A State of Hybridity: Lessons in Institutionalism from a Local Perspective

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The meeting of worlds wherein state-based and customary governance interact is often viewed by policymakers in largely functional terms as two analytically separate sets of institutions that interact in various ways—resulting in various outcomes that either support or run against their overall normative agendas. This assumption of the existence of two separate sets of institutions—which fits neatly into the democratization, development, and state-building agenda by reflecting classic institutionalist theory—is incomplete. Drawing on fieldwork conducted in the rural areas of Timor-Leste since 2008, this paper will examine the various ways in which local communities make sense of their local governance environment by simultaneously navigating coexisting state-based and customary governance forms and institutions.

Contemporary Timorese village life is characterized by a hybridity of modern and traditional values, understandings, and laws. Local leaders strategically engage with state-based and customary governance institutions in order to fill communal needs and pursue individual political agendas. In this context, the balance found in meeting the requirements of state-based and customary governance is created through local leaders' interactions with their community and with each other. These interactions determine who has authority over what areas of communal life and how local leaders are made accountable to the community. Viewed in this

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way, it becomes clear that it is through these local politics—rather than in the form and function of institutions themselves—that it is possible to understand how social arrangements within Timorese communities are shaped in the context of coexisting customary and state-based governance. While often invisible to those outside the community, it is therefore these everyday local politics that determine how effective state-based institutions or laws are in meeting their intended policy aims. If we recognize these local realities and take local politics seriously, we can also see the possibilities for grounding state-building efforts in the lived experience of Timorese communities.

RECOGNIZING THE OVERLAP OF CUSTOMARY AND STATE-BASED SYSTEMS

It is well-documented that the process of democratization in Timor-Leste has involved, and continues to involve, building liberal-democratic institutions over existing customary governance structures and norms.[1] As a result, there is now significant overlap where customary and state law coexist, and it is part of everyday local reality to interact with these different institutional structures at different times.

This reality is by no means limited to Timor-Leste. Customary and state-based legal and governance structures coexist to varying degrees in most postcolonial nations around the world. This phenomenon can be found across a variety of nation-states: from those with indigenous minorities, such as Australia or the United States, to those like Mozambique where the colonizing force has left the territory, to those of postcolonial colonization and differentiated autonomy such as parts of Indonesia or India.[2] In an effort to understand how this coexistence operates in practice, numerous studies, particularly in Africa, have investigated the powers of chiefs and how they operate in the broader state context.[3] While history, politics, and culture vary significantly between societies, the shared postcolonial experience of coexisting governance structures suggests that there are other important commonalities worth exploring.

One commonality appears to be the difficulty of properly recognizing and incorporating customary governance into its worldview and practice. Policy and lawmakers tend to view customary and state-based governance as two analytically distinct sets of institutions, which can be easily separated in both theory and practice. However, while we can *analytically* distinguish customary and state-based governance, Timorese communities do not experience this coexistence separately.

For most people in Timorese communities, *lisan* is the primary source of governance, law, and authority.[4] While *lisan* is often referred to simplistically as "customary law," its importance in people's lives is much broader than many legal systems. Many explain that *lisan* is *in* them—that, in fact, it is a fundamental aspect of who they are. However, in considering its importance with regard to policy and law-making, it is sufficient to note that *lisan* has broad spiritual, economic, political, and legal significance that determines the shape and structure of a community's obligations and an individuals' obligations within their community. Viewed within a Timorese *suku* (or village), therefore, customary institutions are significantly more than a resource bank upon which state-based institutions may draw. Instead, these customary institutions structure relations within a community through the imposition of obligations; failure to meet these obligations is believed to bring serious penalties such as crop failure, the spread of disease, or even death.[5] At the same time, however, there are many aspects of state-based governance in Timorese communities, including the presence of state officials who operate at the local level, the introduction of government-funded programs, or the operation of criminal law, which applies sanctions distinct from those under customary law. Some interactions between customary and state-based governance are relatively easy for communities to navigate; others are less so. Regardless, the reality in Timorese villages is that individuals *must* navigate customary and state-based governance simultaneously every day, as community members use the resources at hand in order to fill communal needs and to pursue individual agendas.

The analysis presented in this paper is based on a series of detailed empirical studies of Timorese village structures, which I conducted while living and working in Timor-Leste from 2008 to 2012.[6] Based on this fieldwork, I suggest that the theoretical deficiency in Western understanding of governance can be overcome by taking a process-driven approach to institutionalism. This process-driven approach recognizes that the work of governance is never "done," but rather focuses on the *ongoing process of institutionalization*. I argue that the key to understanding the formation and maintenance of these various hybrid forms of governance lies not in the institutional structures themselves, but in how they are *implemented* in practice.[7] Rather than seeking grand constitutional theories that describe the interaction of customary and state-based law and governance as a static model, I argue that it is more important to understand how this coexistence is formed and maintained by considering the impact of the daily decisions made by local leaders in strategically engaging each other and their community.

THE HYBRIDITY OF LOCAL GOVERNANCE

One of the challenges in discussing the interaction of customary and state-based law and governance is that the concepts are not directly comparable. Instead, customary law and governance goes well beyond Western-style systems by incorporating moral and spiritual dimensions. Thus, attempting to define customary law and governance in Western terms becomes a complex philosophical undertaking that is fraught from the start. Nonetheless, the practical reality is that both systems operate simultaneously to regulate many of the same areas of communal life, albeit in different ways.

Such is the case in the villages of Timor-Leste, where local governance is a complex melding of customary and state-based institutions, as well as many other networks and relationships that have evolved to fill the needs of the community. These myriad systems and relationships affect how local authority is obtained, maintained, exercised, and shared; they also influence broader power relations within the village.

Timorese communities have developed various hybrid models to meet the twin requirements of customary and state-based governance. In the vast majority of cases, these hybrid models have not been introduced by policy or lawmakers or other external actors. Instead, they have formed through local politics as the community has used the resources at hand to solve their problems. In some situations, these hybrid models have been developed by local authorities as a deliberate strategy to solve recurring problems in the community. In others, the models have come about as a result of the many small, daily decisions taken by local leaders while doing their work.

The common feature in each of these situations is the lack of attention paid to whether the resources used to solve a particular problem fall in the categories of "customary" or "state-based" governance. Instead, the guiding principles are whether the community will embrace the methods used (if they are legitimate), and whether they will be sufficient to solve the problem (if they will be effective). Very often, these solutions involve a complex melding of customary and state-based institutions, which attempt to influence, but also are determined by, the political and economic realities of rural communities in Timor-Leste where there is still limited state reach.

The emphasis I place on local, everyday decision-making is not to say that institutions do not matter. They can have a very important role, as seen in the very real constraints placed on local leaders as they carry out their functions in their communities. However, the goal of this paper is

to demonstrate that institutionalization is, by definition, a process rather than an end result that itself is central to understanding how political hybridity is formed and maintained. The ways in which institutions are accessed and implemented (i.e., the process) cannot be separated from the social context. Thus, to acknowledge the importance of local politics is not to diminish the importance of institutions as constraining and guiding forces; rather, it is to recognize that our understanding of the *function* of institutions needs to match the complex reality of people's daily lives.

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GAINING AUTHORITY

The different modalities through which local leadership is granted in Timorese communities demonstrate the evolving relationship between customary and state-based forms of political legitimacy. The *suku* council is the official Timorese local governing body, whose members are directly elected into office by eligible voting community members.[8] When discussing issues of local legitimacy with villagers and local leaders, the position of *xefe suku* (chief of the *suku* council) is broadly described as one that is modern and democratic. This is opposed to the customary position of *liurai*, or king, which is part of the "old" system.

But further examination reveals a concurrent narrative in which people acknowledge that these roles within the community, and the authority that they embody, are often endemic to the community. In many cases, these are well-established roles that are supported by *lisan* and the broader social environment; this means that *lisan* continues to play a hugely important role in the legitimacy of local leadership. In fact, communities embrace both democratic and *lisan* ideals of legitimacy, clearly demonstrating that, for them, navigating coexisting customary and state-based governance is not a question of choosing one system over the other.

This is not a new dynamic in Timor-Leste: throughout Indonesian occupation, communities did everything in their power to ensure that their traditions and identity as distinct peoples were protected.[9] They drew on this cultural strength to continue their fight against the Indonesian occupiers.[10]

In some communities, these methods of protecting culture, and more specifically customary governance, have continued into independent Timor-Leste. This can be seen in *suku* Lihu in the subdistrict of Railaco, where the relevant customary authorities in the community meet together prior to local elections to determine who should take up the position for *xefe suku*. Following this decision, they lobby community members to vote for their preferred candidate. The customary authorities refer to this system as "wrapping up" the old in the new, wherein the "old" represents customarily-recognized authority, and the "new" is the practice of voting for their preferred chief.[11]

In other communities, this system of lobbying for culturally appropriate leadership may not be as organized. The result, however, is often similar. Broadly speaking, the combination of democracy and *lisan* has resulted in three hybrid models of authority at the village level. These can be characterized in political terms as two different types of "co-incumbency" models and an "authorization" model of political hybridity.[12] The three models each reflect different routes through which communities have sought to fulfil both customary and democratic ideas of legitimacy. Each situation embodies a different, sometimes creative solution that allows community members to make practical decisions as they vote for the *xefe suku* candidate that they believe is best able to fill their various political, economic, spiritual, and social needs.

The two co-incumbency models can be described as a strict "co-inheritance" approach and a "traditional house candidate" approach.[13] According to the co-inheritance approach, those who are legitimated through *lisan* to rule as *liurai* are routinely elected by community members into office as *xefe suku*. This effectively creates a hereditary system that is legitimated through elections and which parallels the traditional inheritance of authority in the *liurai* family line. This can be seen in the ascendance of Uai Oli to *xefe suku.* When his older brother, the previous *liurai*, died in 1999, Uai Oli did not actually want the position. However, his people hold a belief that if they are not led by the *liurai*, the spiritual balance will be upset and that they will become very sick.[14] While he was reluctant to leave his government job in Dili and the privileges afforded him and his family, he could not ignore this cultural obligation. Since this time, he has served as their *xefe suku.*

Yet, this mode of co-inherited traditional and modern authority appears to be fairly rare. More common is the "traditional house candidate" approach, through which those who are from the traditional house and family line of the *liurai* (or the *liurais uma lisan*) are elected into office as *xefe suku*. This model satisfies both customary ideas of legitimacy while also encouraging choice from a broader pool of candidates—there are many

within the *liurai's* traditional house and family who can conceivably take on the position.

Isolating cause and effect relationships in such complicated hybrid political environments is always a challenge. For instance, it could be successfully argued that the tendency to vote for those from higher classes is due to their greater visibility in the community, their leadership skills and self-confidence, or their greater educational opportunities. While any of these factors could be the case, this does not render a community's choice of leadership meaningless if it is mandated by ancestry. As many community members of the *suku* Ainaro commented when interviewed in 2008 and 2009, they were "lucky" to have been able to find someone who was both a capable leader *and* from the *liurai's uma lisan*.[15] Because there can be multiple interpretations of a person's capability to lead, political hybridity flourishes.

In other communities, a third model of hybrid local authority has emerged, which can be loosely termed an "authorization" model of leadership. This system provides for elected *xefe suku* who are not from the *liurai's uma lisan*. When a person who is not traditionally empowered to take on local leadership positions is elected, it is a common practice for the relevant customary leaders to give a ceremonial blessing, effectively recognizing his right to govern as *suku* chief. Sometimes, this will also involve specific rituals to remove potential dangers to the new *xefe suku* in taking on a *liurai's* responsibilities.[16] While such mechanisms may be dismissed by people outside the community as mere symbolism and just part of the local celebrations ushering the new leadership into office, the impact on legitimacy and the new chief's capacity to exercise his authority is significant. In fact, this satisfies important spiritual needs and ensures that the community will put their trust in the elected *xefe suku*.

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These various hybrid forms often result from creative solutions that satisfy issues of legitimacy for both systems. Sometimes they occur due to the multiplicity of interpretations that can be placed on a single situation—for example, assuming a *liurai* will be a "good" leader because he is educated; however, a *liurai* could also be a "good" leader because he comes from the *liurai's uma lisan*. Other times these creative solutions occur because certain obligations have been shifted in order to accommodate state-based requirements—for example,

the ritual "blessing" which is bestowed on leaders who do not satisfy customary, cultural obligations. Still in other circumstances, these creative solutions come from a quiet subversion of the ideals of the liberal democratic process—for example, the cultural lobbying for the "right" candidate that takes place prior to the election in some *suku*. None of these dynamics come about accidentally; rather, they are a product of local politics as local leaders and community members endeavor to fill their needs. This ongoing process, and the importance of local political decisions that breathe life into these systems, all need to be recognized as part of Timor-Leste's evolving system of hybrid local governance.

EXERCISING AUTHORITY

As discussed above, local Timorese leaders obtain their authority and legitimacy from a complex mixture of customary and state-based institutions. Conversations with many local leaders in various parts of Timor clearly demonstrates that a leader's capacity to obtain this authority has a direct impact on his ability to be productive in the *suku*. In fact, there are many practical things that a *suku* leader must do including: coordinate with the government or non-governmental organizations in implementing projects; arrange for the use of labor, land, or other local resources; keep community members updated on issues that affect them; and resolve local disputes. Without the support of customary authority, it is extremely difficult for local leaders to carry out this work.

According to the subdistrict administrator of the subdistrict Ainaro, those *suku* leaders who cannot obtain customary authority often labor under unrealistic expectations from their community and struggle to wield influence with the national government or secure development goods. These are heavy expectations to fill and many fail; as the subdistrict administrator said, "the community sees that he has not brought projects into the *suku,* they [will] say he is not a good leader."[17] Leaders who obtain customary authority do not tend to struggle with such heavy expectations, as they have the necessary support to carry out the work.

While it is not impossible for leaders without customary authority to take on local leadership roles, experience has shown that the practical tasks of bringing community members together around a common objective, making difficult decisions, and having people accept those decisions are considerably more difficult if one does not have customary authority for support.[18] It is here, in the daily exercise of authority, that the failure to recognize the complexities of operating in a hybrid governance environment

can mean that important interactions go unnoticed. Thus, policies may be seen to fail when there is in fact something else at play.

At the institutional level, this is illustrated by the introducion of gender quotas onto the *suku* council. When the *suku* council was formed by the Timorese government in 2004, the policy decision was taken to promote female and youth participation in local leadership by creating four reserved seats: two for female representatives and two for youth representatives (one male and one female). This means that there are at least three females on each of Timor-Leste's 442 *suku* councils. However, in many *suku* councils, these women have been largely inactive in their roles—a source of frustration for all concerned. In fact, in some areas this has had the unintended impact of undermining local support for women's political participation, as other *suku* council members and community members have blamed the female representatives for not taking their responsibilities seriously.[19] As one *suku* council member explained, he tried to get the women's representatives involved in council work but he did not think they have the motivation or the "vision" to implement their programs properly.[20]

In most analyses, the minimal participation of women holding reserved seats on the *suku* council has been attributed to a lack of capacity and/or confidence of the female representatives, or to patriarchal attitudes within local culture.[21] However, throughout my fieldwork I encountered a broad spectrum of women holding these positions—some lacking in confidence, but others as highly talented and professional. All of them encountered major difficulties in taking on active leadership positions on the council. As time progressed, and as this issue was explored, it became clear that a major difficulty for the women was that many community needs continue to be met through various aspects of *lisan*, which in patriarchal areas is led by male authority figures. This has automatically excluded these women from taking on a leadership role. For example, according to *lisan* in most areas, dispute resolution via *nahe biti*[22] can only be executed by men, which has meant that these women have been unable to make their mark in this important area of communal life. In addition, community members believe that if they have a problem, they should take it to the important male members of the council—further perpetuating the gendered division of leadership.[23] Interestingly, in the *suku* in subdistrict Maliana, a female representative has been able to establish herself as an important leader in the community by accompanying and assisting the *xefe suku* in efforts to resolve domestic violence cases. As she explained, "cultural practices have changed since independence so women can now be active participants, speaking in these ceremonies."[24] The fact that she has used her influence within the community to push for such an

adjustment in local practices is a clear indication of the flexibility of hybrid governance arrangements and the capacity for individuals to work within this government environment to effect change.

The experience of female representatives on the *suku* council illustrates an important feature of local governance. As Frances Cleaver notes in her examination of social capital, inequalities have a way of reproducing themselves through distinguishing different people's engagement with, and access to, institutions.[25] This is particularly true in the context of coexisting customary and state-based institutions, as the balance found between them is formed as a natural part of local politics. This balance tends to mirror existing power relationships in the *suku*—those who are less powerful are then subject to these decisions. It is through this process that existing power inequalities are reproduced through both customary and state-based institutional forms, as can be seen in the example of introducing gender quotas to the *suku* councils.

Like politics everywhere, local politics in the villages of Timor-Leste are underpinned by uneven access to power and resources. As local elites engage with each other and with those they govern, they draw on existing power bases and resources, interacting strategically amongst one another to make important decisions that shape their governance environment. This is the "shadow side" of hybrid politics; as existing inequalities are reproduced and legitimated in state-based institutions, they are incorporated into the local political environment.

However, this structural feature of local governance has largely been invisible to policymakers. Functional accounts of institutionalism have not provided the right tools to analyze these interactions and understand the complexities of introducing new institutions into hybrid governance environments. This carries the danger that interventions are misdirected towards capacity development when what is actually needed is an integrated approach designed, in the above example, to give female leaders real decision-making power at the local level. Women's rights activists, both inside the community and outside the community, need to take a more process-driven approach, working within the governance environment to slowly change community perceptions and providing opportunities for women to work practically on the issues that affect them.

The experience of introducing gender quotas also potentially holds important lessons for other institutional interventions. On the surface, it appears that a local political settlement has been reached that includes an institutionalized, democratically-elected *suku* council with a number of important local leaders sitting on it. However, when we examine local

dynamics more closely, it becomes clear that the institutionalization of the *suku* council appears to have occurred mainly where arrangements have been closely aligned with customary institutions, forming a symbiotic relationship with the distribution of material power and value systems that are already entrenched within the community. Where the state-based institutions have departed from these entrenched customary relationships, the relative fragility of the "state institution" of the *suku* council becomes apparent. Here, we begin to see that any intervention that challenges the existing ways of doing business will encounter obstacles that cannot simply be removed by creating new policy or legal instruments. Thus, a more informed approach is needed.

FROM FUNCTIONALISM TO PROCESS-DRIVEN

The dynamics of gaining and exercising authority, as described above, reflect the continuing importance of *lisan*. These dynamics also reflect the flexibility of communities and diversity of approaches that communities will take to ensure that their governing structures fit the twin demands of *lisan* and liberal democracy. Historically, the political theories that describe the institutions of the modern state have not recognized these important dynamics. At best, customary institutions tend to be categorized as "informal institutions," a residual category which also includes various customs, traditions, sanctions, taboos, and societal codes of conduct; these are then are contrasted with the "formal institutions" of state-based law and constitutionalism.[26] However, such anaemic descriptions fail to reflect the continuing reality for many people: that these informal institutions form their primary source of law and governance. For many, the formal institutions of the state are less important in their daily lives than the informal institutions.

However, such anemic descriptions fail to reflect the continuing reality for many people: that these informal institutions form their primary source of law and governance.

The various forms of hybrid governance that continue to evolve in Timorese communities hold important implications for how we understand institutions and the process of institutionalization. In turn, how we understand institutions and institutionalization holds important implications for our comprehension of law, democratization, development, and state-building, with potential implications for how we formulate and monitor

law and policy. The considerable difficulty in recognizing the importance of customary governance can be put down to a failure of perspective; the very language of political theory makes it difficult to look beyond the overarching liberal institutions of the state. If we accept that the theories we use to describe the world shape how we *see* the world, those theories will also determine which social arrangements are considered relevant to politics and which are not. When theory and policy adequately reflect the lived experience of community members, the relationship between individuals and the state is more coherent. Crucially, however, when theory and policy *do not* reflect community realities, this can render specific governance challenges effectively invisible to law and policymakers.

Because institutionalist theories tend to be created by academics and policymakers on the outside looking in, the categorization of customary governance as informal—in opposition to state-based governance, described as formal—ties in with existing political categorizations that explain particular relationships and interactions within the state. However, while this approach may be useful to explicate particular economic and political problems from the state's perspective, it does not reflect the reality of power and authority as it is experienced from within a Timorese *suku.* This failure of perspective, and its tendency to render important interactions invisible, provides some important clues to deconstructing the cycles of good governance and policy failures.

Most contemporary approaches to state-building, development, and democratization draw on an understanding of institutionalism that is best described as *functional.* This approach has, at its core, an assumption that if one can get the legal and policy frameworks right, societal outcomes will follow.[27] Often, the presumption is that simply importing Western ideas of good governance is the ideal way of addressing these problems, regardless of the diversity on the ground. For example, such approaches can be seen in good governance theory,[28] as well as previously in law and development[29] and modernization theory[30]—each of which rely on the application of technocratic solutions across different cultural and social contexts.

However, over the years these approaches have been strongly condemned by others who place greater emphasis on the need for cultural specificity in state and institution-building; they point out that while technocratic interventions have often been extremely expensive, the introduced institutions have largely failed to stick and produce sustainable results within the recipient societies.[31] This debate has formed part of a policy cycle that has played out since decolonization.

This lack of understanding—regarding how people live their lives—points to a failure within institutional theory that focuses on the *outcomes*

of institutional interventions without paying due attention to the complex *process* of institutionalization. There is often a rush in institutional thought and practice to determine how a political settlement can be reached, as a political settlement is viewed as a requirement for law and policymakers to respond to policy problems. From this perspective, the relevant question is whether a legal or policy instrument is "working"—or whether it is achieving the intended result in guiding individual and communal behaviour. However, if we take account of the ongoing and contested nature of local politics and recognize that the process of institutionalization of particular governance structures is never actually complete, other important interactions are drawn into the spotlight and demand our attention.

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As discussed previously, the various hybrid models of local governance that exist in the *suku* of Timor-Leste have developed as a natural part of local politics—sometimes as a deliberate strategy to solve recurring problems in the community, other times as a result of the many small, daily decisions that are taken by local leaders when doing their work. Commonly among these different hybrid forms, the relevant question is not whether a particular institution falls in the realm of customary or state-based governance, but rather whether it will be an effective and legitimate response to the problem at hand. Sometimes a problem can be solved using either customary or state-based institutions; other times, it will require the engagement of both. In such an environment, institutions certainly work to shape individual and communal behaviour, but the surrounding environment also shapes institutions. Thus, as state-based institutions are incorporated into the local governance environment, they are interpreted locally in a way that they do not clash with pre-existing ways of doing things.

In the villages of Timor-Leste, considering the importance of customary governance and lack of state penetration, state-based institutions tend to be interpreted so they are in accordance with *lisan*. Sometimes, this means that existing understandings of the legitimate distribution of power and resources within a community are replicated in the new, state-based institutional form—such as, for example, where those with customary authority

are routinely elected to leadership positions. Other times, when institutions have been introduced with the specific intention of challenging existing distributions of power and resources, they may be sidelined or ignored by large sections of the community—as appears to have occurred for many female representatives. This provides important clues around the process of institutionalization in hybrid political environments.

In situations where state-based institutions mirror existing relationships or the distribution of resources according to *lisan*, the state-based institutions may appear quite strong but are in fact dependent on customary governance arrangements. By contrast, where state-based institutions are built to challenge existing governance arrangements, they may appear to be failing but are actually slowly taking hold. If we limit ourselves to a functional account of institutionalism—and therefore fail to recognize these complexities in the local governance environment—it is possible that a very deceptive picture of the relative success or failure of institutional interventions may emerge.

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If, however, we accept that people and communities are not simply *subject to*, but *actively engaging with,* the legal and governance structures that surround them, a very different picture emerges. According to this picture, the community context influences what institutions do, how they work, and what ultimate impact they have. The influence of institutions, in turn, becomes part of the community context. It is intimate and it is messy. And it demands a different way of thinking about institutions and institutionalization—one that is more nuanced, but also more humble in what is demanded of institutional interventions.

CONCLUSION

Whether or not it is explicitly stated, most approaches to state-building, democratization, and development rely on a functional understanding of institutionalism, which focuses on the outcomes of institutional interventions without recognizing the local political process of institutionalization. There are a number of reasons for this, including donor demands that programs be clearly designed so that they meet defined policy aims.

However, as explored in this article, this approach to institutionalism fails to capture the intricacies of the local political environment, and as such misses some important clues on how to recognize, and then potentially address, specific governance problems that arise during the process of institutionalization.

My fieldwork demonstrates that it is through everyday local politics that customary and state-based institutions are engaged, wherever possible, to be mutually supportive as they both work to guide important aspects of village life. This has a direct impact on the implementation of state-based institutions in Timorese villages that tend to rely on pre-existing customary structures, with the result that existing distributions of power and resources are also replicated through state-based structures. As such, the process of institutionalization is not as simple as either community acceptance or rejection of state-based institutions. Rather, it is a complex process that is negotiated by the local leaders as they use existing resources to meet community needs and to pursue individual political agendas. However, this process, which also involves the reproduction of existing inequalities across institutional spheres, does not imply institutional failure. Rather, it indicates the complexity of the local governance environment and the many different factors that are required for institutionalization to take place. The challenge, then, is for outsiders to take these complexities seriously.

For policymakers, simply comparing state-based institutions that are successfully institutionalized with those that challenge existing power inequalities can give a false impression: the first becomes indicative of institutional strength and the second of institutional fragility. If policymakers fail to recognize the complexity of local politics and governance, there is a danger that those institutions that could positively impact Timorese communities are instead treated as a lost cause. However, if governance is viewed through the lens of local politics, it becomes clear that customary institutions are not static. They too are subject to change and Timorese communities have proved remarkably adaptive to the changing governance environment. Recognizing this intimate, messy process of institutionalization as it is played out through local politics provides another avenue for policy development, one that may move policymaking closer to the political reality experienced in Timorese communities. ■

ENDNOTES

1 See: Tanja Hohe, "The Clash of Paradigms: International Administration and Local Political Legitimacy in East Timor," *Contemporary Southeast Asia* 24 (3) (December 2002): 569-590; and José Trinidade, "An Ideal State for East Timor: Reconciling the Conflicting Paradigms," in David Mearns and Steven Farram, eds., *Democratic*

Governance in Timor Leste: Reconciling the Local and the National (Darwin: Charles Darwin University Press, 2008), 7-8.

2 See: Sally Merry, "Law and Colonialism," *Law & Society Review* 25 (4) (1991): 889-922; James Tully, *Strange Multiplicity: Constitutionalism In An Age of Diversity*, (New York: Cambridge University Press, 1995); and Volker Boege, Anne Brown, Kevin Clements, and Anna Nolan, "Undressing the Emperor: A Reply to Our Discussants," in Martina Fisher and Beatrix Schmelzle eds., *Berghof Handbook for Conflict Resolution Dialogue Series: No 8 Building Peace in the Absence of States* (Berlin: Berghof Research Centre for Constructive Conflict Management, 2009).

3 See: Frances Cleaver, "The Inequality of Social Capital and the Reproduction of Chronic Poverty," *World Development* 33 (6) (June 2005): 893-906; Pierre Landell-Mills, "Governance, Cultural Change, and Empowerment," *The Journal of Modern African Studies* 30 (4) (1992): 543-567; Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996); Barbara Oomen, "Chiefs! Law, Power and Culture in Contemporary South Africa," in Peter Geschiere, Birgit Meyer, and Peter Pels eds., *Readings in Modernity in Africa* (Oxford and Cambridge: James Currey, 2008).

4 See: The Asia Foundation (2008), *Law and Justice Survey* Dili, Timor-Leste.

5 Kathryn Monk, Yance de Fretes, and Gayatri Reksodiharjo-Lilley, *The Ecology of Nusa Tenggara and Maluku* (Oxford: Oxford University Press, 1997); Sofi Ospina and Tanja Hohe, *Traditional Power Structures and the Community Empowerment and Local Governance Project: Final Report* UNTAET and World Bank (Dili, 2001); and José Trinidade, "An Ideal State for East Timor: Reconciling the Conflicting Paradigms," in David Mearnsand Steven Farram, eds., *Democratic Governance in Timor Leste: Reconciling the Local and the National* (Darwin: Charles Darwin University Press, 2008).

6 The primary fieldwork through which this analysis was developed, following a grounded theory approach, was conducted from July 2008 until February 2009 when I lived and worked in the subdistricts of Venilale and Ainaro. This analysis has since been deepened by my involvement in various other research studies investigating different aspects of local governance, totalling approximately eight months' fieldwork time across the districts of Viqueque, Baucau, Bobonaro, Suai, and Dili.

7 For a discussion on political hybridity, see: Volker Boege, Anne Brown, Kevin Clements, and Anna Nolan, "On Hybrid Political Orders and Emerging States: What is Failing - States in the Global South or Research and Politics in the West?" in Martina Fisher and Beatrix Schmelzle eds., *Berghof Handbook for Conflict Resolution Dialogue Series: No 8 Building Peace in the Absence of States* (Berlin: Berghof Research Centre for Constructive Conflict Management, 2009).

8 Republica Democratica Timor-Leste, *Law 3/2009 on Community Authorities.* According to Law 3/2009, eligible voting members of the *suku* vote for their *xefe suku* and other *suku* council members every four years. The council comprises one *xefe suku* (village chief), one *lia-na'in* (traditional dispute mediator), one *ferik/katuas* (elder), all *xefes aldeia* (subvillage chiefs), two women's representatives and two youth representatives—one man, one woman. The exact number of *suku* council members varies according to the number of *aldeias* (and therefore *xefe aldeias*) in the *suku.*

9 Andrew McWilliam, "'Houses of Resistance in East Timor: Structuring Sociality in the New Nation," *Anthropological Forum* 15 (1) (2005): 27-44.

10 Ibid.

11 A. Boavida dos Santos and E. da Silva, "Introduction of a modern democratic system and its impact on societies in East Timorese traditional culture," *Local-Global* 11

(2012): 206-21, 210.

12 Deborah Cummins and Michael Leach, "Democracy Old and New: The Interaction of Modern and Traditional Authority in East Timorese Local Government," *Asian Politics & Policy* 4 (1) (January 2012): 89-104.

13 Ibid.

14 Fieldwork conducted while living and working in Venilale (Baucau) from July 2008 to February 2009.

15 Fieldwork conducted in Ainaro (Ainaro) from November 2008 to February 2009.

16 Deborah Cummins and Michael Leach, "Democracy Old and New: The Interaction of Modern and Traditional Authority in East Timorese Local Government," *Asian Politics & Policy* 4 (1) (January 2012): 89-104.

17 Interview, Subdistrict Administrator, Ainaro (District Ainaro), February 2009.

18 For an in-depth description of this, see: Deborah Cummins and Michael Leach, "Democracy Old and New: The Interaction of Modern and Traditional Authority in East Timorese Local Government," *Asian Politics & Policy* 4 (1) (January 2012): 89-104.

19 Deborah Cummins, "The problem of gender quotas: women's representatives on Timor-Leste's *suku* councils," *Development in Practice* 21 (1) (2011), 85-95.

20 In-depth interview, Daniel Ximenes Pereira, *suku* council *lia-na'in*, September 10, 2008.

21 See: Republica Democratica Timor-Leste (RDTL), *Initial Report: The Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW) (2007): 61-62; NGO Working Group on CEDAW, "NGOs Alternative Report: Implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in Timor Leste," unpublished report prepared for 44th Session of CEDAW, New York, July 20 – August 7, 2009.

22 *Nahe biti* is a woven mat upon which people sit to discuss and resolve issues in the community, mediated or arbitrated by a *lia-na'in* (customary dispute resolution authority). A *nahe biti boot* is a large mat, to resolve larger problems, and *nahe biti ki'ik* is a smaller mat for smaller problems.

23 For a full description of this issue, see: Deborah Cummins, "The problem of gender quotas: women's representatives on Timor-Leste's *suku* councils," *Development in Practice* 21 (1) (2011), 85-95.

24 Focus Group Discussion with *suku* council, Suku Lahomea (Maliana, Bobonaro). Comments from women's representative Felicidade, May 10, 2012.

25 Frances Cleaver, "The Inequality of Social Capital and the Reproduction of Chronic Poverty," *World Development* 33 (6) (June 2005): 902-903.

26 See: Douglass North, "Institutions," *The Journal of Economic Perspectives* 5 (1) (Winter 1991): 97.

27 Ibid, see: 97-112; and Shahid Javed Burki and Guillermo Perry, *Beyond the Washington Consensus: Institutions Matter* (Washington DC: World Bank, 1998).

28 See: John Degnbol-Martinussen, "Development Goals, Governance and Capacity Building: Aid as a Catalyst," *Development and Change* 33 (2) (April 2002): 269-279; Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, *Governance Matters VII: Aggregate and Individual Governance Indicators, 1996-2007* (Washington, DC: World Bank 2008); and Christopher Scott and Alexandra Wilde, *Measuring Democratic Governance: A Framework for Selecting Pro-Poor and Gender Sensitive Indicators*, United Nations Development Programme (UNDP), 2006.

29 See: John Henry Merryman, "Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement," *The American*

Journal of Comparative Law, 25 (3) (Summer 1977): 457-491; and David M. Trubeck and Marc Galanter, "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," *Wisconsin Law Review* 4 (1974): 1018-1062.

30 See: Talcott Parsons, *Structure and Process in Modern Societies* (New York: Free Press, 1960); and Walt Whitman Rostow, *Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge, Cambridge University Press, 1960).

31 See: Cynthia Hewitt de Alcantara, "Uses and Abuses of the Concept of Governance," *International Social Science Journal* 50 (155) (March 1998): 105-114; Kate Jenkins and William Plowden, *Governance and Nationbuilding: The Failure of International Intervention*, (Cheltenham: Edward Elgar Publishing, 2006); and Serge Latouche, *The Westernization of the World: The Significance, Scope and Limits of the Drive towards Global Uniformity* (Cambridge: Polity Press, 1996).