail, the substantial oral-historical, documentary and legendary data underlying the argument have been presented elsewhere.

Also our final contribution, by TRUTZ VON TROTHA, focuses on violence, and it does so in ways that are original, unexpected in a book celebrating the work of an Africanist, and potentially of world-wide relevance. Von Trotha's argument seeks to interpret no less than the world-wide evolution of large-scale violence from the end of World War II to the anonymous attack on the USA on 11 September 2001. The article fits in our collection for two reasons: it offers a theory of war as a specific form of violence, and it does so on the basis of inspiration deriving from legal anthropology, notably the work of Spittler.⁶⁰ The point von Trotha makes is that, in future, war will be shaped by 'wars of defeat', by some sort of trading-off between the thermonuclear war of extermination and the *global small war*. Spittler's theory argues that every society has a variety of forms of dispute settlement. These forms are institutionalised and legitimised to different degrees, from the private discussion within the four walls of one's house, to blood feuds, and appeals to official legal authorities. The forms of dispute settlement are connected with each other in a number of ways, of which two are of interest here:

- Every form of dispute settlement is influenced by its alternatives;
- this interdependence of the forms of dispute settlement is characterised by the supremacy of legitimate violence. In stateless

⁶⁰ Cf. Spittler 1980.

societies it is violent self-help that throws this shadow; in state societies it is the institutions of the state monopoly on violence, in the first instance the police and the army.

What is held to be true for domestic dispute settlement may also be true for armed conflicts, at least since the use of the atomic bomb against Japan in World War II: forms of war are interdependent. Any war belongs to an order of wars, in which each form of war is influenced by existing alternative forms. In terms of space, today these alternatives can cover the whole world. The supreme form in this order of wars is determined by which agent has the greatest destructive potential both militarily and in terms of its technology of arms. Today this is the thermonuclear war of extermination. Hence the common retreat into the forms of *small war* and the *global small war*, phenomena with which most citizens of the world have become acquainted over the past decades, either by electronic means or by personal experience.

If legal anthropology can help us understand the most threatening and destructive events of our era, that would be the highest praise for this sub-discipline, and the best guarantee for legal anthropologists' continued livelihood.

Conclusion

This book celebrates a scholar whose complex and often difficult career has greatly helped us to focus on crucial issues in African Studies and in legal anthropology which, to judge by the contributions in this book, will continue to inspire us for decades to come. It is my hope and conviction that, even after institutional retirement, Emile Adriaan B. van Rouveroy van Nieuwaal will continue to contribute to the investigation of these topics, and (as we have moved, during our lifetime, from the book to the furtive, virtual screen image as the standard of knowledge transmission) that he will continue to feed our eyes and our hearts with his films. The African Studies Centre salutes him as a long-standing, productive and constructive colleague.

Finally, it is my pleasure to thank all those who have contributed to the genesis of this book: the contributors, whose papers show the richness and continued relevance of Emile van Rouveroy van Nieuwaal's work, and whose forbearance with my extensive and critical introduction will be a further sign of their eminence and wisdom; Riekje Pelgrim, who did part of the editing; the African Studies Centre, whose subsidy made the book a viable publishing undertaking; Emile van Rouveroy van Nieuwaal, who shared his bibliography and unknowingly inspired the book throughout; and LIT Verlag, as reliable and supportive publishers.