

## BOOK REVIEW

Franz and Keebet von Benda-Beckmann and André Hoekema (Guest Eds.), *Natural Resources, Environment and Legal Pluralism. Special Issue of Law and Anthropology: International Yearbook for Legal Anthropology* (René Kuppe and Richard Potz, eds.), Vol. 9. The Hague, Boston, London: Martinus Nijhoff (1997)

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The IXth International Symposium of the Commission on Folk Law and Legal Pluralism was held in Mexico City from July 29 to August 5, 1993, as part of the XIIIth World Congress of the International Union of Anthropological and Ethnological Sciences. Three sessions were held within the panel on natural resources, environment and legal pluralism, and this volume (with the exception of two articles) represents a cross section of those sessions. A survey of the background of the contributors gives one indication of why the work of the Commission remains vital and challenging. The authors include three legal practitioners (one working on a Ph.D. in anthropology at the time), four professors of law (a number of whom also hold degrees in anthropology), one agricultural engineer, one rural sociologist, one intern at the World Bank, and several anthropologists. This multidisciplinaryity has always been a feature of the Commission, and unlike many such organizations the Commission has never suffered from insurmountable problems of intellectual communication. Indeed, the tensions created by different theoretical approaches are generally very positive. This volume is an example, in that the articles are an excellent mix of practical and theoretical perspectives.

In addition to the diversity of disciplines, the volume covers a great deal of ground topically. The geographic areas discussed include Alaska, the Amazon, Australia, Cameroon, Costa Rica, Mexico, Peru, the Philippines, Rwanda, Venezuela and Zimbabwe. The natural resources include land, water, wetlands, forests, offshore resources, and game animals. The players involved in the struggle for control of such resources include indigenous peoples, multiple ethnic groups, regional governments, state governments, transnational corporations, environmental groups and international agents. Finally, although the overarching

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theme of the volume is the incompatibility of western and nonwestern property systems, many other sub-themes can be traced within this generic discussion.

The volume begins with two valuable theoretical contributions. The introduction, by Franz and Keebet von Benda-Beckmann, concisely outlines the global sources of conflict when it comes to exercising rights over resources: conflicts over whose law applies, conflicts over whose categorization of 'peoples' applies, conflicts over the compatibility of legal concepts and ultimately conflicts over who gets what resources and why. The following article by Franz von Benda-Beckmann carries many of these themes further, particularly the issues of conceptualizing types of persons: citizens, strangers, and indigenes, and how these categories are at work in multiple normative orders which attempt to regulate access to resources. In this paper, F. von Benda-Beckmann makes a strong case for "a radical analytical notion of law/legal pluralism" as a vital prerequisite for any comparative approach (2). He also provides an extremely useful working definition of law (8), and a discussion of the debate over the concept of legal pluralism including its methodological utility and degree of political engagement. This is an article I will be assigning to my students in the future.

The case studies begin with a contribution by June Prill-Brett. This is a continuation of her uplands research in the Philippines, and provides an update on earlier Commission publications which covered the land reform debates in that country. In this paper, she contrasts local regimes of resource control with those introduced by the state, followed by a discussion of the consequences of conflict between these two normative orders, including widespread environmental degradation from excessive logging and soil erosion. The Post-Marcos political environment has been struggling to deal with these problems, using a series of acts which taken together, offer increased land security for uplands peoples. While Prill-Brett acknowledges that these are currently 'paper tigers' for the most part, she is optimistic that they offer the best hope, particularly for legitimating communal holdings in the state law context. In contrast, Monique Nuijten's contribution examines *ejido* lands in Mexico, and shows how the laws are manipulated by powerful caciques to erode communal rights. Her research in the valley of Autlan links this manipulation to irregularities during the establishment of the *ejidos* in 1924, to subsequent local administrative battles, and to the over-bureaucratized nature of the state institute responsible for administering the *ejido* system. Given that even this highly manipulated *ejido* system was further eroded by legislation in 1992 which was designed to free *ejido* land from cumbersome restrictions, Nuijten does not seem hopeful that "modernization" of the *ejido* system will result in "legal security" or in increased productivity (102).

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Using a very different approach, van de Giesen and Andreini write about the use of scientific/technical knowledge by state bureaucrats to create resource management systems that serve the interests of a narrow sector of society. In a study of the wetlands in two African countries, Zimbabwe and Rwanda, van de Giesen and Andreini follow a situation in which local farmers have expanded cultivation from uplands areas into wetlands. Given that this is a recent innovation, these farmers have weak tenure both within the local normative order and within the state legal system. But the situations in Zimbabwe and Rwanda have developed in sharply different ways. Zimbabwe tries to legislate protection of the wetlands, ostensibly for conservation purposes (meanwhile allowing the more destructive cattle grazing), while in Rwanda the government actively supports cultivation of the wetlands using scientific/technical arguments based on 'efficiency of production' and 'agricultural development'. An interesting complication in both cases is the struggle by the local political administration to maintain control over resources in which individuals try to create private rights. Cyprian Fisiy documents a similar situation of colonization of new farm lands in the northwest Cameroon, but adds complexity to his analysis by tying changing rights in resources to questions of male versus female access. In his case, the commercial exploitation of tree bark for pharmaceutical use, sanctioned by the state, has opened up areas formerly under interdict under customary law. Since foreigners suffered no supernatural sanctions when they invaded the realm of the forest gods, local people quickly followed suit, with severe ecological consequences. Expansion into former forest lands has come about at the same time that the collapse of coffee prices has led to a male invasion of the formerly female purview of subsistence vegetable gardening. Women are being marginalized, having lost access not only to the most fertile lands for family food production, but also opportunities to sell surplus vegetables for cash.

The two contributions from Australia are both framed within the post-*Mabo* legal environment. In the *Mabo* case, the 1992 ruling by the High Court of Australia stated that the legal basis for ignoring aboriginal title was invalid and that 'communal native title' constitutes a prior and legitimate title where it can be established. In the Kimberley region of Western Australia, however, David Mardiros found that successive state governments have refused to follow the federal government's lead in enacting legislation that recognized some form of native title. Such lands as were set aside in trust for natives, remain under the control of a state-appointed body. Additional lands, made available under 'lease' arrangements are insufficient for the economic viability of native communities while economic exploitation of lands outside of leaseholds has been resisted by state officials using excuses of conservation, land management and environmental protection (149). Efforts by the federal government to move regional officials into alignment with the rest of the country have been

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effectively resisted by conservatives using the rhetoric of state/national power politics. In a complementary contribution, Richard Cullen uses what he characterizes as an "orthodox" approach to understanding the implications of *Mabo* for any Traditional Native Property Rights in offshore resources (173). In his opinion, various legislative enactments of the Australian Commonwealth government (most notably the Seas and Submerged Lands Act 1973 and the 1979 Australian Offshore Settlement package) have extinguished whatever native property rights may have existed in offshore resources, with the possible exception of a food fisheries (170). This is especially the case since *Mabo* explicitly links native claims to survival of a particular group with a particular relationship to a particular territory "pursuant to the laws and customs of that group" (162). In Cullen's view, prior use of the marine resources in Australia was rare enough to make such claims difficult to demonstrate using the criteria allowed under the *Mabo* decision (173).

The volume then moves on to two contributions located in the extreme north - the Canadian Northwest Territories for John Bayly and Northern Alaska for Stephen Conn. Bayly examines the case of a prototype Wildlife Management Board in the Northwest Territories, which attempted to integrate aboriginal values and ethics with those of the dominant society. This Board existed for only four years (1987-1991) before lack of effectiveness led to its downfall. One of the problems was that the government of the Northwest Territories set the agenda for the Board's discussions by referring troublesome cases to it and then agreeing to recommendations only when they coincided with the approach the government had already decided to take. Initiatives that came from native communities were not given any government support. Bayly notes that one problem the Board faced was its emphasis on government solutions rather than on working with communities to develop public education or train future generations of hunters (208). So long as future management bodies try to become agents of the state, Bayly predicts a similar fate for them. In Northwest Alaska, Stephen Conn found that local communities were faced not only with the erosion of their rights in land and resources, but with the poisoning of those resources and ultimately of the people that relied on them. While many Canadians and Americans are familiar with the very real contamination from nuclear fallout in the Arctic Circle, few are aware that such contamination was on occasion intentionally injected into the environment in order to study the results on local populations (216). In 1962, American radioactive tracer experiments exposed Alaskan natives to nuclear material directly and also indirectly through storage site contamination of the environment. Efforts by local natives to establish how much radioactive material was imported into Alaska for these tests, and how much remains in the state, have led to direct threats from state and national bureaucrats that they will 'walk away' from clean up of the dumps (222). Stephen Conn charts the difficult and so far unsuccessful attempts

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by local natives to achieve justice and notes that in this struggle, very little support has been offered by government, international bodies or environmentalists.

The next three contributions in the volume cover Latin American case material. The first is an article in Spanish by Monica Ludescher on indigenous Peruvian communities of the Amazon. I am unable to review this article as I do not read Spanish. This is followed by an article by René Kuppe on Venezuela, and one by Willemien Brooijmans on Costa Rica. Kuppe examines the legal status of land rights for the Amerindian groups of Venezuela, where aboriginal original title has never been recognized, and where the twin grip of agrarian development and environmental protection have squeezed aboriginal communities out of access to resources. On one side, the Agrarian Reform Law of 1960 has been allocating *tierras baldias* or public domain lands (the very lands that Amerindians occupy), to agriculturists with insufficient land of their own. While this Agrarian Reform Law also protects the rights of indigenous peoples to make traditional use of the territories they inhabit, the Institute for Agrarian Reform has followed an assimilationist policy by making native communities the target for (largely insecure) commercial farming land grants. On the other side, many native territories fall within so-called 'protected areas' in Venezuela, which while not protected from logging or mining operations, are subject to restrictions on land titling for agriculturists. The effect then of environmental protection plus agrarian reform has been to steadily erode traditional rights of occupation and use for Amerindian communities. Brooijmans carries the environmental protection theme further as she examines what happened on the Plains of Tortuguero when "concern for environmental degradation" justified intense international interference in the uses to which land was put (262). This region is one in which recent colonizers have created agrarian operations in a region which the international environmental movement has targeted as an endangered ecosystem. The environmental movement has been able to define not only what constitutes ecological problems in the region, but also what solutions should be followed to remedy the situation. Their view is that nature must be protected from local land users. This has had a significant impact on the definition of property rights, on property values and on the social organization of land users and their view of outsiders (295). The resulting legal and bureaucratic jungle rivals the rainforest.

Finally, Keebet von Benda-Beckmann rounds off the volume with an excellent article on the tricky alliance between environmentalists, human rights activists and indigenous peoples' organizations. While indigenous peoples have made some inroads internationally in claiming human rights at a collective level (315), and while environmental groups often champion the notion that these indigenous human rights should include a viable 'habitat', many dangers lurk in this twin

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pronged protection for native peoples. First of all, a stereotypical image of "forest peoples as custodians of nature", while a positive view, also ignores the many indigenous people who are neither forest dwellers, nor able to manage their resources in a sustainable way. Where there is a backlash, native peoples are easiest to blame for environmental degradation. A higher profile for indigenous environmental knowledge has also led to "severe forms of intellectual expropriation" as international corporations position themselves to benefit (317). The linkage of land/territorial rights to environmental stewardship has also made any concessions granted to native peoples conditional upon the highly contested notion of sustainability and thus extremely vulnerable. And finally, those intermediary organizations created by indigenous peoples to interact with international environmental or human rights agencies, may themselves become excuses to ignore the needs and wishes of indigenous peoples in local contexts (314). As Keebet von Benda-Beckmann concludes, "the environmental issue may be a tricky ally, at its worst it may turn out to be a Trojan horse" (319).

In summation, the volume is valuable on many levels. One would hope that development agencies, environmental organizations, those proponents of western-style land management systems, forestry agencies, transnational corporations and those concerned with indigenous peoples would read and profit from the way that politics, economics, law and natural sciences are combined in this volume. But that seems less likely than exposure of the volume to students interested in the role of law in natural resource management; one can hope at least for that.