An Economic Analysis of Legal Pluralism

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Abstract

The formal law is typically conceived as the locus of an all-or-nothing choice: either it is used, or it is ignored and informal rules are followed instead. In this paper, we argue that the formal law, under certain conditions, causes the conflicting informal rule to go some way toward producing the change intended by the legislator. As a result, even if the formal law is not resorted to in an explicit manner, the simple fact that it exists and that people whose interests concur with its prescriptions can threaten to use it, might create a situation in which its objectives are partly met. The conditions under which this statement holds true are elucidated and then illustrated by means of several examples referring to SubSaharan Africa. A discussion follows about the best policies available to make the formal law an effective leverage in the hands of unprivileged sections of the population.

1 Introduction

In the most general sense, the concept of legal pluralism refers to a situation in which several law systems coexist. The term is used more restrictively when it points to the simultaneous existence of a legal system or formal laws with customary principles or informal rules. The formal law may be intended for either replacing or complementing the informal rule. In the latter case, legal pluralism is seen as a permanent situation and the different laws deal with separate matters: for example, the formal law regulates commercial, criminal, or constitutional aspects of human life, while civil and personal matters are governed by the local customary law. In the former case, where legal pluralism is conceived of as a temporary outcome, substituting the formal for the informal law may obey to two distinct rationales. In the first situation, the formal law serves the purpose of uniformizing, codifying, crystallizing and simplifying the customary rules and practices. In such circumstances, informal rules appear to be "the foundations on which formal rules are built" (Knight, 1992, p.172; see also North, 1990). In the second situation, the formal law aims at bringing a change that the custom inhibits. The formal and the informal laws are then seen as conflicting with each other.

Two different problems can arise when legal pluralism is intended to be temporary. To begin with, there may be an uncertainty about whether the formal law or the custom actually applies. As pointed out by Knight (1992), the enactment of a new formal law (1) alters the information about the equilibrium that the rule seeks to produce, and (2) it lays down sanctions against behaviour prescribed by the old rule. Whether the new formal law will replace the existing custom then depends on the ability of the new information and the sanctions to change the existing expectations. There are three reasons why actors might not trust that the formal law will be recognized and followed. First, the expectations, which have been formed in the past, may be too enduring and strong to give way to new ones. Second, the new rule may be ambiguous, being subject to multiple interpretations that could not be sorted out through the experience of time. And, third, there is uncertainty as to whether the sanctions under the new rule will actually be enforced (pp. 185-186).

When the required change in expectations does not take place because of one or several of these reasons, customary rules tend to persist, and formal laws destined to replace them remain 'dead letters'. In the conceptual universe of the institutions-as-equilibria approach, the new law does not get established as an institution because a certain representation becomes an institution only if the agents mutually believe in it. In other words, the new law must be a focal point in order to replace the prevailing custom (Aoki, 2001, p. 13; Greif, 2006, pp. 3-53; Basu, 2000, pp. 111-15). For instance, laws which have been enacted in countries of SubSaharan Africa with the aim of preventing excessive fragmentation of rural lands –whether through inheritance or through land sale transactions–, have never been really enforced. This is due not so much to people's ignorance of the law as to their widespread belief that it runs counter to deeply entrenched customary principles (such as the rights of all male children to receive a portion of the family land), and is therefore unlikely to be followed by others or to be backed by appropriate sanctions.

The second problem is typical of societies strongly differentiated in terms of power and social status. In such societies, indeed, a privileged group is generally tempted to use its leverage or its informational advantage to manipulate the state of legal pluralism for its own benefit. A striking example of this possibility, well substantiated in the literature, concerns the application of laws providing for formal land rights or titles. Experience with land registration and titling schemes has shown that well-informed, powerful and usually educated individuals often succeed in manipulating the customary law to claim large tracts of land that they then hasten to register under the freehold system of tenure (Doornbos, 1975, pp. 60, 66, 73; Glazier, 1985, p. 231; Barrows and Roth, 1989, p. 8; Berry, 1993; Platteau, 2000, pp. 165-68; Jacoby and Minten, forthcoming)

The general picture that emerges from the literature dealing with legal pluralism is rather pessimistic: except in cases where the statutory law is grounded in customary rules which it attends to formalize and simplify, legal pluralism tends to produce neutral or negative effects. In this paper, we want to argue that this pessimism is probably excessive: a more general approach to the problem of legal dualism is required that would allow for a wider set of predictions. In particular, the possibility must exist that the formal law, under certain conditions, causes the conflicting informal rule to go some way toward producing the change intended by the legislator. More precisely, even if the formal law is not resorted to in an explicit manner, the simple fact that it exists and that people whose interests concur with its prescriptions can threaten to use it, might create a situation in which its objectives are partly met.

From the observation that a state legislation is rarely applied, it may not therefore be inferred that this legislation has no or little impact on people's behaviour. An immediate implication is that the situation of legal pluralism may persist for a long time despite the initial intention of the legislator to bring an end to it by displacing informal rules and customs. The ability of the latter rules to evolve and adapt under the constraint of a new legal framework is the critical factor explaining why legal pluralism may endure. When the formal law is intended to complement the custom, refraining to regulate all aspects of human life, the existence and persistence of legal pluralism are a direct consequence of the legislator's decision. By contrast, and this is where our contribution lies, when the intent is to substitute the formal law for the custom, legal pluralism may obtain as a self-perpetuating equilibrium outcome of strategic interactions between arbiters and claimants.

The above analytical perspective, it may be noted, enables us to account for an observation frequently made by social scientists: customary rules, far from being the static and rigid outcomes that economists depict as stable (Nash) equilibria, are continuously evolving in reality. Moreover, and most interestingly, several scholars have stressed that transformation of customs may partly occur as a result of the existence of statutory laws which have the effect of conferring a stronger bargaining position on some particular section(s) of the population. For instance, we are told that "local landholding systems are not the expression of an

unchanging 'traditional law', but the fruit of a process of social change, which incorporates the effects of national legislation" (Lavigne Delville, 2000, p. 114). What these empirical statements imply is that the formal law is enforced or, at least, the claimants and the informal mediators or arbiters believe that it is likely to be enforced. Otherwise, it would not have the effect of strengthening the bargaining power of the people who are put at a disadvantage by the custom.

The remainder of the paper is organised as follows. In Section 2, we present a simple game-theoretic model with the purpose of proving the above statement that, even if not explicitly used or activated, a new formal law may, under certain conditions, bring changes in people's behaviour via its impact on customary rules which most of them continue to follow. To allow for legal pluralism, the model features two laws, the statutory law and the custom, which are represented by a formal judge and an informal arbiter or mediator who are able to enforce their respective rulings. Moreover, to incorporate the assumption of social heterogeneity, the model distinguishes between two types of possible claimants, the privileged people whose interests tend to be well reflected by the custom, and the unprivileged whose interests tend to be neglected by it. People dissatisfied with the custom can appeal to the formal judge, yet the informal arbiter acts strategically, and may move some distance away from his preferred outcome in order to retain cases in the informal court.

Section 3 provides the reader with a number of examples illustrating how changes in various key parameters of the model affect the manner in which conflicts are being resolved. These examples draw from the literature on women's rights and land tenure, particularly in the context of SubSaharan Africa. In the second part of this section, the domain of application of the model is extended so as to convince the reader that the relevance of the proposed theory is greater than what might appear at first sight. Section 4 summarizes the main findings of the paper.

2 A Model of Legal Dualism

2.1 Outline of the model

We consider a community in which conflicts can be arbitrated either by a formal judge or by an informal mediator. The mediator lives in the community and has, in each case, a preferred judgement. This preferred judgement represents the community's dominant custom at the present time. The mediator is not necessarily a unique person; he can be a council composed of esteemed members of the community. The formal judge operates in the framework of a court. He bases his judgement on written law. Yet this does not imply that his judgement is completely predictable. This unpredictability of his judgement captures three ideas.

First, there is an information problem. Quoting Robert Bates, one can state this problem as follows: "although those who impose the statutory law make efforts to inform themselves (about the case), they

remain outsiders and are therefore less likely to possess detailed information than would neighbours and kin" (Bates, 2001, p. 64). Since witnesses are expected to present conflicting evidence before the judge, the verdict eventually pronounced by him may well deviate from the ruling expected by the claimant on the basis of his reading of the statutory law. For example, unlike the custom that prevailed until recently in Sub Saharan Africa, the statutory land law recognizes the right of an owner to alienate his land. Yet, local witnesses or customary authorities can render the law void by arguing that the claimant is not the genuine owner of the land that he has sold or wishes to sell. In an extreme situation, the evidence is so contradictory that the judge may decide to abdicate and refer the case back to the informal settlement procedure.

Second, the judge may have not one but several bodies of law available to him to support his decision. In other words, the situation may be more complex than the state of legal dualism that has been depicted in section 1. Note that legal pluralism in the above sense is more frequently observed in countries with important Muslim populations. For example, we are told that in Tanzania, inheritance is governed by different laws of succession, including customary, Islamic and statuary laws. The customary law is the most unfavourable to women and the statutory law, which tends towards giving equal recognition to women's rights, is the most favourable. The Islamic law tends in between. In deciding which law should apply to a particular case, courts tend to base their judgement on what is known as the "mode of life test" whereby the ethnicity and religious affiliation of the heir, as well as the intent of the deceased are taken into account. As a matter of principle, customary law applies to African Christians unless they can prove that the family has abandoned the African mode of life in which case statutory law applies. For African Muslims, the Islamic law should apply, unless it can be proven that the deceased had other intentions (Longway, 1999 as cited by Hilhorst, 2000, p.187). Uncertainty clearly inheres in the above situation since it is rather easy for claimants to distort information regarding "the mode of life" of the deceased so as to obtain the most favourable judgement before the formal court. In fact, there could even be honest disagreement about the intentions of the deceased.

Third, even in cases where there is a unique body of statutory laws, interpretation problems may create uncertainties. This point is much emphasized in the literature and is known in the legal profession as the problem of the subjectivity of the judge. The flexibility of the formal law can thus be used by the judge to gain privileges for himself or to make it more congruent with his own preferences and values. The former possibility is illustrated by the case of the Forestry Law in Cameroon where the overriding consideration of the bureaucrats in charge of the law is to interpret it in such a way as to vest themselves with power and privilege (Egbe, ?). An example of the latter possibility is provided by the new Family Code of Morocco which contains provisions much more favourable to women than the old one based on a combination of the Islamic and customary laws. Factual evidence shows that the new law is less strictly applied by judges with more conservative inclinations (personal field observations of Imane Chaara).

The community is charcterized by an heterogenous population. The model distinguishes between two types of possible claimants, the privileged people whose interests tend to be well reflected by the custom, and the unprivileged whose interests tend to be neglected by it. In case of conflict between these two kinds of agents, the resolution is either informal and takes place in the community or formal and takes place in a court. Once the dispute is resolved, the players participate in a social exchange game. If an agent appeals to the formal court, he is excluded from the social exchange game. Each non-excluded player contributes to the production of a social good and enjoys a benefit from it.

We will consider two versions of the model which differ in the timing of events. In the fisrt case, the verdict of the mediator is implemented immediately In the second case, there is time lag between verdict and implementation that leaves time for both conflicting parties to take the case to the formal court. The outcome of a dispute under the two scenarios can be very different. In the first case, once a case is brought before a mediator, he has full control over the resolution of the dispute. However, this very feature may render the mediator unattractive as an arbiter for one or the other party. In the second case, either party may appeal to the formal court if he is not satisfied with the verdict of the mediator. This possibility can act as a restraint on the actions of the mediator, and in consequence, he can commit to giving a verdict that is not too different from that prescribed by the formal court. Given the central argument in this paper, that the existence of a formal law can cause local customs to evolve even if it is not resorted to in an explicit manner, it is the second case which is more pertinent. However, we analyse both cases to illustrate the significance of the timing of events.

For each of the above timing, we will, in the last part of this section, analyse the case in which we introduce heterogeneity in the intensity of disputes.

2.2 Description of the model

Consider a one-shot game involving a mediator, M, and two individuals, a privilege one (P) and a unprivileged one (N). There is a dispute between P and N. Players P and N face a binary choice: whether to take their dispute to the mediator, or to plead to a court of formal law. Once the dispute is resolved, the players participate in a social exchange game.

We will consider two cases: the verdict of M is implemented immediately (case 1); there is time lag between verdict and implementation that leaves time for both conflicting parties to take the case to the formal court (case 2) Specifically, the timing for the two cases are as follows:

Case 1: (1) the institutions of the formal court are set; (2) N decides whether to bring the case to the formal court (F); if she chooses F, the community excludes her, the social game without N is played, and the payoffs of all parties are determined; otherwise (3) P decides whether to bring the case to the formal court (F); if she chooses F, the community excludes her, the social game without P is played, and the payoffs of

all parties are determined; otherwise (4) M chooses verdict v^M, the social game without exclusion is played and the payoffs of all parties are determined.

Case 2: (1) the institutions of the formal court are set; (2) M chooses verdict v^M; (3) N decides whether to appeal to the formal court (F); if she chooses F, the community excludes her, the social game without N is played, and the payoffs of all parties are determined; otherwise (4) P decides whether to appeal to the formal court (F); if she chooses F, the community excludes her, the social game without P is played, and the payoffs of all parties are determined; otherwise (5) both parties accept the verdict v^M, the social game without exclusion is played and the payoffs of all parties are determined.

We represent the range of possible verdicts of the case by the interval $[0,1]$, where a verdict of 0 is most favourable to the privileged individual and a verdict of 1 is most favourable to the unprivileged individual. The formal law is to be represented by a specific verdict, $v^F \sim U\left[f-\frac{1}{2\phi}, f+\frac{1}{2\phi}\right]$ which is a stochastic variable with mean f and concentration parameter ϕ (a higher value of ϕ indicate a lower variance of the verdict). We assume that f and ϕ are such that the bounds of the distribution fall strictly within the interval $[0,1]$.

If the case is brought to the mediator, he has to choose a verdict $v^M \in [0,1]$. Therefore, this interval is his strategy set. The welfare of the mediator is increasing in the number of cases that are brought before him. Moreover, he has a 'preferred' verdict $I \in [0,1]$, such that his welfare is decreasing in the distance between the actual verdict and the prefered verdict. His preferred verdict is closer to the interests of the privileged persons in the community –in the patriarchal tribal societies of Sub-Saharan Africa, these are the male elders belonging to the founding lineages-.

The social game is modelled in the following manner . N, P, and M jointly produce an excludable public good. All (non-excluded) players enjoy the full benefit of the good and we assume that the community fully resolves the free-rider problem. Moreover, there is some cost-sharing rule such that each (non-excluded) player K contributes $C^K(Z)$ to the public good, where Z stands for the set of non-excluded players. Let's denote with A the full set of players, A_P the set with P excluded, and A_N the set with N excluded. Similarly, $Q(Z)$ denotes the benefit of the public good. Obvioulsy, we assume that $Q(Z)-C^K(Z)>0$ for any Z and K. Moreover, the net benefit from the public good for a stand-alone player is assumed to be zero, and the net benefit for the mediator in a bigger coalition is always higher than in a smaller coalition (this is necessary to avoid strategic renounciation of the case by the mediator).

Thus, M's utility is

$$\begin{aligned} u^M\left(v^M\right) &= X+Q(A)-C^M(A)-g\left(v^M-I\right) \text{ if his verdict is accepted} \\ &= Q(A_P)-C^M(A_P) \text{ if } P \text{ challenges his verdict} \\ &= Q(A_N)-C^M(A_N) \text{ if } N \text{ challenges his verdict} \end{aligned}$$

where X is the prestige in utility terms that the judge acquires from having his verdict unchallenged, and $g(.)$ denotes his loss function from choosing a verdict that is different from his preferred one. Note that this function is not necessarily symmetric, i.e. we can allow for M's loss being different if he biases the verdict to the unprivileged or to the privileged.

The preferences over possible verdicts are given by $u^P(1-v)$ for the privileged type, and by $u^N(v)$ for the unprivileged type, and $u^P(.)$ and $u^N(.)$ are increasing and concave. The concavity of the function ensures that the individuals are averse to the uncertainty of the verdict in the formal court. In addition, there is a cost, represented by c^P and c^N respectively for the two types if one opts for the formal court rather than the informal court. This cost captures the administrative cost of going to a formal court. These variables capture not only the fees at the formal court but can be interpreted more widely (so as to include the cost of access to information, transportation costs, the presence or absence of organizational support, etc). We can assume that $c^P < c^N$; i.e. the cost of accessing the formal court is lower for the privileged individual than it is for the unprivileged individual.

Now, we can write the utility to each type of individual from choosing the formal or informal court to settle a dispute. For the privileged type, the expected utility from choosing the formal court equals

$$Eu^P\left(1-v^F\right)-c^P,$$

the utility from choosing the informal court (without N going to the formal court) equals $u^P\left(1-v^M\right)+Q(A)-C^P(A)$, and utility from choosing the informal court (with N going to the formal court) equals $Eu^P\left(1-v^F\right)+Q(A_N)-C^P(A_N)$.

Similarly, the expected utility to the unprivileged type from choosing the formal court equals

$$Eu^N\left(v^F\right)-c^N,$$

the utility from choosing the informal court (without P going to the formal court) equals $u^N\left(v^M\right)+Q(A)-C^N(A)$, and utility from choosing the informal court (with P going to the formal court) equals $Eu^N\left(v^F\right)+Q(A_P)-C^N(A_P)$.

2.3 Analysis of the Model

In this section, we discuss the equilibrium for the two cases and comparative statics for parameters of the model.

2.3.1 Equilibrium for Case 1

In this case, if the agents decide not to go to the formal court, the mediator has full control over the resolution of the dispute. We proceed by solving the game by backward induction.

Stage 4. Let both contenders accept to take the case to the mediator. Then, clearly, M picks his preferred verdict $v^M = I$. This is due to the fact that at stage 4, the judge has full discretion over the verdict

Stage 3. Under M's preferred verdict, P gets the payoff equal to

$$u^P(1-I) + Q(A) - C^P(A).$$

She compares this to the payoff obtained from making recourse to the formal court:

$$Eu^P\left(1-v^F\right) - c^P.$$

Thus, P brings the case to the formal court iff

$$Eu^P\left(1-v^F\right) - c^P \geq u^P(1-I) + Q(A) - C^P(A).$$

In other words, P accepts the verdict of M whenever $I < \bar{I}$, where $\bar{I}$ is pinned down by the equation:

$$Eu^P\left(1-v^F\right) - c^P = u^P\left(1-\bar{I}\right) + Q(A) - C^P(A). \tag{1}$$

Stage 2. Suppose $I < \bar{I}$. Then, under M's preferred verdict, N gets the payoff equal to

$$u^N(I) + Q(A) - C^N(A).$$

She compares this to her payoff in the case of making recourse to the formal court:

$$Eu^N\left(v^F\right) - c^N.$$

Thus, N accepts the verdict of M whenever $I > \underline{I}$, where $\underline{I}$ is pinned down by the equation:

$$Eu^N\left(v^F\right) - c^N = u^N(\underline{I}) + Q(A) - C^N(A). \tag{2}$$

Thus, the preferred verdict of M is the equilibrium outcome of the game iff $I \in (\underline{I}, \overline{I})$. More generally, the equilibrium of the game is:

- I, if $I \in (\underline{I}, \overline{I})$. The payoff of the judge is $u^M(I) = X + Q(A) - C^M(A)$. The payoff of the privileged is $u^P(1-I) + Q(A) - C^P(A)$. The payoff of the unprivileged is $u^N(I) + Q(A) - C^N(A)$.
- v^F, if $I \leq \underline{I}$.The payoff of the judge is $Q(A_N) - C^M(A_N)$. The payoff of the privileged is $Eu^P\left(1-v^F\right) + Q(A_N) - C^P(A_N)$. The payoff of the unprivileged is $Eu^N\left(v^F\right) - c^N$.
- v^F, if $I \geq \overline{I}$.The payoff of the judge is $Q(A_P) - C^M(A_P)$. The payoff of the privileged is $Eu^P\left(1-v^F\right) - c^P$. The payoff of the unprivileged is $Eu^N\left(v^F\right) + Q(A_P) - C^N(A_P)$.

2.3.2 Comparative statics for case 1

Next, we analyze what happens to bounds $\underline{I}$ and $\overline{I}$ when the parameters of the model change. These parameters are: the mean (f) and the dispersion (the inverse of ϕ) of the verdict in the formal court, the costs of accessing the formal court (c^P and c^N), and the payoff parameters of the social game ($Q(Z)$, $C^N(Z)$, $C^P(Z)$).

Proposition 1 *(i) An increase in f, the mean verdict of the formal judge, raises both $\underline{I}$ and $\overline{I}$, the respective thresholds at which the unprevileged and the privileged are indifferent between an informal resolution of the conflict and an appeal to the formal court. An increase in ϕ, which corresponds to a decrease in the variance of the formal verdict, raises $\underline{I}$ and decreases $\overline{I}$.*

(ii) An increase in c^N, the cost of access to the formal court for the unprivileged, decreases his threshold verdict $\underline{I}$. Similarly, an increase in c^P, the cost of access to the formal court for the privileged, increases his threshold verdict $\overline{I}$.

(iii) An increase in the net benefit from the social game, expands the interval $[\underline{I}, \overline{I}]$ in which both parties are satisfied with the verdict of the mediator.

The intuitions for these results are as follows. As the formal court becomes more favorable to the unprivileged agent, he has a stronger incentive to appeal the formal court while the privileged agent is less inclined to do so. And vice versa as the formal court becomes more favourable to the privileged agent. When there is more uncertainty about the verdict of the formal court, both agents are more reluctant to make use of it. An increase in the cost of accessing the formal court discourages each agent from doing so and therefore, expands the interval where the verdict of the mediator is acceptable to both. A higher net benefit from the social game implies a higher opportunity cost of appealing to the formal court and thus expands the range over which a decision by the mediator can prevail.

Proof. The threshold condition (1) can be written as:

$$u^P\left(1-\bar{I}\right) = Eu^P\left(1-v^F\right) - c^P - Q(A) + C^P(A) \equiv \Phi^P,$$

thus, $\Phi^P(f, \phi, c^P, Q(A), C^P(A))$ denotes the reservation utility of the privileged. Clearly, it is decreasing in f (average formal-law verdict), and, by concavity of the utility function, increases with ϕ (precision of the formal verdict). Moreover, it decreases in the net benefit of the privileged from the cohesive production (decreases in $Q(A)$ and increases in $C^P(A)$) and decreases in the administrative cost of accessing the formal court (c^P). Given this, and the fact that

$$\frac{d\overline{I}}{d\Phi^P} < 0,$$

the threshold identity (for the rich) of the mediator is

$$\overline{I}(\overset{+}{f}, \overset{-}{\phi}, \overset{+}{c^P}, \overset{+}{Q(A)}, \overset{-}{C^P(A)}).$$

Similarly, rewriting (2) as

$$u^N\left(\underline{I}\right) = Eu^N\left(v^F\right) - c^N - Q(A) + C^N(A) \equiv \Phi^N,$$

and observing that the expected outside option of the unprivileged , Φ^P, increases in f,ϕ, and $C^N(A)$, and decreases in c^N and $Q(A)$, we get that the threshold identity (for the unprivileged) of the mediator is

$$\underline{I}(\overset{+}{f}, \overset{+}{\phi}, \overset{-}{c^N}, \overset{-}{Q(A)}, \overset{+}{C^N}(A)).$$

■

2.3.3 Equilibrium for Case 2

In this case, the choice of recourse to the formal court is made after the judge has given his verdict. In other words, the commitment is not an issue anymore, and now the preferred verdict of the judge is not the only factor that determines the equilibrium Again, we proceed by backward induction.

The payoffs at stage 5 are: $X + Q(A) - C^M(A) - g\left(v^M - I\right)$ for the judge, $u^N\left(v^M\right) + Q(A) - C^N(A)$ for the unprivileged , and $u^P\left(1 - v^M\right) + Q(A) - C^P(A)$ for the privileged. At stage 4, the privileged compares her payoff at stage 5 to that if she appeals to the formal court. She is better off appealing if

$$Eu^P\left(1 - v^F\right) - c^P \geq u^P\left(1 - v^M\right) + Q(A) - C^P(A),$$

in other words, if

$$v^M \geq \overline{I}.$$

Suppose now that $v^M < \overline{I}$. Then, at stage 3, the unprivileged compares her payoff at stage 5 with that if she appeals to the formal court. Thus, she is better off appealing if

$$v^M \leq \underline{I}.$$

Knowing this, at stage 2, the judge decides strategically. He knows that the case will go unappealed if and only if his verdict is sufficiently attractive to both contending parties:

$$v^M \in (\underline{I}, \overline{I}).$$

Thus, the judge would choose a verdict (in this range) that gives him the highest payoff, conditional on this payoff being higher than the payoff of letting the verdict be appealed by one contending party.

Clearly, if $I \in (\underline{I}, \overline{I})$, the judge chooses his preferred verdict.

Suppose now that $I \notin (\underline{I}, \overline{I})$. Consider two possible cases.

(a) $I < \underline{I}$. In this case, the judge's preferred verdict I is, from the point of view of the unprivileged player, too biased towards the privileged. Then, there exists a critical verdict value at which the judge's payoff from letting go equals to that of keeping the case "in". This critical value $\bar{v}$ satisfies the equation

$$X + Q(A) - C^M(A) - g(\bar{v} - I) = Q(A_N) - C^M(A_N). \tag{3}$$

Any verdict above $\bar{v}$ is too biased towards the unprivileged for judge's taste, and he is better off triggering the appeal of the unprivileged to the formal court. If $\underline{I} < \bar{v}$, the judge is better off choosing $\underline{I}$ and keeping the case in.

(b) $I > \overline{I}$. The judge's preferred verdict I is, from the point of view of the privileged player, too biased towards the unprivileged Then, there exists a critical verdict value $\underline{v}$ that satisfies the equation

$$X + Q(A) - C^M(A) - g(\underline{v} - I) = Q(A_P) - C^M(A_P). \tag{4}$$

Any verdict below $\underline{v}$ is too biased towards the privileged for judge's taste, and he is better off triggering the appeal of the privileged to the formal court. If $\overline{I} > \underline{v}$, the judge is better off choosing $\overline{I}$ and keeping the case in. Otherwise, the judge is better off letting the case go to the formal court.

Now we can characterize the equilibrium more precisely.

The equilibrium of the game is:

- I, and the verdict goes unchallenged, if $I \in [\underline{I}, \overline{I}]$. The payoff of the judge is $u^M(I) = X + Q(A) - C^M(A)$. The payoff of the privileged is $u^P(1 - I) + Q(A) - C^P(A)$. The payoff of the unprivileged is $u^N(I) + Q(A) - C^N(A)$.

- $\underline{I}$, and the verdict goes unchallenged, if $I < \underline{I} \leq \bar{v}$. The payoff of the judge is $X + Q(A) - C^M(A) - g(\underline{I} - I)$. The payoff of the privileged is $u^P(1 - \underline{I}) + Q(A) - C^P(A)$. The payoff of the unprivileged is $u^N(\underline{I}) + Q(A) - C^N(A)$.

- v^F, if $\bar{v} < \underline{I}$. The payoff of the judge is $Q(A_N) - C^M(A_N)$. The payoff of the privileged is $Eu^P\left(1 - v^F\right) + Q(A_N) - C^P(A_N)$. The payoff of the unprivileged is $Eu^N\left(v^F\right) - c^N$.

- $\overline{I}$, and the verdict goes unchallenged, if $\underline{v} \leq \overline{I} < I$. The payoff of the judge is $X + Q(A) - C^M(A) - g(I - \overline{I})$. The payoff of the privileged is $u^P\left(1 - \overline{I}\right) + Q(A) - C^P(A)$. The payoff of the unprivileged is $u^N\left(\overline{I}\right) + Q(A) - C^N(A)$.

- v^F, if $\underline{v} > \overline{I}$.The payoff of the judge is $Q(A_P) - C^M(A_P)$. The payoff of the privileged is $Eu^P\left(1 - v^F\right) - c^P$. The payoff of the unprivileged is $Eu^N\left(v^F\right) + Q(A_P) - C^N(A_P)$.

2.3.4 Comparative statics for case 2

We know from the comparative statics for case 1 how bounds $\underline{I}$ and $\overline{I}$ react to a change in a parameter of the model (the mean and the dispersion of the verdicts in the formal court (f and ϕ), the adminitrative costs of accessing the formal court (c^P and c^N), and the payoff parameters of the social game ($Q(Z)$, $C^N(Z)$, $C^P(Z)$)). We can now add to this what happens to the bounds $\underline{v}$ and $\overline{v}$ when the parameters of the model change.

Proposition 2 *(i) An increase in X, the prestige associated with mediating a case raises $\bar{v}$, the upper threshold above which the mediator lets the case go to the formal court and lowers $\underline{v}$, the corresponding lower threshold*

(ii) An increase in the net gain to the mediator from the participation of the privileged party in the social game lowers $\underline{v}$. Corespondingly, an increase in the net gain to the mediator from the participation of the unprivileged party in the social game, increases $\bar{v}$.

The intuition for these results are as follows:

There are two factors that influence the mediator's payoff from keeping the case in the informal court.

First, the mediator faces a trade-off between the cost of deviating from his preferred verdict and the loss in terms of prestige from having the case judged in the formal court. When X is larger, the mediator has a greater incentive to act as an arbiter for the dispute himself, and thefore, he is willing to propose a solution further from his preferred verdict.

Secondly, there is a loss to the mediator whenever either party is excluded from the community. Since an individual will go to the formal court if he is not satisfied with the decision of the mediator, and thus face exclusion, the latter will accomodate him if the cost of deviating from his preferred verdict is not too great. As the cost of excluding someone from the social game becomes higher, the mediator is again willing to deviate further from his preferred verdict to avoid this exclusion.

Proof. Rewrite (3) as

$$g(\bar{v} - I) = X + Q(A) - C^M(A) - Q(A_N) + C^M(A_N) \equiv \Pi^N,$$

where Π^N denotes the maximum loss that the judge biased against the unprivileged is ready to accept, before letting the case go to the formal court. Thus maximum loss clearly increases in the judge's direct payoff from the case (X), the benefit from the cohesive production of the community public good ($Q(A)$), and the contribution of the judge to the public good when the unprivileged is excluded ($C^M(A_N)$). The maximum loss decreases in the contribution of the judge to the public good under cohesive production ($C^M(A)$) and the benefit from the public good under the exclusion of the unprivileged ($Q(A_N)$). Since

$$\frac{d\overline{v}}{d\Pi^N} > 0,$$

the judge's threshold verdict $\overline{v}$ carries through all the above comparative statics signs:

$$\overline{v}(\overset{+}{X}, \overset{+}{Q}(A), \overset{-}{C^M}(A), \overset{-}{Q}(A_N), \overset{+}{C^M}(A_N)).$$

Following the same reasoning, we can show the judge's threshold verdict $\underline{v}$ carries the following signs:

$$\underline{v}(\overset{-}{X}, \overset{-}{Q}(A), \overset{+}{C^M}(A), \overset{+}{Q}(A_P), \overset{-}{C^M}(A_P)).$$

■

2.4 Heterogeneity in Disputes

Thus far, we have assumed that all disputes are of the same nature. Here, we consider heterogeneity in the severity of disputes, specifically, the extent to which one cares about the outcome of a dispute, compared to the cost necessary to ensure that a settlement is favourable to oneself. For example, if the dispute is related to a large amount of property, one may be willing to take the case to the formal court, even if the administrative and social costs are high, if the formal court is likely to produce a more favourable verdict.

Formally, to express this idea, we characterise any dispute according to a parameter $\gamma \in [1, \gamma_{\max}]$; and rewrite the utilities obtained by the unprivileged and the privileged from a specific verdict v as linear functions: $u^N(v) = \gamma v$ and $u^P(v) = \gamma(1-v)$ respectively (thus, we abstract away, temporarily, from the case where individuals are averse to the uncertainty of the verdict in the formal court). For notational simplicity, we also abstract away from the payoffs of the social game. This will not qualitatively affect the results in this or the following section. Then, the critical values $\underline{I}(f,\gamma)$ and $\bar{I}(f,\gamma)$, are given by the following equations:

$$\gamma \underline{I}(\gamma) = E\gamma v^F - c^N \quad (5)$$

$$\gamma\left(1 - \bar{I}(\gamma)\right) = E\gamma\left(1 - v^F\right) - c^P \quad (6)$$

Therefore, $\underline{I}(f,\gamma)$ is increasing and $\bar{I}(f,\gamma)$ is decreasing in γ; i.e. the interval of verdicts that would attract both parties to the informal court is smaller for more critical disputes. Intuitively, one is more willing to bear the cost of accessing the formal court when they stand to gain or lose more from the verdict.

The remainder of this section and the next is specific to the Case 2-model. Where the results would differ for the Case 1-model, comments are included in parantheses.

Suppose that f is very different from I, such that $X - g(f - I) < 0$. Then, for γ sufficiently large, $I \notin \left[\underline{I}(f,\gamma), \bar{I}(f,\gamma)\right]$, and thus $v^M(f,\gamma) \notin \left[\underline{I}(f,\gamma), \bar{I}(f,\gamma)\right]$; i.e the mediator would not be willing to accomodate both parties for the most critical disputes. Consequently, these would end up in the formal court. (For Case 1, cases end up in the formal court whenever $I \notin \left[\underline{I}(f,\gamma), \bar{I}(f,\gamma)\right]$).

Let $\bar{\gamma}(f)$ be the threshold value of γ, such that all disputes for which $\gamma > \bar{\gamma}(f)$ go to the formal court; and all disputes for which $\gamma < \bar{\gamma}(f)$ go to the informal court. If $f < I$, then $\bar{\gamma}(f)$ is given by the equations

$$X - g\left[\bar{I}(f,\gamma) - I\right] = 0 \tag{7}$$

$$\gamma\left(1 - \bar{I}(f,\gamma)\right) = E\gamma\left(1 - v^F\right) - c^P \tag{8}$$

Substituting for $\bar{I}(f,\gamma)$ in (7) and rearranging, we obtain

$$X - g\left(f - I + \frac{c^P}{\bar{\gamma}(f)}\right) = 0 \tag{9}$$

$$\Longrightarrow \bar{\gamma}(f) = \frac{c^P}{g^{-1}(X) + I - f}$$

Similarly, if $f > I$, then $\bar{\gamma}(f)$ is given by

$$X - g\left(f - I - \frac{c^N}{\bar{\gamma}(f)}\right) = 0 \tag{10}$$

$$\Longrightarrow \bar{\gamma}(f) = \frac{c^N}{f - I - g^{-1}(X)}$$

Thus, as f moves away from I, the threshold value $\bar{\gamma}$ decreases; i.e. more disputes end up in the formal court when the formal law is very different from I.

2.5 Extension to a Dynamic Framework where Community Size Matters

The aim of this extension would be to investigate the actions of the mediator and the disputants when the value of the social game and/or the prestige associated with mediating a case (denoted by X in the model) depends on the current size of the community, and thus on how many people have already been excluded.

For this purpose, suppose the population consists of $2N$ individuals equally divided between privileged and non-privileged persons. We assume that each privileged person has an outside option ω^P. We index the unprivileged persons in the population from 1 to N and assign each person j an outside option $\omega_j^N \in [\underline{\omega}, \overline{\omega}]$ with $\omega_{j+1}^N > \omega_j^N$ for $j = 1..N-1$. Each period, there is a dispute involving a priviledged and a non-priviledged individual, drawn randomly from the population.

For simplicity, we rewrite the value of the social game for each person i as $Y^i(n) = Q(n) - C^i(n)$, where n is the current size of the community. We assume that $Y^i(n)$ is increasing and concave, such that the cost of social exclusion rises as the size of the community declines. We also assume that the prestige of the mediator is a function of the size of the community, $X(n)$. If $X'(n)$ is positive, then there is a loss in prestige, whenever an individual exits the community. In addition, we can assume that $X''(n)$ is negative, such that the loss in prestige increases with each exit.

The per-period utilities for each type of individual, when the community size is n, is then given by:

- The mediator receives $X(n) - g\left(v^M - I\right)$ if the case is settled in the informal court and $X(n-1)$ if the case goes to the formal court. (Note that we have dropped the gain from the social game from the mediator's utility function as it would behave in the same manner as the prestige function).

- The non-privileged party in the dispute receives $u^N\left(1 - v^M\right)$ if the case is settled in the informal court and $Eu^N\left(1 - v^F\right) - c^N$ if it is settled in the formal court. In addition he receives ω_i^N if excluded from the community and $Y^P(n)$ otherwise.

- The privileged party in the dispute receives $u^P\left(v^M\right)$ if the case is settled in the informal court and $Eu^P\left(v^F\right) - c^P$ if it is settled in the formal court. In addition he receives ω^P if excluded from the community and $Y^N(n)$ otherwise.

Note that if either of the two disputants have already been excluded from the community, then they must necessarily resolve their dispute in the formal court. There is no strategic choice to be made. The interesting case occurs when both disputants are still members of the community. We also assume for the remainder of the discussion that $f > I$; i.e. the formal law favours the unprivileged.

We assume that the mediator is forward-looking; he takes into consideration any consequences of letting a case go today on the future game. Letting a case go today would lead to a loss in prestige and also diminish the threat value of social exclusion in the future, as individuals would value less membership in a smaller community. Therefore, by refusing to accomodate a case today, the mediator would have to be more accomodating to retain a case in the informal court tomorrow.

Denote by $U^M(n, \Omega)$ the maximum continuation utility that the mediator can achieve when the community consists of n individuals and Ω is the set of their indices. Now, if there is a dispute involving an unprivileged person $j \in \Omega$, the mediator would accomodate him if and only if

$$X(n) - g\left(\underline{I}\left(n, \omega_j^N\right) - I\right) + \beta U^M(n, \Omega) \geq X(n-1) + \beta U^M(n-1, \Omega \backslash \{j\})$$

$$\iff X(n) - X(n-1) + \beta U^M(n, \Omega) \geq g\left(\underline{I}\left(n, \omega_j^N\right) - I\right) + \beta U^M(n-1, \Omega \backslash \{j\}) \tag{11}$$

where β is the per-period discount factor. The right-hand side is increasing in j (when the dispute involves someone with a stronger outside option, it is more costly for the mediator to accomodate him, and the continuation value when this person is excluded is also weakly greater) while the left-hand side is independent of j. So, for each n and Ω there is a threshold individual of the unprivileged type including and above whom the mediator allows all cases go to the formal court; and below whom, the mediator accomodates all cases. We shall denote this threshold by $J(n, \Omega)$. Formally, we can establish the following lemma:

Lemma 1 *For each n and Ω, there exists a threshold $J(n, \Omega) \in \Omega$ such that the mediator keeps a case in the informal court whenever it involves an unprivileged individual $j \leq J(n, \Omega)$ and not otherwise.*

Proof. The mediator would provide a verdict that satisfies individual j if and only if condition (11) is satisfied. In the previous section, it was shown that $\underline{I}\left(n,\omega_j^N\right)$ is increasing in ω_j^N. Therefore $g\left(\underline{I}\left(n,\omega_j^N\right)-I\right)$ is increasing in ω_j^N. Also, note that, given $j',j''\in\Omega$, $j''>j'$, any future verdict that is accepted by j'' will also be accepted by j'. Therefore, for any continuation strategy of the mediator, the stream of prestige that the mediator receives when j' remains part of the community (i.e. j'' is expelled) is at least as high as when j'' remains part of the community (j' is expelled). And, given a strategy, the stream of loss $g\left(..\right)$ is independent of the identity of the community members. Therefore, the mediator's optimal strategy when faced with $\Omega\backslash\left\{j'\right\}$ should perform at least as well when faced with $\Omega\backslash\left\{j''\right\}$. Therefore, we have $U^M\left(n-1,\Omega\backslash\left\{j''\right\}\right)\geq U^M\left(n-1,\Omega\backslash\left\{j'\right\}\right)$. Therefore, the right-hand side of (11) increases monotonically with j and the left-hand side is independent of j. Thus, we have established the existence of the threshold $J\left(n,\Omega\right)$ as defined above. ■

Now consider what happens in the first period when no social exclusion has yet taken place. If there is a case involving an unprivileged individual $j_0<J\left(2N,\Omega_0\right)$ (where Ω_0 is the set of all unprivileged persons in the population), the case is settled in the informal court and no social exclusion takes place. Then the subsequent period looks exactly the same. On the other hand, if $j_0\geq j\left(2N,\Omega_0\right)$, the mediator would refuse to give a verdict that satisfies j_0. The case goes to the formal court and j_0 is excluded from the community. At this stage, the population has $2N-1$ individuals and the unprivileged individuals consist of $\Omega_0\backslash\left\{j_0\right\}$.

We should be able to show that the loss in future utility to the mediator due to the social exclusion of an additional person is greater when the community consists of $\Omega_0\backslash\left\{j_0\right\}$ instead of Ω_0. In addition, $X\left(n\right)-X\left(n-1\right)$ increases following social exclusion given that $X\left(.\right)$ is concave. Therefore, the mediator should be more accomodating following the social exclusion of person j_0. However, members of the community also become more demanding, as previously seen; i.e. $\underline{I}\left(n,\omega_j^N\right)$ increases for each j following social exclusion. If the former effect dominates, then the threshold person whom the mediator will accomodate will increase with each exclusion. On, the other hand, if the latter effect dominates, then the threshold level will fall each time a person leaves the community, opening the door to further exclusion.

We can make statements relating to the dynamics of the size of the community over time. First, we define a 'steady-state' of the community as follows:

Definition 1 *A community has reached a* ***steady-state*** *when all future disputes involving members of the community are settled by the mediator.*

If the threshold person to be excluded remains constant or increases each time someone leaves the community, then, sooner or later, we should arrive at a steady-state in which all remaining members settle their disputes by going to the mediator. In this case, when the steady-state is reached, some individuals of the unprivileged type would have left the community, seeking to resolve all their disputes within the formal

legal system; while others would remain within the community, accepting the judgements of the informal mediator. On the other hand, if the threshold falls whenever a person exits the community, then the steady-state will not be reached till all unprivileged members have exited the community. In other words, we would witness, in some sense, the collapse of the unprivileged part of the community.

3 Applications

This section is made of two parts. In the first part, we present an example illustrating the main contention presented in Section 2, i.e. formal law can have an indirect influence on behaviour even if not explicitly activated. In the second part, we propose two additional illustrations in which the formal law is interpreted in a wider sense than has been done so far in the paper.

3.1 Formal laws and informal rules: the case of women's rights

In the Senegal river valley, all populations are Muslim and they have been so for several centuries. Indeed, islamization of these societies resulted from the colonisation of the (middle) valley by successive waves of foreign conquerors since the 10th century, and maraboutic power used the 1776 revolution to assert itself and establish the Almaami regime based on the Islamic law (Minvielle, 1977). It is, therefore, not surprising that local inhabitants are quite aware that the Qur'an contains a provision that deals explicitly with inheritance. In particular, there is a Qur'anic prescription to the effect that women should inherit half of the share of their brothers. Despite the existence of this religious prescription, and perfect information about its content, the customary principle according to which women do not inherit at all has been generally followed until recently. The idea that daughters are entitled to inherit a share of the family land is deemed unacceptable in patriarchal societies because of the fear that ancestral lands may fall into stranger hands or be excessively split, especially when marriage practices follow the rule of virilocal exogamy (Goody, 1976). Incidentally, this observation runs counter to Timur Kuran's statement that in a matter such as inheritance that it addresses explicitly, the Qur'an carries an explicitly strong authority (Kuran, 2003, 2004).

In the above situation, women never thought of invoking the Islamic law lest they should antagonize their male relatives and be compelled to forsake key social protections that they traditionally enjoyed. Under the customary land tenure system, indeed, women are insured against various contingencies, in particular the prospects of separation/divorce, widowhood, and unwed motherhood. In such circumstances, they typically enjoy the right to return to their father's land where they are allowed to work and subsist till they find a new husband. In terms of our model, this means that the cost of appealing to the Islamic law and resorting to the local marabout was too high in terms of (insurance) benefits foregone in the social game for the formal channel to confer bargaining power upon rural women.

Over the last decades, however, as shown by a study of sixteen villages located in the delta area (department of Dagana) and the middle valley (departments of Podor and Matam), the cost of being excluded from the social game has fallen as a result of an increase in women's education and an expansion of non-agricultural employment opportunities for them (Platteau et al., 1999). Moreover, it appears that women who have completed their primary schooling and those who have a non-agricultural occupation (even after excluding marketing of agricultural products) have a tendency to manifest their opposition against customary practices that limit their freedom in fertility and marriage decisions. In particular, there is a statistically significant and positive correlation between women's education and women's participation in non-agricultural income-earning activities, on the one hand, and the claim that women have a right to decide the number of their children, and declared aversion to the custom of levirate (whereby a widow is remarried to the brother of her deceased husband), on the other hand. Whether the latter opinions are a result of the former experiences, or are intrinsic characteristics of women who have chosen to be educated or employed in non-agricultural activities, does not really matter. Indeed, what is important is that, at the least, educational and employment opportunities enable the more progressively-minded women to reveal preferences that they would have otherwise concealed. Although the study did not measure the proclivity of (progressive) women to call customary inheritance practices openly into question and to invoke the Islamic law, it is revealing that the custom has recently evolved toward enhancing women's rights in this regard.

There is no evidence, though, that the custom has adopted the Islamic prescription according to which daughters should inherit half of their brothers' share. Instead, what we find is an evolving practice of transfers aimed at compensating women for their de facto exclusion from inheritance of a portion of their father's land. The same phenomenon has been actually observed in Niger where Cooper (1997) describes cases where women, as token recognition of their ownership rights, receive part of the crop harvested on some of the family's pieces of land. This said, it bears emphasis that, owing to their absence from the native village following marriage, they find it typically difficult to exercise any rights over land which might have been perfunctorily granted to them, all the more so as their male relatives are ready to abuse the situation.

This explains why, in fieldwork, it is so difficult to obtain precise information about the nature of women's rights as well as about the amount and regularity of unilateral transfers received from their brothers. Another reason lies in the fact that male respondents are obviously embarrassed when their un-Islamic behaviour is pointed to them. This embarrassment reflects the potential impact of the formal law even when it is not actually followed. As is evident from the above story, such potential impact is manifested in the gradual transformation of the custom in a direction favourable to women. The ultimate cause of this transformation is the emergence of good exit opportunities that have the effect of decreasing the cost of women's exclusion from the social game. To put it in another way, the expansion of education and non-agricultural employment opportunities for women provides them with new fall-back options that diminish the importance of traditional

social protection mechanisms in the event that they fall under distress due to separation, widowhood, unwed motherhood, etc.

There is another lesson to draw from the above illustration. The Islamic provision regarding women's inheritance, which dates back to the times of Muhammed, conflicts with the institutional logic of patriarchal societies and, as such, was a revolutionary ruling adopted with a view to creating a more just and equal society. To the extent that such a logic has become gradually ill-suited for the purpose of economic development, the Qur'an can also be seen as pulling the custom in an efficiency-improving direction. When its provisions are not strictly abided by, the role of the formal law appears to be that of a magnet that triggers institutional changes which enhance equity and/or efficiency. This role is performed through a bargaining effect: "A stronger legal status does not automatically afford women more independence but it may provide a strong bargaining position" (Hillhorst, 2000, p. 195).

As we know from Section 2, the outcome in which the formal law serves as a magnet that induces the custom to evolve is only one possible equilibrium. For that equilibrium to obtain, it is essential that the outcome for which the claimant is ready to relinquish her threat to resort to the formal court is not too distant from the preferred verdict of the customary authority. It may well be the case, however, that the bargaining strength of the claimant has become sufficiently strong to prevent the customary authority from deviating from his preferred verdict. This is especially likely to be the case in urban areas. There, indeed, women's organizations often operate to defend women's rights both by pushing for law reforms and by conscientizing women, and supporting their efforts to appeal to the formal law. In terms of our model, the work of these organizations causes a fall in the cost of appeal to the formal law (c^N) with the result that the threshold level below which the claimant decides to go to court is raised. This effect compounds the influence of the wider availability of exit opportunities for women in urban environments. As we could observe in Dar Es Salaam, thanks to the intense activities of women's organizations, an increasing number of women do not hesitate to appeal to the formal law in order to defend their rights.

The gradual transformation of the custom regarding women's rights to initiate a divorce can be well understood in the light of the above discussion. In the initial situation, divorce is not readily granted to a wife wishing to leave her husband except in the case of proven mistreatment by the latter (Kevane, 2004; Platteau et al., 1999). Over recent years, however, women have progressively acquired a de facto right to leave an unhappy union. There are two main reasons. First, the severity of social sanctions against leaving an arranged marriage has diminished, to a large measure as a result of continued migration to Côte d'Ivoire. Second, there is the effect of administrative pressure "as successive regimes continue to push for explicit legal rules and rights for women in marriage" (Kevane, 2004, p.75; see also Jewsiewicki, 1993). It is interesting to notice that, in Burkina Faso, the first factor has operated more powerfully in the relatively egalitarian society of the Bwa than in the rigidly hierarchical Mossi society. As a consequence, the incidence of divorces

initiated by women is much larger today among the former than among the latter (Kevane, 2004, p. 75).

3.2 An extended application to radical choices between complete rule systems

The literature on legal pluralism often stresses the opportunistic behaviour of individuals, especially the most educated and best politically connected ones, when choosing their reference system of rules: they tend to shift from the modern law to the customary rule, and vice-versa, depending on where their interest lies in particular circumstances (Crousse, Le Bris and Le Roy, 1986; Le Bris, Le Roy and Leimdorfer, 1983; Lavigne Delvigne, 1998). There is no such opportunism, however, when a person adopts one rule system as a whole instead of picking up whatever ingredient suits him best in all the systems available. This is a much more dramatic shift because the person now calls a whole set of often interdependent rules and norms into question by opting for a competing system. Two illustrations come to mind here, viz. religious conversion and permanent migration.

When a villager decides to abandon his (her) animist beliefs by converting to a monotheist religion, such as Islam and Christianity, he (she) manifests a willingness to break with the past and to opt for a new life based on radically different norms and rules of behaviour. One possible motive for such a dramatic move is the desire to escape a number of important restrictions imposed by the custom, in particular, the moral and social proscriptions against self-enrichment. They then become 'native outsiders' who symbolically adopt a kind of 'stranger' status which has the effect of placing them effectively under an alternative set of obligations and linking them to a spiritual community whose members encourage private accumulation and economic experimentation whilst providing resources such as technical knowledge, credit or labour (Hagen, 1975, p. 279; Kennedy, 1988, pp. 141-42). In the new spiritual community, emphasis is put on virtues of self-restraint and consumption moderation (e.g., abstaining from drinking alcohol and gambling) and on the need to concomitantly do away with traditional feasts where lavish expenditures on food, drinks, and other goods are typically incurred.

In most cases, it is conversion to Islam or Christianity that provides the necessary escape from community loyalty. For example, among the Fra Fra people from northern Ghana, when successful individuals are unwilling to share their profits generously with members of their ethnic group and simultaneously keen to avoid the grave accusation of being 'swindlers', they choose to convert to Islam or Christianity or, else, they have to move to impersonal urban settings (Hart, 1975). In the Serenje District of Zambia, entrepreneurs often become Jehovah's Witnesses who "have little interest in traditional status criteria and espouse an ethic which emphasizes the spiritual and moral dangers of associating too freely with non-believers, even if kin,..." (Long, 1970, p. 139). In short, they are provided with religious justification, spiritual protection and practical assistance in their struggles to disentangle themselves from the demands of their matri-kin. As a result, they are better able to concentrate on building up their business and cater for their nuclear family

interests (Kennedy, 1988, p. 142).

In Burkina Faso, a dynamic individual who had converted to the Pentecostal church expressed the view that: "If people see that someone is going to fare better, they use magic tricks to kill him, and this is something that inhibits our development because jealousy is great... there are those who want to harm me, but I also know that, thanks to my love for God, they are made powerless since the power of God surpasses that of the evil local spirits" (Fancello, 2006, p. 124). Conversion to Islam or to God's Assemblies also proved to be the most effective weapon available to a youth group who wanted to embark upon a development project in their (burkinabé) village but were subject to threats of magical attacks manipulated by local elders (Laurent, 1998, pp. 108-9; 2003). Among the Orma pastoralists living near the Tana River (Kenya), likewise, it seems that the first shopkeepers and traders were young Islamic converts who chose to challenge the authority of the elders and who found in Islam codes of law and behaviour particularly conducive to sound business relations (Ensminger, 1992, pp. 48-62). Poewe (1989) offers a similar analysis of the motives underlying the spread of evangelical churches in Zambia (see also Shillington, 1989).

Compared to the situation of an idiosyncratic choice between a particular formal law and a particular informal rule, the above situation of a radical choice between two complete rule systems has an important consequence. Because of the existence of an alternative community ready to accommodate new converts, the cost of exclusion from the social game is expected to be lower for the deviant member of the community. In other words, religious conversion enables an individual to simultaneously adopt a new system of rules and to enter into a new social network. In addition, because what is at stake now is whole adhesion to a new set of interdependent rules rather than piecemeal rule selection, the value assigned to a favourable outcome is much larger (parameter γ in our model is higher). To counter these two forces and prevent dynamic individuals from opting out of the customary system, the latter must evolve rather drastically. If the cost of losing a case for the customary authority is simultaneously higher when a radical choice is contemplated, the required transformation of the custom might actually take place. The pervasive incidence of acts of conversion to Islam and Protestant sects in SubSaharan Africa nonetheless indicates that a new equilibrium of the customary system does not necessarily obtain.

Furthermore, the apparent multiplication of these acts during recent decades (see, e.g., Laurent, 2003) suggests that some determinants of their profitability have changed. There are at least two plausible factors which have contributed to this evolution through a lowering of the cost of religious conversion. First, the increasing proselytizing activities of Christian sects and Islamic sodalities have helped reduce the cost of estrangement from the native community. Second, growing market integration has raised the value for risk-taking entrepreneurial villagers of being allowed to embark upon individual capital accumulation.

Permanent migration, especially to urban environments, offers another way of escaping customary restrictions on capital accumulation and self-enrichment, as well as norms regarding civil matters such as marriage.

Indeed, by settling down in a city and severing ties with the original family, rural dwellers place themselves under a different set of norms and rules. For example, they are now free to choose their spouse, to end an unhappy union, to live and consume in the way they want, and to escape demands from the extended family on their incomes. It is revealing, in this regard, that African urban entrepreneurs tend to avoid building family enterprises and to use kinship ties in business relations (Nafziger, 1977; Kennedy, 1988, Chap. 7; Fafchamps, 2004, Chaps. 5, 9; Platteau, 2007). Unlike Asian and Levantine entrepreneurs, African entrepreneurs have to build their network anew, typically from interaction among simple business acquaintances and through socialization outside of work.

A major difference between permanent migration and religious conversion is therefore the following: whereas the latter strategy automatically provides the individual with both a new system of rules and a new social game, the former supplies new rules but the new social game is to be constructed. As a consequence, the cost of exclusion from the village social game is significantly larger for a migrant than for a religious convert. Owing to the relatively smaller bargaining power of the would-be migrants, it is possible for the customary system of rules to evolve in such a way as to dissuade them from migrating and severing their ties with the native community. One thus encounters many instances in which rural elders gradually accept a relaxing of customary principles –e.g., regarding arranged marriages, disposal of income and choice of leisurely activities–, as the price to pay for keeping the youth in the fold.

4 Conclusion

To be written

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