**Learning project:
Engaging with informal local
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Customary institutions and public authority:

A literature review

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November 2015

IDS Institute of
Development Studies

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Shandana Khan Mohmand (IDS), November 2015

Summary

There is a growing scholarly and policy awareness of the fact that public authority is rarely exercised only by the state. In fact, a host of actors – some visible and recognised, others invisible and less obvious – exercise authority over and regulate everyday life within communities. Some evidence suggests that the authority exercised by such actors may be stronger within communities that lie further away from the centres of state power, both in terms of distance (remote communities) and in terms of ideology and power structures (minority groups, militant groups, marginalised classes), though this is not always the case. These actors may play an important role in local governance, especially in strengthening citizen participation, encouraging inclusive decision-making and improving service delivery.

While we recognise more and more that such actors and institutions take on various governance-related functions within local communities, our understanding of the role that they play is fairly limited, and possibly because of this, our discomfort with their inclusion in development interventions is often fairly high. We continue to have little real sense of exactly how they work, what they really look like, or even what to call them. This review is part of an effort to deal with this gap by bringing together the literature on a host of such actors and institutions that operate within local communities but engage and interact with formal state institutions and affect how they govern.

Most of our focus in this review is on institutions in developing countries. We approach their study from a non-normative perspective that is not shaped by how governance systems operate in the developed world, in order to gain a better grasp on how governance really functions in large parts of Europe, Latin America, Africa and Asia. In other words, we do not see these local, informal institutions as symptoms or signals of political dysfunctionality in the developing world. Instead, we approach their study by recognising that these are important institutions that function on a daily basis to condition and influence how formal institutions function, and often to even determine their impact on people's lives around the world.

We ask three main guiding questions in this review: (a) what types of informal, traditional or religious authorities/institutions organise citizen interaction and engagement with the state in different parts of the world; (b) why do these institutions matter from a policy perspective and what are their implications for governance; and (c) from where do they draw legitimacy to engage with the state on behalf of communities and to take on various governance functions? We also ask what such institutions might be called in order to delineate a category of institutions that have analytical value for policy and development work. We suggest such a term at the end of this review. Until then, we refer to them as informal or customary institutions interchangeably.

In answering these questions, we consider whether the available literature provides a sense of why these actors and institutions are important governance actors – is it because such

institutions are strong that state institutions are weak, or is it because state institutions are weak that informal institutions are strong? In other words, which way does causality flow? This question captures the fact that we do not fully understand why informal institutions continue to exercise authority in democratising states, and how they adapt and survive, rather than disappear, as formal authority expands or becomes stronger.

This review proceeds as follows. Section 1 considers our first question and looks at how customary institutions are conceptualised in the literature. Section 2 answers the second question by focusing on the ways in which they engage with national processes and impact governance and policy, while Section 3 takes on an analysis of our third question by considering their sources of legitimacy. Based on this, Section 4 looks at the parameters of our concept, and considers a new term that might capture well the sense in which we would like to study such institutions. And Section 5 concludes.

Contents

1 Conceptualising customary institutions

One of the great challenges of dealing with customary institutions is to figure out exactly what they should be called. This is not just an issue of nomenclature, but one of approach, disaggregation and the need to choose a term that has analytical value. In other words, we need a term that helps us on a number of fronts, to: (a) create a meaningful category of institutions that share important characteristics in common; (b) say with clarity what kinds of traditional or informal institutions are not included in this category; and (c) one that is both of academic value but is also relevant to policy decisions and practice, and can bring together the academic and policy perspective on these institutions.

In this section we look at what such institutions are called in the available literature, and then based on this we think through what an analytically relevant term may be for our main concern with these institutions' role in national governance processes in Section 4. Overall, we notice that customary institutions are most visible in four types of literature within political science, and governance and development studies. They appear most often in studies of: (a) clientelism; (b) parallel justice systems, or legal pluralism; (c) the delivery of public services by state and non-state actors; and (d) the practice of public authority by a range of actors both within and outside the state. We organise this around two main discussions. The first looks at literature that concerns itself primarily with informal practices in state institutions and processes, while the second considers literature that is more directly concerned with non-state actors and institutions that exercise public authority and play a role in governance processes.

1.1 Informal institutions

We start our survey of the literature with Helmke and Levitsky's (2006) influential work on informal institutions and their definition of informal institutions as 'socially shared rules, usually unwritten, that are created, communicated and enforced outside officially sanctioned channels' (Helmke and Levitsky 2006). Their terminology encompasses a host of institutions, from custom law and clans to informal rules that operate within formal bodies of the state, such as informal norms that govern presidential nominations. This is a useful definition for our concern with the ways in which the functions of formal institutions are conditioned by unwritten norms and rules that develop over time. Indeed, Helmke and Levitsky point out that some of the most important constraints and incentives for formal institutions come from the informal 'rules of the game'. Their definition, however, puts greater focus on shared expectations and rules, than on the actors and organisations we want to include because of our concern with the way services are delivered by the state, especially within remote and marginalised communities.

O'Donnell's (1996) work on democratic consolidation provides another important reference point for the study of informal institutions. He contributes in a number of ways to the study of informality within institutions. First, he suggests that what we see usually as weakness or fragility in many states in the developing world is not a lack of institutionalisation, but instead, it is the informal institutionalisation of governance systems, in this case through 'particularism' or clientelism. These, he suggests, are present in almost all institutional spheres, including the congress, judiciary and even the executive, but that most of our work on political institutions assumes that they function and operate only according to formal rules. This is an important flipping of the lens. Second, he suggests, like Helmke and Levitsky (2006), that informal institutions are highly institutionalised, because they are 'widely shared and deeply rooted', and are not simply symptoms of the state's dysfunctionality (O'Donnell 1996: 40). He,

therefore, suggests that we look everywhere for informal institutions in our study of formal democratic norms and behaviour, and that we not think of these as anomalies within the system.

Building on O'Donnell's work, Lauth (2000) identifies informal institutions of political participation, which he defines as 'well-established behavioural structures and patterns, by means of which the attempt is made to influence the political decision-making process – without them officially being destined for this purpose'. Some examples that he advances include clientelism, corruption, the use or threat of force, civil disobedience and customary law. Bratton (2007) defines a similar set of institutions as 'the pattern of patron-client relations by which power is also exercised' and includes corruption, clientelism and 'Big Man presidentialism' as informally institutionalised patron-client relations (Bratton 2007: 97). Jörgel and Utas (2007) shy away from using terms such as 'patron-client' relations, arguing that they correspond to Western understandings that do not adequately capture the socio-political realities of non-Western contexts and, instead, advocate the use of the term 'network' to denote both the fluid state of social settings and relations that 'supersede all kinds of groupings and borders' (Jörgel and Utas 2007: 98).

Looking at informal institutions in China, Tsai (2006) argues that formal institutions are inherently both constraining and enabling, and in some manner inevitably inhibit or limit the range of officially permissive behaviour. The 'informal coping strategies' devised by various local actors to evade the restrictions of formal institutions evolve into regularised patterns of interaction that emerge as adaptive responses to the constraints and opportunities of formal institutions. She argues that these widely practiced adaptive responses that are not officially sanctioned, through repetition and diffusion, take on an institutional reality of their own and comprise what she refers to as 'adaptive informal institutions', and contrasts these with more deep rooted 'primordial' informal institutions that resist change.

1.2 Public authority and custom

Moving decidedly into the realm of actors, organisations and the delivery of social services, Scheye (2009) posits that inside each fragile state lies what he calls a 'second state', made of non-state local networks that have the responsibility to replace the state in providing public services. Scheye thus equates the existence of customary and informal institutions with the weakness of state institutions. Scheye situates these networks as 'intermediaries' and looks in particular at the role of the 'second state' in delivering local security and justice instead of, or in parallel to, the state. Informality in this case is implied by the fact that these services are not provided by the state and they are not defined by the law. Instead, they are 'accepted and authorized in practice' (Scheye 2009: 25).

Lund (2006b) uses the term 'twilight institutions' to represent 'traditional institutions', which can include chiefs, lineage leaders, vigilantes, religious fraternities, political factions and activists, hometown associations, and neighbourhood groups. According to Lund, such institutions that lie outside the state can nevertheless be part of the 'idea of stateness' because they also exercise public authority, often in competition with government institutions. This notion of public authority creates a twilight zone where there is 'no neat dichotomy of formal/government on the one hand, and informal/non-government on the other' (Lund 2006b: 689). Therefore, 'twilight institutions' refers to the fact that many institutions 'have a twilight character; they are not the state but they exercise public authority' (Lund 2006a: 673). Lund approaches the study of public authority from the bottom up, through the different types of institutions that practice

public authority outside the state. In doing so he highlights the conceptual limitations placed on our understanding of public authority if we focus only on institutions that are legally recognised by the state.

Within this twilight realm lie a host of actors and organisations. Logan (2009) looks at one subset whose informality emanates from the fact that they are selected through heredity, rather than elected. She calls this 'traditional authority' or 'chieftaincy', and provides illustrations of the dichotomy between selected and elected actors: chiefs vs councillors, sultans vs MPs, and kings vs presidents. These actors can exercise fairly extensive public authority, and in her study of 15 countries in Africa she found that a common feature of such authority is that it is based on a strong sense of shared culture and history – something that the post-colonial states in these countries cannot claim.

In fact, as Raeymaekers *et al.* (2008) argue, the post-colonial African state represents only one among several forces that can exercise legitimate use of force, and that there is a constant negotiation between 'different poles of authority in a process that can best be described as state "mediation"' (Raeymaekers *et al.* 2008: 17). They also note that state and non-state forms of political power are not always oppositional and that there is a good deal of overlap and complicity between them. Governments rely on diverse strategies of negotiation with non-state authorities to provide public security and justice, and to manage local conflicts. The exercise of public authority, therefore, becomes the 'amalgamated result of the exercise of power by a variety of local institutions and the imposition of external institutions, conjugated with the idea of a state', and the more we know about it, the better is our understanding of the ways in which societies organise power in order to manage public resources.

A growing body of literature has conceptualised hybridity of this nature, in which multiple state and non-state actors enter coalitions to produce everyday governance. Boege *et al.* (2008) describe such hybrid politics as places in which 'diverse and competing claims to power and logics or order co-exist, overlap and intertwine, namely the logic of the formal state, of traditional informal societal order, and of globalisation and associated social fragmentation'. Hagmann (2013) identifies hybrid politics in the context of local politics and the provision of service and security in sub-Saharan Africa, and understands it as the 'outcome of shifting figurations of a broad variety of actors, namely rebels, businessmen, NGOs, religious leaders, customary authorities, but also state officials' (Hagmann 2013: 2).

Despite the variety of perspectives, the literature supports the fact that across many parts of the world governance is affected and changed in significant ways by a fairly similar phenomenon – institutions that are not part of the set of formal institutions in each country but that affect how the state functions and delivers services. This separates them from other traditional/customary authorities that may work within local communities but which do not affect local governance and do not engage with the state.

2 Why do they matter?

What implications do customary and informal institutions have for governance and why do they matter within the world of policy and development? A simple answer, elaborated below, is that they matter because they impact the way in which the state interacts with large swathes of its population, and because they can condition the ways in which development policy is implemented. However, this works both ways – customary authorities affect governance

processes, but they are also affected and transformed in important ways through their interaction with formal institutions and processes. We look here at how this has been discussed in the literature.

In looking at informal institutions of political participation, Lauth (2000) provides a good overview by pointing out that such institutions influence national policy and processes by either competing with the state's claim to binding decisions, by striving to establish parallel areas of competence, or by influencing the way in which the state reaches its decisions. They strive to achieve influence through a variety of means, which may include threats of violence and civil disobedience, typically enacted by some kind of a collectivity, or through subtler means by influencing local politics and the implementation of state programmes in particular territories.

In so far as O'Donnell's (1996) 'particularism' as an informal institution is concerned, the perspective on their impact is largely negative. Particularism plays out inside democratic institutions and hampers accountability – a cornerstone of a well functioning democracy – and it allows the implementation of policy to be biased in favour of more powerful interests in new and fragile democracies. Kpundeh (2004) argues that such institutions contribute to corruption. However, Lemarchand (1972) takes a generally positive view of patron-client relationships, especially as they operate in Africa, and argues that they enable the integration of multiple cultural groups into national policy processes. Between these viewpoints, Bratton (2007) contends that informal institutions influence people's perception of democracy in both positive and negative manners. In his view, clientelism has a 'positive effect on the perceived extent of democracy' while corruption has a negative one (Bratton 2007: 108). The view that clientelism can have some positive impacts is also supported in more recent work by Stokes *et al.* (2013).

Besides clientelism, the role of customary institutions has received bad press in the literature for other reasons too, especially in terms of relations between customary authorities and vulnerable or marginalised groups such as women and the economically disenfranchised. For example, Ahlawat (2012) examines the role of *khap panchayats* in the Indian state of Haryana in perpetuating patriarchy and depriving women of the rights conferred upon them by state law. Composed of village elders, *khap panchayats* are extra-judicial bodies that are considered guardians of marriage customs in villages. *Khap*s have denied land rights to women, routinely block attempts to implement marriage laws, and hand out tough punishments. The fact that *khaps* exercise a dominant role in determining rural politics has kept successive governments from coming down too strongly against them. In cases such as these, informal institutions draw barriers between the state and its citizens.

However, much of the literature deals with relatively more benign forms of informal, customary institutions and uses a more neutral lens. For Logan (2009) their impact on governance in Africa is differentiated by the level at which they operate. At the national level customary institutions may play a limited role related to ceremonies and 'advisory roles', but at the local level they have a real impact on local governance. Here they may compete with elected officials for power over 'land, tax revenues or other resources, responsibility for dispensing justice, and influence over community activities and decisions, and even votes' (Logan 2009: 106). For instance, in rural Zambia, which is divided into 286 chiefdoms, hereditary chiefs play the role of intermediaries between politicians and voters. While their authority is to a large extent based on custom and hereditary status, the interface they provide between the formal and informal spheres helps perpetuate their power (Baldwin, 2007). Engagement with national level actors has, however, provided pressure for chiefs '"to 'reinvent" themselves both as crucial intermediaries between state and society during formal elections, and as local-level

"democrats" who are willing to adapt local institutions in the face of popular pressure for change' (Williams 2004). 'These adaptations have ranged from opening space for greater participation by previously marginalised groups, especially women and younger men, to introducing elections for local chiefs (*inzinduna*) in some areas' (Logan 2009: 123).

The main reason they matter, by far, is the fact that they deliver essential public services to large parts of the population in many parts of the world – either directly by substituting for the state, or by influencing and conditioning the way in which, and to whom, the state delivers. Scheye (2009), for example, argues that the 'second state's' main role is to substitute for the state in the provision of different kinds of public services, most importantly security and justice but also health and education within a geographically delimited area within which they exercise authority. For example, in Timor-Leste, such non-state, local networks play an 'intermediary' role between the citizens and the state by providing information to the community on how to deal with procedures that communities are not familiar with. Similarly, Brick (2008) observes that in addition to providing dispute resolution and a degree of order in Afghanistan, a country that is otherwise characterised by national-level chaos, 'customary organisations' maintain and manage communities' access to water, land resources and credit by enforcing community rules and norms.

Dexter and Ntahombye (2005) note that traditional institutions in Burundi (*Bashingantahe)* have historically played 'multidimensional roles' spanning the judicial, moral, cultural, social and political spheres, and today they continue to play an important role in maintaining peace and cohesion amongst communities. Similarly, secret societies that are a respected authority in Sierra Leone, Guinea and Liberia serve important roles of conflict resolution with security and development implications (Jörgel and Utas 2007: 54). In fact, Jörgel and Utas (2007) argue that the functioning of formal institutions would not be possible without local networks led by 'Big Men' who derive their importance from their influence over local politics.

The impact and value of customary institutions is most visible in the area of dispute resolution. Buscaglia and Stephan (2005) point out that informal dispute resolution mechanisms in Colombia, composed of prominent local residents, supplement the formal system in the provision of justice, and provide 'governance-related advantages' compared to the formal systems, such as better access for marginalised groups, lower costs, simplified procedures or better options to resolve conflict. Because of this, the authors argue that these institutions have a role 'in raising living standards' of the most marginalised groups, even more so if these informal mechanisms are recognised and supported by state authorities (Buscaglia and Stephan 2005: 105–6). This is supported by other authors like Chirayath *et al.* (2005) and Coburn (2013).[1] Chirayath *et al.* (2005) look at informal institutions of customary or non-state law in three African states – Tanzania, Rwanda and South Africa. There are notable differences in the evolution of customary institutions in the three countries, the manners in which arbitrators are selected or elected and proceedings are carried out, their areas of jurisdiction, and the degree of independence from the state. However, they are characterised by certain commonalities, such as the power of tribal chiefs to compel disputing parties to attend hearings, consensual resolutions, oral record keeping, the highly informal environment of

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[1] Penal Reform International (2001) differentiates traditional justice systems from informal justice systems, with the former referring to non-state justice systems that have existed since pre-colonial times and are generally found in rural areas, and the latter referring to any type of non-state justice system, including non-traditional systems, such as 'popular justice forums' and 'alternative dispute resolution forums' run by NGOs. The common characteristics shared by both traditional and informal justice systems include voluntary (i.e. non-coercive) process, reliance on social pressure to ensure compliance, informal and participatory procedure, restorative justice as their basis, decisions based on compromise rather than strict rule of law, and the central role of disputants in the decision-making process (Penal Reform International 2001).

proceedings and, perhaps most importantly, the fact that social pressure (instead of physical coercion) is the means by which decisions are enforced.

Tsai's (2006) work on informal institutions in China provides possibly the most compelling evidence of the ways in which such institutions can influence state policies. She argues that informal institutions can set the tone for how citizens engage with the state, and can impact eventual policy or formal institutional change – in this instance the institutionalisation of major reforms that have gradually enhanced the private sector's political legitimacy and economic security in China. Informal institutions and actors have been critical in bringing about this endogenous institutional change. Moreover, she argues that the wide-spread use of adaptive informal institutions motivates and enables political elites to radically reform formal institutions even in the absence of external impetus, crisis conditions or explicit societal demands.

Similarly, Casson *et al.* (2009) note that informal institutions in developing countries play a significant role in shaping formal institutions and the operation of markets, and can emerge as the preponderant rules of interaction when formal institutions and markets fail. They argue that moral and ethical behavioural norms that are often embodied in informal institutions, such as religion and caste, determine the quality and sustainability of formal institutions, including schools, labour markets, and the rules and regulations governing economic activity.

For all of these reasons, there have been attempts to incorporate these institutions into formal policy processes. In many countries this works seamlessly, but in others it has worked less well. Albrecht *et al.* (2011) opine that this is mainly due to lack of context-sensitive programming. For example, international interventions to engage informal systems in Afghanistan have largely been counterproductive due to their reliance on western state-centred models of organising society. This lack of contextual understanding has allowed local actors in many contexts to increase their own political capital at the expense of local stability. Likewise, ill-conceived attempts to integrate informal institutions with the formal state apparatus may also create ambiguities about their roles and functions. For example, the *Bashingantahe's* incorporation into the formal system in Burundi has not only deprived them of the power to enforce the law but has created a great deal of confusion amongst the local population about its purpose and jurisdiction (Dexter and Ntahombye 2005). Chirayath *et al.* (2005) show that in Tanzania several attempts have been made to incorporate customary institutions into the formal judiciary since independence in 1961 but in vain. Most communities have continued to use old community-based dispute resolution processes or developed new ones in response to the state's incapacity to supply law and order. In South Africa, the state has been trying to bring customary institutions into the formal framework since the early 1990s. The Governance Framework Act of 2004 set out the different levels of traditional leaders and institutions and their relationships to different levels of government, but recent legal commission reports have identified problems with this law. In response, several reforms have been proposed in a recent bill, including the formal recognition of unofficial tribunals, more representative composition of councillors in customary courts, allowing customary courts to apply common and statutory law within certain restrictions, and permitting defendants to opt-out of customary courts in criminal cases (Chirayath *et al.* 2005).

This literature tells us that customary institutions have fairly significant implications for governance and the implementation of development policy. Also, they can be fairly resilient in the face of change, though they do shift the manner in which they work in important ways. Much of their continued importance is based on the fact that they have legitimacy within the communities in which they operate. But where does this come from? We turn to this next.

3 The question of legitimacy

A central concern for us is to understand where customary local institutions draw their legitimacy from, how this operates and how they sustain it. A good way to examine this is to ask how they come to occupy a position from which they can exercise public authority and what kinds of activities allow them to maintain this authority. The discussion that follows shows that there are essentially four sources from which customary institutions draw legitimacy: (a) from custom, tradition and everyday practice; (b) from the exercise of public authority; (c) by providing services; and (d) from the state itself as intermediaries.

It is important to point out that the concept of legitimacy is different from that of power. Power, simply understood, is the inherent ability to influence or coerce, in that actors and institutions may have '*power over*' others, or the '*power to*' act in certain ways (Gaventa 2006). Power is 'possessed' by an actor or institution, while legitimacy – a more dynamic and contested phenomenon – must be 'conferred' or 'derived' from the types of sources listed below. Power and legitimacy also do not always coexist. Actors may have local power, but their use of this power may not be legitimate in the eyes of the local community or the state, such as a local militia. At the same time, actors may have legitimacy but little power to exercise authority, such as an exiled leader. As Meagher *et al.* (2014) point out, 'hybrid governance perspectives tend to assume that embedded non-state orders are locally legitimate by definition. Yet, the local legitimacy of non-state orders is often as contentious as that of official orders in many African states'. Nevertheless, power and legitimacy are very closely connected concepts, and their combination enables the exercise of public authority.

3.1 A. Based on tradition, culture and practice

According to O'Donnell (1996) the legitimacy of particularistic or clientelistic practices comes from having deep historical roots and from becoming institutionalised in everyday practice over time. He argues that particularism may be more rampant in places where there is less control or where justice is not administered properly, but its existence does not restrict democratic practice. In fact, countries like Italy, India, Japan, Colombia and Venezuela are functioning democracies even though many informal practices work within their formal institutions. Logan (2009) makes a similar point for Africa by arguing that the usual dichotomy between formal and informal institutions, based on a western perspective, does not hold in Africa. There seems to be little correlation between someone's affinity for traditional authority and their use of the democratic system. One person can believe in both and use both. Therefore, traditional authority is maintained and even sustained alongside the growth of modern formal institutions.

Logan (2013) uses AfroBarometer data collected between 2008 and 2009 to conclude that the resilience of traditional authorities is based less on the failure or weakness of formal state institutions and more on the popular legitimacy of the traditional sphere. She argues that this popular legitimacy stems from the traditional authorities' 'connection with and accessibility to the people in their communities' (Logan 2013: 373). In other words, they understand the context and the prevailing norms, and are readily available, in contrast to politicians and government officials. In a similar vein, Okereafoezeke (2003) contends that the main source of legitimacy for community-based traditional justice systems in Nigeria stems from the familiarity that community members have with them. They understand how they function, and trust the values and ethics of the actors that administer them, which is ensured because any person who deviates from the values and norms of the community is likely to face social

censure. Baldwin (2007) states that 'chiefs have influence in their communities by virtue of the trust people have in them', and that findings from the 2003 Afrobarometer data show that '52% of Zambians trust traditional leaders a lot or a great deal; in contrast, only 32% of Zambians have this degree of trust in the ruling party and only 18% have this amount of trust in opposition parties' (Baldwin 2007: 7–8).

For Scheye (2009) the legitimacy of the 'second state' comes from the fact that it is 'culturally embedded', and it maintains this legitimacy by representing community interests and engaging with state institutions to ensure that they provide services. He points out that 'a trusted and legitimate non-state/local justice and security network is, by definition, a locally owned justice and security provider as the repository of the users' beliefs, norms, and values' (Scheye 2009: 6–10). Tsai (2006) similarly suggests that the power of informal institutions comes from and is sustained by their continued and large-scale practice, which the author defines as 'the capacity to guide human perceptions and practices' (Tsai 2006: 126).

Interestingly, Penal Reform International (2001) contends that some informal institutions, such as local justice systems, may actually lose legitimacy when they come into contact with the state. For example, in South Africa, the legitimacy of informal street committees was challenged in the 1980s when the government set up community councils above them in an attempt to integrate them into the formal sphere. Street committee chairmen who cooperated with councillors were 'given warnings' by their constituents and some were even threatened or physically attacked. By 1985, most councillors had resigned. Similarly, traditional authorities in Mozambique lost legitimacy when they cooperated with the colonial state in policies involving forced labour and cultivation. Without popular authority, the 'chiefs relied on the coercive powers of the colonial state' (Penal Reform International 2001: 45–47). Dexter and Ntahombye (2005) also argue that the Belgian colonial administration in Burundi reduced the legitimacy of the *Bashingantahe* by 'controlling their judgments, modifying their verdicts and withdrawing their right to impose certain sanctions'. These informal institutions of customary law became politicised when the country's sole political party began to manipulate them by appointing individuals to them in a bid to exercise control after realising that they could not be replaced. In response, the public became less and less trustful of these institutions that have historically been seen as nationally representative. There is, however, public support for their rehabilitation because they are generally perceived to know 'in the slightest detail, the origins of the disputes they are called upon to settle' (Dexter and Ntahombye 2005: 14–20).

Chirayath *et al.* (2005) also argue that customary systems that have been 'distorted' by colonial structures lack legitimacy at the local level, and are often seen as more authoritarian and rigid than informal institutions. Legal and regulatory informal institutions in Tanzania, Rwanda and South Africa gain authority and legitimacy to the degree to which they reflect the social norms and values of communities (Chirayath *et al.* 2005: 4). Coburn (2013) also notes that customary authorities in Afghanistan tend to lose popular legitimacy in their communities when they receive international support or financial assistance. They are perceived to respond to funds rather than the local needs of the communities and are, therefore, unacceptable. Interestingly, however, their legitimacy and authority gains esteem when they receive the approval of formal authorities such as district governors (this is discussed in more detail below). This reminds us that the varied ways in which informal institutions derive and sustain legitimacy is context-specific and fairly hard to generalise across different contexts.

3.2   B. Based on the exercise of public authority

For Lund (2006b) legitimacy and public authority work in a circular and mutually reinforcing manner. An institution exercising public authority needs to have legitimacy before it can effectively exercise such authority, but by exercising public authority, it claims and maintains legitimacy. Taxation is one way of gaining legitimacy to exercise public authority. In Niger, for example, when a local chief receives money from a farmer for a property certificate – a non-state institution providing recognition of property rights – it reinforces 'recognition of the legitimacy of the institution' (Lund 2006b: 696). In other words, 'when an institution authorizes, sanctions or validates certain rights, the respect or observance of these rights by people constitutes recognition of the authority of that particular institution' (Lund 2006a: 676). What provides the strongest legitimacy to public authority, however, is 'territorialization by delimitation and assertion of control over a geographic area' (Lund 2006b: 695). This refers to the fact that traditional authorities define themselves as local, in contrast to 'outside' and 'national level'. This is why these institutions often have territorial markers such as flags, signs, or even graffiti on walls. Such territorial and symbolic marking provides recognition of the exercise of public authority, and thus legitimacy. Very often, taking on markers of modernity may also provide further legitimacy, such as a lineage leader calling himself a 'lineage *chairman'* in Tanzania.

Informal dispute resolution and violence provide other examples of functions that underscore the exercise of customary public authority. Dispute resolution works because informal justice has its own internal code, is often understood by the parties involved, is flexible enough to adapt to the changing local political and social context, and is reflective of the cultural norms that exist within a community (Coburn 2013). Warlords and 'Big Men' in Sierra Leone, Guinea and Liberia, for example, usually impose their power through violence and the maintenance of military control over a territory (Jörgel and Utas 2007). Similarly, *khap panchayats* in India are sustained by a combination of legitimacy derived from their role in preserving the status quo based on their communities' beliefs and traditions, and authority rooted in fear and oppression (Ahlawat 2012).

3.3   C. By providing services

In some contexts, the absence or weakness of the state can itself be a significant legitimating factor, particularly in the realm of justice and security provision. The case of Colombia shows the absence of functional state dispute resolution mechanisms that either cannot control certain parts of the population or ask for high prices for its dispute resolution service, hence excluding part of the population. Buscaglia and Stephan (2005) argue that the 'divorce' between marginalised groups and formal institutions represents 'the gap between "law in the books" and "law in action"', an issue observed in many developing countries. Because of this, people in remote areas and members of marginalised groups turn to informal systems. In this case, their sustainability is ensured until the state is able to effectively take on this role. According to Penal Reform International (2001), the majority of Africans prefer to settle disputes via informal systems because of delays in the formal system, physical distances to formal courts, and the formal system's incompatibility with how people actually understand justice as well as its unfamiliar complexity in terms of languages used and procedures followed (Penal Reform International 2001: 6–10).

Likewise, Baker (2005) and Isima (2007) argue that non-state policing in Sierra Leone is a result of the incapacity of the state police in providing security. Isima (2007) contends that

neoliberal policies and increased privatisation in Africa created the conditions for non-state actors to play a greater role in the provision of security against the backdrop of states losing monopoly on the use of force. The loss of the state's legitimacy effectively increased the legitimacy of parallel non-state security mechanisms. Bratton (2007) adds that the ascendancy of informal institutions in Africa is both a reflection of the failure of formal state institutions to fulfil their roles and responsibilities as well as a lack of trust between states and populations. Using AfroBarometer data collected between 1999 and 2006, he argues that this lack of trust is grounded in people's beliefs that they are not well-represented and notes that since 'formal rules mandating public accountability are persistently weak, people turn to other standards for judging the extent of democratic growth' (Bratton 2007: 109).

3.4   D. Through state recognition as intermediaries

This sub-set of literature holds that the legitimacy of customary institutions comes from the nature of their relationship with formal institutions and the state. In other words, they gain legitimacy either as recognised intermediaries through which citizens and the state connect with one another, or as substitute service providers who make up for state weakness. Both these perspectives are presented here.

Lund (2006b) points out that in exercising public authority twilight institutions engage extensively with formal institutions, and in the process, receive state recognition, create alliances with government institutions and sometimes also directly compete with them in providing services. Scheye (2009) similarly suggests that the 'second state's' legitimacy also comes from the state. This is because the state in Africa rarely has a monopoly on the use of force, and gains its own legitimacy not by providing security and justice, but by integrating different layers of service providers, including non-state local networks, to ensure that services are delivered. In this way the state, in need of these non-state networks, validates their utility and presence and reinforces their legitimacy. Very often then, the 'second state' comes to be maintained and sustained by the state itself. Buscaglia and Stephan's (2005) work on informal dispute resolution in Colombia argues similarly that because informal institutions are often the only institutions in remote areas to perform dispute resolution functions, they receive support from formal legal authorities, and thus draw legitimacy from the very top.

Tsai (2006) proposes that the accumulation of informal interactions between local state and non-state actors in China allows informality to acquire a legitimate institutional life of its own, and that this in turn invites further response from the state. However, the individual legitimacy of and state reaction to informal institutions is historically and nationally contingent. For example, informal institutions that threaten to undermine social stability or compromise political monopoly are likely to provoke immediate state censure, while informality in the economic realm is allowed to exist with reasonable to high legitimacy.

Logan (2009) supports a similar perspective, and discusses how African chiefs often gain both legitimacy from the community and another kind of legitimacy from higher authorities, which makes them both 'respected and suspected by local populations' (West and Kloeck-Jenson 1999: 475–6 in Logan 2009: 106). For example, she explains how people had a mixed perception of chieftaincy after the apartheid in South Africa;

> Some viewed traditional authorities largely as complicit collaborators, while others painted a rosier picture of their essential importance to the stability, solidarity and dignity of their communities… And while some characterise the manoeuvring of traditional leaders as primarily self-serving, others contest that the 'ability of chiefs to

straddle the state-society dichotomy' and serve as necessary intermediaries for their people is a strength of the institution that helps to explain its survival.
(Logan 2009: 106)

Elected officials, often having to provide public services with limited resources, need to rely on these traditional authorities to mobilise and communicate with communities. They thereby end up providing and underscoring the legitimacy of these authorities (see also Murray 2004; Oomen 2000; Englebert 2002; de Sousa Santos 2006; West and Kloeck-Jenson 1999).

Baldwin (2007) tends to agree that politicians in Zambia often solicit the support of local intermediaries where they lack the independent capacity to mobilise votes. She explains that in parts of Africa this is often based on the reality of ethnic divisions, in that politicians deliberately empower the chiefs of 'unaligned ethnic groups' in order to build electoral support for their parties when appeals to ethnicity are feasible. She further notes that the least devolution of power to chiefs has occurred either in countries where one ethnic group has been in power and coalition-building on ethnic lines is unnecessary, such as Namibia, or in countries that have few hierarchically structured but politically non-aligned ethnic groups, such as Kenya, Liberia, Tanzania (Baldwin 2014).

Logan (2009) argues that in Africa traditional authorities and government officials are not perceived by the public as being in competition, but they appear to be 'mutually reinforcing'. Their evaluation is not based on comparing one with the other. Instead, using Afrobarometer data, she shows that the same criteria is used to evaluate both formal and informal authorities as a whole. In fact, formal and informal institutions feed off each other's legitimacy to the extent that she suggests that traditional authority should not be seen independently of the system of governance, and rather as part of a 'governing apparatus' (Logan 2009: 116–17).

4 Informal local governance institutions

It makes sense at this point to reiterate our main purpose in this review. We said at the beginning that we need a term that will help us: (a) create a meaningful category of institutions that share important characteristics in common; (b) say with clarity what kinds of traditional or informal institutions are not included in this category; and (c) one that is both of academic value but is also relevant to policy decisions and practice. We define that term and category in this section.

4.1 Demarcating our institutions of interest

From our review of the existing literature above, we now know that there is a very particular kind of informal, non-state, and customary institution that we are trying to define. Helmke and Levitsky's (2006) definition of socially shared rules is a great starting point for us but we need to expand this to include actors and organisations more centrally. This might also make our task easier from a policy perspective, since it allows us to demarcate and focus on specific types of tangible actors, rather than on more abstract interactions or processes. O'Donnell (1996) tells us that these are not systemic anomalies, and are not the 'unusual', but actually quite the opposite – well-established, deeply rooted patterns of behaviour. We know from Tsai (2006) that we should be looking more for institutions that are 'adaptive', in that they interact with formal processes, rather than more 'primordial' entities that regulate communities. And Lund (2006a) suggests that we focus in particular on the fact that these institutions play state-

like roles, thus blurring the neat dichotomy between state and non-state spaces and processes. Furthermore, they are not always based on heredity and tradition, and can draw legitimacy from sources besides these, though this is an important sub-group. And in all of this, their role as intermediaries remains key.

So, there are a few characteristics that the type of institution we are interested in share in common:

a) They either engage actively with the state or with spaces and functions that the state is expected to work in (i.e. they take on governance functions);
b) They deliver some specific service or function, and are not merely associational in character; and
c) They practise generalised authority within a defined territory or over an identifiable group (i.e. they are specifically local in their operations).

The types of informal, customary institutions that this leaves out, by definition, are those whose primary purpose is to organise and represent groups – rather than to take on state-like functions and deliver services – such as trade unions, civil society organisations, landless groups, or social movements. Though each of these institutions are informal, lie outside the state and may also deliver some kind of service, their main aim is to represent collective interests. Also, their purpose and legitimacy comes from the fact that they provide associational spaces, rather than from the fact that they exercise public authority of a variety that allows them to organise the everyday life of a specific community in a 'state-like' manner. It also, fairly obviously, leaves out all actors and institutions that fall in the realm of the 'private sector', such as local businesses, trade associations, and private service providers.

So what exactly should we then call the type of institution that we are interested in here – those that exercise public authority within local communities but that also use this authority to engage actively with national governance processes to take on state-like roles? Based on past work at the Institute of Development Studies (see Ananthpur and Moore 2007; Mohmand and Misic Mihajlovic 2014; Mohmand and Moore 2015), we call these Informal Local Governance Institutions, or ILGIs. And here is why.

4.2   Informal Local Governance Institutions (ILGI)

Mohmand and Moore (2015) provide a detailed discussion of what Informal Local Governance Institutions (ILGI) are. Here it would suffice to make a few key points from this discussion. We have already said that we are interested in a type of institution that is local in scope and takes on governance functions. Along with these aspects, the term ILGI also covers two main considerations of interest in terms of 'informality' and 'institutions'.

- *Informality:* In terms of informality we are mainly concerned with a distinction between spheres of activity that are *formal* to the extent that they are legal, official, transparent or openly sanctioned by legitimate authorities (e.g. a national constitution) and *informal* to the extent that they are extra-legal, unofficial, non-transparent or unsanctioned by those authorities, for example, the fact that a great deal of local governance in many parts of the world is conducted through agents, social networks and procedures that do not feature in the formal texts and sometimes seem to violate wholesale the law, norms of good administrative practice, and the principles of representative democracy. These informal governance practices can sometimes be highly formal in their procedures and organisation.

- *Institutions:* The informal local governance phenomena with which we deal sometimes manifest themselves as distinct *informal organisations*, like 'traditional village councils', and at other times more as informal, socially shared rules embedded in expectations (i.e. *informal institutions*) that greatly influence behaviour in and around formal governance organisations. We deal with both these forms because the attempt to distinguish *institutions* from *organisations* at all times is an obstacle to useful understanding of the phenomenon that we hope to capture here.

ILGIs have three defining characteristics: (a) they are state-like to the extent that they enjoy general local territorial authority and deliver services; (b) they stand in ambiguous, variable and contested relationships to the formal state apparatus; and (c) intermediation between 'their' populations and the external world constitutes a significant part of their activities. Each of these is discussed in some detail below.

(i) ILGIs function like mini-states in that they exercise a degree of general territorial public authority. Unlike, for example, local funeral societies, temple committees or savings and credit associations, they do not confine themselves to a specific or narrow set of functions. Many operate in multiple domains, take on a wide range of activities, and are understood locally to have a right or duty to act in ways analogous to national states: to be generally responsible for dealing with a wide range of problems or opportunities, and to exercise authority over entire locally-resident populations – who, like the citizens of states, may have little choice about compliance while they remain within that jurisdiction. ILGIs might dispense justice and resolve disputes, provide security, help with the connections needed to obtain urban employment, organise religious and sporting events, raise matching revenues for external grants, punish violations of social norms, oversee local development projects or manage the ways in which villagers vote in formal elections.

(ii) ILGIs stand in ambiguous, variable and contested relationships to the formal state apparatus. There have been many proposals in recent years to incorporate 'traditional' local institutions into formal governance structures, especially in conflict and post-conflict situations. These reflect at least three of the major ambiguities and tensions in the relationship between ILGIs and states more generally:

- First, these proposals generate major normative controversies that pit, at the extreme, somewhat romantic devotees of both localism and traditionalism against people who emphasise the role of ILGIs in perpetuating socioeconomic and socio-cultural hierarchy, parochialism and gender subordination, sometimes coercively.
- Second, despite their unattractive features, ILGIs can constitute valuable instruments for governments, public bureaucracies and political parties whose local reach is limited, contested or unstable. ILGIs can help provide local political stability, channels through which government agencies can exercise authority and execute their programmes, and means for local political brokers to aggregate votes.
- Third, the capacity of states to reshape ILGIs in a purposive fashion, either to abolish them, reform them, or incorporate them into the formal apparatus of rule has been fairly limited, and they continue to exercise local political and electoral dominance in many parts of the world.

(iii) ILGIs play major intermediary roles between local populations and the wider world. They may resolve local disputes, monitor local schools or organise local festivals and cultural activities. But they also determine whether and how a village population can access a

government programme for improving sanitation, which village streets then get drained and paved, whether and how a local case of assault is presented to the police, who actually stands for election to the formal local council, and how villagers' votes are cast. Like virtually all political organisations, ILGIs simultaneously perform two different types of role: the exercise of domination, through which some people advantage themselves relative to others (or, the exercise of power); and the provision of collective goods and services that benefit a broader constituency (Moe 2005).

The term ILGIs provides us with a useful sub-category of informal, customary institutions that engage with national policy processes and affect developmental outcomes at the local level. It allows us some handle on explanations for the relative importance of such institutions, and of the reasons they so often operate in multiple domains and exercise general territorial authority in many parts of the world.

5 Conclusion

At the start we had asked whether in reviewing the literature and in answering the main questions we set out, we could get a better sense of why customary institutions are important governance actors – is it because such institutions are strong that state institutions are weak, or is it because state institutions are weak that informal institutions are strong? In other words, which way does causality flow? This question was important also because it captures the fact that we do not fully understand why informal institutions continue to exercise authority in democratising states, and why they adapt and survive, rather than disappear, as formal authority expands or becomes stronger.

It seems that while there is no complete answer to this question, the literature does show that customary institutions and formal state institutions do not substitute for each other and do not always compete. In fact, they may work together and reinforce one another in fairly complementary and accommodating ways, regardless of the strength or weakness of the state. Helmke and Levitsky's (2006) work is central to this thesis, and shows that these two sets of institutions – formal and informal – can share a range of relationships and engage in a number of ways, and this does not need to emanate from the weakness of the state. Interactions between them can both strengthen each type of institution, as well as bring their respective legitimacy under serious question. What this does tell us in the end, though, is that the exercise of public authority is the 'amalgamated result of the exercise of power by a variety of local institutions and the imposition of external institutions, conjugated with the idea of a state' (Raeymaekers *et al.* 2008), and the more we know about it, the better is our understanding of the ways in which societies organise to manage public resources.

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