Places that come and go: A legal anthropological perspective on the
temporalities of space in plural legal orders

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Paper to be presented at the workshop “Where now? Moving beyond traditional legal geographies”,
University of Buffalo, 19 and 20 April, 2012

Abstract
Our contribution to the workshop will offer a legal anthropological perspective. We shall argue that the anthropology of law and in particular legal pluralism is a missing node in the network of critical legal geography that deserves a central position in the analysis of law in space. Attention to plural legal constellations makes non-state legal forms, in the global north as well as in the south, visible and forces us to adopt a more complex perspective on the law-space-power nexus. Multiple legal constructions of space open up multiple arenas for the exercise of political authority, the localization of rights and obligations. We shall argue that the ways in which legal constructions of physical spaces, boundaries, or borderlands, the scale on which these spaces operate, and the political loading and moral connotations pertaining to specific spaces, are perceived and made legally relevant may vary considerably within and across legal orders. Diverse and often contradictory notions of spaces and boundaries and of their legal relevance come to co-exist in different kinds of interdependence. The relationship is to a large extent a result of the different logics and systemic characteristic of each of the legal systems.

In a second step we shall argue, building on the work of Harvey (1996), that spaces are relative in time. We shall argue that legal systems have characteristic ways of the timing of space and that the differences in the temporality of spaces are defined as a major reason for mutual incompatibility, confusion and misunderstanding. To substantiate our arguments we will draw on our own ethnographic material from the Indonesian Moluccas as well as from quite diverse ethnographic accounts of the temporality of space in plural legal contexts.

DRAFT

1. Introduction

Over the past decades, the field of geography of law has made considerable progress in understanding the ways in which law defines and creates space, assigns authority within these spaces and establishes power relationships.\footnote{Blomley (1994; 2006); Taylor (2006), Delaney (2006, 2010); Kedar (2006); Massey (2005). Stanford Law Review (Vol.48/5) published a special issue on law and geography in 1996. Blomley et al. (2001) published a reader on the Geographies of Law, and Holder and Harrison (2006) a large volume on Law and Geography. On the spatial turn in social science in general, see Giddens (1979, 1984, 1985); Lash and Urry (1994) Appadurai (1990); Harvey (1996); Marcus (1992) on the significance of the spatial and the temporal for ethnography. On spatialising the global context, Low and Lawrence-Zuniga (2003), Robertson (1990); Featherstone and Lash (1995); Appadurai’s (1990, 2003); Perry and Maurer 2003 Perry and Maurer (2003); Tsing (2005); F and K. von Benda-Beckmann and A. Griffiths (2005, 2009). Valverde (2008) for governance and scale.} It has been demonstrated that law, legal institutions, rights and obligations are in a fundamental way ‘spatialised’ and, conversely, that space is always normatively constructed. Delaney (2010), building on the theoretical work of authors such as Bromley, Foucault, Levebre, and Massey, as well as on critical legal studies, has recently published the probably most comprehensive account of the mutual constitution
of space and law, or rather: space and norms. For this he designed a totally new conceptual framework with at its core the term ‘nomosphere’. While one can debate whether this conceptual terminology is entirely satisfactory, the underlying argument is lucid and his suggestion that time is an integral element of the nomosphere is convincing.

The scholarly field of critical legal geography has made great advance due to the combination of legal scholarship, critical legal studies, geography and social theory. However, we think that the anthropology of law and in particular the study of space and time in plural legal orders still is an underrated node in this network; one that deserves a more central position in the analysis of law in space. Most of the work in law and geography focuses on industrial societies of the global north and on the law of the state and more recently on international and globalizing law. Legal anthropology in addition offers a social science perspective on law and space which brings in rich empirical material from societies all over the world, the global south in particular. Moreover it specifically problematises plural legal constellations which so far are under-researched and under-theorized in law and geography studies. The notion of legal pluralism is based on the possibility that law of various kinds, with different foundations of legitimacy, validity, power, and authority, and with different degrees of institutionalization and formalization, co-exist. Legal pluralism provides actors a range of options to structure interactions and relationships. Attention to plural legal constellations makes non-state legal forms, in the global north as well as in the south, visible and entails a complex perspective on the law-space-power nexus. The purpose of this is not to establish a normative hierarchy between the legal orders, but to understand the empirical relevance of complex normative constellations. State law in this perspective is different from other kinds of normative order, but not fundamentally so. The notion of legal pluralism does not per definition privilege state law. It allows for the possibility that in certain places and times other law is more dominant, though it acknowledges that the law of the state is often the most powerful and important law. For the theme of this workshop this implies that a critical legal geography has to allow for the possibility of the co-existence of overlapping legal spaces defined in terms of different kinds of law that in turn co-exist with spaces defined in other than legal terms.

Taking up the suggestion of the organisers of this workshop ‘that the law-space-power nexus might be productively examined by prioritizing motion, mobility, and immobilization’ we develop a legal anthropological perspective on temporalities of space. Places, as the nexus between persons, relationships and objects, are relative in time and vary in ‘permanence’ (Harvey 1996). We argue that legal spaces ‘come and go’, but that spaces and places do so at different pace, depending, among other things, on the kind of legal system that constitutes the space,

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3 A legal pluralist approach is similar to that of Delaney but differs from his work in one important way. While he explicitly deals with other normative orders than state law, in this respect he is more conventional than his conceptual terminology suggests. The term ‘nomic traces’ serves to capture the totality of norms that constitute and are constituted by space. It includes rules of etiquette, customs, religion, and written statutory law or court decisions. The term law is reserved for a state legal system. This is a classical, but problematic way of distinguishing normative orders; one that privileges the law of the state suggesting that the law of the state is differs profoundly from all other kinds of norms. According to this view, norms obtain a fundamentally different character once they have been captured by the law of the state. This is precisely the kind of statism that authors working on legal pluralism have tried to escape and with more success.
for each legal (sub-)system has characteristic ways in which spaces are being ‘timed’. A central question shall be what happens within the period in which spaces are emerging and disappearing and are not yet or no longer are officially in place. Despite the great emphasis on conceptualising spaces as emerging and constructed, this issue has as yet not been properly addressed. Yet long before they are formally established by law, legal spaces may fade in and gradually begin to have an impact on the social behaviour of persons in anticipation of inclusion into that space. Likewise, legal spaces that are meant to disappear do not necessarily disappear immediately, but often fade out over a long period of time in which they linger on and continue to exert influence. In this paper we will focus on legal spaces that are fading in and out, on emerging but especially on disappearing and lingering spaces. We suggest that these issues deserve particular attention given the increasing entanglements of legal systems at various scale and the acceleration in regulation that we are currently experiencing.

2. Points of departure

We start with some important points of departure for our further discussion on the temporality of law, space and place. We consider space and time (however defined) important aspects of any empirical research or social theory. Rather than being treated as external environment to social interaction and relations space and time form constituent elements of social life and organisation that help to individuate people, interactions and relationships.4 'Space' and 'time' are here used as etic, analytical concepts that point to the three-dimensional nature of the physical world and social organization to which time understood as ‘stellar time’ (Leach 1961) is added as an additional dimension. Such analytical notions of space and time are formal, non-essentialist social constructions. They are necessary to be able to speak of emic, substantial (social, religious, political, ecological, hydrological) constructions of space and time (see also Werlen 1988). Stellar time also serves as a template against which we develop different temporal scales, from the evolution of the earth, the existence of primates, of empires, states, families and individual lives. From a longer time perspective, most time-space ‘permanences’ get dissolved into a concatenation of temporary occupations of space.

Social constructions of space and time differ not only between but also within societies and historical periods. In most contemporary societies exists a broad array of co-existing social, religious, economic and political constructions of space and places that sometimes differ from each other and sometimes reinforce each other. These in turn coexist with spaces, places and boundaries that are (also) legally constructed. The internal differentiation and complexity of modern legal systems has led to a myriad of overlapping and nested spaces, created by legal regulations that pertain to specific domains of social and economic life (Tickamyer 2000: 806). Each of these spaces are systemically linked to other spaces and regulations at different scale, some more densely, others only loosely. Despite all attempts of lawyers to create an image of a consistent body of law, regulations within each legal system are often contradictory. A farm space, e.g., is linked to broader sets of property regulations, administrative regulations, and agricultural regulations and the concomitant spaces that are already full of contradiction, but it may also be linked to spaces of environmental regulation with its systemic implications.

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It is particularly here that attention to legal pluralism becomes important. Not only is there a plurality of non-legal or legally irrelevant social constructions of space and place that may differ from the legal constructions. Legal systems often provide overlapping and competing legal constructions of space. It is because of this that scholars have begun to talk of internal legal pluralism. Plural legal orders composed of different types of law produce even more complex webs of overlapping spaces. The ways in which legal constructions of physical spaces, boundaries, or borderlands, are regulated, the scale on which these spaces operate, and the political loading and moral connotations pertaining to specific spaces, are conceived and made legally relevant may vary considerably among the component legal orders. For most third world countries the complexity has a long history that goes back deep into the colonial era when the colonizers introduced European notions of bounded space. As a result, they still have a plural legal order today in which local traditional laws, religious laws and the laws of the state construct legal constructions of legal status of spaces and boundaries in different and often contradictory ways. The highly fragmented body of international and transnational law is only the latest addition to the normative complexity. Increasingly international organisations generate their own regulated spaces, whether catchment areas for water management, or nature reserves for the conservation of nature, or special areas of international trade. These organisations operate without the systemic constraints of single national legal systems – they have to serve very different legal orders -. Bilateral donor agencies usually are more geared towards the national legal system of the donor country than to that of the recipient country. The regulations emanating from these organisations very often create spatial regimes that do not sit comfortably with the national legal system into which they insert that regime. (F. and K. von Benda-Beckmann and Griffiths 2009).

As has been frequently emphasized, ideas of space are not value neutral but politically, economically or ecologically loaded, and often become instrumentalized in social interaction (Harvey 1996: 44, 266). Multiple legal constructions of space open up multiple arenas for the exercise of political authority, the localization of rights and obligations. In these arenas clashes occur between different notions of bounded space in which diverging notions of political and legal space are mobilized against each other in strategic interactions over contested forms of political authority in the (sometimes violent) fight for control over resources. The clashes not only concern different notions of bounded space in which diverging notions of political and legal space could be put against each other in social conflict (see Orlove 1991); they often entail the restatement of local rights and obligations (based upon local ideas of space). Different constructions of legally relevant spaces and of the political and administrative powers associated with them, such as villages, communities, private or state property on land, nature parks, game reserves, etc., may be projected on the same physical space, and be used by different actors in the pursuit of their economic and political objectives. This may have to do with the differences in lines of authority and foundations for legitimation or with differences in the basic categories by which spaces are defined, the systemic embeddedness of these categories, and the social embeddedness of property and authority relationships.

Spaces and places often have moral or religious values attached to them. Nature sanctuaries, village or lineage land, burial places and sacred sites are not only social, religious or economic but at the same time moral categories that may or may

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5 For a particularly vivid illustration from Costa Rica, see Brooijmans 1997. See also Geisler and Bedford 1996 for the United States.
not be endowed with a legal status, or with different legal statuses based in different legal orders, as e.g. religious law, customary or international law, state law.\footnote{Warren 2007.} An early instance of contrasting economic moralities is visible in the legal treatment of natural resource environments not maximally exploited in the short term. In the expanding capitalist agriculture in the nineteenth-century colonies, such unproductive land was deemed ‘waste’ since it was not cultivated in an efficient economic sense. By contrast, according to many local legal systems such land and forest represent the moral value of taking care of future generations of the community that owns the land. Other kinds of common property were subject to similar contradictory moral evaluations. Resources held as morally valued inalienable lineage property according to local legal notions served the perpetuation of the lineage, and according to the moral values of the colonial state was ‘not yet’ accessible for ‘the market’ and therefore ‘backward’\footnote{See e.g. for West Sumatra, F. and K. von Benda-Beckmann (2006b).}.

**Temporalities of space**

Spaces, places and boundaries have their own temporality. Spatial location and bounding, as Harvey says (1996: 264), are important attributes for the definition of objects, events and relationships in the world around us. Through such location and bounding, 'places' are constructed in space. Following Harvey (1996) and others, we see place as (relative) ‘permanences’ of people, relationships and objects located and bounded in space.\footnote{Spaces are relative in time. “The process of place formation is a process of carving out ‘permanences’ from the processes of creating spaces” (Harvey 1996: 261).} Permanences - no matter how solid they seem - are … subject to time as “perpetual perishing” and "contingent on the processes that create, sustain and dissolve them (Harvey 1996, 261; 264; 294). All spaces and places have a temporal dimension, but the temporalities differ. The stability of spaces and places depends on a complex interplay between social, legal and physical factors. Changes in the physical environment (changing riverbeds or coastlines), economic processes (nomadism, swidden agriculture) or legal regulation of authority and property spaces may affect the temporal stability of legal spaces. The same physical space becomes different social-legal places over time, as the legal meaning of spaces ‘come and go’ over time or disappear completely. By changing the boundaries, spaces move. However, spaces may also move due to their physical characteristics, or due to the fact that the people that define a place move. Places emerge and disappear, but physical disappearance does not necessarily imply legal disappearance, and vice versa. And neither implies the space socially ceases to exist or that the social effects of legally defined spaces coincide with the temporalities implied in the legal definition.

3. **Spaces that ‘fade in’**

Legal orders define the temporal existence and validity in their own terms. Spaces do not necessarily begin or end as normatively defined. They may start exerting an influence long before the law defines the beginning. This is most markedly the case in countries that have entered or are in the process of entering the EU.\footnote{See e.g. Harboe Knudsen 2012 for rural Lithuania.} The EU space threw its shadow ahead and persons in these new member states began to behave as
if they were under EU rule long before they were formally part of the EU space or before their country even obtained the status of aspirant member. This started out at first haltingly and by a few courageous persons, but when over time more people got involved, anticipation took up speed and over time became more broadly shared. The period of anticipation has its own temporal dynamics. It implies a condition of legal pluralism, for the anticipated new legal regime co-exists - and sometimes collides - with the existing and still legal order(s) that is gradually fading out before it has been officially abolished.

Another example of fading in spaces is Indonesia. After the fall of the Suharto regime in 1998, Indonesian citizens began to effectively press claims against the state on the basis of Human Rights long before the relevant Conventions had been signed that would make the legal instruments formally applicable within the legal-political space of Indonesia. People started anticipating on the new legally defined space and its regulations, of which they expected to become part. By so doing they took considerable risks because it was unclear whether they would actually become part of the space in which these Conventions were applicable.

In such periods of fading in, it is entirely unclear for the majority of the population which laws are applicable and how rights and obligations are being implemented within their lived in spaces. Anticipating on the new legal regime is a risky business that takes considerable courage. In anticipation of a partly understood economic EU regime that may or may not come in an uncertain future, one has to make investments and put oneself temporarily at a disadvantage in the competition with local competitors. As in the Indonesian case, it also may take courage for citizens to invoke Human Rights that were systematically violated by a regime that is known for its violence, risking violent repercussions, at a time when ratification of the main Human Rights Conventions are anticipated but have not yet taken place. Such phases in which a territory is in the process of becoming part of a new legally defined space are therefore characterized by a degree of liminality.

4. Disappearing spaces

Legal spaces may disappear but continue to exist as social or physical spaces and vice versa. In plural legal constellations, the space that has been abolished in terms of one legal system often continues to exist in terms of an alternative legal system that is part of the plural legal constellation.

Legal spaces may disappear in a number of ways. If the legal construction is directly coupled to physical characteristics, legal spaces disappear when they physically cease to exist. The sea carves away the coast, or a tsunami wipes out the coastal lived in space, a riverbed changes its course after the rainy season, or the wind displaces dunes covering villages that are rebuilt elsewhere, as happens on the Curonian Spit (Peleikis 2006). In cases of war, villages may be wiped out, the population is evicted and the buildings are demolished so that only the vaguest traces are left of the space that once constituted the village.

Legal space may also physically disappear in a more regulated manner. Land may be intentionally inundated, as for example land adjacent to the rivers Rhein, Meuse, Mulde, and Elbe that have recently become inundated to serve as reserve basin in case of high water to avoid flooding in populated areas. Other examples are the artificial lakes for hydroelectric power or the lakes made in the exhausted lignite surface mines. The mines themselves had made the previous agricultural and
village spaces disappear. Here the physical appearance of spaces changes due to the implementation of state regulations. Putting up fences may make property spaces that lie beyond the fence factually if not legally or emotionally disappear, as the fence between the GDR and FRG or the fences put up by Israel show (Braverman 2009; Blandy and Sibley 2010: 276). In these examples the disappearance of places is more or less enduring if not completely permanent.

Legal-political spaces may disappear not because their physical appearance changes but because they become part of a larger or different political, social, economic or administrative entity. Examples would be a state that ceases to exist or districts that are abandoned, as happened with the former GDR, or communities that are joined, or states that fall apart and are split into several new states, as in the case of the former Soviet Union, or a town whose population is exchanged, as e.g. in Wroclaw after WW II. These disappearances are a result of political negotiations and legal regulation at different scales. They involve some form of expropriation, loss of rights, and exclusion, and the establishment of new rights and authority and changes in power relationships and often new regulations or even a new legal regime.

5. Lingering spaces – lingering law

Once legally abolished, spaces that are legally defined do not necessarily disappear, but are maintained in practice and memory beyond formal expiry. There are various reasons why spaces may linger on after having been officially abolished (F. and K. von Benda-Beckmann 2006a). They not only continue to exert their influence because the change in law is contested and people continue to adhere to the old law, in contradiction to what the new law stipulates. Legal spaces – and their regulations – may linger on because it is technically impossible to undo all the regulations at once. There are necessary transition periods between an old and a new regulation. Ideally they last only for a short period of time, but in practice this transition may last longer. Lingering law generates a certain degree of legal pluralism that leaves some actors operating within that space in a somewhat liminal stage while it opens up opportunities for others.

Often the old spaces linger on in terms of the very legal order by which they were abandoned. The most prominent example is the dismantling of the GDR and the disappearance of the territory of the GDR. Despite the official abolition, the former space of the GDR still lingers on, for instance as defining differences in salaries, old age pensions and social aid, and in many other ways (Thelen 2006).

Peleikis (2006: 216ff) showed for Lithuania how the various laws of previous eras (pre-World War II, socialism) have lingered on each with specific ways of defining spaces. For example, in a conflict among Protestants and Catholics about property rights to the church in a village on the Curonian Spit, each side based its claim on laws that had been abolished long ago, but valid in different periods of time. The church building had been expropriated by the state under Soviet rule and during socialism it had been used as a stable and store house. After Lithuania’s independence, churches started to be returned to the religious communities. Protestants claimed that their community had built the church long before World War II. There was only a tiny protestant community, but they were backed by emigrant descendants of village members who had fled for the Russians towards the end of WW II and who had since lived in Germany, maintaining a strong memory of their “home village”. When Lithuania allowed them again entrance they had resumed connections, and regarded themselves as citizens of the village to which many return.
year after year. The initial skepticism among the local population that these returning emigrants might reclaim their houses faded, because the majority made it clear that they are not interested in this. But as members of the village community they felt entitled to actively support a property claim to the village church which the protestant community was pursuing based on the fact that the church was to be a protestant church as it had been before WW II. This claim referred to the time when the village had been part of a different political space. It was accompanied by a traditionalization of the grave yard, where carved wooden grave markers shaped as horseheads, birds or plants have been reinterpreted as unique centuries old remnants of the Baltic tribe that lived there though there was no historical evidence for this. The majority of the population that now lives in the village is Catholic. They had been expelled from other regions within the Soviet Union, had immigrated into the village after WW II. They claimed rights to the building because they formed the vast majority of the current population. In the end, the Protestants won and the church has been officially handed over to the protestant community, but a new Catholic Church building was erected in a prominent place for the Catholic majority right in the village centre. Thus, different layers of place-making at different scale linger on and affect current claims to property spaces. The large scale dislocation movements at the end of WW II, the abolishment of the Lithuanian state and its law, and the inclusion into the Soviet Union with its socialist law repeatedly changed the space that the village on the Curonian Spit had been, and the concomitant prohibition of religion and the expropriation of churches and church property under Soviet rule changed the space of the church. Withdrawal from the Soviet Union, Independence, and entrance into the EU with its legal implications once again remade the village space and that of the church, but the space differed in many ways from that of the pre-war village and church. The result is what Roquas (2002) in her analysis of conflicts over land and property in Honduras has called ‘stacked law’, an accumulation of layers of law of various temporal depth that have not disappeared with formal repeal but continue to exert their influence within concrete spaces thereby creating a complex situation of legal pluralism within the state legal system.  

Sometimes, legal spaces linger on because its law is captured and transformed into another type of law and in that form continues to be valid. Thus, much of what today is regarded as customary law in Latin America, in fact used to be the law of the (colonial) state, as Nuijten (2009) has demonstrated for Peru. A hacienda once was an institution defined by colonial law and within the space of the hacienda a set of rules existed that regulated the rights to the land and labour. Territorial strategies allow hacienda owners to control labour far beyond the confines of the hacienda space itself. These laws have long been abolished by the state, but the local population, in particular its elites have captured them and made them into their own local law, forgetting that it once had been law imposed by state. Rights to hacienda land and inheritance of such plots follow these rules. The regulations have moved from the realm of state law to that of local law. Hacienda no longer is a valid legal space under state law, but continues to be so under what has become local law that co-exists with

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10 Santos (2006: 47) uses the metaphor of palimpsest to characterize ‘the intricate ways in which very different and political and legal cultures and very different historical durations are inextricably intertwined’. 

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the new state law that defines the space in a different way.11

6. Alternating places

Sometimes the same physical environment with one specific legal status is
alternatingly invested with different social, religious, legal status which every time
changes the nature of that place radically. Who has access to the space and what
kind of behavior is permitted there depends on the status that happens to be valid at
a particular time. One example of this is the Eruv, a religiously defined space that
effectively exists only during Shabbat when it allows orthodox Jewish believers
to travel on the Shabbat from home to the synagogue according to their religious
prescriptions. According to orthodox rules, entering public spaces is prohibited on
the Shabbat. This would make it impossible to visit the synagogue. To accommodate
the problem, certain spaces, that during the rest of the week and for the non-Jewish
population are public spaces, are redefined and physically as – temporary - religious
space, which allows them to go from their homes to the synagogue without offending
religious laws (Siemiatycyki 2005). The character of the space is defined through one
legal system, while other legal systems may be indifferent to this character but may
condone or accept the specificity as an internal regulation of the Jewish community.
The conviction that such a construction is really necessary and prescriptive may not
be held by all members within the community of believers, but the marking assures
those who wish to live according to these rules that they can do so. Another example
are churches that are accessible for tourists except for the times of service, during
which the space is defined as more exclusively religious and stricter rules of access
apply.

Another example of a recurrently temporarily defined legal space with
specific rights and obligations is described by Turner (2005) for the Sous in Morocco.
On market days the area on which the market is held obtains a legal regime which
differs substantially from the legal regime that applies on non-market days. While it is
quite common for men to carry weapons, and the use of weapons to carry out a
conflict is not unusual and to a certain degree accepted or even encouraged, during
market hours the ordinary rules for carrying out conflicts make place for a specific set
of regulations that pertain to the market. Carrying weapons on the market space and
during market hours is strictly prohibited and infringement on the prohibition is
heavily sanctioned. In other words, during market hours the market place becomes a
different space from what it is in the periods between markets. The spaces transform

11 The lingering and capturing that we have discussed for state law is not confined to state law. The
colonial experience of Indonesia, e.g., reveals that local laws, called adat, have been captured by
the state, for example in regions of indirect rule, by which the spaces ruled by adat changed in a
fundamental way. Before colonial rule, spaces of authority were primarily defined by reference to
persons that were ruled by the sultan or king. These were part of overlapping and nested spaces of
authority. The sultan or king was the highest authority, but his power was limited by those of lower
authorities. Under colonial rule the authority spaces became fixed with clearly defined boundaries and
the authority of the rulers that was attached to these spaces became larger and the lines of authority
with lower rulers became stricter. Thus, the colonial government captured the spaces of authority and
reformulated them according to their views. This was in part a result of a clear strategy to control a
heterogeneous population through simple lines of authority. In part it was a result of misunderstanding
and misrepresentation of the indigenous authority spaces. Today there is a reverse movement in which
descendants of former rulers have recaptured the state’s interpretation of their adat and now claim
authority over these spaces as territorially defined by the colonial government. See Van Klinken 2007.
into other spaces due to the temporality of regulation that attaches a certain set of rules to a physical space only as long as that physical space is also a social-economic space or a religious space.
Moving spaces

Spaces may change over time, they may become larger or smaller, but most stay more or less in place and it is the people and rights and obligations attached to it that move in and out. There are also places that literally move in space. Some do so because physical characteristics generate movement. In case spaces are defined by the persons occupying them, spaces and places may also travel along with the persons that are moving on.

Moving ‘nature’, moving property places

The most well-known example of the first is shifting cultivation. Usually a person establishes rights to land where and as long as he or she cultivates that plot of land. When he moves to another plot of land, that is where he then exerts rights, while the rights to the previous plot expire after a certain period of time. A person’s place shifts with his shifting cultivation.

Another less well known illustration is the moving spaces of sago gardens. Sago starch is the major food stuff for Ambonese villagers. Sago palms have two reproductive strategies. One is through seeds. This, however, is of little value for people's food needs. When the palm flowers, its starch accumulates and is used for inflorescence and seeds. That is why the starch from the sago palm has to be harvested and processed before the palm enters into the flowering stage (between 10 to 20 years). The more important reproductive strategy is vegetative, through stools and suckers. These spring from the stem and form new trunks, the "children of the sago palm", which have the same legal status (usually pusaka) as their mother palm. By preventing sago trunks from flowering, and by allowing a few suckers to develop into new trunks, clumps of sago may be exploited for centuries. The stools of the palm move several meters sideward before they form suckers which develop into new palms. Sago, therefore, travels and after one or two palm-generations can easily invade the area of another clump of sago palms. This may be a cultivated stand of sago, belonging to a different group of right holders, or it may be a stand of wild growing sago palms. If this occurs in a space in the forest that has been cleared and planted with a larger number of sago stands, this does not create a problem because one sago-owner will control the whole stand. However, often sage is planted within an existing garden to fill gaps between other vegetation. The probability of sago palms growing in all directions is enhanced and this interferes with rights that others may have to the other vegetation. Moreover, palm clumps are inherited by the descendants of the original acquirer, which over the generations generates a complex set of right holders.12 Thus, sago palms of different kind and different legal status may grow within the same, and a very small, vegetation zone or as part of a garden. The space of one particular sago clump keeps moving overlapping with spaces of other sago clumps and other types of vegetation.

Places may also disappear - and reappear elsewhere - in repetition, thereby effectively moving. In Nepal, e.g., property spaces close to rivers tend to come and go after every rainy season. Due to the geo-physical constitution of the Himalaya mountains, every rainy season brings enormous amounts of debris and changes the riverbeds of rivers, so that agricultural fields disappear under tons of debris. The

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owners of the disappeared fields then negotiate amongst themselves how to distribute the land that has emerged due to the river’s change of course. Their property space is considered the same but it has moved to a new location.

Moving places because of moving people and their rights
History is full of moving places of displaced groups and persons, by colonizers, due to war, or because a population has to leave a space that is redefined as nature reservation. Thus many native American groups have been expelled from their original living space and relocated in reservations located outside their original territories without hope to ever return. Often the displaced groups consider the new place as a temporary place that exists as long as the conditions do not allow returning to the original space. The reminiscence of the place of origin is kept vivid, thereby redefining that place as well as defining the image of the new space as diaspora.

There are other ways in which places move due to the way the people-space-power nexus is defined. While western legal systems tend to define legal spaces and places primarily by reference to bounded territory, other legal systems have different approaches and may define places primarily by reference to persons. If these persons move, then their social and property spaces move with them. Bohannan (1967) showed that the Tiv in Nigeria defined places by reference to descent and genealogies that were the core of their segmentary social organisation. Practicing shifting cultivation, kin groups and the spaces assigned to them moved over the surface. According to Bohannan, the Tiv "see geography in the same image as they see social organization. The idiom of descent and genealogy provides not only the basis for lineage grouping, but also of territorial grouping and agricultural farm sites" (1967: 55). The connections between kin groups and their physical surrounding were always temporary and moved on as cultivation and farm tenure moved on. The social spaces of kin groups travelled with them and only vague reminiscences of the previous places remain in the collective memory of the group. This could work as long as the territory into which they moved had not been subject to exclusive claims of the type that western legal systems prefer, spaces are defined by reference to territory, irrespective of the persons or groups that are attached to them.

7. Accelleration, hyperterritoriality, hyperglobalisation and trust

Accelleration, hyperterritoriality and hyperglobalisation
The study of globalization has initiated new discussions about the temporalities of change. Authors such as Rosa (2006, 2009) analyse the social implications of accelerated change that according to him characterizes modern society. Hirst and Thompson (1996: 8-13) talk about ‘hyperglobalization’. In a similar vein and in connection to issues of space, Delaney (2010: 138) has pointed out that accelerated legal interventions of inter- and transnational rule makers has led to ‘maniacal’ or ‘hyper’-territoriality in which ever more spaces are created that establish insides and outsides. Other authors on globalisation, such as Held (Held et al. 1999), acknowledge that certain sectors of social life indeed are subject to acceleration, but they also point out that globalization is taking place at very different pace, depending

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13 Some have diagnosed that we go through a period of ‘hyperglobalization’, others, such as Hirst and Thompson (2002, 2009) emphasize that globalization was stronger in the late 19th century. See for a critique on hyper globalization and its skeptics, Giddens 1996 [http://www.unrisd.org/unrisd/website/newsview.nsf%28httpNews%29/3F2A5BF8EF7300D480256B750053C7EC?OpenDocument](last accessed March 26, 2012).
on the place and position one has within the global networks. In some sectors and in some places, globalization is hardly occurring and there are no signs of the kind of acceleration Rosa is talking about. We agree with the view of Held. When we discuss hyperterritoriality here this does not mean that we think this is happening everywhere, for everybody and for all aspects of social and economic life. However, the issue is important because it seems to undermine the trust people can have in law.

In light of our discussion about the temporalities of space and law hyperterritoriality implies hyperregulation. There is a dominant conviction that durable regulation is indispensable for predictable and certain government and orderly and reliable social and economic relations. Many regulations are therefore meant to establish a new regime that regulate once and for all the issue at stake, whether it is rights to land and natural resources, protection of the environment, migration, trade relations, or the financial world. However, this poses a paradox. The more spaces are created in which certain action is allowed or prescribed and other is discouraged or prohibited, including some persons and excluding others, the more these come into conflict with other spaces for other purposes. The result is an incessant need for adjustment in order to create and maintain a minimum of coherence, but this undermines the very idea of durability. Instead of establishing new ‘regimes of continuity’ (Delaney 2010: 138) these new regimes often have a decreasing lifespan. Overlapping old and new regulations shorten the life-span of regulations and the spaces and places created by the regulation.

Conditions of legal pluralism sharpen these effects. Spaces defined by customary law or local law or by religious law may not be subject to the same hectic change. This is not because such laws are unchangeable, but because the modes of change are different. However, such spaces of longer duration often overlap with spaces subject to the above mentioned rapid sequence of regulations and are therefore affected by them. People operating under such conditions have to adjust their relationships and position within a space every time the regulations of that space are changed by one of the relevant legal systems. This is especially apparent where decentralization policies allow for increasing authority to issue lower level regulations. The example of Indonesia shows that the swift sequence of changes in regulation not only emanates from national governments but also from regional and local governments. For example while lower level government regulations assigned authority over village commons to local governments, the powerful national Indonesian Land Administration Board claimed authority over the land within the village territories, thus creating an entirely different land-power-persons nexus.

Trust and the temporality of law and space
There are numerous reasons why legal systems do not guarantee certainty and people have no trust in law under conditions of legal pluralism. Which legal concepts and regulations become really relevant for defining the legal status of spaces is often uncertain. It is often unclear which substantive rules of these subsys tems are applicable, and which rights and obligations, based in which law, people have to a certain space. Besides, it may be unclear which institutions are entitled to make decisions, especially in case of dispute. It also is often uncertain whether decisions can be executed. Moreover, undue political and economic pressure may influence decisions and subvert the law (F. and K. von Benda-Beckmann 2006c: 225-226).

In addition to these factors, an important source of uncertainty and lacking trust has to do with the temporality of law. In order to generate legal certainty that can be the basis for trust, there must be a certain degree of experienced and expected
stability in the regulations. However, too much stability also impedes trust, because there comes a time when old laws no longer are deemed to be adequate due to changed social and economic conditions. Trust in law, then, is situated somewhere between ossification and hyper-regulation. Many actors have to operate in disparate spatial fields of short lived emerging, disappearing and lingering spaces often defined in terms of different legal orders. The Indonesian example shows that such situations of legal pluralism under conditions of decentralization and heightened international involvement has left deep imprints on its spatial landscape. New administrative spaces were created by splitting of provinces, districts, sub-districts and villages; new rules created modes of in- and exclusion based on images of traditional social stratification; decentralization provided new opportunities for local governments and became a space of active development by the local population itself. Drawing on both international law and local law called adat, local communities claimed control over natural resource spaces that had been expropriated under colonial rule or by the Suharto regime. But decentralization also generated much anxiety and fear and in some cases it immobilized local government because it was completely at loss as to what official regulations were applicable or might be applicable in the near future. When a few years after the first decentralization operation had begun, revisions of the laws on local government were initiated, disillusionment of the more active local governments was great. The revisions, meant to streamline local government, were a blow for the trust local governments had put into the law because they were already taking back some of the authority that local governments had just began to use within their village. The village once again became a different space with a different power and authority structure (F. and K. von Benda-Beckmann 2009). The experiences with decentralization show that people are not equally able or willing to cope with hyperregulation and hyperterritoriality, but that it often happens to a remarkable degree. However, there seem to be limits to this. Too rapid change at too many levels leads to a severe loss of trust.

8. Conclusions

We have sketched some of the temporal implications of conceptualizing space and place as inherently subject to regulation. Looking at the dynamics of legal regulation of space reveals that law and the spaces and places it creates is not simply there; it comes and goes, is anticipated and lingers on. With it, places come and go. This deserves more reflection and empirical study for two reasons. One is that the pace of this process differs between legal systems and within legal systems. The various legal orders have become increasingly intertwined, so that what happens within one legal order tends to affect the others as well. Thus, even if the pace of change within religious law or within customary law is not as fast as in the laws of national states, the effect is that people have to operate in fast changing constellations of overlapping spaces created by different legal orders. With the intensification of regulation and the negotiation complex processes entailed in international and trans-boundary regulation, the fading in and out of law becomes a more pronounced part of the process. The relative time in which old legal regimes linger or new ones emerge increases in relation to the total duration of that regime. Where hyper-regulation occurs, incessant streams of regulation for increasingly complex, overlapping spaces of diminishing duration create an enormous amount of uncertainty. People are uncertain about the place they are living in and what it allows or requires them to do. Anticipating new
law is a hazardous enterprise and in the worst case evokes inertia. This puts a heavy burden on the trust people have and can have in law and the places it generates.

References


Kendall 2004. **


Van Klinken, G. 2007. "Return of the sultans. The communitarian turn in local politics," in *The revival of tradition in Indonesian politics. The deployment of adat from colonialism to indigemism.* Edited by J. S. Davidson and D. Henley,

