BOOK REVIEW

Keebet von Benda-Beckmann and Fons Strijbosch (eds.), Anthropology of Law in the Netherlands: Essays in Legal Pluralism. Dordrecht and Cinnaminson: Foris Publications, 1986.

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This fine collection of essays is warmly recommended to all those interested in anthropology and sociology of law. It testifies to the strength and the quality of the anthropological tradition in the Netherlands. It is the fruit of the on-going discussions of the Folk Law Circle (Volksrechtkring), a working group of Dutch-speaking anthropologists of law. It is heartening to note that the Netherlands continues to bring together a critical mass of scholars in this area, something which cannot be said of most countries around it. The expression "in the Netherlands" in the title refers to the geographical base of the anthropologists, not to the area where the research was done. Up to the present, few anthropological studies have been done in the Netherlands itself, although Griffiths, in his introductory essay, mentions a few. These will tend to become more frequent to the extent that funds to go overseas for prolonged periods of fieldwork get more scarce.

The book is divided into 4 parts, each of which has a particular topic. Part 1 consists of Griffiths' long article on "Recent anthropology of law in the Netherlands and its historical background". Part 2 contains three conceptual and methodological essays. Part 3 contains five case studies in which the theme "legal pluralism" plays a central role. And Part 4 consists of two more case studies, the theme of which is rather the evolution of economic relations in Asia. The case studies reflect a certain historical continuity in Dutch legal anthropology in that four out of seven concern different regions of Indonesia.

Griffiths starts out by arguing that anthropology and sociology of law are really the same discipline and that their distinction is only historically explicable. In a sense, this has long since been recognized in the Netherlands where anthropology is sometimes called "the sociology of non-Western peoples". Nevertheless, within the anglo-american tradition the observation is correct and useful. It would seem that the most important practical implication of taking this idea seriously is that both

anthropologists and sociologists will have to read a lot more. Griffiths then deals extensively with the history of the adat law school, a long Dutch tradition of the study of Indonesian normative systems. The Dutch were as a colonial power particularly tolerant and respectful of the various indigenous adat systems, as is exemplified by the abolition of the repugnancy clause in 1920 and by the many detailed studies of the adat systems with which the colonial administrators came into contact. Griffiths does not hide his admiration for the volume and the quality of the work of the adat law school which was headed for several decades by Van Vollenhoven (whose work was only published in English in 1981). The tradition of the adat law school has fortunately survived the political independence of the Dutch East Indies. Despite some misgivings about the colonial past, Dutch anthropologists of law have continued to do research in Indonesia, while at the same time exploring Africa, as the articles in this volume show quite nicely. As the work of the adat law school is very little known among anglophone anthropologists of law, this well-documented essay is an important contribution.

Part 2 starts out with an historical article. Van den Bergh traces the distinction between "law" and "custom" back to Roman law. In following the development of the relations between law and non-law (i.e., what legal professionals at various points in time decided was not law) through the middle ages and up to our days, Van den Bergh comes to a rather relativist position. If we employ a term like "folk law", he states, we should be aware of the numerous different connotations of the element "folk" as well as of the expression "folk law" itself. We should keep in mind that the notion of folk law has mostly been defined in contrast with more formal normative and institutional systems associated with those who held power positions in the political community ("the king's law", "lawyers' law"). And those who held (and hold) these power positions are generally hostile to more informal normative and institutional systems.

F. von Benda-Beckmann confronts the old problem of the conceptualization of law for use in the comparative study of normative systems and institutional structures (that is, the persons charged with the implementation, the interpretation and the application of the norms concerned). He states at the outset (p.90) that "the concepts and categories of the anthropologist's own language are usually unable to meet the requirements of a language of comparison since their meanings are often too strongly bound to a specific culture. It therefore becomes imperative that new concepts be created or that existing words are provided with meanings different from the usual ones". It seems indeed urgent that anthropologists replace the term "law", so

strongly bound to Western culture, and having such specific, historical connotations, with some other, more generic term, when they want to compare normative and institutional structures across cultures. Von Benda-Beckmann proposes as a preliminary definition, "law is one form of resolving social problems" (p.96), which seems to indicate a generally functionalist approach to law. Further, he asserts there is such a thing as the "specifically legal": "the specifically legal property of conceptions is vested in the manner in which the autonomy of a society's members is restricted and simultaneously affirmed" (p.97). The specifically legal may manifest itself in a general or in a concrete form. It has various dimensions (permissibility, evaluation of relevance). The objective of this model is to allow for the comparison of the variations which all these elements may show cross-culturally. Although its elaboration seems rather strongly influenced by legal theory, the model that results combines sufficient functional and structural dimensions to be useful in cross-cultural comparisons. Notably, it allows for the integrated study of norms, institutions and processes - the latter are very important if one is to take account of the historical dimension of both norms and institutions (see also F. von Benda-Beckmann, 1979).

The third essay in Part 2 is a reprint of Holleman's 1973 article, "Trouble cases and trouble-less cases in the study of customary law and legal reform" (Law & Society Review, 7:585). This interesting article has been little cited in the anglo-american literature. For the author, the objective of field research is the comprehensive understanding of the normative systems by which indigenous people live (he himself wrote a book entitled, Shona Customary Law, 1952). He starts out with an example: a discussion he had with Zulu headmen, way back in 1938, concerning the rights of women to own and sell movable property. The headmen stated that the general rule is that the husband is the real owner of anything his wife may produce or raise (handicraft, animals): he may sell it, and she may sell it only if he agrees. Holleman notes that in practice this is not what one could observe happening (perhaps he should have asked the women first), and also the dispute he later observed gave the "rule" a rather weak interpretation. He concludes that the "law-in-action" is not much in accordance with the enunciated rule. Are we then to limit ourselves to the information that may be derived from the observation of disputing? Holleman's answer is: no. On the basis of fieldwork among the Shona he argues that disputes, or trouble-cases, are frequently a-typical situations in which the norms are given an exceptional interpretation and application, under the influence of the specific facts of the case. Disputes themselves may be so rare as to be of little importance next to the over-

whelming regularity of behavior in conformity with the norms. While not totally denying the value of studying disputes, the author suggests that the study of ordinary, day-to-day normative behavior is a more fruitful area of research: "Surely this wide and varied field of observable common practices - of specific instances of voluntary and attested law observance - offers an abundance of concrete cases, though of the trouble-less kind. ... [T]hey likewise ... reveal the relevant principles and regularities as well as much of the permissable leeway, of lawful conduct." (p.117, underlining in the original).

Four out of the five case studies in Part 3 concern land, and three of these concern disputes at the level of individuals. Maddock's essay stands out from the others as it concerns collective land rights. He relates the case of a group of Australian Aboriginals who sought to recover land on the basis of the Aboriginal Land Rights (Northern Territory) Act 1976. He himself was an expert witness in the case. What the Act said about Aboriginals and their rights in land is probably typical of such situations elsewhere in the world:

> ... "traditional Aboriginal owners," in relation to land, means a local descent group of Aboriginals who- (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and (b) are entitled by Aboriginal tradition to forage as right over that land.

The author notes that neither the term "traditional Aboriginal owners" nor any of its component parts (e.g., "local descent group") is a term having a clear meaning to which anthropologists generally agree. The interests of the Aboriginals were seriously compromised by professional rivalries among the anthropologists involved. The hearings ultimately centered around the interpretation of typically Western notions like "ownership" and "land rights".

A very fine piece is K. von Benda-Beckmann's "Evidence and legal reasoning in Minangkabau". The author analyzes the dispute behavior of the parties in terms of their strategies in a context of legal pluralism. Available norms, both substantive and procedural, are used in these strategies. Norms are not treated as having an existence in and of themselves; norms are resources, they are invoked if and when a party to a dispute thinks this will strengthen his case. The dispute presented concerns the control over a piece of land, and behind the land dispute there is a struggle for power between sub-lineages. The element of legal pluralism is institutional: the parties have access to village justice and to state courts. The author analyzes the

different manner in which substantive and procedural norms are invoked and dealt with at the village level and in the state courts; and how the parties manipulate these norms in the different institutions where they may pursue their dispute. The analysis of the dispute process is rich in detail, while the central argument remains clear all the time. This 40-page essay is one of the most enjoyable of the book.

"The plot of the sophisticated son-in-law" by the Van Rouveroys also concerns land and also involves pluralism of legal institutions. In addition, different substantive rules, in particular concerning land reform, are brought into play by the parties. The case presents a mixture of problems over rights in land and adultery, giving it a complexity with which the authors deal very satisfactorily. The issues are presented differently in the different forums - at the village level, adultery is the main charge; in court, the land problem is central, although both fora are aware that the two issues are intertwined.

The third essay on land use is Slaats and Portier's "Legal plurality and normative concepts in Karo Batak society". The extended-case approach of the authors allows them to analyze the development of a dispute over a period of seven years. The "legal plurality" is again to be found at the institutional level: one of the parties takes the case to court at some point in time. At the outset, the case is trouble-less - local adat officers come together with the parties to formalize an inheritance. This legal regulation is unsuccessful because one of the parties is dissatisfied with the arrangement. The latter, an unmarried sister of the heir (an only son) goes so far, in a certain phase of the dispute, as to deny the general rule of inheritance, that sons inherit their father's land and allow their sisters the use of part of it if they need it. The sister asserts that sons and daughters inherit equally from their parents' estate. This case study confirms Holleman's suspicion that disputes are abnormal situations in which people may try to turn the normative system upside down. The other two land use cases also provide elements for a discussion of the problem of the relation between the "norms on the book" and "norms in action". They provide together three instances of clear breach of rules concerning marriage and courting. The Van Rouveroys even state that "in matters concerning women, the Karamon (a higher class) often exploit their social ascendancy"; in other words, the members of this class frequently violate clear rules recognized by all, without provoking any sanction. We need not conclude from this that we therefore cannot know what the rule really is. Instead, we may elaborate on the notion "rule" itself: a rule, or a norm, is a (conditional) injunction or prohibition, plus the space around it in

which some people under certain circumstances may choose to ignore it or to apply only a "soft" version of it.

Schaareman's contribution, on "Context and the interpretation of adat rules in a Balinese village", concerns the infringement of religious rules. The dispute presented concerned an alleged violation of the rule that one may not speak loudly in the ritual sphere. Two questions were raised: (1) does such a specific rule really exist? and (2) was the person concerned outside or inside the ritual sphere when he spoke loudly? The article stresses the flexibility of adat regulations, that is, the space for manoeuvering and interpretation, as well as the possibilities for creative elaboration and eventual change in the rules or their interpretation.

Part 4 contains two articles on economic relations, topics not so frequently dealt with by anthropologists of law. Eikemeier's essay on Korean mutual insurance societies (kye) is the most surprising. It is a fascinating tale of traditional brotherhoods, disapproved of and ignored by government officials but highly valued by the people. They are forced to manage their own problems in relative isolation from courts and other official legal institutions. What all kye seem to have in common, despite wide varieties of form and organization, is that they raise and lend money, and intend to make a profit on that for their members. The author studied the archives of one kye over a number of years, and his findings are most interesting.

Likewise, Strijbosch, on the basis of interviews, describes lending operations in Lombok, and the process of accumulation of capital that results from their structure. As land is frequently given as security for debts, and interest rates are so high as to amount to usury, the money lending system leads to the dispossession of land of those who till it. More and more people are sharecroppers and day-laborers, instead of having original rights in land. As the author points out, the process of dispossession of land, and of rural impoverishment in general, is by no means limited to Lombok, but a well-known phenomenon in the whole of Asia.

The book as a whole is stimulating. The diversity of its articles and their quality make it a most valuable contribution to the anthropology of law written in English (quite a few of the articles already existed in other languages). The issues it raises are important ones which merit on-going discussion. I shall make a few comments on three of these.

The proper object of the anthropology of law

The case studies in the book as well as the more theoretical articles take as the proper object of study of the anthropology of law the comparative analysis of legal institutions and, eventually, of legal systems. The starting point of such a comparison is an institution or type of situation which in our society is typically regulated by law, that is, over which the legal system of the state claims a regulative monopoly (cf. Griffiths, 1986): property and its transfer, family relations, contracts, among others. While non-Western societies (leaving aside for the moment the more recently added dimension of the nation-state) do not have law in the sense of a separate, specialized set of norms, and institutions to interpret and apply or implement them, they do have institutions like the family, they have sets of norms about the transfer of property from one generation to another, etc., and they have also more or less patterned processes in which norms are enunciated, applied, interpreted, adjusted and changed. The case studies in the book describe and analyze how "other" people regulate these areas of social relations. Thus, they are closer to the adat law tradition than to the mainstream of the anglo-american approach which has continued to focus on disputing as the primary object of study (Pospisil, 1958, 1971, is a notable exception). This approach has been developed under the influence of the common law tradition in which law is essentially a series of case decisions (cf. Epstein, 1967). In the dispute approach non-disputing is of little interest; it is the processes of disputing and of dispute settlement that get attention: what are the varieties of process, as related to certain characteristics of the parties and of the relationships between them? When the dispute process is the central object of study, the subject matter of disputes is of lesser importance - all disputes encountered are described and analyzed, whether or not they have anything to do with areas that are, in Western societies, regulated by law. (Some extreme examples of the dispute approach, leaving aside all considerations of the contents of disputes and of substantive norms, may be found in Nader and Todd, 1978).

The plurality of normative and institutional systems

Western legal systems have regularly brought forth legal plurality. Not only has the legal sphere been more and more separated from other spheres (religion, social and economic life) through the increasing specialization of its professionals, its claims of monopoly of norm generation and uniformity of norm application have also paradoxically encouraged the creation of

parallel legal systems (cf. Van den Bergh's article). For example, the rule that all sons and daughters inherit equally from their parents has been systematically ignored by various farming communities in Europe (see e.g., Assier-Andrieu, 1983; Cohen, 1958, 1970). As disputes arising in the folk system cannot be brought to official third parties, unofficial dispute resolution patterns also persist. Only marginals, that is, those who have little to gain within the unofficial system, will on occasion appeal to official third parties like courts (cf. Jones, 1974).

Most non-Western societies did not have such typically Western differentiated legal systems before colonial powers introduced them. Their traditional cultures were characterized by a lack of differentiation as concerns both norms and institutions. For example, the concept of "adat" includes reference to religious, social and political norms, as well as to "legal" norms and institutions (K. von Benda-Beckmann, 1984:34, n.2;37). To speak of "adat law" to refer to the "legal" aspects of adat is a rather unsatisfactory convenience and it fails to do justice to the specific character of the cultures concerned. There are no "specifically legal" norms and institutions in traditional societies. Nowadays, after the introduction of Western legal systems, plurality exists, and the interaction between traditional and Western systems is a most fruitful area of study, espially since legal plurality in Western and non-Western societies may be the subject of genuinely comparative research.

The usefulness of the study of disputes

The choice of method follows from a conceptualization of the object of research and of the objective. In studying legal subjects, like rights in land, the description and analysis of disputes is a means to an end, and it will naturally be complemented by other sources of information. The notion of "preventive law care" for example, developed by the adat law school, refers to an institution available in all societies for regulating social interaction in such a way that disputes are relatively rare. In Europe, notaries and the registration of land have helped to remove practically all disputes concerning the title of real property from the courts. In Karo Batak society, it is an instution called runggun which regulates social relations in a preventive manner (Slaats and Portier).

Although I am sensitive to Holleman's reservations as regards the study of disputes, the latter being extraordinary and non-representative situations, I would still like to defend it. Disputes may be valuable sources of information, on the condition that the

researcher is selective and critical. Trouble-cases are dynamic situations in which there is more potential for change than in trouble-less cases. Trouble-cases, in so far as they are a-typical and exceptional, may show the kind and amount of deviation from the norm that is tolerated by the community. Particularly interesting disputes are those in which the researcher may observe aspects of the relations between norms which he may not observe in the ordinary, trouble-less course of daily events. One such aspect is the practical hierarchy of norms, i.e., their relative worth in concrete situations. This would be in issue in a dispute in which the two parties invoke two or more norms which indicate different solutions to the problem. This dispute situation may be illustrated by an example taken from Gulliver (1963). A son who had not been present to assist his father in his old age claimed all the father's land upon the latter's death. The land was being used by his uncle, who had cared for the old man, and who was in need of land. Three rules were relevant in the situation: (1) sons inherit the land of their fathers; (2) those who assist the sick and the elderly should share in their estate; (3) those in need of land should not be left totally unprovided. In the end, the son, who already had a farm, had to leave part of his father's land to the uncle. This case shows nicely the hierarchy of norms, that is, the relative validity of "soft" norms (norms 2 and 3) when confronted with "hard" norms (norm 1). There is general agreement that the norm "sons inherit the land of their fathers" is the more important one, but the solution to the dispute is found in the application of the two norms representing equity. The interesting feature of the case is that the three norms are simultaneously recognized as valid and applied. It reminds us that it is in the dynamic process of disputing that norms are invoked, affirmed, interpreted and eventually changed.

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