

# “A MATTER OF MAINTAINING PEACE”

## STATE ACCOMMODATION TO SUBORDINATE LEGAL SYSTEMS: THE CASE OF FISHERIES ALONG THE COROMANDEL COAST OF TAMIL NADU, INDIA<sup>1</sup>

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Two legal systems emanating from different loci of authority determine the condition of fishing rights in Tamil Nadu, India. One stems from the state, the other from institutions in the fishing community. Both legal systems consist of rules rooted in a particular knowledge of marine ecology and the effects of human intervention. Fishermen law generally has greater legitimacy among fishermen; official law, however, which is backed by the power of the state, dominates the formal landscape.

We have here a situation of legal pluralism defined as “different legal mechanisms applicable to identical situations” (Vanderlinden 1972: 20).<sup>2</sup> This definition

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<sup>2</sup> This is my translation of the French “l’existence de mécanismes juridiques différents s’appliquant à des situations identiques”. The word ‘applicable’ in this definition is apt as it suggests voluntariness: it can be applied but need not be. This

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locates social dynamics within the fact that various legal systems, which the parties concerned can draw from according to their interests and beliefs, overlay a subject or situation. As each legal system potentially applies, a complex process of interaction occurs. Academics in the field of legal pluralism have applied this schema to the practice of dispute regulation (e.g. Abel 1973, K. von Benda-Beckmann 1981, Galanter 1981, Vel 1992), and, although to a lesser degree, to property law (F. von Benda-Beckmann 1995b). They have hitherto largely neglected to investigate property regimes in common pool resources.

Another category of academic literature examines not only the failure of common property regimes to protect the resources on which users depend (resulting in so-called tragedies of the commons), but also the conditions under which property regimes demonstrate management effectiveness (Ostrom 1990). Management scientists have also discovered non-state sea tenure co-existing with state sponsored regimes, and proved their vitality throughout the world (McGoodwin 1991; Schlager and Ostrom 1993). Very little thought in this school has gone to analysing the consequences of the present state of legal pluralism in fisheries on fishing practice.<sup>3</sup>

The group of academics interested in legal pluralism has chosen to focus on the broad range of relationships between state law and non-state legal systems. However, in practice attention has been directed to one particular segment, the non-state systems, and the theme of study has been “the penetration and dominance of state law and its subversion at the margins” (Merry 1988: 886). Not surprising in view of this focus is the enduring popularity of the concept of a ‘semi-autonomous social field’. This term was coined by Moore to describe social units which “can generate rules and customs and symbols internally, but [are also] vulnerable to rules and decisions and other forces emanating from the larger world by which [they are] surrounded” (Moore 1973: 720).

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leaves room for social spaces in practice to be dominated by one legal system or another, although theoretically both claim jurisdiction.

<sup>3</sup> Cordell is one of the few to recognize the importance of legal pluralism in fisheries. He concludes:

New governmental policies and increasing commercialization of hitherto marginal fisheries are creating unparalleled opportunities for developers to appropriate local sea space. The inevitable collision of traditional and modern fishing...involves converging, antagonistic systems of sea tenure. (Cordell 1984: 321)

In this article I analyze the pattern of state adjustment to another strong legal system in its social field. The setting is the Coromandel Coast of Tamil Nadu, and the issue at hand is the regulation of common pool marine fisheries. In a case study of a dispute involving fishermen law, I ask why the state, in this case the Fisheries Department, has not established a consistent law practice either by imposing state fisheries law or by integrating fishermen law into the formal system. What motivated the government servants in charge of the settlement to 'muddle through' in the way they did (Lindblom 1973)? I find that the answer has roots both in the defects of state fisheries law and in government perceptions of the strength and value of fishermen institutions.

I examine some of the implications of the case study for the conceptualization of legal pluralism. For one, the case appears to contradict the supposition that the state is necessarily the dominant party in an encounter. This idea is entertained by at least a number of academics in the field, and is illustrated in the quotation from Merry above. I distinguish between potential and actual domination, and relate the situation in Tamil Nadu to the character of legal pluralism in post-colonial societies such as India.

### The Regulation of Fisheries Along the Coromandel Coast

Two hundred and twenty-nine fishing hamlets dot the Coromandel Coast of Tamil Nadu between Pulicat Lake to the north and Point Calimere to the south. Most of these settlements are of early origin. Fishing is the traditional occupation, and most fishermen belong to the Pattinavar caste. Each hamlet is administered by a council with a head who carries the title of *chettiyar* or *naaddaar*.<sup>4</sup> Although their powers have been reduced and their structure modified, fishermen councils still regulate and control many local affairs. There is no traditional administrative system above the hamlet level.

Most fishermen in this region use a small log craft called *kattumaram* to work the inshore waters close to their hamlets.<sup>5</sup> Contrary to first impression, *kattumaram*

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<sup>4</sup> To avoid confusion with the lowest tier of the Indian administrative hierarchy, the *gram panchayat*, I use the term 'council' instead of the local word 'panchayat' to denote the caste council (cf. Mandelbaum 1970). The authority of these councils has faded in many caste communities of Tamil Nadu but is still particularly strong among fishermen.

<sup>5</sup> The past thirty years have also seen the rise of a fleet of small trawlers that

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fishing technology is highly dynamic. A study of fishing gears indicates that new types of nets, as well as novel applications of old types, are adopted on a regular basis. Although income disparities exist even at the hamlet level, there are no big economic differences between fishing households. This is partly due to the lack of variation in fishing technology.

The present-day system of fishermen regulation on the Coromandel Coast is predicated on two principles. One of these follows from an awareness of the difficulty of defining property rights in the sea and concerns common access to inshore fishing waters. This principle is checked by another stating that the settlement adjacent to a fishing ground has the right to place limitations on its use. Such conditions are not of a blanket variety, however, but rather pertain to specific locations, kinds of gear, and periods of time.

One of the major instruments fishermen councils along the Coromandel Coast utilize to regulate fishing is the prohibition of a particular kind of fishing gear or one of its applications. Such bans (*tadai*) may be pronounced for a limited or an indefinite period of time; they apply to all users of a hamlet's 'territorial waters' and are vigorously enforced. Transgressors are tried by village leaders who impose fines or other sanctions. Since each council is autonomous, bans are sometimes very local indeed. In other cases, however, injunctions have a much broader geographical range and follow the distribution pattern of the new gear. The *kachaavalai*, for example, was banned from a string of fishing hamlets extending over a distance of at least seventy kilometres in 1995 and 1996.<sup>6</sup>

In imposing gear bans, fishermen councils invariably refer to the potential harm which might be caused to the community. My analysis of a large number of bans reveals three recurring definitions of harm: damage to fish stocks on which fishermen depend, threat to the majority style of fishing, and injury to the community as a social entity. When fishermen refer to harm imposed on the fish stock, they are concerned primarily with the species which are important for their livelihood, that is, the varieties they target because of market price and availability. The second kind of harm stems from competition within one and the

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operate from a number of fishing ports. Although generally manned by persons of the traditional fishing castes, trawler fishing varies significantly from artisanal operations and is not considered here.

<sup>6</sup> The institution of gear bans, which is one of the important mechanisms of fishermen regulation along the Coromandel Coast, is discussed more fully in Bavinck (1996, 1997).

same ecological niche (Tuomi-Nikula 1985), and means that the livelihoods of a large group of fishermen are being threatened by a gear type used by a minority. Finally, harm can be social in nature; if a profitable gear type is too expensive for all but a few fishermen, its use is thought to result in undesirable social differentiation.

In the banning of the *kachaavalai* the fear of damage to fish stocks played a large role. Since modern management is similarly interested in the preservation of fish stocks, dialectics between the two legal systems in this case are of particular concern.

### Case Study: The *Kachaavalai* Conflict in Madras

Crowds gathered in the fishing hamlets of southern Madras on January 12, 1996 to celebrate one of the great festivals of Tamil Nadu, Pongal, which was to commence a few days later. The Minister of Fisheries had decided to hand out free clothing to all fishing families in the state, and department officers had just arrived for this purpose. In the midst of a throng a fight suddenly erupted between fishermen from three neighbouring hamlets. As the fight soon assumed threatening proportions, the police station was alerted. A short while later the Assistant Commissioner (Law and Order) and five policemen arrived. The atmosphere was charged, for many fishermen carried deadly weapons and three persons had already suffered injuries.

When they had managed to separate the warring parties, the police immediately called a peace meeting involving representatives of the three hamlets. They were aware of the history of animosity and violence between these hamlets and knew that any incident, real or imagined, might trigger a chain of group fights. One of their first tasks therefore was to find out the real source of conflict. They learned that the skirmish had originated in a dispute over fishing rights. Fishermen from two of the hamlets had been pushed by traders into trying a new kind of fishing gear, the *kachaavalai* or snail net,<sup>7</sup> and fishermen from the third hamlet felt it was destroying the fish stocks on which most of them depended. The latter wanted this snail net prohibited and had told the users so a few days before the fight. The fishermen using the net, however, had resisted, and a quarrel ensued. Hamlet leaders convened a joint meeting without notifying the state, and decided that the

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<sup>7</sup> Rather than being a wholly new type of gear, the *kachaavalai* is more properly defined as a new fishing application. A net resembling the *kachaavalai* has long been used in various locations to catch crabs. Apparently, because of a growing demand for snails, the crab net was put to a new use.

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complainant council would send a letter asking each of the other councils to ban the use of the net. Before this decision could be implemented, however, some fishermen had used the net again, and thus set the scene for the fight which took place later that day.

The Assistant Commissioner was convinced that it was indeed the *kachaavalai* which caused the skirmish. He requested that the three hamlet councils ban the use of the net without further ado, and everyone present agreed. Violations of the ban occurred almost immediately, however. The Assistant Commissioner then took a somewhat unusual step and requested that the officer of the Fisheries Department responsible for the Madras region examine the matter and initiate a second peace-making effort.

The Fisheries Department officer took his assignment seriously. He arranged separate gatherings with the fishermen of the three hamlets in order to hear them out. It soon proved that the fishermen in favour of a ban formed a majority. They explained that the *kachaavalai* had a number of disadvantages. It was baited with rotting ray fish or other meat, the smell of which scared off fish varieties on which most fishermen depended. In addition, the *kachaavalai* removed snails from the sea floor, so robbing the inshore area of one segment of the marine food chain. This would naturally decrease the fish population. Third, the *kachaavalai* was felt to physically interfere with other kinds of fishing done in the inshore area. And finally, the fishermen considered it unfair that a fishing technique used by a minority of fishermen which had substantial negative effects on the majority should be tolerated. The Fisheries Department officer tested their resolve by arguing that the sea was so big, a small fishing appliance could not possibly have such serious results, but the fishermen maintained their stand.

In the meantime, the same officer was being pressured from another quarter. A delegation of traders dealing in snail products who were adversely affected by the fishermen bans visited his office along with an important functionary of the ruling party to discuss the matter. The officer managed, however, to wave them away. Still he was unsure whether he could stay free from political interference. The Member of the Legislative Assembly (MLA) representing South Madras might involve himself on behalf of one or the other party, or the Minister responsible for fisheries could ask him to take a particular standpoint; fishermen organizations were also starting to come forward with their opinions.

The day of the second peace meeting arrived. Delegations from the three hamlets and a two-person delegation from the Fisheries Department had been invited to the Assistant Commissioner's office. The fishermen delegation from the hamlet where many fishermen opposed the imposition of a ban did not appear at the

appointed time, and it was forcibly brought by police bus.

The Assistant Commissioner and the Fisheries Department officer had prepared the meeting well. They had decided in advance that they should avoid an open-ended debate on the prohibition in the gathering, and rather should focus on discussing the proposal drafted by the Fisheries Department officer. The latter thus opened the meeting by emphasizing that he was interested in peace (*amaiti*) and wanted to have the problems (*pirachinai*) cease. He also said that regardless of the decision, the three hamlet councils would be responsible for enforcement. At this point, playing the role of the devil's advocate, the Assistant Commissioner interrupted, "Can these council members really control their fellow fishermen? Are they at all capable of effectively enforcing rulings?" The fishermen representatives maintained an appropriate silence.

The officer of the Fisheries Department then delivered his proposal, which was largely a repetition of the arguments brought forward by the fishermen themselves, yet coated with an aura of scientific veracity. Entreating them to prohibit the *kachaavalai*, he concluded: "We must protect the main method of fishing of this region and the welfare of the majority of fishermen, by prohibiting methods which affect it".

A brief intermission to hear possible objections followed, but there were none. A police inspector was quick to draft the text of the agreement. When it was read aloud, only the Assistant Commissioner demanded a change:

Please add that if anybody uses the net any longer, it will be considered treachery to the nation (*teesa turoogam*). The police department must be informed, and we will maintain law and order on the basis of legal articles prohibiting incitement to communal violence and breaches of the peace.

While the inspector typed out the final version, the Assistant Commissioner soothed the ruffled feelings of hamlet representatives with small-talk about vacancies in the Police Department and a request to propose suitable candidates. All present then signed the agreement, and the meeting concluded. The Fisheries Department officer later expressed great satisfaction about the calmness of proceedings and the result achieved. His confidence proved well-founded, for six months later the agreement was still in effect.

This case contains some unusual elements, partly because of the personalities involved. The policeman happened to have experience with and interest in fishing communities. He thus took the case more seriously than others might have, and

invited the Fisheries Department officer to participate in finding a solution. The latter was a diligent man, capable, at least to some extent, of keeping outside interests at bay and of judging the incident on its own merits. The relative lack of political meddling is another rare feature of the case. One can also surmise that this incident, which took place in the state capital a few months prior to elections, demanded and received more attention from the Police and Fisheries Departments than it might have if it had taken place at another time or location.

I am specially interested in the Fisheries Department officer's role in this incident. This person can be assumed to be acting in accordance with bureaucratic convention. It is surprising, first of all, that his solution to the *kachaavalai* problem contained not one reference to state law or policy. Was this coincidence? Or are fishing rights issues tackled outside, or in the margin of state law? I shall suggest that state law has neither the range nor the flexibility to be used in cases such as this.

### Marine Fisheries Regulation Policy

The Tamil Nadu Marine Fishing Regulation Act of 1983 forms the main body of legislation on fishing within territorial waters. The troublesome circumstances which prevailed in the state's fisheries in the decade prior to its conception largely defined its content. Since the birth of the trawling sector in the 1960s, the conflict between trawler and artisanal fishermen had developed alarming proportions. In the course of years, it claimed many lives, caused large-scale destruction of capital in the form of fishing gear, and triggered repeated law and order problems. It became an important political issue after large-scale riots took place in Madras in 1977 and 1978. The designers of the Act of 1983 aimed to defuse this intractable problem by separating the two groups of fishermen geographically and in time. They paid rather less attention to other issues involving fishing rights, and opted for a formulation which left open the possibility of further regulation.

Section 5.1 (*a-d*) of the Act thus empowers the government to introduce supplementary regulations on fishing activity in certain areas, during defined hours, or with certain kinds of fishing craft and gear. Section 5.2 specifies the main grounds for such regulations as follows: the need to protect the interests of a particular group of fishermen, the conservation of fish stocks, and the maintenance of law and order. The possibilities for supplementary regulation offered by Sections 5.1 and 5.2 have never been used, however. Except for the mentioned restrictions on trawling, the Tamil Nadu government has not made any kind of time regulations, area closings or limitations on fishing craft or gear in the state. This means that the state regulation 'map' contains many white and

uncharted patches.

It would be unfair to blame this state of affairs on the Fisheries Department. In fact, the department has submitted several suggestions for supplementary regulation to the state government in the past decade, but these have been kept pending for no other plausible reason than bureaucratic inertia. The result is that officers of the Fisheries Department are now highly reluctant to propose use of the legislative opportunities offered by Sections 5.1 and 5.2 of the Act, and instead prefer other avenues.

Recently the Fisheries Department has sought to make more fundamental changes to the Act of 1983 by deleting problematic sections and adding new clauses. One of the suggested changes relates to Section 5.1. As it stands, Section 5.1 provides the state government with the power to regulate, restrict or prohibit fishing activities. Henceforth, if the department's advice is heeded, the power to issue notifications on fishing rights will be delegated to the district level and thus will become the prerogative of District Collectors.<sup>8</sup> Department officers believe this would reduce red-tape and speed the process of state law-making; it would also make it easier to adapt regulations to the conditions of individual districts. If this amendment is passed, every administrative district thus might develop a different set of state fishing regulations.

These are all plans for the future. It is interesting, however, that the Fisheries Department plan mirrors the current ground-level situation in Tamil Nadu. In fact each district already has a different, albeit non-codified, set of fisheries regulations as a result of such factors as a varying implementation of the Act of 1983, the existence of court orders applicable only to a particular district, and informal agreements between fishermen groups. The suggestion to amend the Act of 1983 and delegate powers to District Collectors would probably reinforce the current process of differentiation and give it a more stable legal basis.

As for the *kachaavalai* case, it is clear, first of all, that the state cannot utilize its legal system to regulate cases such as this for the simple reason that its marine fisheries law does not take account of them. Government officers find no legislative foothold with which to judge disputes over fishing practices in the artisanal sector.

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<sup>8</sup> Each administrative district in Tamil Nadu is headed by a Collector. The nomenclature is a legacy from British times, when revenue collection was the main task of administrators.

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Fisheries Department officers are free, however, to suggest supplementary regulation on the basis of Sections 5.1 and 5.2 of the Act of 1983. Such regulations could be drafted according to the insights of officers or of fishermen. In the *kachaavalai* case, the latter option is not necessarily out of the question. After all, fishermen motivated the *kachaavalai* ban as a result of their concern about the future of the resource, and Section 5.2 of the Act of 1983 mentions conservation as a valid ground for supplementary regulation. Moreover, the *kachaavalai* ban was not a local affair, but one with a larger geographical reach. There is no reason why department officers should not investigate the value of the ban according to their own scientific norms and, depending on the result, submit it for codification. One important reason they have not done so follows from the sluggishness of the bureaucracy and the overall reluctance of officers to draft new legislative proposals.

A Fisheries Department officer's matter-of-fact answer to the question of why the department did not choose to codify the *kachaavalai* ban suggests other factors, however. He said that “it was simply not necessary”. This statement has at least two dimensions. It contains an implicit reference to the Fisheries Department's objectives with regard to regulation: “it was simply not necessary [because we achieved our goals anyway]”. A study of the Fisheries Department's regulatory practice reveals a concern less with resources than with conflict management (Martin 1979: 283-4). This order of priorities is also revealed in the history and content of the Tamil Nadu Marine Fishing Regulation Act of 1983. Although it mentions conservation, the legislation is mainly aimed at restoring harmony between warring factions of fishermen.

The Fisheries Department officer's statement also hints at an approach other than legislative codification: “it was simply not necessary [because the problem was solved differently]”. At the heart of this other approach lie particular conceptions of fishermen regulations and institutions which, from the viewpoint of many department officers, are better left unformalized.

Before continuing on this point, I have another issue to address, the legal status of the agreement reached in the *kachaavalai* case. It is difficult to give an unequivocal answer to this question. It appears that agreements such as that signed by the representatives of the three village councils on the *kachaavalai* can be and sometimes are taken to court. There they are challenged on the basis of the fundamental rights enshrined in the Constitution of India. Article 14 thus asserts that “the State shall not deny to any person equality before the law” and Article 19 (g) provides that “all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business” (Republic of India 1995). Although these rights normally carry substantial weight in jurisprudence, informed officers

feel that the judge would probably uphold the agreement in instances such as the *kachaavalai* case. For one, the agreement bears the signatures of two senior government officers. Furthermore, anyone who complains will inevitably be a member of the three hamlets concerned, and the judge will conclude that he is bound by the signatures of his representatives. This highlights a jurisprudential tradition of upholding council law. My informants emphasize, however, that they do not expect anyone to take this agreement to court, and thus the court scenario is only speculative.<sup>9</sup>

### Attitudes Toward Fishermen Regulation

The peace meeting on the *kachaavalai* hinged on the presence of hamlet delegates, which was considered by government officers to be imperative. In fact, when one delegation failed to arrive, the Assistant Commissioner sent a police van to fetch it. From the onset of the meeting to the conclusion, organizers were eager to avoid giving the impression that they were forcing a decision down the participants' throats. This meeting was meant not to announce a government order, but to weld together the three hamlet councils with a mutually acceptable agreement. Thus, when the Fisheries Department officer launched his proposal to ban the *kachaavalai*, he chose his words carefully, in order to avoid terms which might suggest even the slightest directive. Although cloaked in government authority, the speech which followed contained no more than a summary of the arguments raised by the majority group of fishermen opposing the ban. From beginning to end, the officers stressed the responsibility of the hamlet councils for monitoring and controlling the agreement.

Such respect for the hamlet councils is common in the Fisheries Department. It is rooted in an appreciation of both the continuing authority of these institutions within the fishing community and the limitations of the Department's influence. Fishermen have a vibrant sense of self-determination and form a closed front against perceived intruders. People with business in the fishing community are well-advised to follow the community channels of authority. Officers of the Fisheries Department are foremost among them.

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<sup>9</sup> One of the obvious reasons for public hesitancy in taking matters to court is the fact that "courts cannot provide quick, decisive outcomes" (Mendelsohn 1981: 825) and cases are often kept pending for many years. Rather than looking to the courts for solutions to disputes, litigants are often more interested in furthering them (Cohn 1959: 90). The crisis of the Indian legal system (Baxi 1981) - which irrefutably influences the strategic actions of law-makers, enforcers and the public alike - is beyond the scope of this article.

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However, officers' conception of the hamlet councils goes further than a recognition of their mediating role. It includes a sense that there is a separate field of jurisdiction which should not be trespassed upon. The officer involved in the *kachaavalai* case had thus proclaimed his indignation in another instance when a government department overruled a hamlet council decision. He commented that “officers shouldn't get involved in council matters or in their fields of jurisdiction”. His dismay was based more on a body of collective experience than on a moral view. In fact, Fisheries Department officers have bad memories of times they tried to steer events in fishing communities, only to find that their often well-intended efforts generated waves of resistance. Time and time again, department officers stressed their experience that fisheries regulations must emanate from the fishermen themselves if they were to be successful. Otherwise, the officers explained, regulations stood a large chance of dying an untimely death. Introducing measures which lacked fishermen support was overplaying one's hand. From this point of view, the *kachaavalai* meeting was well executed. Rather than introducing 'foreign' measures, the officers made careful use of local knowledge and opinion in order to reach a locally acceptable solution.

Despite endorsement of the councils' right to manage local affairs, including the definition of fishing rights, Fisheries Department officers do not always respect the councils' style of functioning. They blame the unevenness of council decisions and point out that the quality of hamlet councils depends on the availability of competent leadership. They also argue that hamlet leaders do not always act in the common interest and sometimes take money from interest groups in exchange for a favourable decision.

Then what do Fisheries Department officers think of the regulations drafted by the councils? Do they feel that these regulations fit in with the imperatives of scientific resource management? The speech given by the officer at the *kachaavalai* meeting suggests an endorsement of fishermen regulation and of the arguments on which it was based. The officer verbally accepted all the reasons fishermen gave for banning the net and acted as if the reasons were part of a conventional scientific knowledge underwritten by the Department. In fact, however, this was not the case; various officers and marine scientists expressed strong opinions that the fishermen's fears about the *kachaavalai* related more to superstition than to objective observation.

The scepticism with which Fisheries Department officers view fishermen regulations and their underpinnings has a history that begins in the post-Independence era. Specific preconceptions of the nature of fishing communities and of fishermen's reactions to change underlay the modernization drive which

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began in Indian fisheries in the 1950s. Written on the eve of the announcement of substantial government fisheries programmes, the Handbook of Indian Fisheries provides the following illustration of these early viewpoints: “At present the fishing population is illiterate and occupy a very low position in the social scale. Consequently, they are *highly conservative and reluctant to adopt new ways and methods* in their profession” (Chopra 1951: 124; emphasis added).

The idea that fishermen are inherently conservative shaped government thinking in the following decades.<sup>10</sup> At regular intervals Fisheries Department officers noted that the artisanal fishing population was blocking well-intended changes. The introduction of nylon webbing that replaced cotton, jute and coconut fibre in the fabrication of nets from the late 1950s on is a case in point. This resulted in extensive bans, for fishermen down the coast feared that nylon caused excessive bleeding in fish and would force fish stocks to leave the inshore areas. In an interview, a senior staff member explained that he and other Department officers believed that this form of fishermen regulation was rooted in illiteracy and ‘crude notions’:

*We* knew the advantages of the technology, and wanted them to use it. We were confident that in the long run their attitude would change. We didn’t counter it directly, no. But we let people who wanted to use the new filaments use them.

A full analysis of the history of interaction between the Fisheries Department and the fishermen population of the northern Coromandel Coast must be left for another occasion. The gist of contemporary bureaucratic opinion is clear, however. Officers feel that fishermen regulation stems from unscientific, primitive thought and perhaps from jealousy, and that its content generally need not be taken seriously by modern fisheries managers. This attitude explains the lack of scientific follow-up to concrete instances of fishermen regulation; for example, no effort is being made to discover whether the apprehensions fishermen expressed about the use of the *kachaavalai* had a scientific foundation. It also helps to explain why department officers neglected to submit the *kachaavalai* ban for codification in a standard legislative draft and to introduce it to other coastal areas, an action they might well have taken if the ban had been treated seriously.

So why did the Fisheries Department officer *act* as if he was taking the *kachaavalai* ban seriously, if he and his colleagues entertained fundamental doubts

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<sup>10</sup> Also see Kurien (1985: A-72) for a discussion of the ideas circulating in government circles about artisanal fishing communities.

about its usefulness? I have already provided the contours of an answer to this question, but a final element emerges in a review of the Tamil Nadu government’s approach to incidents of social unrest in the fishing sector.

### The Law and Order Perspective

Let me re-emphasize some crucial facts from the *kachaavalai* incident. The *kachaavalai* ban captured the attention of the authorities only when it became so controversial amongst fishermen that it escalated into a major physical fight. At this point it attracted the attention of the Police Department which was interested in restoring a semblance of normalcy. The Assistant Commissioner of Police invited the Fisheries Department to take part in deliberations only after the initial peace effort had failed. From the Assistant Commissioner’s point of view, the Fisheries Department’s involvement in the second attempt to make peace was intended to establish a solid foundation for a successful imposition of law and order. In this case the Fisheries Department officer appears to have played no more than a supportive role. This is illustrated by the fact that the meeting took place in the police station and not in an office of the Fisheries Department.

Generally speaking, the Fisheries Department seems to follow a reactive rather than a proactive policy towards fishermen regulation. It becomes involved in matters of regulation only after problems arise and it is imperative that they take measures to prevent a potential disruption of law and order. Often, as in the *kachaavalai* case, this means that police take action first. The Fisheries Department is involved later, if at all, and its efforts are mainly aimed at mediating between police officers and the distrustful fishing community. Agreements with and between hamlet councils, such as in the *kachaavalai* case, are from this point of view more an instrument of law and order than of resource management.

However, it is not only in assisting the Police Department that the Fisheries Department takes on a law and order perspective. Numerous officers, the majority of whom do not come from the fishing community, confided their fear of fishermen when they were incensed. Their anxiety stems from a popular perception in Tamil Nadu that fishermen are both fearless and aggressive. In some cases, Fisheries Department officers opted to risk incurring the wrath of their superiors rather than take measures which ran counter to the wishes of the fishing community.

Although they do not believe in fishermen regulation as an instrument of resource management and do not give priority to resource management themselves, Fisheries Department officers are required to play a part in quelling the

disturbances sometimes caused by such regulation. Eager to achieve workable compromises, they don cloaks of opportunism and give agreements reached in peace meetings no more weight than necessary. When fishermen forget them, the agreements fade into oblivion in department archives as well, having outlived their purpose. This analysis holds true for the *kachaavalai* ban, as a later conversation with the Fisheries Department officer revealed. He emphasized that the settlement of the *kachaavalai* dispute had been no more, but also no less, than “a matter of maintaining peace”.

## Conclusions

This paper focuses on an instance of controversial fishermen regulation that spread to a wider public arena. I analyse the reaction of Fisheries Department officers involved in this dispute, and come to the conclusion that the officers made no attempt to interpret the dispute in terms of state fisheries law, but rather upheld the ban of the *kachaavalai* according to the demands of the majority of the fishermen. However, their efforts remained half-hearted and the ban was neither formally promulgated nor extended to other parts of the coastline. Thus a question as to the nature of the accommodation of the state to fishermen law arises. In investigating this matter, I took three steps. I first considered the state fisheries law map, but discovered that this contains many blank areas and is not applicable to the issue at hand. Moreover, the procedures to convert fishermen regulations into state law prove to be cumbersome. I then examined the dominant perceptions of fishermen institutions and regulations. I concluded that Fisheries Department officers respected fishermen councils because of their enduring authority within the fishing community. On the other hand the department had a tradition of dismissing the substance of fishermen regulation as manifestations of superstition and unscientific thought. Finally, I examined the attitude of Fisheries Department officers and found that it was dominated by a law and order perspective aimed at soothing conflicts rather than at investigating their roots. This is not only the role law enforcement agencies expect them to play, but also that implied by departmental policy, in which resource management has a low priority.

It is clear that, although state fisheries law theoretically applies to the same situations as fishermen law, the two legal systems lead a largely separate existence. State law ends where fishermen law begins, and where fishermen law is effective, the state sees little reason to become involved. It is only when fishermen are unable or unwilling to resolve disputes themselves that the government intercedes. This conclusion was affirmed on the macrolevel by the Marine Fishing Act of 1983, which addressed the conflict between artisanal and trawler fishermen, but only after fishermen councils demonstrated their powerlessness to contain it. The *kachaavalai* incident provides another example

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on a more local level.

The ‘separateness’ of the two legal systems manifests itself on a different plane as well. Economic concerns, which include notions of ecological harm, play an important role in fishermen regulations; the state, however, approaches the disputes which come to its notice mainly from the viewpoint of conflict management. This important difference is not always apparent. An innocent observer might thus conclude that the participants in the peace meeting on the *kachaavalai* shared a concern about the ecological harmfulness of the net, whereas in fact their interests were quite different.

Fisheries Department officers stand at the interface of the two legal systems and bear substantial responsibility for adjustments, especially in times of crisis. As state fisheries law provides few footholds to cope with this complex task, officers of this department have developed an independent body of conventions over time. One of their strategies in instances such as the *kachaavalai* dispute is to bolster fishermen law and the institutions enforcing it.

What does the *kachaavalai* dispute teach about the presumed dominance of the state in a situation of legal pluralism? If one asked Fisheries Department officers about the dominance of the state, their response would probably be sceptical. Their experience in handling fisheries disputes has revealed a sense of powerlessness and limited manoeuvring space. For them it is clear that fisheries law cannot be imposed; one can only hope to convince or co-opt the fishermen or, more sensibly, to make use of their institutions to achieve one’s own ends.

However, this ground-level perspective is not the only reality. One must first enquire whether the term domination is defined sufficiently clearly. One question concerns the issue of potential or real domination. The state does not lack the ability to impose its will if it commits its manifold resources to this purpose, but in practice this is seldom done. The actual influence of the state on a given sector differs from its potential power, exercised under special circumstances.

Three variations of the state’s possible role in dealing with other legal systems emerge from the literature on the subject. At one end of the continuum stands the possibility of non-involvement; the state is not interested in activities which are governed by another legal system, possibly because of their economic unimportance (F. von Benda-Beckmann 1995a: 3). Schlager and Ostrom apply this to the fisheries field, saying: “In many instances government officials simply pay little attention to inshore fisheries, leaving fishers with sufficient autonomy to design workable arrangements” (Schlager and Ostrom 1993: 19). At the other end stands the possibility of a state which, for reasons of economics or ideology, is

highly interested in the activities governed by another legal system and makes successful attempts to bring them under its own control (McEvoy 1986).

A middle ground exists, however, between the two extremes of non-involvement and domination, in which the state wishes to gain control but is unable to do so. Thus in writing about irrigation policy in southern India, Wade (1988: 36) concludes that “the state continues to have a limited ability to reach into villages and push aside or absorb systems of rule that stand in its way; that is, a limited ability to control or meddle”. The counterpart legal system in this situation is capable of partial resistance and generates what Moore (1973) calls a ‘semi-autonomous social field’. This would appear to apply to the Tamil Nadu fisheries field as well. The state might desire greater influence, but is countered by a strong sense of self-determination among fishermen.

Academics in the field of legal pluralism recognize semi-autonomous social fields both in the West and in post-colonial societies, and there is a tendency to treat the two situations as being analytically similar. This counteracts the thrust of an earlier school of legal scholars, that stressed the radical differences between the two settings. As Hooker points out, legal pluralism in post-colonial societies is the result of “the transfer of whole legal systems across cultural boundaries” as well as of the “uneasy coexistence” of colonial law and indigenous law. Not only is one law system in origin dominant over the other, but also the principles underlying them “do not combine easily with each other” (Hooker (1975: 1-2). Merry shares this opinion, and discusses “normative orders that are fundamentally different in their underlying conceptual structure”. According to her, the situation in the ex-colonies varies from that in the West where non-state legal systems “blend more readily into the landscape” (Merry 1988: 873).

I believe that the differentialist position provides greater analytical gains. This is true especially in considering the nature of the domination of the state over alternative legal systems. In the case of the fishermen councils of the Coromandel Coast the alternative legal system has a long tradition of autonomy as well as a conceptual structure radically different from the dominant one. Thus state dominance is likely to be of a fundamentally different order than it would be in a society of greater cultural homogeneity where the alternative system developed along the fringes of state power.

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