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Riding or killing the centaur? Reflections on the identities of legal anthropology[1]

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Abstract

The article examines how the academic genre called the 'anthropology of law' or 'legal anthropology' developed under the disciplinary constraints of both the social and legal sciences. It first discusses its historical development and different trajectories and engages in a comparative analysis of similarities and differences between anthropologists, lawyers and sociologists of law. Finally, by looking at the ways in which cognitive and normative categories such as 'legal anthropology' are reproduced and changed through time, the article in itself is a legal anthropological exercise. The author concludes that there are hardly any identity markers left that would demarcate legal anthropology in a mutually exclusive way from other (sub)disciplines. The distinctiveness of legal anthropology rather lies in an accumulation of features, which make (legal) anthropology what it is, even if many features may be shared with other disciplines.

Introduction

In his essay 'Law and fact as local knowledge', Clifford Geertz characterised the anthropology of law as a 'centaur discipline' (1983, p. 169), a hybrid in which anthropology and law, meaning legal science, were aggregated. 'The interaction of two practice-minded professions so closely bound to special worlds and so heavily depending on special skills has yielded', according to Geertz, 'rather less in the way of accommodation and synthesis than of ambivalence and hesitation' (1983, pp. 168, 169). This led him to advocate a 'somewhat disaggregative approach to things than has been common: not an attempt to join law . . . to anthropology . . . but a searching out of special analytical issues, that, in however different a guise and however differently addressed, lie in the path of both disciplines' (1983, p. 169). I think Geertz's diagnosis holds true for some but not for all legal anthropological work. There is indeed much uncertainty and ambivalence about the relations between law, understood as academic discipline, and the social sciences dealing with law, especially anthropology and sociology. This colours the more specific relations between the subfields or specialties of legal anthropology and legal sociology. But, as the quote from Geertz suggests, a third problematic relation is the positioning of legal anthropology within general (social, cultural) anthropology. In my contribution, I attempt to throw more light on these problematic relationships. I look at the general historical development of this specific anthropological genre. This involves both the status of the genre, as 'specialty, subfield, sub-discipline or topical label', as well as its substance.[2]

The issue of the identities of the anthropology of law has accompanied me throughout my academic life. Ever since my own metamorphosis from lawyer to anthropologist in the Department of Anthropology in Zürich in the early 1970s, I have been regularly confronted with it in different national and disciplinary contexts. I have worked in three different national academic cultures – in

1 This paper is a revised version of a presentation at the International Workshop 'Disciplining Anthropology: A Transatlantic Dialogue', held at the Max Planck Institute for Social Anthropology, Halle, 22–23 February 2007.

2 See Collier, 1997, p. 117; Riles, 2002; Clifford, 2005.

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Germany, Switzerland and the Netherlands – in many international academic networks and associations, in law faculties, in anthropology, and in development studies embedded in an originally agricultural university. My involvement with and engagement in anthropology were both intra- and extramural (see Clifford 2005, p. 47), depending on where I worked. I have relatively successfully maintained a professional identity as 'legal anthropologist' in the national and international academic fields despite the various boundary crossings and despite the coexistence of my (legal) anthropological identity with periodically ascribed identities such as 'lawyer'. Thus, I have been sensitised to the constraining and enabling powers of multiple academic identities in different contexts.[3]

Finally, such reflection does not need to be a mere exercise in navel gazing. I also want to make it an exercise in a time-oriented legal anthropology.[4] I look at the ways in which cognitive and normative categories such as 'legal anthropology' are reproduced and changed through time and in different relational and institutional contexts.[5] I shall first talk about some general developments, and then about the different trajectories in different states, academic institutions and networks. In the second part of my paper I engage in a comparative analysis of some differences between anthropologists, lawyers and sociologists of law, and discuss the relation between the anthropology of law to anthropology in general. I conclude that, when thinking of anthropology in general or legal anthropology in particular, there are hardly any identity markers left that would demarcate mutually exclusive (sub-)disciplines. I am not troubled by this. The distinctiveness of anthropology, and legal anthropology, I argue, is not (should not be) constructed with the help of unambiguous mutually exclusive identity and boundary markers. It rather lies in an *accumulation* of features, which make (legal) anthropology what it is, even if many features may be shared with other disciplines.

The (re)production of legal anthropology

The categories of legal anthropology, as well as legal sociology, social or legal science, are 'categorising concepts' (Fallers, 1969) of a cognitive and normative nature to which certain academic works, authors and research traditions are attributed.

The repertoire of identity markers

A number of properties have been used to characterise the genres in general and the anthropology of law in particular. They can also be used to assess its similarity and difference from other sciences dealing with law. In my view, the most salient ones functioning as 'disciplinary ensemble' (Clifford, 2005, p. 40)[6] have been:

- the region of the world in which research took place
- the type of society/political organisation

3 As Munger (1998, p. 57) says and illustrates, 'the virtues of engagement without orthodoxy, freedom to cross disciplinary boundaries or to redraw them provisionally, and commitment to exploring problems or issues while remaining open about methods and intellectual traditions may best be illustrated and explored through biography – through the practices and activities of the scholars in the law and society field'. On the advantages and limitations of such venture see also Geertz (1995, pp. 106 ff.).

4 I also hope to contribute to the question of 'how the refiguring of other disciplines in the social sciences and the humanities, and the emergence and transformation of interdisciplinary fields of study, constrain and incite the possibilities of anthropology' (see also Gupta and Ferguson, 1997; Riles, 2002; Segal and Yanagisako, 2005).

5 These ideas were first developed in my paper on 'Legal Sociology, Legal Anthropology and Legal Pluralism from a Legal Anthropological Perspective' (1991). For a similar treatment of the relation between law and anthropology see Riles (1994/2002), and of anthropology in relation to other social sciences Clifford (2005).

6 For anthropology in general, Clifford (2005, pp. 37, 40 ff.) distinguishes object, method, paradigm, telos.

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- the type of law (normative order)
- the conceptualisation of law
- comparative orientation
- historical orientation
- pragmatic–political orientation
- methodological specialisation
- theoretical assumptions and interests.

Interweaving the properties (and creating boundaries): general developments

Many actors interweave combinations (now one would say, assemblages) of these features to produce and change different academic traditions or genres dealing with law.[7] History shows that the combination of substantive criteria used for attributing academic work to the category legal anthropology have been changeable and contextual since the publication of Bachofen's *Mutterrecht* (1861/1948) and Maine's *Ancient Law* (1861/1894). There have been many and considerable shifts in research interests, theoretical concerns, methodologies and regional specialisations. These have frequently been reviewed, and I shall just give my own brief summary. [8] We have seen a gradual development 'from the law of primitive man to the social-scientific study of law (legal pluralism) in complex societies', including European or US industrial societies (F. von Benda-Beckmann, 1989; Moore, 2001). Theoretical and methodological interests have developed, in overlapping phases, from a strong concern for an evolutionistic, encyclopaedic account of the evolution of legal systems, a universal history elaborated by armchair academics, to a largely unhistorical, intensive and fieldwork-based study of small-scale societies in a rather non-comparative way. For a long period, legal anthropology then became a nearly exclusive study of conflict and dispute management processes under the spell of American legal realism and the so-called trouble-case method. This made it increasingly less attractive to general social and cultural anthropology.[9] Until the early 1970s, these studies largely neglected the fact that these societies had since long been influenced by and had become part of colonial states and a wider economy. Gradually, the scope of interest widened. Since the early 1970s, much research addressed legal and institutional complexity under the concept of 'legal pluralism', so much so that 'legal pluralism' became a kind of trademark for legal anthropology. Starting with studying the plurality of procedures and decision-making institutions in disputing processes, the state and its law came within the purview of legal anthropologists. This interest in dualism or pluralism was later extended to state law and institutions outside the domain of dispute management.[10] In the same period, legal anthropology also became increasingly 'time-oriented', combining, as Moore (1970) had suggested, individual centred short-term, choice making instrumental action and a long-term historical perspective.[11] Important impulses to broaden the perspective in the direction of state and history also came from neo-Marxist scholars.[12] Especially during the past fifteen

7 As Clifford has said, there are no natural or intrinsic disciplines. All knowledge is interdisciplinary ... and disciplines define and redefine themselves interactively and competitively (1997, p. 191; 2005).

8 See Moore, 1970, 2001, 2005; Nader and Yngvesson, 1973; Newman, 1983; Snyder, 1993; F. von Benda-Beckmann, 1989b; Griffiths, 1986b; Merry, 1988, 2006; Just, 1992; Schott, 1982; Rouland, 1994; Riles, 1994/2002; Collier, 1997; F. and K. von Benda-Beckmann, 2002. Recently three new readers on law and anthropology have appeared (Mundy, 2002; Moore, 2005; Darian-Smith, 2007). See also Pottage and Mundy, 2004; and Donovan and Anderson 2003.

9 See also Collier (1997, p. 130, note 4), quoting Brenneis to this effect.

10 In my view, Nader (1965, 1969; Nader and Todd, 1978) and Moore (1970, 1973, 1978a) were the most important authors in Anglo–American legal anthropology to broaden the field. See Collier, 1997.

11 See amongst others Fallers, 1969; Moore, 1986, 1989; Snyder, 1981; Fitzpatrick, 1980; Wiber, 1993; F. von Benda-Beckmann, 1979; F. and K. von Benda-Beckmann, 1985, 2005; A. Griffiths, 1997, 2002.

12 Fitzpatrick, 1980, 1983; Snyder, 1980; Hunt, 1993.

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years, theoretical reflections and empirical research on law/legal pluralism have been further expanded through the attention given to transnational and international law and organisations and other aspects of 'globalisation'.[13] The developments in our field have to a large extent run parallel with, and have been influenced and enriched by, developments in social anthropology and other social sciences (history, legal science, political science, psychology).[14] In most recent times there is also an increasing trend towards a geography of law.[15]

There increasingly is a conviction that whatever theoretical specialties legal anthropology may develop, these must be firmly grounded in general social theory, and legal anthropological authors have drawn on the theoretical insights of social theorists like Giddens, Bourdieu, Foucault, Gramsci or Habermas (see Munger, 1998).

General patterns and different trajectories

This is a brief sketch of the general patterns in the developments of the anthropology of law. However, what anthropology of law was, and is, and what its relation was to social scientific studies in general, followed different trajectories in different countries. It would need more time and space (and information) than I have available here, but I want to emphasise some characteristics and differences in these developments.[16]

In the world of Anglo–American anthropology, the anthropology of law in the UK ceased to remain important after the golden age of the Manchester school. What had been the most developed empirical and reflexive anthropology of legal processes in tribal/village societies under the stimulating influence of Max Gluckman lost its academic power and appeal in the 1970s and 1980s. While the work of Roberts (1979) and the joint work by Comaroff and Roberts (1977, 1981) belong to the best works of their time, they also introduced some elements which led legal anthropology as a specialty within anthropology into a dead end. First of all, they argued that to engage in an 'anthropology of law' was not useful, given the strong ethnocentric associations of the concept 'law', which could not really be transposed to the normative orders of other societies, given the 'fundamental differences' of the latter if compared with European law. Would-be legal anthropologists were advised to better study the processes of disputing and maintaining order.[17] The second element, reinforcing the first one, was that they kept the anthropology of law within the 'trouble case' paradigm for studying law in society, for the two paradigms in the anthropology of law, which they identified as rule centred and process centred, both remained limited to the study of disputing processes.[18] Finally, they did not address the co-existence of legal orders and institutions of

13 Merry, 1992, 1997, 2006; Nader, 2005; Wilson, 1997; K. von Benda-Beckmann, 2001; Dezaley and Garth, 1996, 2002; Wilson, 1997; Riles, 2001; Nelken and Feest, 2001; Darian-Smith and Fitzpatrick, 1999; F. and K. von Benda-Beckmann and A. Griffiths, 2005; F. and K. von Benda-Beckmann, 2007. See also some contributions in Moore, 2005; Turner, 2006; Weilenmann, 2005; Wiber 2005.

14 See Yanagisako, 2005, p. 96. See also the contributions in Barth *et al.*, 2005.

15 See Blomley, 1994, 1998; Holder and Harrison, 2003. For a geographic interest from the legal anthropological side, see F. and K. von Benda-Beckmann, 1991, 1998; F. von Benda-Beckmann, 1999, 2001; Weilenmann, 1996; Marcus, 1992.

16 A rich account of the development of anthropology in the UK (by Barth), Germany (by Gingrich), France (by Parkin) and the USA (by Silverman) is given in Barth *et al.*, 2005.

17 While Roberts still maintains this view, Comaroff has adopted the anthropology of law as a major topic or subfield in anthropology; see J. and J. Comaroff, forthcoming.

18 Not that there would have been no alternatives. The *Hoebel Festschrift* in *Law & Society Review* of 1973 had sparked extensive discussions of the value and limitations of the case method. Moore (1973) had demonstrated the value of legal anthropological analysis beyond the focus on disputing, and J. F. Holleman in particular had published a long article on trouble and trouble-less cases (1973) in which he presented some of the insights developed by the Dutch scholars researching the ethnic laws of Indonesian societies (generally called adats, or adat laws).

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decision-making – which, at that time, would have been quite normal and was increasingly done by other scholars.[19] From the side of the sociology of law and socio-legal studies, little attention was given to legal anthropological work.[20] However, in recent years there seems to be a gradual renaissance of legal anthropology in the UK that seems to belie Fuller's (1994) pessimistic assessment, as well as a move towards a convergence between the anthropology and sociology of law.[21]

But quantitatively, and qualitatively, the English-speaking anthropology of law definitely moved to the US in the 1970s.[22] Moore, Nader and Collier became the leading scholars in the field, and this prominence is continued by their younger colleagues. In the US, more than elsewhere, one could also observe a feminisation of the anthropology of law (Moore, Nader, Collier, Dwyer, Yngvesson, Merry, Greenhouse, Starr, Riles and Hirsch). In contrast to most other academic systems, the anthropology of law obtained a place in anthropology departments rather than in law departments, and in the best universities at that. Collier (1997) has given a rich account of the development of the subfield in US anthropology, especially of Nader's attempt to consolidate the anthropology of law as a 'sub-field'. [23] However, these developments do not seem to have reached into and really changed the mainstream of US anthropology.[24] As Collier (1997, p. 122) says, the anthropology of law was 'respected by lawyers but neglected by anthropologists' (see also Riles, 2002). While having their own association (PoLaR) within the AAA, legal anthropologists also became a prominent tribe in the 'big tent' (Erlanger, 2005) of the Law and Society Association, in which different approaches to law in society come together, albeit that prominence refers more to quality than to quantity.[25]

While the anthropology of law went through a crisis of identity in the US and UK in the 1980s (Riles, 2002, p. 35), it started to blossom in the Netherlands.[26] Legal anthropological work in the Netherlands built upon the insights developed by the adat law scholars in the Dutch East Indies and

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19 Nader and Todd, 1978; Moore, 1973; F. von Benda-Beckmann, 1979; K. von Benda-Beckmann, 1981; Snyder, 1981.

20 See Campbell and Wiles, 1976. Their 1979 reader includes two excerpts from Malinowski and Gluckman. This was similar in the relation between the mother disciplines, sociology and social anthropology (Kuper, 2005).

21 See A. Griffiths, 1997, 2002; Banakar and Travers, 2002; Kelly, 2006; Pirie, 2006b, 2007; Cowan, Dembour and Wilson, 2001; Wastell, 2006, 2008; Mundy, 2002; Wilson, 1997, Darian-Smith, 1999, Darian-Smith and Fitzpatrick, 1999.

22 As was the case with anthropology in general; Silverman, 2005. p. 346.

23 In her account of the development in the US, Collier (1997, p. 117) specifically focuses on the theoretical shifts in the discipline, the academic job market, and the national policy and cultural context, linking them to the aspirations and experiences to three academic generations.

24 An illustration is the way in which law is treated in one influential textbook, Kottak (2000). In the this book, law is briefly mentioned within a chapter on political systems. On p. 388, under *key terms*, it reads: 'law: a legal code, including trial and enforcement, characteristic of state organised societies'. In the suggested additional readings (p. 389) there is not a single reference to a legal anthropological authority. Earlier (p. 357) it reads: 'a related (to political anthropology) field is legal anthropology, the comparative study of legal systems or law. Although not all societies have law, in the sense of formal legal codes, judiciary, and enforcement, all societies have some means of social control'. This is the language of the 1940s and 1950s.

25 Munger (1998) gives a good overview of the development of the wide field of 'law and society' studies in the US. He mentions that the Law and Society Association was established to create a field of studies for persons with different backgrounds sharing similar interests and being marginalised within their disciplines. In the 1990s, however, 'boundaries between the traditional disciplines which the discourse of the field once aspired to transcend or oppose now seem increasingly to divide the law and society field, even though many of the same research questions and issues remain vital and important to scholars at all sides' (p. 56).

26 See J. Griffiths, 1986b; K. von Benda-Beckmann and Strijbosch, 1986; F. von Benda-Beckmann, 1991; F. and K. von Benda-Beckmann, 2002. On the French and Belgian developments, see Rouland, 1994; Eberhard and Vernicos, 2006.

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Anglo–American anthropology and sociology of law.[27] The Dutch adat law researchers had developed several insights that emerged in the Anglo–American anthropology of law only at a much later stage. One was that the influence of legal realism and its methodological and theoretical implications for law in action were not confined to 'trouble cases' but extended to decisions taken in 'trouble-less cases' (Holleman 1978).[28] Another was the early critical discussion of Western ethnocentric misinterpretations of local laws in colonial courts and literature, later to become known as the 'creation of customary law' discussion.[29] The third was that right from the start adat laws were seen within the wider plural context of the state system and in relation to Islamic law, and the influence of substantive and procedural state law on adat laws and village decision-making were studied (see Ter Haar, 1929) long before this became part of legal anthropological work.[30] Starting in the 1980s, the various strands of social scientific studies of law (anthropology of law, sociology of law, psychology of law, later also law and economics) were brought together in one professional organisation with its own journal (*Recht der Werkelijkheid*). The extent of actual convergence, however, was limited to a small number of legal sociological and anthropological scholars.

Germany had had a rich early history with German Ethnological Jurisprudence (with Post, Kohler, Steinmetz, Schultz Ewert and others; see Schott, 1982; Gingrich 2005), and with Thurnwald was prominent in the transition to fieldwork oriented anthropology. This development was disrupted during the Nazi rule. Some anthropologists (such as Lips and Adam) emigrated. After the war, the anthropology of law never fully recovered. Schott (1970, 1998) was the major postwar anthropologist in the field. There was also a small number of lawyers with a strong interest in the 'historical' [actually evolutionist] anthropology of law (Fikentscher, 1980; Wesel, 1985). In more recent years, however, the anthropology of law is becoming more recognised and valued again in German anthropology departments. Some chairs have been advertised, asking for the anthropology of law as a preferred specialty. The establishment of a legal anthropological research group at the Max Planck Institute for Social Anthropology is another factor contributing to a stronger visibility and institutionalisation of legal anthropology in research and curricula.[31] The sociology of law remains largely embedded in faculties of law, and there lives a difficult and often sad life, declining again after a short boom in the 1970s and 1980s. The extent of convergence between the anthropology and sociology of law was and is very limited.[32]

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27 In the early years of the twentieth century, the study of Indonesian ethnic legal orders (adat laws) had been institutionally differentiated from colonial anthropology, having its own chairs and publication outlets; Holleman, 1973.

28 Long before legal realism entered American anthropology of law via Llewellyn and Hoebel's book on The Cheyenne Way (1941), Ter Haar (1937), influenced mainly by Gray, also a legal realist, had developed his 'decision theory' in the 1930s.

29 Van Vollenhoven had already in 1909 discussed the ethnocentric interpretations and resulting transformations of adat law, and the distinction between 'adat folk law' and 'lawyers' adat law' had become well established.

30 This is not to deny some orientalist notions, a tendency to romanticise adat law, and the influence of legal science (rather than ethnological) concerns in the study of adat laws. But in some methodological and theoretical terms, Dutch adat law studies were years or decades ahead of developments in the Anglo–American literature.

31 See the contributions by Eckert, 2006; Turner, 2006; Thelen, 2006; Peleikis, 2006; Pirie, 2006a; Beyer, 2006; and F. and K. von Benda-Beckmann, 2006, in the special issue of the *Journal of Legal Pluralism and Unofficial Law* 53–54. See also the website and the reports of the insititute at http://www.eth.mpg.de

32 For a recent description of the fate and present condition of German sociology of law, see Raiser, 1998; Wrase, 2006. Wrase also pleads for an increasing coming together of the different approaches to law in German academia and for establishing 'sociolegal' studies as a common field of study, as in the Law and Society Association.

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Actors in contexts

Many authors within and outside the professional academic world have shaped these developments by attributing their own work, and that of others, to the category of legal anthropology and by redefining the category itself.[33] Scholars become, or do not become, legal anthropologists by processes of self-identification and/or external labelling.[34] Such processes are normative, selective and often strategic. Labelling, often rather stereotypical, is important, because the extent to which scholars still (can) read other scholars' writings is limited, and the tendency to take over authoritative statements of leading scholars and/or accounts in important review or state-of-the-art articles is great. Labelling is often done by collective identification, for instance through membership in the department or faculty in which a scholar works. If one is working in an anthropology department, one is an anthropologist; if one works in a law department, one is a lawyer, or a sociologist or political scientist, respectively; this is often quite independent from what one's academic degrees are or what one writes. Labelling and classification also occur outside the core of academic writing, through the catalogues and advertisements of academic publishers.

Processes of self-identification and the publicising of that identity are also important. There are many authors whose writing concentrates on the core business of legal anthropology, on descriptions of legal orders or of legal anthropological concepts and theories, and who may also teach courses on legal anthropology, but who nevertheless do not see themselves as legal anthropologists, but rather see themselves, or are seen, as 'lawyers', or legal or political 'sociologists', or 'political scientists'.[35] This can be due to different reasons, such as membership in non-anthropology departments or an unwillingness to become identified with a specific label or stereotype of legal anthropologists for instance as people 'who only research customary laws in villages' or 'who do not address wider theoretical or thematic field issues such as social theory, political science, or history'. To some extent, and especially during their lifetime, authors can largely control their identity. But even during their lifetime, and especially after their death, they and their work become subject to the labelling and identification processes controlled by others.

In these processes, the changing normative frameworks for the interpretation and association of research and theorising can be, and have been, used to re-categorise earlier work. What has not been legal anthropology can become legal anthropology, and what had been legal anthropology can become legal sociology.[36] Contemporary ideas about the 'correct' legal anthropology thus recreate the history of legal anthropology anew (see generally Restrepo and Escobar, 2005). The development of what is now called the Dutch tradition of legal anthropology is a good example for this.[37] Another good example is also the history of (neo-)evolutionist theory (F. von Benda-Beckmann, 1991).[38]

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33 See Gieryn on the construction of 'science', emphasising that 'its boundaries are drawn and redrawn in flexible, historically changing, and sometimes ambiguous ways' (1983, p. 781). He states that it is not just an analytical problem, but that material resources are involved. See also Bourdieu, 1988; Whitley, 1982; Restrepo and Escobar, 2005; Fuest, 2006. See also F. von Benda-Beckmann, 1991; Gupta and Ferguson, 1997. On the construction of sociology of law as a discipline, see also Cotterrell, 1995; Banakar, 2003; Hunt, 1978, 1993.

34 As Silverstein (2005, p. 99) notes, 'changing interdisciplinary connections related directly to shifts in intradisciplinary configuration'.

35 See for instance Riles' (2002) 'discovery' of Leach as an important anthropologist dealing with law.

36 See for more examples, F. von Benda-Beckmann, 1991; F. and K. von Benda-Beckmann, 2002.

37 See F. von Benda-Beckmann, 1991. A scholar, also well-known in English speaking circles, like Ter Haar (1937) – who took great pains to distinguish his adat law science as being essentially different from legal anthropology – was first declared to represent Dutch ethnological jurisprudence (Hoebel, 1954), was later praised for his decision-theory and his treatment of legal pluralism (J. Griffiths, 1986b) and was firmly incorporated into the 'Dutch tradition of legal anthropology' in Merry's review article (1988).

38 In the beginning, evolutionism certainly was an interest in all emerging social sciences, but later was largely attributed to (legal) anthropology. With the field research revolution and structural functionalism it nearly

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These processes take place in wider academic institutional and societal contexts, in a 'field pervaded by power in distributing, proclaiming and withholding knowledge' as Banakar (2003, p. 15, quoting Bourdieu) has said; a field of power relations in which material resources are distributed and struggled over – staff positions, professorships and shares in the curricula (Restrepo and Escobar, 2005). As sub-branches of sociology and anthropology, and of law, the fate of legal anthropology and of the sociology of law is largely shaped by the relationships between their larger academic sisters (F. von Benda-Beckmann, 1991; Banakar, 2003, p. 14), and by the position these larger disciplines hold within the totality of disciplines within a university and in the wider academic community, professional associations and peer groups.[39] These relationships play a role within the different and partly overlapping fields and arenas in which these academic traditions develop, in the academic institutions, the relationships between disciplines, in academic networks, and the wider societal context (see also Clifford, 1997, 2005). Scholars working in the mainstream of sociology, anthropology or law have a relatively quiet life most of the time.[40] Their relations with other single category-disciplines (law, economics, sociology, political science) can become tense when struggles arise about who 'owns' what range of social phenomena and what resources are attached to this. For the hyphenated 'sub-disciplines' such as legal sociology or legal anthropology, which theoretically can belong to or identify with two category-disciplines, or develop a trans- or inter-discipline, life is generally much harder. To speak of 'belonging' is often a euphemism, for what is at stake is at best a modest extent of being tolerated. In the law faculties, this goes for the sociology of law (after its heyday in the 1970s) and even more so for the anthropology of law. Both have to struggle for recognition and survival. Within their home disciplines (anthropology, sociology or law) they are usually isolated and easily marginalised. In these contexts, the anthropology and sociology of law are largely engaged in struggles for recognition and survival under conditions of very unequal power relationships. Because of their weaker position and their constant confrontation with stereotypical assumptions about what they do or should be doing, they have a tendency to spend much time discussing and defending the specifics of their specialty, law, which then easily reinforces the image 'that they are only interested in law' and not in power, practice, culture, etc. Whereupon they have to prove again that 'law is important', and easily become locked in a vicious circle.

During the past years, however, there have been changes. With the new attention bestowed on law and even legal pluralism by powerful academic and political actors (economists, international and national development agencies), a need for social scientific expertise on customary law, indigenous peoples' law and legal pluralism has gone hand in hand. 'Legal anthropologists' are increasingly regarded as relevant experts.[41] An academic interest in law by non-lawyers seems to become rather self-evident, or'normal', and this facilitates a 'coming out' of social scientists as anthropologists of law.

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died out in legal anthropology. Legal anthropologists lost interest (but see still Hoebel, 1954; Newman, 1983) and engaged rather critically with evolutionist theories. In a slightly modified form, it has now been taken over by (legal) sociologists – for instance Black, Nonet and Selznick, Unger, and in Germany by Luhmann and Teubner. Under the name of 'historical anthropology of law' it has also been taken over by some anthropologically inclined legal scientists; Fikentscher, 1980; Wesel, 1985.

39 Examples would be the International Research Committee of the Sociology of Law, The Commission on Folk Law and Legal Pluralism, the EASA, and national networks and associations with an international membership and ambition such as the Law and Society Association and the AAA.

40 As Clifford (2005, p. 27) says 'In its normal functioning, a discipline does not actually need consensus on core assumptions. Rather like a hegemonic alliance, in Gramscian perspective, it requires consent, some overlapping interests, and a spirit of live-and-let-live across the differences'.

41 At the World Bank Legal Forum, 2005, three legal anthropologists (Nader, Merry and F. von Benda-Beckmann) were invited. See also Sage and Woolcock, 2006.

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An intermediate summary

History thus shows different ways in which the boundaries between legal anthropology and other sciences interested in law have been drawn. They also show different degrees of convergence, differentiation or polarisation. As a consequence, there seem to be hardly any clear and unequivocal boundaries and identity markers left that would distinguish the academic disciplines in a mutually exclusive way.

- In the most general way, the subject matter, 'law', is not, and never has been an exclusive identity marker.
- Also, a non-dogmatic interest in law as such is not an exclusive identity marker.
- *Type of law.* There is no longer a firm association of the anthropology of law with a specific type of law, for instance local (customary, ethnic, religious, non-state) law, or of the sociology of law with the law of the state.
- *Geographical region and sociopolitical organisation.* The earlier regional concentration – on regions in which tribal people and their law was situated – no longer is a distinguishing feature. Legal anthropologists do research in industrialised states (and not just among marginal population segments such as Roma or immigrants), while (development) sociologists and comparative lawyers also do research in post-colonial states in Africa, the Americas and Asia. The boundaries between 'field' and 'home', and between 'self' and 'other', are increasingly blurred (see also Collier, 1997, pp. 128, 129).
- *Legal pluralism.* Now, the concept is used by many anthropologists, sociologists, political scientists and lawyers. While legal pluralism is sometimes said to have been the conceptual guiding star of legal anthropology since the 1970s, and for many it seemed to be exclusively connected to anthropology (of law), it is also claimed as being typical for the sociology of law (Banakar, 2003) or even academic lawyers (Roberts, 1998).[42] Legal pluralism has also made inroads in resource management studies, and into the world of forestry and irrigation studies. While there are considerable differences across disciplinary boundaries, the use of the concept 'legal pluralism' is no longer a clear identity marker for legal anthropology.
- *Research methods.* 'Anthropological fieldwork' (Gupta and Ferguson, 1997), the methodological stance of privileged witnessing (Kuklick, 1997, p. 63) is still an important identity marker, which legal anthropology shares with anthropology in general. But it is increasingly recognised that what is studied in the field is only an episode of social processes on a wider temporal and spatial scale (Moore, 1993), and also that the best fieldworker draws most of his/her knowledge from other sources and the literature. Nevertheless, extended fieldwork remains the trademark and initiation ritual of anthropologists. But its importance is also discussed now within anthropology.[43] As Kuklick (1997, p. 64) says, the 'archetypal field method currently lacks a defensible rationale'. Conversely, other disciplines also sometimes engage in long-term in-depth research in small-scale settings, while anthropologists also work with questionnaires, collect statistical data and use written sources. While there is still an imbalance in the extent to which different methods are used, anthropology and sociology cannot be divided along the line of qualitative and/versus quantitative methods.

42 In practice, I would say, that the majority of lawyers and sociologists of law do not think and write in these terms, and if so, they tend to focus on what could be called 'the newest' legal pluralism, the co-existence of state with inter- and transnational law (see Gessner, 2002; Teubner, 1997).

43 For instance at the EASA Conference in Copenhagen, 2002; see also Clifford, 1997, p. 195; Passaro, 1997) as to whether there can be anthropology without fieldwork.

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Comparative analysis of disciplining processes

There remain many differences besides the often superficial similarities. The actual subject matter, 'law' or 'legal pluralism', is not 'just there'. It is largely constituted and delimited by one's conceptual and analytical approach, one's empirical and theoretical research interests, and by one's pragmatic objectives. It makes a great difference whether or not one limits the category of law to what lawyers call law, and whether or not one is interested in all kinds of social processes in which law gets involved, or specifically only in 'legal' processes. In the following, I shall look more deeply into the differences between anthropologists of law and lawyers, sociologists of law and general anthropologists.[44]

Boundary work: social and normative sciences

While the subject matter, law, law application, etc., does not distinguish legal anthropology from law as legal science, the way in which legal anthropology conceives law as variable, the questions it asks about law and the methodology on which research is based, distinguish it from legal science (F. von Benda-Beckmann, 2002). A qualifier must be added right from the start. The category of 'legal science' is potentially very wide. It can also include non-dogmatic studies, such as the history of law, sociology of law, or legal theory, and also, of course, a comparative social scientific anthropological study of law.[45] Depending on the scope of the definition, we are thus talking about relations between a social science discipline dealing with law and a dogmatic science, or about different theoretical approaches within a very wide notion of legal science. [46]

The anthropology of law, with its specific focus, wants to contribute to the ultimate aim of anthropology, the scientific understanding of human social and cultural behaviour, and a systematic understanding of the distribution in time and space of its manifestations (Goldschmidt, 1966, p. 2). Legal anthropology is primarily oriented at description and analysis, comparatively and historically oriented, with more or less modest ambitions at generating explanatory propositions. The normative and dogmatic sciences of law elaborate correct interpretations of general legal abstractions with respect to concrete problematic situations (cases) and/or philosophical reflections on what and how law should be.[47]

These are different academic and professional ways of thinking about and dealing with law. Not surprisingly, they are also reflected in different conceptual and theoretical assumptions.[48] Many

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44 There are of course other disciplines or specialties, such as, in Germany especially relevant, legal folklore studies (*rechtliche Volkskunde*) and legal history; see Gingrich, 2005. For the perspective of *rechtliche Volkskunde*, see Bader, 1976, p. 5; Köstlin, 1976, p. 114. Köstlin's perception of legal anthropology seems to be the study of a closed legal system in small-scale cultural settings in archaic societies. His characterisation of *rechtliche Volkskunde*, on the other hand, is very close to how legal anthropology has largely been characterised during the past decades.

45 As I have written earlier, I am in favour of a selective and constructive convergence in the field of social scientific studies of law (F. von Benda-Beckmann, 1991). I further think that a clear distinction should be made between the anthropology and sociology of law as social sciences and law, understood as normatively and philosophically practice oriented sciences of law. For a similar approach see Geertz, 1983; Nader, 1965, 2002; Riles, 2002; Donovan and Anderson, 2003.

46 As Bourdieu (2002, p. 121) has emphasised, there are different actors and different interests in the social field of the juridical, struggling over the monopoly to determine law. Their number varies with the scope of the definition.

47 See also Bourdieu (2002), who mainly focuses on differences within the legal field. His analysis of 'the homonymic collision' around the concept law as indicating a duality of mental spaces (pp. 133, 135) can be extended or expanded to the wider range of actors defining law.

48 In their mutual relations and discussions, lawyers and legal anthropologists should take the job in which the other is engaged more seriously. If it is one's job to maintain the state law ideology, one cannot in the same action of political relevance regard non-recognised law as law. If one has to choose 'the' correct law as a

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debates, including the one on legal pluralism, have suffered from the tendency to bring these different objectives and resultant concepts down to a one-dimensional level of discussion, in which authors look for 'the one' correct or useful concept for both lawyers and social scientists, without appreciation of the fact that the other is engaged in a different enterprise (F. von Benda-Beckmann, 2002). *This constitutes the very nature of the centaur.* So, however great the shared interest in the subject matter may be, and however much one can learn from the other, before one enters into conceptual debates, one should be clear in one's appreciation of the different academic and professional enterprises and their limitations and implications, and take them into account when promoting one's own understanding or criticising that of others.[49] This indeed requires 'the disaggregation of "law" and "anthropology" as disciplines so as to connect them through specific intersections rather than hybrid fusion' (Geertz, 1983, p. 232).[50] As Geertz (1983, p. 170) said, it should not lead to 'infusing legal meaning into social customs or to correct juridical reasoning with anthropological findings, but to a hermeneutic tacking between two fields ... in order to formulate moral, political and intellectual issues that inform them both'.[51] I would not consider such 'learning from' to be a 'merging' of law and sociology/social science, as the title of Banakar's 2003 book suggests, or create an 'interdiscipline' (Riles, 2002). This would bring us too close to the centaur discipline.

Anthropologists and sociologists of law: a comparison

While the relation between the anthropology of law and normative and pragmatically oriented approaches to law can be (and should be) relatively clearly marked, the situation is different in the social sciences. As I said before, there seem to be hardly any unequivocal exclusive identity markers left that would distinguish between different social sciences approaches to law. In the process of convergence, the wider field is called the sociology of law by some, the anthropology of law by others, while again others settle for labels such as the 'social-scientific study of law' or 'law and society'.[52]

It is nevertheless rather obvious that the tendency to blur the historical boundaries and to mix genres is relatively stronger among legal anthropologists. While many sociologists of law and socio-legal scholars also include insights of the anthropology of law, the tendency to remain ignorant of what the others do and maintain and police the boundaries between the two traditions is much more

judge, one cannot 'apply' legal pluralism. And if one is engaged in comparisons of law across time and societies, one cannot have one's comparative perspective blinkered by the dominant legal ideology; see also Geertz, 1983; Riles, 2002, p. 78.

49 This is not a problem confined to the relation between legal anthropology and legal science. For the relation between the anthropology of religion and religious studies or theology, see Laubscher, 1998; and Berger, 1973, for the sociology of religion.

50 Nader (2002, p. 73) criticises 'the cacophony in legal and anthropological scholarship on law and society'. In his discussion of legal pluralism and the polycentricity of law, Zahle (1995, p. 197) shows a clear awareness of these differences. This is, however, comparatively rare.

51 Although I have grave doubts as to the balanced reciprocal character of that relation, which Donovan and Anderson (2003), propose. See also Riles's (2002) interesting discussion of the question what law can learn from anthropology, or what anthropology can contribute to legal debates. The boundary between law as a set of empirical phenomena, including legal doctrine and thought, and law as an academic and practical specialty is not always made clearly.

52 As largely occurs in the US under the label of law and society and in the Netherlands (social scientific study of law); see also J. Griffiths, 1986a, 1986b; F. von Benda-Beckmann, 1991. For the plea to move into that direction in Germany, see Wrase, 2006. The label 'socio-legal studies' has different connotations in different academic cultures' see Campbell and Wiles, 1976, for the UK; Mather, 2003, for the US. As Wrase (2006, p. 307) also emphasises, this should not end up in an incorporation of the research traditions of others into one's own but in the creation of a common field transcending the older genres. See Banakar (2003) for a recent friendly-imperialist attempt to encompass (every interesting) socio-legal scholarship under the overarching concept of sociology of law.

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prevalent among sociologists of law, and anthropologists of law are generally more open to conceive and address the complexity of law in society; they have a more cosmopolitan comparative perspective, as well as a stronger historical orientation.[53]

I argue that there is quite an unequal distribution of social scientists interested in law with respect to a number of important facets of studying law in society. These fault lines do not correspond squarely with the different sub-disciplinary categories of scholars interested in law (anthropologists, sociologists, socio-legal scholars). There is considerable variety within and similarities across these categories. The normative and institutional structures of the disciplines do not determine what the individual academics do. Generally speaking, however, I would maintain that anthropologists of law found it easier to arrive at a distanced, analytical, historical and comparative orientation in the study of law in society.

Comparative orientation

Most sociologists of law do research in their own country, with which they are rather familiar. Anthropologists, on the other hand, used to do research in 'other societies'. In fact, studying 'the other' was for a long time an essential identity marker of anthropology. Anthropologists were thus constantly confronted with the problem of understanding, translating and comparing quite different systems of normative/legal meaning and the social processes through which these were reproduced and changed. As extensively discussed in the Gluckman–Bohannan controversy,[54] such comparisons were often carried out as direct comparisons, in attempts to capture unfamiliar cognitive and normative meanings through one's own ethnocentric meanings/concepts. This inevitably led to distortions of meaning, often with considerable economic and political consequences. Realising this danger, anthropologists were more inclined to develop an analytical comparative conceptual vocabulary, a language for comparing different systems of meaning, folk systems and 'the natives' point of view'. This concerned concepts of marriage, property, religion, public/private distinctions, the state and, last but not least, the concept of law itself. In comparative analytical frames of reference, a conceptual 'sameness' had to be constructed, which the empirical phenomena falling under the category shared, beyond the wide range of empirical variation in other respects. Given the remarkable differences in social and legal morphology, anthropologists were also forced to specify the dimensions of variation along which the empirical manifestations of what was analytically defined as 'the same' differed. In such comparative perspective, also the researcher's own society and legal system appeared as a variation to be looked at as critically as the others.[55] For legal anthropology, this meant that legislation, court judgments and legal scientific publications were in the first place 'data', 'folk systems' having the same status as legal conceptions of religious or traditional authorities elsewhere. This of course did and does not preclude that anthropologists could learn much from law and legal reasoning, the natives' point of view, in their own society and elsewhere.

Conceptualising law

This also played a role in the approach to conceptualising law/legal pluralism. Whether and under what conditions the concept of law could be fashioned into a cross-cultural comparative concept was and remains a contested issue, much more than was/is the case with other concepts, such as the family,

53 See F. von Benda-Beckmann, 1991. For Germany, see Wrase, 2006. On the US, see Abel, 1978; Mather, 2003.

54 See Bohannan, 1957, 1969; Gluckman, 1969; Nader, 1969.

55 Nader, 1969; Bohannan, 1969; Geertz, 1983. This is a good antidote to ethnocentrism (see also Gupta and Ferguson, 1997, p. 36). As Finnegan and Horton have said, 'the most serious single source of misunderstanding of the concepts of alien cultures is inadequate mastery of the concepts of one's own culture' (quoted in Hirschon, 1984, p. 2).

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property, religion or economy.[56] The extent to which this was problematised, however, varied considerably throughout the history of legal anthropology.[57] The crucial question mainly was whether normative and institutional orders providing an organisational framework for political, social and economic relations and transactions could be called law, independent from their recognition as law by the legal order of the state. If this is denied, there is no need for further discussion, for a concept of legal pluralism then is logically excluded. If it is accepted, state law then is just one (and in itself variable) manifestation of law, and the likelihood of some extent of legal pluralism the rather unexciting consequence (F. von Benda-Beckmann, 1979, 1997, 2002). At a certain level of generality, there is thus no reason to make much of the sensitising concept legal pluralism or of the insight that in most societies there is a plurality of legal orders.[58] This, however, does not change the fact that this abstract point was rarely taken seriously in empirical research and that its implications for social legal theory were rarely discussed.[59]

Moreover, because of its political and ideological implications, the notion of law, and legal pluralism, remains highly contested.[60] The diverging opinions cross-cut the boundaries between the anthropology of law, sociology of law and legal science (F. von Benda-Beckmann, 1991). But generally speaking, thinking in terms of legal pluralism is much more common among anthropologists of law than among (legal) sociologists. [61] It was easier for the former to get used to this notion. Legal anthropologists were in their fieldwork directly confronted with rather clear-cut and overt constellations of legal pluralism. They had to drop the expectation (which they may have had in the beginning) that the societies researched were culturally and legally homogenous (albeit that it took many much too long to realise this).[62]

In an earlier publication (1991, p. 105), I have argued that the differences we encounter had less to do with the everyday life in academe or historical differences between these different traditions of studying law in society, but also, and probably more, to do with the extent to which academics distance themselves from the dominant legal ideology in the society they study and/or submit to it.[63]

56 Geertz also stated 'that the problematic relationship between rubrics emerging from one culture and practices met in another – has been recognised neither as avoidable nor fatal in connection with "religion", "family", "government", "art", and even "science", it remains oddly obstructive in the case of "law"' (1983, p. 168).

57 Much has been written about this issue, and I recently have elaborated my own view in some detail; F. von Benda-Beckmann, 1979, 1997, 2002.

58 Fuller, 1994, p. 10; Riles, 2002, p. 71. Geertz (1983, p. 220) used 'legal pluralism', mainly – as he said – 'because it seems to commit one to less, *hardly more than the mere fact of variance itself*' (my italics).

59 Sensitivity to legal pluralism (and in fact it is primarily a sensitising concept) shapes the research direction. Cotterrell also recognises that 'the choice of a concept of law is, thus, in social science merely a starting point for analysis. Yet in important points it may influence the agenda for research and the forms that the sociological imagination takes in legal study' (1995, p. 40).

60 See Merry, 1988; Moore, 1978a, p. 81; 2001.

61 Banakar has 'naturalised' legal pluralism for the sociology of law, stating that legal pluralism is as old as the sociology of law itself (2003, p. 99). While this is undoubtedly true, I doubt whether many sociologists of law do indeed take legal pluralism seriously.

62 While it is true that anthropological research up to the 1960s largely ignored the existence of the state, its law, and the embeddedness of the societies studied into wider networks of economic relations, as well as the changes these factors had had on 'traditional' societies, since the 1970s, state law and institutions are usually taken into account empirically and theoretically.

63 What I mean with submission has been excellently analysed by Hunt (1978, pp. 135 ff; also Stewart, 1981; Bourdieu, 2002). Submission is characterised by a consistent adherence to a shared set of domain assumptions that are inherent to bourgeois legality. Central to these are ideas about the 'naturalness' of law and its 'inevitability' as well as the unquestioned legitimacy of the dominant legal order. These points of departure easily lead to identification with the persons and institutions which create and maintain the law. This identification then leads to a particular perception of 'legally relevant problems'. This, I argued, influences their conceptualisations of law and legal pluralism.

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Such submission to the dominant legal ideology (whether of the state, or of religious or traditional political organisations) is not confined to professional lawyers. Also laypersons, sociologists and anthropologists can fully 'internalise' the messages of law and its ideologies, treating what lawyers say about law as what the law is. If lawyers limit their understanding of law to state law (including international law) and 'recognise' non-state law only in these terms, they deny the possibility of other constellations of legal pluralism. This legal ideological viewpoint is then often generalised to 'us', who only call law what 'we' call law.[64]

Finding law and studying its significance

Their research being anchored in societies not yet studied by others (and other disciplines), anthropologists were less likely to fall into the 'expertise-trap', that is, to take too easily to the scientific discoveries and truths of other academic disciplines. In their approach to law in society, anthropologists of law, at least in the societies they started to study in the twentieth century, had a double task. One was to find 'the law'. The other was to look into the mechanism of its application and other ways of acquiring significance in social life. Since the law they aimed at discovering was largely unknown and unwritten, they had to find it themselves. They would therefore not easily run into the 'expertise-trap' in which legal sociologists and other social scientists tend to fall in their own society, given the academic division of labour in their own society. In their own society, law is to a large extent written up and refined through legal scholarly writing and published court decisions. There is a large number of highly trained specialists, whose task it is to interpret, systematise, apply and teach this law. Social scientists and lawyers are therefore easily led to assume that the law is known or could become known to them through consulting what the experts write about it. In the spirit of the dominant cultural distinction between 'the is' and 'the ought', social scientists could fully devote their attention to the 'is', the so-called 'legal reality', and leave research on the 'ought', the law (the ideal law, the law in the books), to the specialists, to lawyers and philosophers.[65] Legal anthropologists, on the other hand, whether they liked it or not, had to take on both tasks.[66]

I do not claim that legal anthropologists always did this well.[67] But it can be claimed for much anthropological work that the ideal law (the ideologies of law, law as culture) and its normative and ideological attributes were described and analysed in quite some detail, and that they were not

64 As for instance the early Tamanaha (1993) did. Another demonstration of the submission to legal ideology is the limitation to the judiciary and the exclusion of all other processes in which state officials rationalise and justify their decisions by reference to state law, the innumerable decisions taken by a variety of administrative personnel.

65 For a recent critique of this neglect and the demand to take legal dogmatics more seriously in German sociology of law, see Schulz-Schäffer, 2004. Schulz-Schäffer also emphasises that this neglect is made easier by the realistic definitions of law and the research interests premised on the gap between ideal and real, but also notes that the neglect does not necessarily result from such definitions.

66 Moreover, there always was a dominant strand in studies of law that treated law (legal concepts, ideals, ideologies) – at least amongst others – as culture and tried to understand it as such (see Hoebel's cultural postulates, Rosen, Geertz). That is, concern with the substantive content of normative-legal systems was a 'normal' professional interest, even if social practices deviated from ideal norms. This was not only the case in relation to general legal rules, but also in studies of disputing and decision-making processes of village or tribal mediation, arbitration and adjudication. Here much attention was given to the ways in which participants constructed relevant 'facts' with the help of common sense and legal concepts and assumptions, the law and practice of evidence, and in which they rationalised and justified their points of view in argumentation and decision-making. Many of the legal anthropological classics and also more recent research are thus full of taking other people's legal dogmatic seriously. See Gluckman, 1955, 1972; Bohannan, 1957; Holleman, 1952; but also more recent work such as Moore, 1978b; Comaroff and Roberts, 1981; K. von Benda-Beckmann, 1984; F. von Benda-Beckmann, 1979; Rosen, 1998.

67 On the contrary, this for quite some time led to the unfruitful mix of methodology and subject matter in the form of the so-called trouble-case method à la Hoebel (1954) and Pospisil (1971).

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simply contrasted with some kind of 'legal reality'. Anthropologists doing research in plural legal orders were also forced to rethink the questions of functional and causal relationships between legal rules and social practice, and to reformulate these as questions concerning the relative significance of different bodies of legal conceptions. The naiveté of the conventional gap approach became much more obvious because of the 'plurality of gaps' between actual interaction and the different legal frameworks pertaining to such interaction. This led anthropologists to focus much more on the ways in which people dealt with the pluralism of normative orderings, how they selectively involved rule complexes, legally structured modalities of action, procedures and institutions into their strategies. Once there, legal anthropologists were forced to contextualise, to see how different categories of actors were influenced by and made use of different legal bodies in different contexts of interaction (see F. and K. von Benda-Beckmann, 2006).[68] In order to do this systematically, they had to dissociate categories of actors from the categories of law to which the actors 'belonged' by normative construction, that is, the farmer from his/her customary law; the bureaucrat from his state law; the religious functionary from his religious law. Only then could they see that farmers used, or were influenced by, state law, bureaucrats by traditional law, etc. Empirical research further showed that the relations between the elements in a plural legal whole could be different; people could distinguish legal subsystems and choose between them, or accumulate them, or create new combined legal forms and institutions, while other actors, in other contexts, would act differently.

Attitude towards history

Legal anthropologists also developed a different attitude towards the past, and tended to use the opportunity offered by the past to gain distance from the present. To be sure, presentist conditions and hegemonic structures always tend to inform one's reconstruction of the past, and anthropologists of law are also susceptible to this danger. But here the division of academic labour also functions more easily as an obstacle for sociologists than for anthropologists. For knowledge of history is presumed much more easily in one's own society than in a foreign one. For more detailed information one can turn to another discipline or sub-discipline, history or history of law.

The kind of historical perspective developed by sociologists and anthropologists also tends to be different. The anchoring of sociology in the present leads researchers (in their own society) to a predominantly *retrospective* view of the past. This perspective also colours their perception of other societies that do not correspond to their own contemporary model of 'modern' or 'post-modern' society. These are then easily distanced in time, made into 'archaic' or 'traditional' societies and put into evolutionary categories.[69] For legal anthropologists working in developing countries, on the other hand, it was easier to develop a different perspective on history. In terms of research tradition and their own fieldwork experiences, they are much more strongly anchored in the 'traditional' society, and in the past. Whether they like it or not, they have to trace changes into the present and thus develop a heightened historical sensitivity for processes of social and legal change.

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68 Banakar's conclusion (2003, p. 126) 'that the weakness of legal pluralism lies rather in not focusing on the interplay of the various dimensions of the law' (quoting Merry (1988), thus an overview which could not consider the research of the past fifteen years), in my view is an unsubstantiated proposition, both for the time Merry wrote and even more for research during the past twenty years. Banakar's positive appraisal of what some of the enriching methodological insights have opened up by thinking in terms of legal pluralism (as setting the conditions for social action, as providing a repertoire of social interaction, etc.) have been common research procedures in the anthropology of law for quite some time.

69 See Fabian's critique (1983). Fikentscher (1980) and Wesel (1985) are good illustrations of such an approach. But see also the frequent use of evolutionary schemes in sociology, in which traditional, modern and post-(high-/radical-) modern are distinguished, without giving serious attention to historical change and the co-evalness of not-so modern or post-modern societies in many parts of the contemporary world.

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The anthropology of law within anthropology

As the centaur metaphor indicates, the position of the anthropology of law is also problematic within general (sociocultural) anthropology. After having a central place in the beginning of anthropology, it was increasingly neglected, and, as in the social sciences generally, became an 'intellectual stepchild' (Parsons, 1978; Collier, 1997, p. 122). Anthropologists also found it more difficult to treat law as a category for cross-cultural comparison than other categories such as marriage, property, inheritance, religion, etc. (Geertz, 1983, p. 168). It is therefore useful to look at how this image came into being.

In my view, the centaur metaphor primarily relates to the attempts of some anthropologists of law to combine or merge the descriptive–analytical perspective of anthropology with the normative dogmatic and pragmatic perspective of legal science, which I have already discussed. The specific difficulties with 'law' as an external discipline or an internal subfield, in my view, are more strongly due to the way labels and stereotypes structure the perception of anthropologists (and others). The position of 'law' or 'the legal' depends on the meaning one attaches to these categories and to other categories such as 'economic', 'political', 'cultural', etc. These categories are imposed on social phenomena, institutions, social practices or social systems, which are classified as either legal, or political, or cultural. The phenomena captured by the category are then easily identified as the more or less exclusive property of the academic (sub-)discipline that has taken its name from the category. Thus economics is the science of economic phenomena, law of legal phenomena, political science of political processes. This is a major problem which anthropology as a whole faces in its external relationships with other disciplines. But these problems of demarcation and difference not only play a role between anthropology, economics, political science or law, they also play a role within each of these sciences in the interrelations of the hyphenated sub-disciplines, social, cultural, religious, economic and legal anthropology. This easily obfuscates that other (sub-)disciplines also research and theorise about the phenomena in the category of the others. For instance, not only economists but also sociologists, anthropologists, political scientists and lawyers deal with economic institutions and processes. Anthropologists, sociologists, political scientists and economists deal with law. Take the institution of ownership: is ownership a legal phenomenon, or an economic one, a social or political one? Obviously, it is all of the above at the same time, and it would be strange to maintain the contrary. The sale of a house is a legal transaction; it is also a social and an economic one. The law concerning sales gives a normative structure to the circulation of economic goods, which is not external to, but part of 'the economy'.

In other words, the social phenomena captured with the categories mentioned belong to more than one category. Another way of saying this would be that such institutions and rights are 'multifunctional', and consequently figure as elements in more than one functionally defined 'system' or 'domain'. While it is useful to create specific and different analytical categories to mark the properties that characterise social phenomena, these properties are, when we look at actual social phenomena, not sufficient to characterise the phenomena in question in an exclusive manner. The variety of social phenomena summarised under the anthropological concept of law cross-cuts and overlaps with other conventional subdivisions in anthropology, the boundaries between the cultural, religious, political, social and economic spheres of social organisation. Law indeed is culture, law is politics, law is economics and social, but it cannot be reduced to these categories, nor should it be fully absorbed by them (Parsons, 1978).[70] Legal anthropology is social anthropology with a specific focus on the legal and institutional dimension.[71]

70 Also in globalisation studies, law is usually subsumed under the categories of 'culture', 'governance/politics', 'ideology' or 'economics'; see Held *et al.* (1999) or Appadurai's (1990) '–scapes'. But see Günther and Randeria, 2001; F. and K. von Benda-Beckmann and Griffiths, 2005.

71 This is similar to Silverstein's characterisation of linguistic anthropology as 'socio-cultural anthropology with a twist' (Clifford, 2005, p. 29).

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While these general ideas will be largely shared by most anthropologists, the fact remains that what they associate with law is usually very limited. It builds upon the pre-academic socialisation in which 'law' is something distant, involving courts, parliaments, the police and a rather esoteric language of specially trained experts. In undergraduate studies, this early socialisation is reinforced in many textbooks, such as Kottak (2000). Since time for reading and learning is limited, such perceptions tend to prevent anthropologists from going deeper into the matter or to realise that they themselves deal with law in their own research. Moreover, much knowledge transmission is based on selected publications, which often reproduce stereotypes and caricatures of what the 'anthropology of law' has done or is (alleged to be) doing.[72] That some legal anthropological work conforms to these stereotypical notions, that it, for many years at least in Anglo–American anthropology, has been limited to the study of disputing processes, and that indeed there have been centaurs reducing the descriptive–analytical and the normative perspectives to one dimension, has not made it easier for the anthropology of law.

During the past twenty years, however, a definite change has occurred within anthropology. Law has become much more 'en vogue', and more anthropologists get interested in issues related to law, rights, legal and institutional complexity and the interconnections between local, national and global levels. To some extent this is due to the increasing importance of 'law' in the wider world. Law in its many forms – land rights reforms, global human rights law, indigenous peoples law, World Bank regulations, WTO procedures, rights talks, and recently also the sharia – has become politically and economically so important that it can no longer escape the attention of anthropologists. Some make it a 'new' issue within political, economic and cultural anthropology. The enthusiasm with which such important (state or international) law is discovered, sometimes has the consequence that other forms of law in plural legal constellations are forgotten. Another reaction is to 'come out' as an anthropologist of law. Another, and the most healthy one in my view, is to see a focus on legal–normative and institutional complexity as just one interesting focus within anthropology; one that does not imply that when being a legal anthropologist one is not (or cannot be) also a political, or economic, etc. anthropologist. Obviously, such a 'normalisation' of the anthropology of law (perhaps furthest progressed in the US and increasingly emerging in German anthropology departments) is the most desirable and appropriate one.

Conclusion: multiple boundaries, cores and identities

Where does this leave us? Let me try to draw some conclusions.

First, there remains a sharp difference between descriptively and analytically oriented social sciences of law and normative pragmatically or philosophically oriented legal sciences. With respect to legal science, understood as the normative and practice oriented dogmatic science of law, I am a boundary guard, very much concerned with watching for legalistic and ideological assumptions within anthropological categories and theoretical assumptions (F. von Benda-Beckmann, 1991).

Second, within the social sciences concerned with law, there has been considerable convergence in the conceptualisation of the research object, theoretical assumptions and objectives, and in research methods. This, in my view, is a good thing and I try to blur genres.[73]

Third, however, for the majority of these scholars, there are still significant differences in these respects; especially in the extent to which lawyers and social scientists distance themselves from, or

72 Major stereotypes are: legal anthropologists only study customary law in isolated villages; legal pluralism looked at different legal orders as if they were isolated and/or there were no power differences between them.

73 F. von Benda-Beckmann, 1991. Similar pleas have been made by 'legal sociologists' like J. Griffiths (1986a, 1986b) in the Netherlands or Bryde (2000) and Wrase (2006) in Germany.

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submit to, the dominant legal ideology; a fact that shapes their conceptual and analytical thought considerably and thereby directs their assumptions and research interests.

Fourth, within (social) anthropology, there is a process of increasing normalisation of the anthropology of law.

What does this tell us about the relationships between the disciplines? In its external relations, legal anthropology shares with its mother discipline the problems of difference and overlap. Whether speaking of anthropology in general, or legal anthropology in particular, I conclude that there seem to be hardly any unequivocal *exclusive* identity markers (between different social science approaches to law) left. I am not greatly troubled by this. The distinctiveness of legal anthropology is not (should not be) constructed with the help of clear-cut identity and boundary markers that would each separately demarcate mutually exclusive sub-disciplines. It rather lies in an *accumulation* of features, which make legal anthropology what it is, even if many features may be shared with other disciplines:

- its specific attention to complexity and legal pluralism, the totality of legal ideas normatively oriented at and/or involved by actors
- its attention to the substance of legal schemes of meaning and to the social significance of law (plural legal elements) in social life
- its more cosmopolitan comparative perspective, within and between cultures/societies/states
- its historical orientation
- its sensitivity to contextual differences
- its reliance largely on in-depth field research as a major way of getting 'quality data'
- the relation of its work to the legal anthropological tradition and its older and newer theoretical and methodological concerns.

For me, this seems to be the only way out of this dilemma (if it is one), a different one from the one suggested by Gupta and Ferguson and their creative reinterpretation of 'the field' (1997).[74] In my view, Gupta and Ferguson (1997) too strongly focus on the 'field' rather than on the other differences that distinguish most anthropology from most sociology. A focus on the field and on anthropology's concern with 'the other' alone does not have sufficient distinguishing power. It is also slightly different from what Yanagisako (2005, pp. 96, 97) suggests as 'flexible disciplinarity': anthropology as 'a trading zone in which scientists with divergent ways of conceptualising and of organising the world forge transitory, local languages to facilitate exchanges, even while disagreeing about the meaning of items exchanged and their significance in a broader context. It figures a discipline as historically contingent, rather than as defined and delimited by a distinctive subject matter, methodology or theory' (Yanagisako, 2005, pp. 96, 97). I am also not really satisfied by Clifford's dispassionate conclusions of the articulations between the [past, VB-B] 'articulated ensemble called anthropology' and other disciplines, which 'does not identify the ongoing core, the soul, of anthropology, nor does it offer much advice for charting the discipline's immediate course' (2005, p. 47). I agree, and given the historically contingent nature of the formation and changes of disciplines one cannot but agree, that there are no clear disciplinary identities or prescriptive traditions. But while the insight that contingency and being part in a wider academic setting with unequal power relationships will be part of the future, it should not prevent us from laying down our terms of trade in the trading zone as defined by our own current understanding of what the identity should be. Without an indication of what 'our' core is, we simply become a rudderless ship in stormy academic seas.

74 As Clifford (1997, p. 195) notes, anthropology has always been more than fieldwork and 'always aspired more than the local' (Kuklick, 1997, p. 79). For an inspiring discussion of anthropology as a discipline, see also Geertz, 1995.

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It depends on how one looks at cores, differences and boundaries. The traditional way of looking at the boundaries of norms and categorising concepts is to examine the outer edges of norms and categories, in order to determine whether an act, a transaction or a publication still falls within or outside a boundary. In her discussion of the Dutch and Minangkabau construction of evidence, Keebet von Benda-Beckmann (1984, p. 84) has contrasted such 'centrifugal thinking' of state court judges, which is directed towards the other boundaries, with the more 'centripetal' thinking of the Minangkabau, who much more strongly focus on the kernel of norms. If we use the integrative approach of the Minangkabau, looking at the accumulated outcome of such evaluation, rather than at a series of yes/no operations in the analytical construction of difference in each of the relevant identity markers (1984, p. 83), there are good reasons to retain a relatively well characterised anthropology of law within the wider spectrum of the social sciences.

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