**Critical Dialogue**

**Contending Orders: Legal Pluralism and the Rule of Law. By Geoffrey Swenson. New York: Oxford University Press, 2022. 288p. $74.00 cloth.**

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**Geoffrey Swenson replies:**

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

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

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

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

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

think of non-state organizations, for example private businesses or non-governmental organizations, as influenced by state actions and regulations even as they retain significant autonomy.

Finally, Sesay questions what type of legal pluralism is most common after conflict. While there could certainly be situations where cooperative legal pluralism exists when a conflict ends, these situations are rare. Establishing a legitimate post-war legal order that has meaningful buy-in from most of the population is no easy task. Even post-independence regimes emerging from colonial rule relatively peacefully tend to face serious challenges in this area. Indeed, Sesay's work shows how difficult establishing an inclusive, effective, and legitimate state legal regime that enjoys widespread popular support across geographic and ethnic boundaries is—both before and after conflict. More broadly, my key concern is not whether competitive or cooperative legal systems are more common, but rather to highlight the value of thinking about the dynamics of different types of relationships between state and non-state justice institutions.

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