

## BOOK REVIEW

Keebet von Benda-Beckmann, *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau*. Foris Publications, Dordrecht, The Netherlands / Cinnaminson, U.S.A., 1984. XVIII + 210 pages.

Francis Snyder

This book is an intricately woven and thoroughly stimulating study of legal pluralism among the matrilineal Muslim Minangkabau of West Sumatra. Based on ten months' rural field research during sixteen months in West Sumatra in 1974-75, as well as on archival and library research, it represents the author's Ph.D. dissertation at the University of Nijmegen. It consists of a series of closely related papers, all either previously or subsequently published elsewhere. Most of the papers follow the same format: the statement of a research question; a brief ethnographic description of aspects of village socio-political organisation; one or more extensive case histories; and a general analysis and theoretical discussion. The whole of the book, however, amounts clearly to more than the sum of the parts. Together the papers not only contribute a most useful analysis of the relationships between procedures and substantive rules in various Minangkabau dispute settlement processes. They also provide a well-informed and thought-provoking discussion of some of the major topics in the anthropology and sociology of law.

The author's field research, conducted together with Franz von Benda-Beckmann (joint author of the last chapter in the book), was carried out with a sample of the approximately three million Minangkabau who live in West Sumatra; roughly another three million are scattered throughout the Indonesian archipelago. This setting is especially apt for a study of legal pluralism, for Minangkabau social organisation, as even the non-specialist will be aware, is incredibly complex. In particular, the conjunction of several elements raises extremely difficult, hence fascinating, issues for the anthropologist or sociologist of law: an emphasis on decision-making by consensus, a matrilineal authority structure, an emphasis on trying

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to make decisions at the lowest possible level, and a pluralistic normative order due to Islamization beginning in the 16th century and then incorporation into the colonial state of the Dutch East Indies in the early 19th century. These elements are alluded to in the book's title, which is a play on the words of three proverbs containing the main principles of Minangabau decision-making.

Amidst this complex setting, the general aim of the research was "to find out how people cope in daily life with a constellation of law which seems to contain so many contradictions" (p. 3). In a clearly written and unusually candid 'Introduction', the author presents the background of the project, outlines her research questions, discusses various methods and problems of fieldwork and outlines the main themes, arguments and conclusions of the subsequent chapters. The research questions (see pp. 6-7) included: Which institutions made up village justice, how were they organised and how did they work? How, if at all, had these institutions been affected by procedures of decision-making by administrative agencies, and more generally by the social and political changes before and after Independence? How did state courts operate in practice? What happened to decisions made by state courts and by village institutions? What were the relationships between state courts and village institutions? Did adat law, applied in different procedures, lead to different decisions? These questions stem at least partly from the author's analysis of her Minangkabau material, and in this book they are posed solely in relation to this specific example. They are in no way limited to this particular ethnographic setting, however, for they encapsulate some of the major issues in the sociology of law.

The various questions are considered, in detail and in specific contexts, in the following chapters. In "The use of folk law in Minangkabau state courts", for example, Von Benda-Beckmann observes that state courts in the central rural part of West Sumatra apply adat or adat law in 86% of all civil disputes. Focussing on the interrelationship of substantive law and procedure, she asks "In what ways does the Dutch type of state court procedure affect the outcome of disputes?" (p. 23). She addresses this question by clarifying what it means to "apply adat law" (p. 21). In order to do so, she develops a model of the process of dispute management. This model encompasses four analytically different stages: (1) presentation of the claim, definition and specification of the issues; (2) provision and evaluation of evidence; (3) final decision; (4) application or execution of the decision. It omits the pre-trial stage, but as the author remarks (p. 34, n. 5), this stage could easily be included. The purpose of this model is to help to identify the various ways in

which law is used, both within a dispute settlement institution and during the execution of the institution's decision.

In evaluating evidence, for instance, village institutions tend to consider all issues involved in a case together, whereas state court judges tend to treat each issue separately. This is one consequence of the use of procedural rules of a non-adat character; indeed, flexible adat rules are often transformed by state procedures into rather rigid norms. Moreover, in village dispute processes the substantive content of norms is not sharply distinguished from procedure; every substantive rule has its procedural aspects. Consequently, in village processes the proper procedures, including the broken stairways to consensus, are the main guarantee of a good solution. In state courts, however, the guarantee of a good decision lies mainly in the substantive content of the rule. Events that are highly relevant in village procedures, therefore, are often considered irrelevant in state courts. This contrast is a particular illustration of the more general point, explored in detail in the last chapter, that state court adat rules ('adat law') differ from adat rules ('the law in adat') used in village dispute processes.

Accordingly, Von Benda-Beckmann argues that norms may be and among the Minangkabau are used differently at each stage of the dispute process. At the first stage, substantive norms help structure the argument and the dispute. At the second, they are used as a standard for assessing relevance and credibility. At the third stage, they serve to justify the consequences attached to the events as constructed by the court. At the fourth stage, as shown more fully in Chapter Five, norms may be partly implemented and have various effects on village dispute processes.

These propositions are considered in the subsequent chapters of the book. "Forum shopping and shopping forums" deals with the first stage. Von Benda-Beckmann shows that forum shopping proceeds first in terms of arguments over jurisdiction. The means of establishing jurisdiction consists of defining the dispute. It is used by both parties and functionaries, because adat procedure is a crucial framework for village politics. Since the colonial government took over most governmental functions except dispute processing, jurisdictional disputes remain an important legal expression of the struggle for power. Such jurisdictional arguments, like the evaluation of the elements of a dispute in terms of procedural arguments, stem from two factors: the socio-political structure of the village and the ways in which this structure is embodied in adat principles.

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Forum shopping is promoted and encouraged, at least indirectly, by state courts. They reinforce the role of adat functionaries, thus tending to ensure that most disputes are processed within the village. For example, only official representatives of a lineage or sublineage may file a suit about lineage property. Most land cases are settled on the basis of witness testimony, and the prime witnesses are adat functionaries. The outcome of many disputes depends on kinship relations, and adat functionaries are experts in kinship knowledge. Finally, disputes can often be decided only on circumstantial evidence, and for this purpose state court judges often rely on evidence of local experts. These factors tend, within limits, simultaneously to strengthen and to control the role of adat functionaries.

The second stage of the dispute process, the construction and evaluation of evidence, is discussed in Chapter Four, "Evidence and legal reasoning". Von Benda-Beckmann analyses the differences in procedure between state courts and village justice which account for a difference in evaluating the relevance and reliability of evidence. She argues that the most important differences lie, not in procedural rules, but within the domains of judicial discretion. This includes the treatment of witnesses, the evaluation of testimony and the evaluation of the relevance of evidence. Like the other chapters, this discussion concerns an aspect of legal pluralism, viz. the situation in which parts of two legal systems are used in the same process. The establishment and the procedure of the institutions in question are based on the state system, but the substantive law is adat. In this context also, Van Benda-Beckmann emphasises the state judges' tendency to distinguish and deal with each issue separately, as contrasted to the integrative approach of village institutions. These approaches represent two different ways of applying norms. Von Benda-Beckmann shows convincingly that these differences in reasoning influence perceptions of what the dispute is about, as well as the evaluation of the reliability and the relevance of evidence.

Among the most stimulating parts of the book, at least to this reviewer, was Chapter Five on "The social significance of Minangkabau state court decisions". This chapter deals partly with the third stage (decision) and mainly with the fourth stage (execution) of the dispute process. In dealing with this difficult topic, Von Benda-Beckmann notes that the post-trial stage has thus far received little attention. Yet, as she points out, "court decisions may be as dead as paper law or ideal rule statements" (p. 103). She presents an admirable, generally persuasive explanation of the reasons for this neglect (see pp. 105ff). Scholars have usually given special, if not exclusive, emphasis to the institutions applying law or exercising

social control. In addition, their conceptions of the field of study have been bounded implicitly by the institutional separation of powers, especially that between law making and application, on the one hand, and its execution, on the other hand.

Von Benda-Beckmann argues persuasively that decisions can have a quite different impact from that foreseen by the court. She shows that "an execution [of a decision] in the sense that everything is completely realised in the way intended by state courts is an exception rather than the rule" (p. 33). The analysis of this impact, in her view, must focus on the social processes in the appropriate social field. The general argument is not of course novel, but the author uses the Minangkabau material to elaborate it in an especially intriguing way. She also employs it as a basis for drawing general conclusions concerning research in the anthropology and sociology of law.

In the village in which most of the author's research was conducted, state court decisions were executed in several ways, and "all decisions had at least some effect" (p. 31). In longstanding property conflicts between lineages or lineage segments, the main type of disputes, state court decisions were granted great prestige. They tended "to be treated .... as a more or less absolute establishment of rights and legal positions" (p. 32). This did not mean, however, that the state court's decisions were implemented to the letter. Instead, as Von Benda-Beckmann shows clearly, the different elements of the decision were often distinguished and separated. Acceptance of the court's view about which events had taken place, for example, did not necessarily imply acceptance of, or compliance with, other elements such as the consequences to be attached to particular 'facts'. Thus, state court decisions were apparently often used incrementally to build up evidence which might eventually lead to recognition of a claimed social status. In other words, they provided additional legitimation for particular social claims or positions. State court decisions thus became an integral part of local village politics. Their main effect often lay in their influence on village dispute processes.

Von Benda-Beckmann thus uses Minangkabau extended cases to show how state law and state court decisions may be transformed into 'folk law' as they enter what, following Sally Falk Moore, she calls a new semi-autonomous social field. On this view, the social significance of decisions can only be understood if close attention is paid to two factors. The first is the ways in which these decisions are interpreted and used by people involved in the dispute. The second consists of the institutions, processes, structures and behaviour which determine

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what happens to decisions once they are rendered; in this instance, this means the political situation in Minangkabau villages.

This view of state court decisions has two general implications, both for the author's model of the dispute process and for future studies in the anthropology and sociology of law. On the one hand, the case as a unit of analysis should not be delimited so as to end with the court's decision. It must necessarily include the post-decision period. Von Benda-Beckmann makes an eloquent and persuasive plea for an open-ended concept of the case. On the other hand, instead of focussing solely on disputes, anthropologists and sociologists of law need to recognise more clearly the interdependence of dispute management and preventive law. Von Benda-Beckmann pays great attention throughout the book to what Dutch scholars have called *preventieve rechtszorg* ('preventive law care'). For example, revising Van Vollenhoven's 1931 distinction between intentional and accidental witnesses, she argues that no witnesses are really accidental. They must be ranked instead according to the degree to which they play a role in preventive law care in village life and to which they are later heard in court (p. 91). This argument, both in its particular Minangkabau and in its more general forms, deserves to be explored further in future work. It represents a potentially important element of the relationship between disputes, dispute processes and what Von Benda-Beckmann calls "trouble-free social life".

Though focussing on the relationship between state courts and village justice, these chapters give special emphasis to the small-scale village context. The broader setting in which these dispute processes occur is treated briefly in the last chapter, "Transformation and change" (with Franz von Benda-Beckmann). This chapter considers two potential sources of legal and socio-economic change: (1) colonial administrative and economic policies, and (2) the description and reinterpretation of Minangkabau adat in terms of Western, usually Dutch, legal thinking. It makes two extremely valuable points. First, Western influences neglected the diachronic conceptualisation of property in adat, as well as the extent to which rules could not be conceived apart from their context (the "action/interaction element"). Secondly, these changes produced two sets of adat law (village justice and state courts), which in any study of legal (or indeed socio-economic) change must be distinguished. The discussion of these macro-sociological and micro-sociological changes in this book is thought-provoking and clear, but nevertheless it is extremely compressed. It deserves to be read together with the joint authors' other publications.

It should be clear that this book provides a rich harvest for a wide range of readers. For the specialist in adat law or Indonesian affairs, it makes a considerable contribution to our ethnographic knowledge and analysis. For the legal anthropologist interested in dispute management or legal pluralism, it represents a valuable addition to the growing literature on the interrelationship of legal institutions, processes and norms deriving from apparently radically different sources. For the student of the sociology of law more generally, it marks a sustained effort to reconsider, on the basis of ethnographic fieldwork, some of the major questions in the contemporary sociology of law.