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# Beyond Democratic Tolerance: Witch Killings in Timor-Leste

Rebecca Strating and Beth Edmondson

**Abstract:** Newly democratising states experience challenges in reconciling “traditional” or “customary” dispute resolution practices with newly established state-based legal systems based on the rule of law. For Timor-Leste, these tensions are pronounced in continuing debates concerning the killing or injuring of women accused of witchcraft. Defences of extrajudicial punishments tend to conflate democracy with local support and fail to deal with the key institutions of democratic systems, including the rule of law, political equality, and civil rights. In Timor-Leste’s case, where equality and social rights were incorporated into the Constitution as fundamental governmental obligations, localised extrajudicial punishments threaten internal and external state legitimacy and highlight the difficulties of ensuring the primacy of state-based institutions. Extrajudicial punishments challenge Timor-Leste’s capacity to consolidate new liberal democratic political institutions.

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**Keywords:** Timor-Leste, democracy, rule of law, extrajudicial punishment, state-building

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## Introduction

Newly democratising states experience challenges in reconciling “traditional” or “customary” dispute resolution practices with newly established state-based legal systems founded on the rule of law. In Timor-Leste these tensions are pronounced in continuing debates concerning the killing or injuring of women accused of witchcraft – a country where infrequent, extrajudicial punishments of accused witches have continued to occur since independence (Wright 2012; Jütersonke et al. 2010: 51). These events attract divergent views of the status and validity of customary practices, the legitimacy and acceptance of democratic practices in Timor-Leste, and the responsibilities of state institutions in protecting rights violations. Defences of extrajudicial punishments conflate democratic legitimacy with popular local support and fail to deal with the key institutions of democratic systems, including the rule of law, political equality, and civil rights.

Making democratic processes legitimate and meaningful at local, “grassroots” levels is a key challenge in Timor-Leste. State-based democratic institutions were pursued by leaders of the independence movement throughout the 24 years of Indonesian occupation and provided the basis of the democratic state (Strating 2015). Many of these leaders became political representatives in the Democratic Republic of Timor-Leste, which partly explains the resilience of democratic institutions since independence was achieved in 2002. However, democratic consolidation and the rule of law also requires the acceptance of liberal-democratic values at popular levels (Diamond and Morlino 2004: 23). As a new state, Timor-Leste relies upon broad recognition and acceptance by the general public of the practical expressions of the supreme authority of government founded upon independent democratic sovereign statehood. Citizens must accept and adopt a new political culture which conceives of a “political system as internalized in the cognitions, feelings, and evaluations of its population” (Almond and Verba 1989: 13).

One logically contorted argument in support of customary punishments of witches in Timor-Leste claims that customary witch killings are democratic acts because they occur with local support (Herriman 2009). Such views tap into broader arguments concerning legal pluralism, which acknowledges the existence of alternative systems of law within a jurisdiction, including international, state-based, and customary sources (Griffiths 2011: 174; von Benda-Beckmann 2002: 37). Such admissions that more than one legal order exists within a socio-political jurisdiction highlights the tensions of Timor-Leste’s legally dualist system whereby state-based law (with its incorporation of international law) sits alongside

customary or “local” law (which encompasses a wide range of legal systems and rules). Conceptually, state-based law has acquired primacy insofar as the rule of law is typically associated with the capacities of states to enact a legal system across a whole territory and population. However, some take the position that state centrism should be avoided as diverse legal sources mean that the idea of a “single site of sovereignty embodied in the nation-state cannot be sustained” (Griffiths 2011: 177; Janse 2013: 186–187). Consequently, in recent years scholars and international donors have focused more attention on non-state-based sources of law that carry local legitimacy, popular support, and provide alternative sites of conflict resolution (see Janse 2013). Indeed, a common criticism of state-building in Timor-Leste related to a perceived failure of state-builders to interact with local law and their ultimate desire to “subordinate” it (Janse 2013: 188).

While legal pluralism acknowledges the existence of valid alternatives to state-based law, there are ongoing debates about how these diverse sources of law can coexist or interact when normative principles come into conflict. Scholars such as Hohe and Nixon (2003) and Grenfell (2006) present the reasonable proposition in relation to Timor-Leste that local systems that violate international human rights law should be abolished. Views in support of customary punishments of witches challenge both the universality of international human rights norms and the position of state institutions, including the Constitution, as inherent components of democratic states and the rule of law. Specifically, the issue of punishing witches in Timor-Leste raises questions of how boundaries of tolerance are decided and enforced, and to what extent informal judicial practices should be reconciled with a state-based legal system (Mearns 2001; Hohe and Nixon 2003; Swaine 2003; Grenfell 2006). While there are common arguments promoting the inclusion of customary law in state-based legal systems as necessary for engendering local legitimacy of state-based legal systems, how new states such as Timor-Leste should deal with customary practices that conflict with key democratic principles, including political equality, remains problematic (Harris 2011). The extrajudicial punishments imposed upon those accused of witchcraft provide a salient example of so-called customary practices that cannot be accommodated by state-based law. These ongoing issues reflect Timor-Leste’s ongoing challenges in instituting effective statehood and a democratic rule of law and establishing the key ideas of constitutionalism, political equality, and democratic values among the population (Grenfell 2006: 334). In this respect, we agree with Grenfell’s

(2006: 305) argument that “legal pluralism is important but must be properly tuned to serve the rule of law.”

It is important here to distinguish between two conceptually distinguishable but interrelated requirements for independent Timor-Leste. The first is the establishment of conditions of effective statehood. The second is the type of regime that is established – in this case, democracy. At the centre of effective statehood is the state’s exclusive possession of the legitimate use of sanctioned violence and the capacity to articulate and enforce supreme law within a given territory (Habermas 1996: 281). Controlling social and political violence is a central measure of the effectiveness of governments and state apparatuses. These features of statehood are clearly challenged by extrajudicial punishments justified by customary law.

States that struggle to achieve predominance in the face of resistant social structures are classified as “weak” or “fragile” (see Migdal 1988). Within Timor-Leste’s diverse local communities, local legal norms are persistently linked to moral and spiritual belief systems, which contribute to their endurance and resistance to new social structures. The new political institutions were established after a “long history of conflating belief systems and justice institutions,” thereby creating particular conditions for new government structures to assert and exercise their exclusive politico-legal authority (Marriot 2010: 160). The tensions between “modern” and “traditional” systems of law are exacerbated by claims concerning the moral validity of preserving or permitting extrajudicial punishments as customary practices. This reflects the difficulties new states face in finding ways to accommodate and preserve a viable moral system alongside new political institutions. As Marriot (2010: 160) observes, “Moral systems [...] resist change, whereas laws must reflect the emerging needs of a community.” Establishing and consolidating democratic systems of rule requires a transition from “traditional” to “rational legal” legitimate authority, which describes the situation where formal, state-based laws are obeyed by people not out of fear, but because they are viewed as valid (Habermas 1976: 45; Weber 1991: 215).

Customary practices that violate the constitutional and human rights of citizens cannot be justified in democratic states, because they threaten political equality and citizenship rights. As Linz and Stepan argue:

a democratic regime is consolidated when governmental and non-governmental forces alike, throughout the territory of the state, become subjected to, and habituated to, the resolution of conflict within the specific laws, procedures and institutions sanctioned by the new democratic process. (Linz and Stepan 1996: 6)

Without a generalised acceptance of the authority of the central state (embodied in a state-based rule of law) among citizens, it will be difficult for a state to reduce incidences of social violence or achieve political stability and order. The majority of people must obey the laws of the state and work within the operational political and legal parameters outlined in the state's constitution. Extrajudicial punishments inevitably render some citizens vulnerable to arbitrary punishments without the protectionary sanctions afforded by a state-based rule of law. In Timor-Leste extrajudicial punishments of witches violate constitutional integrity and undermine the domestic and international constitutional legitimacy of the state. In any new democratic state, failure to achieve widespread respect for its founding constitution threatens the establishment of the rule of law.

Establishing trust between state structures and citizens regarding the consistent and predictable enforcement of laws is an important component of the introduction and consolidation of a democratic rule of law. Democratic political systems do not permit the preservation of localised practices that fall outside the parameters and expectations of a constitutionally founded rule of law. To do so would risk undermining the trust-based relationship between citizens and state apparatuses as well as the universality of a state-based legal and political system.

In Timor-Leste's case, where equality and social rights were incorporated into the Constitution as fundamental governmental obligations, failing to control localised social practices such as extrajudicial punishments undermines the credibility of state structures and authoritative capacities and thus threatens the overall legitimacy of the state. This is especially problematic for Timor-Leste, where the Constitution affords universal political equality and emphasises human rights protections as a key role of government. Those most likely to be accused of witchcraft are the most vulnerable and marginalised, which reflect the broader social tensions and motives behind such allegations (Kuman 2011: 25–26). Articulating, protecting, and preserving the constitutional rights of citizens is an essential political function of democratic statehood.

The issue of extrajudicial killings of witches in Timor-Leste also challenges efforts to establish gender equality, since most of the people accused of witchcraft are women (Marriot 2010: 160). Section 17 of the East Timorese Constitution deals specifically with equality between women and men and states that “women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life” (Constituent Assembly 2002: section 17). Constitutional equality has been unhelpfully challenged by some East Timorese political

leaders, who have argued that gender equality contradicts the cultural roles designated to women and men (Niner 2013). These cultural roles locate women in the private sphere, disguising and even permitting the high incidence of domestic violence against women in Timor-Leste (Wigglesworth 2014). Extrajudicial punishments of witches also reflect clashes between cultural roles and practices and new citizenship rights based on democratic principles of equality.

## Local Customary Governance

East Timorese society is comprised of diverse communities that share some commonalities in social organisation based on an interdependent “paradigm” that emphasises interconnections and exacerbates feedback loops within the social system. In this organisational structure “Any one aspect, such as law, kinship or the belief systems cannot be extracted from the entire socio-cosmic systems without taking it out of context” (Hohe and Nixon 2003: 12). According to Hohe and Nixon (2003: 12), the “threat of someone behaving against the social rules is perceived as very serious.” Conflict resolution through traditional social processes remain a significant part of this because neither Portugal nor Indonesia implemented effective state-based justice systems during their respective occupations, which has enabled cultural practices to endure and persist (Libbis 2012; Hohe and Nixon 2003: 12, 23).

In traditional East Timorese society, two types of leaders exist within each *suku* (village): a spiritual leader, who is responsible for the “cosmos,” and a *lurais* (political leader), who is responsible for “jural order” (Hohe and Nixon 2003: 14–15). *Lian nains* (masters of the word) also carry moral authority in East Timorese society and enforce social norms derived from spiritual beliefs. Their roles as “custodians and interpreters of indigenous Timorese animistic cosmology” sees them “dispense justice according to spiritually derived behavioural norms” (Marriot 2010: 160). Unlike in modern liberal-democratic states, where the laws emphasise the separation of church and state, in Timor-Leste the political leader is subservient to the spiritual leader according to customary law (Hohe and Nixon 2003: 14–15). Timor-Leste’s “multiple and diverse societies” remain rooted in these “traditional” social systems (Hohe and Nixon 2003: 7).

For the East Timorese, adjusting to a new democratic culture means recognising the authority of the state over that of local leaders and ascribing the political realm primacy over the spiritual realm. As a new liberal democracy, Timor-Leste is experiencing a new emphasis on indi-

viduals and a corresponding shift in recognition away from community-located views of citizens/subjects. Social and legal relationships have become redefined as part of the democratising process. In modern constitutional states different aspects of social, political, and economic organisation and orderly affairs are both institutionally and conceptually divided. For instance, the functions of government utilise separate and accountable institutions for lawmaking, policymaking, enforcement, and implementation. These functional separations are also reflected in conceptual divisions that recognise overlapping but distinctive political, social, and economic spheres. Previously in Timor-Leste, economic, social, and legal spheres were not deemed to constitute largely separate spheres. Rather, they were perceived as integrated aspects of communities that had been formed and were maintained through interdependent relationships. Consequently, political and legal changes in Timor-Leste also require new forms of economic association and exchange and social and political relationships and structures.

These social values and worldview factors provide an important backdrop to the tensions outlined earlier between a democratic rule of law and extrajudicial customary punishments. Exchange societies experience additional challenges in reconciling new and old approaches to law, justice, and punishment. As Siegel (2006: 9) observes, beliefs in witchcraft are more common in exchange societies, such as Timor-Leste. Within exchange societies accusations of witchcraft often correspond with the need to identify sources of otherwise unexplained accidents.

For the relatively newly democratising sovereign state of Timor-Leste, witchcraft reflects dissonance between “old” and “new” worldviews. Such discord is not unique to Timor-Leste but is a common experience for new states as they establish new power hierarchies and implement new forms of rights and responsibilities across their social, political, and economic spheres. In such settings dissonance between old and new worldviews can contribute to difficulties in avoiding reification of “traditional” social structures, including “power hierarchies” that have been central to the “inventions and re-inventions” of traditional social structures (Niner 2014: 240). As Marriot (2010: 160) observes, “what is perceived to be custom of ancestral provenance may be a far more recent invention.” Discerning the “traditional” status of some practices, such as extrajudicial punishments of alleged witches, can be difficult (Mearns 2001).



## Establishing Democratic Statehood

A key contest in the period of international state-building in Timor-Leste concerned the different forms of legitimacy required to support socio-political institutions. While the international community seeks specific kinds of legitimate “rational-legal” authority based on widespread consent and formal democratic processes, traditional authority rests upon “an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them” (Weber 1991: 328). There are risks in romanticising customary forms of government by valuing their sites and forms of authority as “traditional.” While liberal democracies might also be romanticised as affording egalitarian participation, freedom, opportunity, and choice-based lifestyles, these are founded upon the rule of law and formal political institutions.

In 2002 Timor-Leste became an independent democratic state following an extensive period of international state-building. In 1999 a United Nations-supported ballot was held in Timor-Leste, in which 98.5 per cent of the population voted in favour of independence (United Nations Security Council 1999). Political, economic, and social realities rendered it impossible for Timor-Leste to develop internal sovereignty and democratic political institutions without extensive international assistance. For instance, approximately 70 per cent of all buildings had been destroyed by members of the Indonesian military and militia groups in the days following the referendum (Chopra 2000: 27). In August 1999 the United Nations Transitional Administration in East Timor (UNTA ET) assumed responsibility for establishing political and legal institutions in the post-conflict territory.

While tensions persist between state-based institutions and customary practices, democracy and human rights were integral to Timor-Leste’s independence movement from 1974 onwards. Both of the peak independence bodies headed by Xanana Gusmão, the National Council of Maubere Resistance (Conselho Nacional da Resistência Maubere – CNRM) and the National Council of Timorese Resistance (Conselho Nacional de Resistência Timorese – CNRT), aspired to a future democratic East Timorese state. The CNRT committed Timor-Leste to a “pluralist, multi-party, democratic system based upon the rule of law and separation of State and religion” (Walsh 1999). Gusmão called upon all organisations working within the CNRT to unify and accommodate various political positions in order to advance the prospects of democracy in Timor-Leste (Strating 2015).

The Magna Carta concerning Freedoms, Rights, Duties and Guarantees for the People of Timor-Leste was unanimously adopted at the

1999 CNRT National Convention and “defined the principles of a future national constitution” in the event of Timor-Leste’s independence (Niner 2007: 177; Commission for Reception, Truth and Reconciliation 2005: 90). It outlined a shared vision of statehood which reflected a firm resolve that independence would be achieved through the international rule of law. Tanter, Seldon, and Shalom (2001: 245) describe the Magna Carta as displaying an “impressive commitment” to building a “constitutional democracy with strong protection for human rights.” The Magna Carta became the basis of the Bill of Rights in the East Timorese Constitution and exhibited efforts to link international human rights norms to the independence struggle (Strating 2015; see also Marriott 2013: 105).

The imposition of a “liberal peace” was seen by some as a denial of self-determination, a crucial component for establishing robust political institutions with widespread support (Richmond 2011: 123; Chesterman 2005: 136). Certainly, the institutions and structures that were created reflect the truism that the preferences of the dominant industrially developed states shape human rights norms in the contemporary international political system (see Zaum 2007). Given the international normative dominance of liberal-democratic political systems, they inevitably influence the expectations of new states, and their preferences underpin the forms of assistance that new states receive to consolidate independent governments.

These dynamics create tensions within new states as they seek to reconcile their aspirations of political independence and prosperity with popular expectations of social and cultural preservation alongside new opportunities and rights. According to Diamond and Morlino, democratic states must:

satisfy citizens’ expectations regarding governance [...] allow citizens, associations, and communities to enjoy extensive liberty and political equality [...] [and] provide a content in which the whole citizenry can judge the government’s performance through mechanisms such as elections, while governmental institutions and officials hold one another legally and constitutionally accountable. (Diamond and Morlino 2004: 22)

Building the capacities for democratic government in Timor-Leste required the creation of government structures and the articulation of roles for governmental authorities. Dreams or promises of democracy would have remained unfulfilled without the formation of requisite legitimate political structures (Almond and Verba 1989: 41).

Disjunctures between modern state structures and traditional societies can rupture the legitimacy of new political structures and unsettle the

democratic capacities new states seek to establish. As Migdal (1988) has noted, “strong societies” can disrupt a new state’s “reach” across a population and territory, which challenges its capacities to exert effective governance. Achieving such control remains a central challenge in Timor-Leste, where the “state” has been largely Dili focused, led by a small urban elite, and limited in terms of reach into local rural communities. A significant process in civic nation-building must involve making democracy meaningful in the districts where roughly 70 per cent of East Timorese reside. Relationships between state structures and agencies and civil society are pivotal to the fulfilment of the promises of independent democratic government. However, these are also especially vulnerable to disruption, as newly formed political institutions and the social visions upon which they are premised can be confounded by more traditional sources of authority and social control.

As a new democracy, Timor-Leste must simultaneously meet the expectations of their people and the international community, including politically influential states. To do so, they must develop key political institutions and establish a rule of law that protects human rights and preserves political order. By creating a protected political space in which the newly elected government could endeavour to build democratic structures, the UNTAET reflected the values of the international community concerning appropriate political structures. Franck argues that:

governments recognize that their legitimacy depends on meeting a normative expectation of a community of states [...] that those who seek the validation of their empowerment patently govern with the consent of the governed. (Franck 1992: 48)

Such legitimacy is central to Timor-Leste’s successful consolidation of democratic statehood, as it moves beyond the early years of supported institutional development and seeks to implement policies that transform aspirations into social and political realities. Being a new modern state means conforming to international norms and expectations as well as delivering on promises of democracy for the East Timorese people.

On 30 August 2001 Timor-Leste’s first democratic elections had a voter turnout rate of 91.5 per cent and established the Constituent Assembly, which comprised 88 elected officials (UNTAET 2001: sections 36, 37). The East Timorese Constitution was drafted by the Constituent Assembly with very little intervention by the UNTAET or other international bodies. The UNTAET determined that the Constitution should be drafted by East Timorese leaders in conjunction with widespread public consultation, in order to establish a durable constitution that depicted

and institutionalised the broadly understood aspirations of “society” and provide the basis of political order and the rule of law (Hart 2003: 3).

According to article 4, section 2 of the Constitution, “The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law.” With this, article 4, section 2 asserts the primacy of the Constitution and its expansive bill of rights. However, it does not clarify the relationship between the two legal systems or establish a formal position for local law (Grenfell 2006: 322–323). In Part II (“Fundamental Rights, Duties, Freedoms and Guarantees”) the Constitution clearly articulates and guarantees the inviolability of human life, the right to life, and the abolition of the death penalty (section 29); the right to personal freedom, security, and integrity and freedom from torture and cruel, inhumane, and degrading treatment (section 30); freedom from unlawful trial (section 31); the right to access courts and legal representation (sections 30, 34); and that everyone is presumed innocent until proven guilty (section 34). The aforementioned rights and guarantees are universal, irrespective of sex or religion (Constituent Assembly 2002: section 16). Article 3 section 9 also commits Timor-Leste to the provisions of the international human rights conventions it has signed.

While the nature of these rights and the means by which they are now part of the responsibility of the East Timorese state remain subject to ongoing uncertainty, it is a misrepresentation to suggest that these constitutional rights were “imposed” upon the East Timorese nation. It is, in fact, a product of “public authorship,” albeit one that reflects the values and beliefs of a small “elite” of independence leaders – many of whom were exiled from Timor-Leste from 1975 until the referendum. However, because the drafting process was largely (and necessarily) elite-driven and lacked the direct involvement of East Timorese, the Constitution does not necessarily represent the diverse beliefs and values of ordinary East Timorese. During consultation, drafters ignored requests that contradicted democratic practice, including mandating a belief in god and including the Catholic Church in government (Lutz 2003). Because the government seeks to avoid conflating democracy with popular opinion, it is essential that it provides civic education in order to support attitudinal change among the population towards the new rights and responsibilities set out in the Constitution. While conforming to international norms is important for international legitimacy, especially for new states, the extensive Bill of Rights in the Constitution of Timor-Leste also reflects the country’s long struggle for freedom and human rights.

## The Challenge of Witchcraft

In Timor-Leste tensions persist between new institutions, “customary” law and animist traditions as many East Timorese continue to believe in localised and traditional customary dispute resolution practices. The “complex enmeshment or hybridity among customary and state-forms of governance” that exists in Timor-Leste raises questions about political legitimacy and the capacities of states to provide social order (Brown 2012: 54–55). Grenfell (2006) argues that state-based and customary legal systems are not “enmeshed” but exist as two almost distinct, parallel systems, which she views as a consequence of the failure to recognise local legal customs during the international state-building period. This sits in contrast with classical legal plural systems, where “state law formally recognizes and incorporates local law” (Grenfell 2006: 307).

Problematically, most customary law is locally specific, subject to variance, and unevenly applied, making it difficult to ensure political equality (Grenfell 2006: 319–320; Hohe 2002). Many local laws do not conform to international human rights standards. Although some argue such standards are not culturally relevant to the East Timorese and represent a “new form of colonialism,” local laws are often discriminatory towards women in ways that undermine their security (Grenfell 2006: 320–321; Swaine 2003).

There are a number of crucial differences between state-based and customary legal systems in Timor-Leste. What is considered a crime in customary contexts differs from state definitions of criminal behaviour (Hohe and Nixon 2003: 18). While the state does not view witchcraft as a criminal offence, it is not unusual for women to be accused of the crime of witchcraft within certain East Timorese villages (Mearns 2001: 21). As anthropologist David Hicks (2004: 41) explains, in Timor-Leste the *buan* (witch) is devoid of “benevolent attributes [...] and is an incorrigibly malevolent quasi-human being who lives like an otherwise legitimate resident.” The possible range of witch behaviour includes women’s transformation into dark birds, in particular black owls, that are able to fly through the darkness (Hicks 2004: 41). In a much-publicised case in 2009, the police were called to calm residents after rumours spread of a witch named Margareta flying over Dili (Wright 2012). According to Hicks (2014: 41–42), witches are also said to be capable of entering dreams, grabbing sleepers by their throats, or enticing them to poison a relative. These beliefs simultaneously permit explanations of sudden deaths and account for why those accused of witchcraft might not recall their alleged misdeeds (Pollanen 2004).

These accusations occur in the broader context of a “body of tradition” that Marriot (2010: 160) describes as “rightly criticised [...] [for] failing to advance the interests and equality of women.” Further, women who behave “unsociably” may also be considered witches since witchcraft can also account for their rejection of behavioural norms (Hicks 2004: 41; Slatts and Portier 1993). Witchcraft remains a feature of local justice measures in some East Timorese regions. An important role of the *lain nain* is to draw upon their “localised, spiritual authority,” especially in “prosecution[s] for witchcraft” (Marriot 2010: 160). In Timor-Leste the *nabe bitu* (literal translation is “stretching out the mat”) customary dispute resolution mechanism is underpinned by two key principles: a willingness to come together and the voluntary confession of culpability (Tilman 2012: 194). These are consistent with customary justice in exchange societies where compensation (“replacing social values”) and *badames* (forgiveness or reconciliation) are ways of restoring social order. Although each *suku* interprets *nabe bitu* differently, *nabe bitu* usually results in a violent punishment in dispute resolutions involving accusations of witchcraft (Tilman 2012: 194; Libbis 2012). As in other states, such as Papua New Guinea (PNG), violent punishments of witches are targeted towards women in contexts of highly unequal power relationships (Hermkens 2015: 38).

Since Timor-Leste’s successful independence referendum, reports have periodically emerged concerning the punishment or killing of accused witches (Mearns 2001: 21). The Early Warning and Response group recorded 32 sorcery-related conflicts in Timor-Leste from October 2011 to February 2014 across 16 of 65 sub-districts (EWER 2014: 4). It appears that sorcery-related violence is not isolated, either in frequency or geographical incidence, and that state institutions struggle to prevent it. Yen (2010: 341) and others observe that the apparent sightings of “witches” and other phantasms occur more frequently during periods of political and social uncertainty (see also Scamary 2013: 201). For instance, during the international state-building mission, allegations emerged that a group of men had tortured and killed an elderly woman they had accused of witchcraft in the eastern Los Palos district (Wright 2012). Additionally, most instances of witches being tortured or murdered occur in districts that are geographically removed from the administrative heart of Dili – that is, areas where the reach of state agencies remains limited (Yen 2010: 345).

In some circumstances the state has convicted its own agents of carrying out extrajudicial killings. For instance, on 14 May 2011 a Falintil Defense Force soldier was found guilty of the murder of an elderly

woman accused of engaging in witchcraft (United States Department 2011: 1). At other times, however, representatives of formal administrative bodies have encouraged citizens to continue to utilise extrajudicial processes. The difficulties in having parallel and sometimes competing legal systems became apparent in the international state-building phase. In one example, a local man who complained that another man had accused his daughter of witchcraft was directed by a United Nations police officer “to deal with it in a traditional way” (Mearns 2001: 20; Herriman 2009). The United Nations police officer rightly acknowledged that he had “no authority to deal with accusations of black magic” (Herriman 2009). According to Herriman (2009), “the complainant returned and advised the UNPol officer that he had done as told, and dealt with the problem using traditional means; he killed the accuser.” The complainant was then arrested for murder (Mearns 2001: 20; Braithwaite, Charlesworth, and Soares 2012: 221). In this problematic case, *ema halo* (black magic) was viewed as being beyond the purview of the police officer. Nevertheless, the police office recognised the continuation of pre-existing social structures, wherein “traditional” socially sanctioned retribution might be possible.

A spectrum of customary punishments exists whereby punishments are imposed according to the “severity of witchcraft involved” (Wright 2012). Toohey (2007) maintains that Timor-Leste “dresses itself up as a Catholic nation,” but culturally and politically embedded animism runs “deeper than all that.” Following independence, the national newspaper *Suara Timor Lorosae* carried reports of the torture and killing of witches in 2003, 2006, and 2008 (Yen 2010: 345). In January 2007 three women in the Liquiça district unsuccessfully attempted to heal an injured teenager (and distant relative), who then reported seeing the women in a feverish dream. The women were subsequently accused of witchcraft, hacked to death with a machete, and burned along with their houses; the child died 14 days later (Yen 2010: 345; Toohey 2007). Another suspected witch reportedly died after hot coals were placed on her back (Wright 2012).

A debate emerged in the *Timor-Leste Law Bulletin* concerning the “democratic” nature of these customary punishments, primarily between Nick Herriman and Warren Wright. Wright (2012) expressed concerns regarding the extrajudicial nature of these killings and the challenges they pose for Timor-Leste’s democratic institutions. He contends that:

Many anthropologists who lack a comprehension of the concepts of democratic secular law and justice, are ardent supporters of traditional justice systems even though they posit supernatural hypotheses for the explanation of the realities of social disharmony

and criminal conduct and impose corporal punishments and worse tortures on citizens accused of the impossible crime of witchcraft. (Wright 2012)

In response, Herriman (2009) argues that his fieldwork demonstrates that:

Killing “sorcerers” [...] was the wish of almost all local residents – often the “sorcerers” own family, friends, and neighbours. In the sense that it is the will of the majority, it is thus democratic. If a trial by jury were established, I strongly suspect that “sorcerers” would be similarly condemned. I suspect that most villagers in Timor Leste would also wish to kill witches. To the extent that this is true, it appears that democracy is not antithetical to witch killings. (Herriman 2009)

This debate over the democratic nature of these killings points to the challenges the East Timorese state faces in achieving authority over customary law, including laws concerning the punishment of witches. Controversies concerning issues of legitimate jurisdictional capacities highlight the importance of reconciling diverse views of the public regarding the relationship between citizens’ identities and roles, and engendering widespread recognition of the authority of state structures and agencies.

## Democracy and Witchcraft

The politics of punishing witches in Timor-Leste sheds light on the problems associated with reconciling so-called customary dispute mechanisms and new political structures. These actions and their justifications highlight tensions concerning tolerance and, even more importantly, reveal that a democratic political system requires more than majoritarian acceptance. Despite Herriman’s (2009) claim that “democracy is not antithetical to witch killings” due to widespread local support, democracy in fact demands state protection against actions that are not sanctioned by the state. Democratic systems are premised upon respect for the constitution and the primacy of state law, which protect citizens and grant them economic, social, and political rights. Democracy requires a level of mediated reasoning that is exercised when making, implementing, and reviewing laws and relies upon an impartial and universal application of those laws.

The challenges of consolidating sovereign authority and democratic political structures are exacerbated for new states when their social spheres continue to valorise traditional customary law. While the state is



responsible for ensuring that structures are deemed legitimate and acceptable to the “nation,” it cannot necessarily support all locally acceptable forms of law and punishment. The Constitution allows for customary laws to be incorporated in state-based law if they conform to the rights provisions articulated in the Constitution. Hence, customary laws can be embedded in the legal system if they conform to – and do not contradict – democratic values. Extrajudicial punishments of accused witches do not conform to democratic and constitutional rights and therefore cannot be deemed “democratic” or acceptable to the new state, even in a hybrid system.

Consolidating democracy through constitutional integrity and the rule of law requires Timor-Leste to delegitimise the customary practices that fall outside the boundaries of liberal-democratic political tolerance. There must be a belief among those who are governed that the government is “morally justified in exercising political power” in order for the state to request and receive civic compliance (Buchanan 2004: 233). Buchanan (2004: 238) maintains that authority entails “the idea that citizens have an obligation to obey someone – that someone has the right to be obeyed – not just the idea that someone is justified in imposing rules on them.” Establishing universal expectations of the primacy of the rule of law as a benefit of independent democratic government must, therefore, be treated as a component of the nation-building project that new states embark upon. Successful implementation of a rule of law that arises from newly formed democratic systems and structures relies upon explicit connections between the aspirations of citizens, the visions of state authorities, and the legislative and administrative practices within the new state. As Hohe and Nixon (2003: 3) contend, “institutions and systems that have little or no relevance to a people’s way of life are unlikely to be adopted in the short term.” Part of the democratic challenge, then, is to make new institutions relevant to people’s lives.

Scholars have increasingly recognised the sociological reality in many political communities of legal pluralism. In dealing with diverse sources of law, some have advocated “hybrid” legal systems whereby democratic political and judicial institutions are reconciled with features of customary practices. Peacebuilding missions often fail due to a lack of local legitimacy. In democracies laws must generally be obeyed due to a belief that the universalised application of a state-based rule of law is preferable to other legal systems. Such views are underpinned by a belief in the moral claims of state agents in their legitimate exercise of authority. Expectations and acceptance of codified moral claims are key components of a democratic rule of law that does not rely upon citizens per-

ceiving self-interest or fear in order to comply. Under these conditions legitimacy creates a “voluntary pull toward compliance” that enables consolidated liberal democracies to become politically self-perpetuating (Buchanan 2004). Such beliefs derive from the relationships, structures, and institutions that both enable a generalised rule of law to be exercised and encourage recognition of the legitimacy of government decisions. It is not an easy or rapid process for citizens to adapt to a new socio-political organisational system, particularly in parochial and fragmented societies such as Timor-Leste (Almond and Verba 1989: 34).

In Timor-Leste an irreconcilable clash of worldviews is evident: certain communities believe witchcraft is a legitimate crime, but a “rational” state rejects the power of sorcery and thus has no need to protect the community from it (Siegel 2006: 16). Even if acts of violence against accused witches are an acceptable part of “traditional” or “customary” law in Timor-Leste, they are not based on reason and thus cannot be tolerated by new democratic state structures – otherwise, the authority of democratic government and its ability to establish a universal rule of law would be challenged.

Arguments that seek to preserve customary practices for their own sake are problematic for democratic equality in newly independent states for a number of reasons. They can encourage conflict resolution methods that do not conform to acceptable democratic practices or support new citizenship rights. As Harrington (2006) argues, the potential harm of some cultural practices must be recognised. One of the key advantages of state-based legal systems is that they apply equally to all citizens within a territory and correspond with democratic rights established in the constitution, including “the inviolable right of hearing and defence in criminal proceedings” (Libbis 2012).

The validity of democratic states’ claims to legitimate authority rest upon legal-rational grounds, whereby citizens believe in “the ‘legality’ of patterns of normative rules and the right of those elevated to authority under such rules to issue commands” (Weber 1991: 328). Rational-legal authority signifies that

obedience is owed to the legally established impersonal order. This extends to the person exercising authority of office [...] and only [exists] within the scope of authority of the office. (Weber 1991: 328)

In Timor-Leste voting rights among free and equal citizens justify the authority of political leaders to create and enforce rules, and the constitutional separation of powers ensures that state institutions cannot become tyrannous (Dahl 2005).

Attempts to hybridise “traditional” and “modern” structures reflect a strategy of co-opting particular customary practices that are not harmful to citizens or detrimental to the authority of the state. If a state can take on some of the characteristics of customary structures, it can reflect unique values embedded in the communities it encompasses. It may also help to promote a sense of local “ownership” of democratic structures and replace “generic” structures implemented with the aid of international state-builders. Although *nabe biti* and other dispute resolution mechanisms are appropriate for minor, community-based issues (particularly if they shoulder some of the burden of the stretched embryonic state-based justice system), these should not undermine state-based law.

Nevertheless, there are hurdles to reconciling state-based and customary law without undermining democracy. Problematically, the state-based legal system is not as popular as local systems are. This makes it difficult to legitimise the state-based system while simultaneously relying upon customary systems to fill in the gaps (Marriott 2013: 102). In Timor-Leste’s remote, rural societies there is a lack of knowledge about state-based legal systems and laws, which means that traditional justice is often administered by the *lian nain* (Marriot 2010: 160). In these cases, moral order – derived from spiritually based behavioural norms – informs the application of customary law. In a speech for the International Conference on Traditional Conflict Resolution and Traditional Justice in Timor-Leste on 27 July 2003, then president Xanana Gusmão argued that there were opportunities for reconciling traditional and modern forms of justice and dispute resolution, particularly when used as a mechanism for “reverting feelings of enmity to an understanding between brothers [sic].” However, he noted significant problems with customary dispute resolution, including its lack of impartiality and inability to guarantee a “common pattern in sentencing or punishment.” This absence of consistent measures in local dispute resolution “puts it at odds with the rule of law,” which is fundamental to democratic governments (Marriot 2010: 159). Maintaining dual systems of customary and state-based law can also lead to “forum shopping,” whereby citizens switch between legal systems according to which best suits their complaint (Marriot 2010: 160).

The experiences of other states, such as Papua New Guinea (PNG) and Cameroon, demonstrate the problems witchcraft presents for state–society relations in post-colonial contexts. Both states have attempted to regulate witchcraft. In PNG, a state close to Timor-Leste both geographically and culturally, although witch killing has increased in recent decades, the state has often failed to prosecute the perpetrators of such acts

(Jorgensen 2014: 267). Jorgensen (2014: 268) argues that while some commentators argue that witch-killings are nothing new in PNG, there is surprisingly little historical evidence for this claim. In fact, extrajudicial punishments of accused witches emerged as a post-independence political problem, which challenges the idea that these are “customary” or “traditional” responses (Kuman 2011: 32). Efforts to regulate witchcraft through the 1971 Sorcery Act had the effect of legitimating the crime of witchcraft (Spingler 2005). The PNG example suggests that incorporating customary and state-based law is unlikely to prevent extrajudicial killings, because incorporating local beliefs in witchcraft in state-based law supports the perception that community members are justified in protecting themselves against witchcraft.

## Witchcraft and Gender Equality

In Timor-Leste prioritising customary forms of dispute resolution such as extrajudicial punishments for witches may require disregarding gender equality provisions guaranteed in the Constitution. As Swaine (2003: 2) demonstrates, women are excluded from playing a substantive role in local justice hearings, and the cultural beliefs and prejudices held by the administrators of justice regarding the status of women in society influence their legal findings. Traditional justice mechanisms do little to protect women from violent and hazardous situations, including accusations of witchcraft (Swaine 2003: 3). This again reflects the key issue that administrators of justice such as the *lian nains* are guided by own cultural beliefs which are not supported by the “rational” modern state.

Most problematically, culturally relative arguments permit dishonest claims to “cultural” practices, including those that undermine efforts to reduce incidences of gender-based violence. This is a particular issue in Timor-Leste, where rates of domestic violence have been used to reify the idea that such violence is embedded in the “culture” or “tradition.” However, Niner (2014: 243) challenges this view on traditional social roles, arguing that the “domestication of violence” needs to be understood in the broader context of the war against Indonesia and the backlash against female independence which emerged in the civil and labour spheres as a result of men assuming fighting roles during the resistance and the extraordinary loss of life.

While some view “women’s rights” as contrary to traditional East Timorese culture, the sections of the Constitution devoted to these “were approved unanimously” by members of the Constituent Assembly (Soares 2004: 27). The Constitution of Timor-Leste is unequivocal in its

support for political equality and belief that men and women possess “the same rights and duties in all areas of family, political, economic, social and cultural rights” (Constituent Assembly 2002). Nevertheless, senior male politicians have worryingly come out in recent years to “patriotically” promote “‘traditional’ indigenous culture while denigrating international ‘gender equity’ policies as foreign impositions” (Niner 2014: 243). These ideas present challenges to achieving gender equality in Timor-Leste and to delegitimising customary punishments for women accused of witchcraft.

## Delegitimising Witchcraft

For Timor-Leste, the issue of witchcraft demonstrates some of the difficulties in establishing a statewide judicial system that can effectively establish a monopoly on legitimate violence and meet the aspirations outlined in the Constitution. Prime Minister Xanana Gusmão drew upon the relationship between constitutional integrity, political order, and equality in a 2003 speech defending the primacy of the state-based legal system:

Whereas contemporary written laws warrant a permanent and global concept of values, traditional laws lack resolve in their expression because they are unwritten and may change according to the narrator’s interpretation, although still maintaining a dynamic of its own. Common or traditional laws also represent the stage of evolution of a society and usually correspond to societies based on feudal relationships both in the social and religious (non-formal religions) aspects; both aspects are combined with the political and economic ones and add to another which refers to castes as the lower echelons of society, slaves and those who practice witchcraft and whom are usually denied rights.

Almond and Verba (1989) argue that people are socialised into political cultures just as they are into social systems. Adjusting the political culture among the citizenry requires the adoption of new ideas about what behaviours and activities are now acceptable and which are no longer tolerable. A democratic transition is not possible without sweeping institutional reforms, which includes the eradication of any “traditional” practices that undermine democratic principles and the authority of the state.

On 24 December 2012, an editor’s note in the *East Timor Law and Justice Bulletin* claimed that:

the continuing belief in witchcraft in some societies such as Timor-Leste should [...] be of concern to lawyers and jurists, human rights defenders, health care workers, the institutions of states as well as those dedicated to the emancipation of women from social, economic and political repression [...] it is, of course, necessary for the state as well as religious institutions to develop policies, laws and strategies to promote a rational analysis of social problems informed by experience rather than the supernatural to annihilate the torture and murder of persons accused of witchcraft and to punish those who perpetrate those acts. (Editor's Note within Libbis 2012)

If citizens do not accept the primacy of state-based law, the legitimacy of new and constitutionally decreed democratic rights and the rule of law will be undermined. The idea that democracy is exclusively based on popular opinion is not supported in the contemporary literature on democratisation or by the contemporary practices of democracy-building. Constitutional citizenship rights and the rule of law are fundamental to the very notion of democracy. Reducing democracy to the “will of the people” represents a serious misunderstanding of the various structural, operational, and attitudinal dimensions of successful democratic systems.

One way of dealing with extrajudicial punishments of witches is to strengthen the judicial system and increase its presence in the districts through decentralisation. However, this will not necessarily be a panacea if the state-based judicial system continues to compete with customary law and will be unable to provide solutions to perceived social problems. Furthermore, strengthening the judicial system faces a number of challenges, including limited resources and personnel, language differences, and a lack of legal services and advocacy (Marriott 2013: 113–115). The new state also needs to delegitimise the idea that witchcraft is a punishable crime. Given that witchcraft allegations are often linked with destabilisation and disorder, providing political and social order through modernisation is critical. Alleviating poverty and inequality in the districts through inclusive welfare policies and better civic education might also support the legitimacy of democratic state-based systems. As Marriott (2013: 115) notes, “equality before the law is an idea central to democratic notions of justice, and so must be reinforced in the public consciousness.” The case of witchcraft punishments highlights the ongoing challenges the new state faces in making democracy meaningful at the “grassroots” level and establishing effective governance that provides political equality, citizenship rights, and the rule of law.

## Conclusion

Since independence Timor-Leste has made considerable progress in developing its judicial capacities as part of its ongoing transition into a state-based rule of law (Marriott 2013: 105). Nevertheless, newly independent states often experience the pull of differing worldviews and rationales as they establish effective authority structures. Divergent views and practices within their borders challenge their ability to establish a political culture that supports new political structures and establishes a congruent civic culture (Almond and Verba 1989). Achieving coherence between civic culture and political structures ensures the maintenance of political legitimacy and the rule of law and reinforces democratic institutions and processes.

The East Timorese independence movement viewed democracy as a pathway to self-determination and freedom. The argument that external actors imposed democratic ideals neglects the roles East Timorese leaders, citizens, and civil society actors played in constructing their state. It also neglects the contingent consequences of pursuing democratic independence. Such arguments are further flawed by short-sighted assumptions that good reasons exist for maintaining and preserving long-established cultural practices. While there may sometimes be good reasons for retaining old cultural practices in new political systems and the resulting new cultures, it is not always possible or reasonable to do so. When claims of cultural practice extend to extrajudicial punishments, it is impossible to reconcile their preservation or efforts to legitimate them within the practices and structures of a new democratic state. For new states seeking to accommodate and preserve cultural practices, it is not necessarily the case that “old” traditions are superior to “new” structures (Wright 2012; Edgerton 2000: 131).

“Traditional” practices such as killing women accused of witchcraft undermine democratic principles and social and political progress. Timor-Leste’s extrajudicial killings violate the integrity of the Constitution, which was drafted by elected representatives, and undermine the state’s monopoly on violence and its commitment to protecting individuals against arbitrary acts of social violence. Tensions between old and new seem a significant stumbling point given that states are modern entities and seek to prove their progressive modernism. Arguments that popular, socially sanctioned violence is consistent with democracy fail to recognise that effective democracy relies on the rule of law, domestic sovereignty contingent upon the legitimate and exclusive use of sanctioned violence, and equal citizenship rights. Breaching these components ultimately undermines the entire enterprise.

Pre-modern beliefs in witchcraft challenge the rational state as they lack a predictable institutionalised form. Witchcraft is a site of tension between the traditional practices that were tolerated and valorised by customary law in Timor-Leste and the political values and institutional expectations of Western liberal democracies that have become part of the newly independent state. Effective statehood requires traditional and charismatic forms of legitimate authority to defer to rational-legal authority. The rule of law is exclusively the realm of state authorities and apparatuses, and a necessary condition for democratic effectiveness and political order. In cases involving accusations of witchcraft, punishments outside the boundaries of state-based law undermine the rule of law and democratic legitimacy, particularly as they amount to non-state-sanctioned violence. As a new state, the Timor-Leste government should not readily relinquish its exclusive control over legitimate violence, as this is a fundamental condition of sovereign statehood.

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