


the insurgency or separatist movement challenging the state. In this context, the immediate post-conflict issues are confined to jurisdictional disputes and social matters that do not threaten the state's judicial authority, an interaction that Swenson attributes only to cooperative pluralism. These war-torn countries may have much in common with Timor-Leste than Afghanistan, which seems a unique case because of some ideological connections between the Taliban as an insurgent group and the *jirgas* and *shuras* as non-state justice mechanisms. Thus, instead of predetermining a default condition, I think the question should be which circumstances determine the legal pluralism experienced in the immediate aftermath of conflict.

Despite these concerns, *Contending Orders: Legal Pluralism and the Rule of Law* is tremendously valuable not only for its original empirical assessment of judicial state-building interventions but also its creative theory building and testing efforts. In the field of peacebuilding, the book is a timely contribution to the mainstream problem-solving literature that evaluates the impact of liberal statebuilding and peacebuilding interventions with the objective of improving the efficacy of international efforts. With more than three decades of international rule of law promotion in war-torn countries, *Contending Orders: Legal Pluralism and the Rule of Law* helps to address the empirical knowledge gap about the impact of these measures on the ground. Although the tension between rule of law and legal pluralism remains, the book revisits this question in a manner that can rekindle dialogue between the two fields. Its framework for assessing the relationship between the rule of law and legal pluralism is indeed a valuable offer to scholars in Socio-Legal Studies, Peacebuilding, and Law, among others.

Response to Mohamed Sesay's Review of *Contending Orders: Legal Pluralism and the Rule of Law*

doi:10.1017/S1537592723001792

— Geoffrey Swenson 

I very much appreciate Mohamed Sesay's thoughtful, constructive engagement with my book. Among many other insights, it speaks to the necessity of clarity and precision to the extent possible when dealing with concepts as contested as the rule of law and as expansive as legal pluralism. His intervention raises several important inquiries, but there are two particularly important areas worth focusing on here: a) how should we understand and assess the rule of law after conflict and b) how is non-state justice understood and applied.

The rule of law requires a monopoly on justice provisions. Sesay is rightly skeptical that this is always

possible, let alone desirable. Monopolistic legal orders may be just or unjust. Non-state justice may be predominant within a given state's territory and it may provide for a significant degree of legitimacy and stability. This dynamic, however, is not the same thing as the rule of law which requires uniformity and equality before the law.

As Sesay highlights, I advocate for assessing post-conflict efforts based on a thin understanding of the rule of law, but notes that "it is hard to find in the long history of international efforts a compelling example where thick rule of law ultimately followed the establishment of thin measures." This point is well taken, but I am also unaware of any instance where thick rule of law was established before thin rule of law. Thick rule of law is a worthwhile aspiration, but even achieving a thin rule of law is difficult. As such, I still believe it is a more reasonable way to assess progress (or lack thereof) in invariably challenging post-conflict settings.

Regarding non-state justice, Sesay maintains "the state/non-state distinction remains a binary." As I readily admit, the non-state/state distinction cannot capture the rich nuance of lived legal pluralism. (That said, nor can concepts like "informal" or "traditional.") On a foundational level, a degree of simplification is the cost of engaging in both theory-building and cross-unit comparison.

To understand how contemporary legal pluralism functions and its consequences, it is vital to know whether and to what extent these legal systems enjoy meaningful autonomy from the state. Sesay's own book speaks to the utility of this approach. He argues that "the central modern state ... corrupted and undermined African traditional governance systems and this elitism must be separated from broader customary practices" (p. 153). Yet these customary legal practices are still subject to extensive influence from the state and routinely interact with the overarching political and legal order. In other words, what matters is that these customary legal practices enjoy substantial autonomy. It is important to keep in mind that non-state justice *does not* mean a complete absence of state involvement, now or in the past, but rather that a particular legal system enjoys considerable autonomy from the state. After all, we routinely think of non-state organizations, for example private businesses or non-governmental organizations, as influenced by state actions and regulations even as they retain significant autonomy.

Finally, Sesay questions what type of legal pluralism is most common after conflict. While there could certainly be situations where cooperative legal pluralism exists when a conflict ends, these situations are rare. Establishing a legitimate post-war legal order that has meaningful buy-in from most of the population is no easy task. Even post-independence regimes emerging from colonial rule relatively peacefully tend to face serious challenges in this area.

Indeed, Sesay's work shows how difficult establishing an inclusive, effective, and legitimate state legal regime that enjoys widespread popular support across geographic and ethnic boundaries is—both before and after conflict. More broadly, my key concern is not whether competitive or cooperative legal systems are more common, but rather to highlight the value of thinking about the dynamics of different types of relationships between state and non-state justice institutions.

Again, I very much appreciate Sesay's close reading and thoughtful engagement with my book.

Domination Through Law: The Internationalization of Legal Norms in Postcolonial Africa. By Mohamed Sesay.

Lanham, MD: Rowman & Littlefield Publishers, 2021. 226p. \$120.00 cloth, \$36.00 paper.

doi:10.1017/S1537592723001779

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What role international actors can or should play in promoting the rule of law has generated extensive debate. In *Domination through Law*, Mohamed Sesay engages these debates with a thoughtful and provocative book. For him, claims about advancing the rule of law primarily function as a tool of domination that favors people and institutions better able to access the state legal system (p. 3). Consequently, Sesay contends that “international efforts, even when well intentioned, often end up reinforcing social domination in economies, politics, and societies” (p. 3).

Sesay's arguments are both theoretical and empirical. Chapter two offers a critique of rule of law from a postcolonial perspective positing that domination forms the throughline that links “Euro-American Imperialism, colonialism, [and] postcolonial structural adjustment programs to contemporary post-conflict peacebuilding and state-building” (p. 52). Modern law, he contends, remains profoundly colonial as evidenced by its Eurocentrism, superimposition, and emphasis on doctrinal legality.

Chapter three looks at legal order in Africa from the colonial period to the present. Sesay shows how international law and legal technicalities, ambiguities, and loopholes in instruments such as treaties underpinned attempts to legitimize colonialism. He highlights that non-state justice actors remain the most prevalent providers of legal order today, as is frequently the case throughout the Global South. These actors claim the right to adjudicate issues based on sources of legitimacy outside state-sanctioned law, such as religion or custom. He also shows how legal pluralism was employed strategically to perpetuate and consolidate colonial rule through the ability to

discipline and reward customary leaders, and to determine what law applies, how it should be applied, and to whom it should be applied (pp. 72-80).

Chapters three through five turn to issues surrounding legal order in post-conflict Liberia and Sierra Leone. Both Liberia (1985–2005) and (Sierra Leone 1991–2002) experienced devastating conflicts. A key strength of the book is that Sesay's analysis is not limited to conflicts and their aftermath but rather situates post-conflict realities in a broader historical analysis. Sierra Leone was a colony of the United Kingdom until 1961, while Liberia was never formally colonized. Nevertheless, leaders in both countries employed an indirect rule system wherein chiefs helped perpetuate the existing regimes even as they retained significant autonomy (pp. 88-96). This led to the establishment of dual, but decidedly unequal legal systems where a state legal system modeled on English law coexisted with customary law, or rather, a particular version of it.

Sesay examines how different legal regimes over time related to political power (Chapter 4), the economy (Chapter 5), and society (Chapter 6). Despite differences between countries, he finds an overarching trend that what he identifies as the rule of law has been used to serve the interests of an exclusionary elite at the expense of the population more generally. This dynamic, Sesay argues, persists in both countries, despite domestic policy and international aid ostensibly designed to promote the rule of law. Likewise, in the economic realm, Sesay argues that “the neo-liberal logic of legal reform” helps perpetuate an economic order that enriches a small elite, precludes the state from undertaking key social and redistribution functions, and leaves most of the population economically vulnerable with little access to justice (p. 141). Regarding society, Sesay maintains that the informal legal sector, despite its continued importance, remains systematically marginalized. In contrast, English law retains preeminence, and even dominance, while still excluding most people and disproportionately benefiting the wealthy, educated, and influential.

Domination through Law effectively and persuasively demonstrates how the post-war orders in Liberia and Sierra Leone failed to fulfill their promises, and how the international community contributed to that failure. Sesay's deep knowledge of both countries is apparent. He paints a vivid, compelling portrait of lived legal pluralism in both Sierra Leone and Liberia. In both states, he shows that non-state justice mechanisms serve a vital and often underappreciated role in providing justice, while not idealizing them. Moreover, this book makes it clear that not everything that is labeled rule of law actually achieves it or is even really trying to achieve it. Sesay illustrates that behind lofty rhetoric and grand ideas, legal realities can be decidedly different. The book serves as a timely reminder that simply because a legal system is affiliated with the