# Introduction

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"Law is everywhere."[1] Law governs all facets of the human condition, providing rules and principles that are intended to coordinate all spheres of human interaction. Although we typically associate law with the law of the nation-state, the growing recognition of law's ubiquity has led to an explosion of interest in a vast range of legal systems outside the nation-state. Thus, we have seen in recent years increasing interest in various forms of *non-state* law – from transnational law to international law and from religious law to indigenous law. In each of these areas, scholars have studied the internal workings of these legal systems, demonstrating how they at times coexist and at other times conflict with the law of the nation-state.

To be sure, scholarly focus on this dynamic is not new; it has long been at the core of academic interest in *legal pluralism* – a term whose meaning has itself been contested – but covers a wide range of scholarship that identifies, explores, and interrogates the relationship between overlapping legal systems.[2] Over the years, scholars have approached legal pluralism from a variety of vantage points. Starting in the 1970s, anthropologists explored the topic as part of their research into legal systems in colonial and postcolonial

[1] *See, e.g.*, Aharon Barak, The Judge in a Democracy 179, 309 (2006); Owen Fiss, *Law is Everywhere*, 117 Yale L.J. 257 (2007); Werner Menski, *Indian Secular Pluralism and Its Relevance for Europe*, *in* Legal Practice and Cultural Diversity 46 (Ralph Grillo et al. eds., 2009).

[2] Sally Engle Merry, *Legal Pluralism*, 22 L. & Soc'y Rev. 869, 879 (1988) ("Legal pluralism not only posits the existence of multiple legal spheres, but develops hypotheses concerning the relationship between them."); Oren Perez, *Legal Pluralism*, *in* The Oxford Encyclopedia of American Political and Legal History (Donald T. Critchlow & Philip R. VanderMeer eds., 2013). For some helpful discussions of the evolution of legal pluralism, see also Paul Schiff Berman, *The New Legal Pluralism*, 5 Ann. Rev. L. Soc. Sci. 226 (2009); Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 Sydney L. Rev. 375, 375 (2008); Ralf Michaels, *Global Legal Pluralism*, 5 Ann. Rev. L. Soc. Sci. 243 (2009).

societies.[3] In the 1980s, scholars began drawing on the concept of legal pluralism to consider overlapping legal systems in noncolonized societies as part of an effort to "reconceptualiz[e] the law/society relation."[4] In recent years, there has been renewed scholarly interest in legal pluralism as a framework for evaluating the rapid trend of globalization, especially with respect to developments in transnational and international law.[5] But notwithstanding these divergent approaches and objectives, legal pluralists generally embrace two core commitments: first, that law is not solely the province of the nation-state,[6] and second, that legal systems frequently overlap such that two or more legal systems coexist in the same social field.[7]

However, even with the perceived success of the legal pluralist agenda, problems still remain. Most formidably, the so-called ubiquity of law raises a fundamental problem: What do mean by "law"?[8] Does finding law in everything undermine our ability to speak of law as an intelligible category?

Now, the "what is law" question is a philosophical Mount Everest of sorts – trying to provide an answer is remarkably treacherous with few claiming to have succeeded. And yet, even with persisting philosophical debates over the definition of law, scholarly consensus has continued to coalesce around the central tenets of legal pluralism. Thus, even as scholars disagree over some applications of the term "law," one would be hard pressed to find many scholars still claiming that the nation-state is the exclusive source of law.[9] Such a

[3] *See, e.g.*, Leopold Pospisil, The Anthropology of Law: A Comparative Theory (1971).

[4] Sally Engle Merry, *Legal Pluralism*, 22 L. & Soc'y Rev. 869, 869 (1988); *see also* Gunther Teubner, *The Two Faces of Janus: Rethinking Legal Pluralism*, 12 Cardozo L. Rev. 1443 (1992); Boaventura de Sousa Santos, *Law: A Map of Misreading: Towards a Postmodern Conception of Law*, 14 J.L. & Soc'y 279 (1987).

[5] *See generally* Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law Beyond Borders (2012); *see also* sources cited *infra* note 23.

[6] *See, e.g.*, Marc Galanter, *Justice in Many Rooms: Courts, Private Orderings, and Indigenous Law*, 19 J. Legal Pluralism & Unofficial L. 1 (1981).

[7] *See, e.g.*, John Griffiths, *What is Legal Pluralism?*, 24 J. Legal Pluralism 1, 2 (1986) (describing legal pluralism as a "state of affairs, for any social field, in which behavior pursuant to more than one legal orders occurs"); *see also* Sally Falk Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, 7 L. & Soc' Rev. 719 (1978).

[8] A number of scholars have noted this fundamental question at the heart of the legal pluralism project. *See, e.g.*, Brian Z. Tamanaha, *A Non-Essentialist Version of Legal Pluralism*, 27 J.L. & Soc'y 296 (2000); Sally Engle Merry, *Legal Pluralism*, 22 L. & Soc'y Rev. 869, 878 (1988); Gunther Teubner, *Global Bukowina: Legal Pluralism in the World Society*, *in* Global Law Without a State 3, 14–15 (Gunther Teubner ed., 1997); Marc Galanter, *Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law*, 19 J. Legal Pluralism 1, 18 (1981).

[9] In an important series of articles, Ralf Michaels has highlighted that notwithstanding the growing enthusiasm for legal pluralism, the concept continues to entrench the importance of the nation-state to our concept of legality – a dynamic that he argues will continue until legal pluralism finds a way to move "beyond the state." *See* Ralf Michaels, *The Re-State-Ment of Non-State Law: The State, Choice of Law, and the Challenge from Global Legal Pluralism*,

claim – popular among philosophers of past generations[10] – has retained limited resonance within current discourse. And once the nation-state is no longer understood as the exclusive source of law, the existence of multiple legal systems follows.[11] Indeed, with multiple legal systems inhabiting our world, the possibility of coexisting legal systems looms large. In fact, the increasing acceptance of the two core commitments has led some to comment that "we are all legal pluralists."[12]

Of course, the fact that scholarly consensus has – to varying degrees – embraced legal pluralism does not mean that everybody is happy about it. Since 2010, over half the state legislatures in the United States have considered so-called "anti-foreign law" bills – which generally prohibit state courts from considering religious, foreign, and international law in their decisions – with nearly 20 percent of states actually passing such bills in one form or another.[13]

51 WAYNE L. REV. 1209 (2005); Ralf Michaels, *The Mirage of Non-State Governance*, 2010 UTAH L. REV. 31; Ralf Michaels, *Global Legal Pluralism*, 5 ANN. REV. L. SOC. SCI. 243 (2009).

[10] *See, e.g.*, THOMAS HOBBES, LEVIATHAN 186 (C. B. MacPherson ed., 1968); JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED (Wilfred E. Rumble ed. 1995).

[11] I use the term "legal system" here in the non-technical sense. For my discussion of the distinction between law and legal system, see Chapter 10.

[12] *See, e.g.*, Harm Schepel, *Rules of Recognition: A Legal Constructivist Approach to Transnational Private Regulation*, *in* REGULATORY HYBRIDIZATION IN THE TRANSNATIONAL SPHERE 198 (Poul F. Kjaer, Paulius Jurčys & Ren Yatsunami eds., 2013).

[13] These states include Arizona (ARIZ. REV. STAT. ANN. §§ 12-3102 to -3103 (West, Westlaw through Apr. 20, 2014, legislation) (applying only to individuals, not businesses)); Florida (2014 FLA. LAWS ch. 2014-10, *available at* http://laws.flrules.org/2014/10); Kansas (KAN. STAT. ANN. §§ 60-5101 to -5108 (West, Westlaw through July 1, 2014, legislation) (not applicable to any contract in which a business agrees to subject itself to foreign law)); Louisiana (LA. REV. STAT. ANN. § 9:6001 (West, Westlaw through 2013 Legis. Sess.)); North Carolina (N.C. GEN. STAT. ANN. §§ 1-87.12 to -87.20 (West, Westlaw through 2013 Legis. Sess.) (restricting application of such law in family law matters and providing guidance when contracts specify choice of foreign law)); Oklahoma (OKLA. STAT. ANN. tit. 12, § 20 (West, Westlaw through 2d Reg. Sess. of 54th Legis. (2014)) (not applicable to any contract in which a business binds itself); South Dakota (S.D. CODIFIED LAWS § 19-8-7 (West, Westlaw through 2013 Legis. Sess.) (providing "No court, administrative agency, or other governmental agency may enforce any provisions of any religious code.")); Tennessee (TENN. CODE ANN. §§ 20-15-101 to -106 (West, Westlaw through Apr. 8, 2014, legislation) (applying only to individuals, not businesses)); and Washington (WASH. REV. CODE ANN. § 2.28.165 (West, Westlaw through June 12, 2014, legislation) (restricting the use of foreign laws in therapeutic and specialty courts)). Most recently, Alabama Constitutional Amendments, proposed by Act 2013-269, appeared on the Nov. 4, 2014, ballot and was passed by the Alabama voters. Ballot Statement for Statewide Amendment 1, ALABAMA LEGISLATURE, *available at* http://www.legislature.state.al.us/statewide_ballot_measures/BALLOT_STATEMENT_FOR_STATEWIDE_AMENDMENT_1.pdf, and *Alabama 2014 General Election: Results for Statewide, Congressional, Legislative Races*, ASSOCIATED PRESS, last updated Nov. 5, 2014, 12:45 PM, *available at* http://www.al.com/news/index.ssf/2014/11/alabama_2014_election_results.html (identifying that State Amendment 1 – Foreign Laws – Ballot Issue passed with 72 percent of the vote). Accordingly, the Amendment will be added to the Alabama Constitution. Greg Garrison, *Amendment Banning "Foreign Law" in Alabama Courts Passes; Will*

Much of the support for these bills stems from a fear of Islamic law, leading these proposed bills to be dubbed "anti-Sharia" bills.[14]

But beyond the fear of Islamic law, these bills also prohibit courts from considering all forms of non-state law, indicating a general rejection of any law that is not U.S. law.[15] In so doing, the widespread consideration – and growing embrace – of these bills represents heightened skepticism of non-state law in the United States. Indeed, this desire to avoid foreign law may already have filtered into the U.S. judicial system. According to recent articles by Donald Childress and Christopher Whytock, federal district courts in the United States dismiss transnational forum non conveniens cases approximately 50 percent of the time;[16] and this number rose to 63 percent when a foreign plaintiff was involved.[17] As Childress notes, these staggering numbers may very well indicate that federal district court judges are "dismissing suits on forum non conveniens grounds to avoid cases involving the application of foreign law."[18]

But such desperate attempts to protect the law of the nations-state – and reject other "foreign" legal systems – only further highlight the fact that "legal pluralism is everywhere,"[19] and that our experience of legality is undeniably multifaceted and multifarious, overlapping and conflicting. Thus, in the words of Brian Tamanaha, "There is, in every social arena one examines, a seeming

*Be Added to Alabama Constitution* (last updated Nov. 4, 2014, 11:40 PM), *available at* http://www.al.com/news/index.ssf/2014/11/amendment_banning_foreign_law.html.

*See generally* Kimberly Railey, *More States Move to Ban Foreign Law in Courts*, USA Today, Aug. 4, 2013, *available at* http://www.usatoday.com/story/news/nation/2013/08/04/states-ban-foreign-law/2602511/; Faiza Patel, Matthew Duss & Amos Toh, Brennan Ctr. for Justice, *Foreign Law Bans: Legal Uncertainties and Practical Problems* (May 2013), *available at* http://www.brennancenter.org/sites/default/files/publications/ForeignLawBans.pdf; *see also* Bill Cotterell, *Florida Legislature Forbids Use of Foreign Law in State Court*, Reuters, Apr. 30, 2014, *available at* http://www.reuters.com/article/2014/04/30/us-usa-florida-sharialaw-idUSBREA3T14H20140430.

[14] *See generally* Asma Uddin & Dave Pantzer, *A First Amendment Analysis of Anti-Sharia Initiatives*, 10 First Amend. L. Rev. 363 (2012).

[15] *See* Martha F. Davis & Johanna Kalb, Am. Const. Soc'y for L. & Pol'y, Oklahoma State Question 755 and an Analysis of Anti-International Law Initiatives 4, *available at* http://www.acslaw.org/sites/default/files/davis_and_kalb_anti-international_law.pdf (noting that "[s]ome commentators couch their objections to courts' consideration of international or foreign material in the language of sovereignty.").

[16] Christopher A. Whytock, Politics and the Rule of Law in Transnational Judicial Governance: The Case of Forum Non Conveniens 15 (Feb. 28, 2007) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=969033.

[17] Donald Earl Childress, III, *Rethinking Legal Globalization: The Case of Transnational Personal Jurisdiction*, 54 Wm. & Mary L. Rev. 1489, 1536–37 (2013).

[18] Donald Earl Childress, III, *When* Erie *Goes International*, 105 Nw. U. L. Rev. 1531, 1562 (2011); *see also* Christopher A. Whytock, *Myth of Mess? International Choice of Law in Action*, 84 N.Y.U. L. Rev. 719, 721 (2009) (arguing that there exist "strong biases favoring domestic over foreign law").

[19] Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 Sydney L. Rev. 375, 375 (2008).

multiplicity of legal orders, from the lowest local level to the most expansive global level."[20] And, as expressed by Paul Schiff Berman, the existence of these plural legal orders stems from the fact that "[w]e live in a world of multiple, overlapping normative communities"[21] and "[l]aw is constantly constructed through the contest of these various norm-generating communities."[22]

If the core insights of legal pluralism accurately describe the social spheres we inhabit, then the nation-state can no longer be seen as the sole provider of law. Instead, non-state law continues to emerge alongside the state, further contributing to our pluralistic experience of legality. Although the totality of non-state law often defies description, it can be subdivided into two broad categories: law above the state and law below the state.

The first category – law above the state – captures a wide range of legal systems that function across the territorial borders of nation-state. These include a various international and transnational legal institutions, including examples such as the European Court of Human Rights, human rights nongovernmental organizations, transnational regulatory institutions, and the International Centre for Settlement of Investment Disputes, just to name a few.[23]

The second category – law below the state – includes various forms of local customary, religious, and indigenous law,[24] including religious arbitration tribunals,[25] tightly knitted trade associations,[26] tribal courts,[27] and

[20] *Id.*

[21] Paul Schiff Berman, *The New Legal Pluralism*, 5 Ann. Rev. L. Soc. Sci. 226 (2009).

[22] Paul Schiff Berman, *Global Legal Pluralism*, 80 S. Cal. L. Rev. 1156, 1157–58 (2007).

[23] *See, e.g.*, William Twining, *Normative and Legal Pluralism: A Global Perspective*, 20 Duke J. Comp. & Int'l L. 473 (2010); Berman, *Global Legal Pluralism*, *supra* note 22, at 1157–58 (2007); Peer Zumbansen, *Transnational Legal Pluralism*, 1 Transnat'l Legal Theory 141 (2010); Roger Cotterrell, *Transnational Communities and the Concept of Law*, 21 Ratio Juris 1 (2008); Oren Perez, *Normative Creativity and Global Legal Pluralism: Reflections on the Democratic Critique of Transnational Law*, 10 Ind. J. Global Legal Stud. 25 (2003); Gunther Teubner, *Global Bukowina: Legal Pluralism in the World Society*, *in* Global Law Without a State 3, 14–15 (Gunther Teubner ed., 1997).

[24] *See, e.g.*, Gypsy Law: Romani Legal Traditions and Culture (Walter O. Weyrauch ed., 2001); Nomi Maya Stolzenberg & David N. Myers, *Community, Constitution and Culture: The Case of the Jewish Kehilah*, 25 U. Mich. J.L. Reform 633 (1992).

[25] Michael A. Helfand, *Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders*, 86 N.Y.U. L. Rev. 1231 (2011); Adam S. Hofri-Winogradow, *A Plurality of Discontent: Legal Pluralism, Religious Adjudication and the State*, 26 J.L. & Religion 101 (2010).

[26] Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. Legal Stud. 115 (1992); Barak D. Richman, *How Community Institutions Create Economic Advantage: Jewish Diamond Merchants in New York*, 31 L. & Soc. Inquiry 383 (2006).

[27] *See, e.g.*, Karl N. Llewellyn & E. Adamson Hoebel, The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence (1941).

neighborhood-dispute resolution norms.[28] These institutions generally function as local pockets of legality, providing and enforcing their own system of rules within the borders of the nation-state.

Accordingly, as the multiplicity of legal systems continues to proliferate, the nation-state finds itself sandwiched, so to speak, between two broad categories of non-state law. And although the dynamics among these three levels of law differ in important ways, many of the questions about this increasingly plural legal space converge. It is to this series of questions to which this volume is dedicated:

(1) To what extent can state and non-state law peacefully coexist?
(2) What is the nature of the relationship between state and non-state law?
(3) To what extent do these relationships lead to the transformation and development of both state and non-state law?
(4) Through what mechanisms do state and non-state law seek to influence each other's development?

To explore these and related questions, the present volume is divided into three sections.

## PART I: NEGOTIATING STATE AND NON-STATE LAW: THE LEGAL PLURALIST PROJECT

The first section considers some of the fundamental questions for the legal pluralist project and explores shared themes of global and local legal pluralism. First, Paul Schiff Berman considers the relationship between his own vision of global legal pluralism and liberalism, arguing that legal pluralism is neither irreconcilable with nor reducible to liberalism. Berman argues that liberalism too often focuses on only non-state law when it comes into conflict with state law, limiting the purview of its inquiry to whether and to what extent the state should tolerate non-state law. Adopting the perspective of liberalism – that is, focusing on non-state law through only the prism of state law – neglects the potential for procedural and institutional innovation that can enhance the relationship between state and non-state law. Thus, concludes Berman, the project of global legal pluralism is to identify and

[28] Robert C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1986).

capitalize on opportunities to improve the relationship between state and non-state law by recognizing that a legal pluralist framework provides both a superior lens for understanding the plural nature of law and by improving our ability to navigate the complex interactions between overlapping legal communities.

Second, Ralf Michaels uses the recent decision of a district court in Cologne, Germany – which ruled that circumcision of male children constitutes an illegal bodily injury – as a frame to interrogate how we should define the category of "non-state law." In searching for a definition of non-state law, Michaels discusses and critiques attempts in legal philosophy, legal anthropology, and systems theory, to find a definition for non-state law that is both universally applicable and nonhegemonial. Michaels' own proposal, using an analogy to private international law, includes a twofold structure for the definition of law. First, each system determines for itself whether it regards its norms as legal norms. Second, although this self-determination provides an opportunity for autonomous definition, it does not bind other legal systems as each state retains the right to recognize – or not recognize – other systems as legal systems. Such an account of non-state law incorporates the empiricism of legal anthropology – each system defines for itself whether it is, in fact, a legal system – but at the same time each legal system retains the opportunity to impose its own rule of recognition that differentiates between what it deems law and what it deems non-law. In this way, Michaels aims to decentralize the concept of a legal system, rejecting the possibility of providing a uniform definition of the term.

Third, Sally Engle Merry presents her vision of spatial legal pluralism, which – by building on global legal pluralism among other models – seeks to contextualize the nation-state within the global and local legal regimes that exist both above and below the nation-state. Doing so provides a thicker account of law's pluralism, identifying how questions of law are intimately connected to questions of space and place. In turn, a focus on the spatial dimensions of law breaks down the sense of law's uniformity and contiguity, highlighting how other factors can sometimes circumscribe legal systems and at other times expand legal systems in ways that cut across physical borders.

Together, the three chapters in this section provide a broader frame for the subsequent chapters that consider the relationship between the nation-state and non-state law both above the state as well as below the state. In so doing, they consider new approaches to what we mean by non-state law, how non-state law interacts with the liberal nation-state, and the various spaces in which these interactions occur.

## PART II: NEGOTIATING STATE LAW AND INTERNATIONAL/TRANSNATIONAL LAW

The second section of this volume considers these questions of legal pluralism and non-state law in the context of international and transnational law – that is, law above the nation-state.

Peer Zumbansen explores the perceived legitimacy deficit of transnational private regulatory governance and its impact on the definition and purpose of law in an increasingly interconnected world. For Zumbansen, the growth of transnational governance requires that we shift our concept of law away from something inextricably linked to the nation-state and toward a more process-based understanding of law. This shift has enormous consequences for the way in which a political critique of the stakes in regulatory governance must now occur; without the backdrop of states and established ways – both institutionally and normatively – of identifying "right" and "left" positions, we need to develop a more bottom-up, learning approach to understand the workings of "transnational law in context." Thus, Zumbansen encourages us to embrace a methodological transnationalism where we refocus our attention on the actors, norms, and processes that typify law and use those categories to discern the evolving role of law for the emerging system of transnational private governance.

Oren Perez and Daphne Barak-Erez also contend with the perceived legitimacy deficit in transnational law, focusing specifically on these challenges in the context of global administrative law. As they note, various international agencies have growing and multifaceted influence over the domestic regulatory process on a wide range of issues, including trade, financial regulation, public health, and the environment. Perez and Barak-Erez identify significant problems with this transnational administrative scheme: It is often driven by a capitalist ethos that does not sufficiently account for other important values; it creates confusion when it comes to accountability by exposing domestic decision makers to competing sets of expectations and norms; and it creates a lack of democratic justification for many administrative regimes. In response to these concerns, Perez and Barak-Erez argue that global and domestic regulatory institutions must create new mechanisms that promote joint deliberation and consultation in the production and enforcement of norms within the growing transnational regulatory networks. Such an approach steers a middle course between two alternative extremes – sovereign exceptionalism and global constitutionalism – by focusing on the potential for democratic innovativeness at the micro level of administrative

praxis. In turn, such innovation holds out the hope of making the emerging global administrative framework more democratic, accountable, and pluralistic.

Next, Helen Quane analyzes the relationship between international law and the nation-state, arguing that the nation-state can serve as the medium through which international law can both promote as well as reform various forms of non-state law within the nation-state's borders. By imposing requirements on nation-states, international law has the potential for a twofold impact on various forms of non-state law within religious and indigenous communities: International law can exert considerable influence on the nation-state's recognition of religious and indigenous law; international law can also influence the development of religious and indigenous law by requiring the nation-state, for example, assist in the elimination of discrimination against women. Accordingly, not only does non-state law impact the law of the nation-state, but the various forms of non-state law are themselves also in a conversation, with the nation-state serving as a go-between – a dynamic that holds out the potential to promote reform.

This section concludes with Harlan Cohen's exploration of precedent's surprisingly central role in international law notwithstanding the fact that, in principle, international law precedents are supposed to lack any doctrinal force. To explain this puzzle, Cohen argues that law is primarily a "practice" – thus, we need to think less about the way in which states "make" international law and more about how the community of legal practitioners actually "do" law. By focusing on the community of legal practitioners, as opposed to the nation-state, Cohen suggests that we can better account for the resilience of precedent in international law. This resilience is of particular importance given some of the conventional reasons why nation-states have resisted the doctrinal relevance of precedent; limiting the legal impact of precedent ensured that the nation-state did not cede total authority over legal meaning, leaving room to challenge the decision of an international body in subsequent cases. In this way, tying precedent to a community of practitioners provides insight into how the practice of international law has dislodged, to some extent, the centrality of the nation-state.

In sum, these four chapters highlight the relationship between the nation-state and non-state law above the nation-state. In a number of ways, the migration of law away from the nation-state and toward both international and transnational law has posed some significant challenges. It has raised worries about the legitimacy of law above the nation-state, leaving the nation-state to reconsider its place within this global legal environment. And yet at the same

time state and non-state law can also work together to solve key challenges, providing opportunities to improve the relationship between the nation-state and communities that live within its borders.

## PART III: NEGOTIATING STATE LAW AND RELIGIOUS/INDIGENOUS LAW

The final section of this volume explores similar themes in the context of the relationship between the nation-state and both religious and indigenous law – that is, non-state law below the nation-state. It begins with Joel Nichols's prognosis of current tensions between religious law and state law over marriage and divorce. When it comes to these issues in the United States, religious laws and values have become increasingly marginalized; examples include the waning influence of conservative Protestant Christians, as evidenced by the recent same-sex marriage trends, as well as the spread of anti-Sharia laws in the United States, which have wrongly and unnecessarily stigmatized Islamic law. In this context, Nichols considers the role religious law can play when it comes to family, dismissing arguments that either have the state leaving marriage and divorce exclusively to religion or having the state embrace a particular religious worldview when it comes to family law questions. Instead, Nichols argues that the state should grant more – albeit not unlimited – solicitude to the private contractual choices made by couples, enabling them to incorporate religious law into their family arrangements via prenuptial or arbitration agreements. Although the state might instinctively resist such incursions into its authority, Nichols contends that enforcing the private choices of religious couples can provide the state with increasing opportunities to influence religious law and protect vulnerable parties in the family law context.

In the next chapter, Haider Ala Hamoudi, Wasfi H. Al-Sharaa, and Aqeel Al-Dahhan present a model of cooperative legal pluralism through a case study of the current relationship between Shi'i tribes and the Iraqi judicial system as well as Iraqi law enforcement. Hamoudi, Al-Sharaa, and Al-Dahhan contrast this model with what they note is the dominant narrative in the legal pluralist literature – one of legal competition and conflict. While still retaining some of those themes, Hamoudi, Al-Sharaa, and Al-Dahhan highlight ways in which Shi'i tribes and Iraqi law enforcement show restraint in resolving conflicts, working toward optimal outcomes instead of seeking to exercise maximum influence. Thus, in detailing various forms of power sharing in this context, Hamoudi, Al-Sharaa, and Al-Dahhan outline an alternative cooperative pluralist paradigm, identifying in the process both the benefits of and challenges for such a framework.