**Realising the rule of law through avenues beyond the state**

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**C*ontending Orders: Legal Pluralism and the Rule of Law*** by Geoffrey Swenson. Oxford University Press,2022. pp. 273.

What happens when multiple avenues exist beyond the state judicial system where individuals/ groups can resolve their disputes, rights infringements, and entitlements? Geoffrey Swenson’s *Contending Orders* engages with such a reality, especially in the post-conflict and developing world, where about 80 to 90 percent of disputes continue to be dealt with outside the state judicial system. Legal pluralism is an issue that has captured the attention of scholars in the legal and political science field for many years: it was the lens through which many studied normative orders beyond the state (Griffiths 1986; Benton and Ross 2013; Grenfell 2013); and for some, it provided a means to describe the normative discordance or accordance of non-state legal systems with state-backed forms of justice (see Berman 2009; Helmke and Levitsky 2004). As for practitioners, legal pluralism is a reality they must navigate in the societies where they work to bring reforms to strengthen the state justice sector (Swenson 2018). *Contending Orders* engages with these issues by discussing *how* state and non-state authorities can *interact with each other* to enable the rule of law. Itplaces the significance of non-state order in legitimising and realising the rule of law in many societies and initiates a dialogue between scholars and practitioners. This is also what sets apart *Contending Orders* from similar titles that have dealt with the topic of legal pluralism.

One of the main contributions of the book is that Swenson provides a framework to understand how state and non-state justice systems interact. He identifies four types of interactive arrangements i) combative ii) competitive iii) cooperative, and iv) complementary. Swenson explains that his typology is *distinct* from Helmke and Levitsky’s (2004) in understanding the interactions between formal and informal institutions. He argues that his typology captures not just the “convergence and effectiveness” between informal and formal institutions but places the multiple possibilities of having legal orders with different normative foundations (p.51). Swenson distinguishes his approach as a more holistic way of understanding legal pluralism, where a non-state justice system can potentially challenge the state justice sector or actively undermine it. Furthermore, Swenson points out that his typology does not just explain “the dynamics of legal pluralism in any setting” (p.8), but it also allows practitioners to design the most promising approaches and strategies that they can can undertake in legally pluralistic environments (p.9). He explains that with the right strategies, practitioners can assist in transforming, for example, a *combative* legally pluralistic environment where state and non-state systems are overtly hostile to one another (p.59) to a *cooperative* or a *complementary* one, where non-state and state judicial actors retain their authority and legitimacy but work towards shared goals. To demonstrate his arguments further, Swenson relies on two case studies: international justice sector reforms in East Timor and Afghanistan. He studies the different policies undertaken by the international community in these countries to strengthen the justice sector. East Timor is used as a *success story*, where the international community could transform a competitive non-state order into a *cooperative* one with the state system, and the Afghan case study as a *failed* one, where the non-state order, which was *competitive* to begin with, deteriorated into a *combative* one because of unsuccessful policy interventions.

While the strengths of Swenson’s arguments are many, there are a few gaps, which are left for the reader to contemplate. As mentioned above, *Contending Orders* provides a typology of the different relations between state and non-state order,and Swenson offers a set of strategies (p.64-74), which he argues can enable the practitioners to transform the state order to engage with the non-state order in constructive ways. But the book leaves little guidance on whether the transition from combative to more constructive engagements – cooperative/ complementary – with the state justice order takes a linear or a non-linear trajectory. As for the prescribed strategies, Swenson cautions that they do not guarantee success; rather, the “results of the efforts will reflect domestic or international actors’ ability to persuade, or in some cases coerce, non-state authorities and society at large” (p. 65). *Contending Orders* mainlytakes account of the policy materials of international donor agencies in East Timor and Afghanistan to show how policy actors engaged with local decision makers in creating a conducive environment for non-state and state justice to interact. As a result, the analysis overlooks the human element of judicial sector rebuilding and the interests of actors who are part of the process. For instance, while international partners can posture as supporting non-state justice institutions to further their interests (Reheem Shaila 2019), local elites might do the same because they may be necessary to sustain their positions locally (Goodhand and Sedra 2007; Perera 2017; Ingram 2018). As decision makers, both local and international actors can shift the trajectory of how non-state and state orders interact; thus, whether it is the international practitioners or the local elite who have the upper hand in deciding the path may vary from one context to the other. Swenson is silent about these dynamics and instead takes a more optimistic stance in observing that his proposed strategies can lead to a more constructive engagement between the state and non-state systems.

As for the case studies, one wonders whether comparing international engagements in East Timor and Afghanistan is reasonable. While the two case studies are helpful in describing the status of state and the non-state order, they are less convincing in explaining comparatively the transformation of state and non-state order. As Swenson points out, the nation-building projects in Afghanistan and East Timor had different trajectories. In Afghanistan, religious and tribal leaders exercised more social and political capital, which capitalised on tribal structures and religious beliefs, and they were much more reluctant to engage with the international community. In East Timor, the Timorese elite were open to cooperating with the international community as this was fundamental to further their economic and cultural aspirations. As for the international donors, Swenson points out that in Afghanistan they were much more hesitant to engage with the local *shuras* and *jirgas*, whereas in East Timor, the opposite was the case. Although Swenson recognises the political, social and cultural environment of both post-conflict settings to be widely different from each other, in his evaluation of the international engagements, he doesn’t weigh these factors too heavily. As a result, one wonders whether some legally pluralistic societies are more adaptable to transforming into cooperative/complementary societies than others. If so, is there any scope for international rule of law practitioners to attempt to change legally pluralistic societies that are more hostile to state-backed judicial systems?

Finally, Swenson’s parameters of what makes a *cooperative* and *complementary* legally pluralistic order are vague. For example, he observes that under Portuguese colonial rule in East Timor, the traditional normative order *competed* with the state order, which transformed into a *combative* one under the Indonesian occupation, and then into a *cooperative* one post 2012 (p.63). Swenson concludes that the present environment in East Timor is *cooperative* because the non-state authorities recognise the state building as a legitimate endeavour and are open to constructive engagements with the state authorities (p.63). Further along in the book, Swenson also provides examples of how traditional authorities have been incorporated into the state authority at the regional levels as evidence of such cooperation (p.103-108). Even though, on paper, both the state and non-state justice orders are recognised in the country, it is far from a cooperative model. The vast majority of the Timorese population continue to rely on the traditional legal system, especially to resolve disputes within the private sphere, sometimes even at the risk of contradicting the normative standards set under the state-based law and compromising the rule of law (Kovar 2012). Moreover, Timorese judicial actors persist in their struggle to establish their authority and legitimacy in a society that continues to revere traditional authorities more than state officials (Reheem Shaila 2022). It may be that the situation in East Timor is not as hostile as in Afghanistan, but it is still far away from an ideal example of a *cooperative* non-state order that furthers the rule of law.

Despite the above reservations, Swenson’s monograph is a welcome change in the scholarship on legal pluralism. Swenson emphasises the importance of taking non-state judicial institutions and its instruments seriously as tools for pursuing the rule of law. His writing is clear and leaves the reader to appreciate why there should be more positive and optimistic engagement with normative orders beyond the state. Swenson reminds us that non-state orders do not necessarily need to compete with the state order; instead, there are a number of different combinations of how the non-state order can engage with state-backed institutions. As for researchers working on legal pluralism, Swenson’s typology on interactions between the state and non-state orders opens new avenues to examine why a particular interactive relationship exists in a setting, whose interests are pursued as a result, and how that impacts the rule of law. Finally, as someone who has worked as a practitioner in many post conflict and developing states, Swenson marries academic inquiry with realisable policy solutions. His monograph is invaluable in demonstrating how pursuing theoretical concerns need not be an end in itself and that it can also facilitate constructive policy engagements. Thus, *Contending Orders* is a book not just for scholars who are interested in legal pluralism, it is also a valuable resource for those who are in the field as practitioners assisting with justice sector building initiatives in societies where the non-state justice system thrives.

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