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Postscript

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This article provides an overview of the special issue devoted to the legacy of Franz von Benda-Beckmann in the field of legal pluralism. It describes the Motivation for the special issue and introduces the various contributions. It finally identifies some common threads, emphasizing that von Benda-Beckmann's most significant contribution has been to put legal pluralism on the academic map.

Keywords: legal pluralism; law; anthropology; von Benda-Beckmann

Introduction

It has repeatedly been observed in this special issue: Franz von Benda-Beckmann was an extraordinary scholar. John Griffiths (2013, 6) describes him in his In Memoriam as “one of the most important anthropologists of law of his generation,” someone who “spoke softly but carried a big intellectual stick”. Much of von Benda-Beckmann’s scholarly life was devoted to exploring, together with a band of colleagues, the phenomenon of legal pluralism. He did so both at a theoretical as well as an empirical level, focusing his own fieldwork mainly in Indonesia.

It is for these reasons that a publication on his intellectual contributions is more than appropriate. Shortly after his untimely death, the executive board of the Commission on Legal Pluralism, in which he had played an important role ever since its establishment in 1981, requested the editors to initiate a commemorative volume that would deal with the range of von Benda-Beckmann’s intellectual interests. The proposal instructed that “every contribution should have a topical rather than a case-study focus, and commence with a review of Franz’s work in this field. This is then expanded into a broader overview of the contemporary state of legal pluralist enquiry, and future research avenues.”

Carefully avoiding the semblance of a hagiography, the editors aimed to elaborate the topics that von Benda-Beckmann had emphatically put on the legal pluralism agenda. After all, being enthused about the potential reach of the concept, as well as of the need to further demarcate this scholarly field, he had made efforts to mark its crucial themes. What is their continued relevance for the field of legal pluralism studies? How have they been absorbed in the academic scene, and what new developments are occurring? These are the questions that prompted the composition of this special issue.

The editors took a twofold approach, compiling on the one hand a list of von Benda-Beckmann’s prominent themes, and second, an overview of potential authors. As for the

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latter, the editors had a preference for authors who were very familiar with von Benda-Beckmann's writings on the topics in question, but would also be able to carry them into the future, anchoring the discussion in the more general scholarly debate. It would take us too far off track to detail the topics we were hoping to have represented in the issue. The present set of papers, however, gathers three important strands in von Benda-Beckmann's work. The first of which, flaunted most famously in his article, "Who is afraid of legal pluralism?" (2002), was theoretical in nature. It dealt with the nature and dynamics of legal pluralism, throwing the gauntlet before scholars who are fearful of the messiness of "living law". The second strand was more specific in nature: it focused on specific themes, such as property, development, politics and natural resources (all represented in this special issue). The last strand was highly context-specific, focusing on the social workings of law among the Minangkabau in Sumatra, Indonesia. Indonesia was the place von Benda-Beckmann returned to, time and again, to attune his theoretical insights to the actuality of a particular social order. It is in a way fitting that his last monograph, realized in collaboration with his partner in life and work, Keebet von Benda-Beckmann, was a historical ethnography of this people and region.

Revisiting the contributions to this special issue

In the following, we discuss the various contributions to this special issue separately, then to highlight some common elements. Bertram Turner's introduction to the issue is, in a sense, the most personal, as the author was working with von Benda-Beckmann during the last, very productive period (2000–2012) of his professional life in Halle, Germany. While giving insight into the broader agenda-setting dynamics of this ambitious academic group, he centres on the way von Benda-Beckmann "designed his version of legal pluralism". Without pretending to be complete, Turner discusses several forward-looking perspectives in the analysis of plural legal orders. Some of them – such as the relationship between law and anthropology and the possibility of comparison across time and place – belong to the essence of the sub-discipline. Topical issues that will remain relevant for a variety of reasons make up the remainder. These include perspectives on the spatiotemporalities, politics, dynamics and transnationalization/globalization of law, as well as its relationship with the domains of economy, development and religion.

The question Gerhard Anders raises is the "identity" of legal anthropology, strung as it were between two academic disciplines. While agreeing, with von Benda-Beckmann and others, that law and anthropology display considerable theoretical, epistemological and methodological differences, he also points out the variations that occur from country to country in the way the social-scientific study of law is shaped. This leads him to conclude that "it would make sense of speaking of a range of different fields loosely connected across national borders" rather than an undifferentiated field of legal anthropology. He highlights von Benda-Beckmann's position as "riding the centaur", and defending legal anthropology as a separate sub-discipline. Throughout this effort, von Benda-Beckmann is described as having been heavily influenced by Dutch *adat* studies, which in the context of colonial and post-colonial Indonesia, claimed space for the existence of customary "living law" and allowed for legal pluralism.

Anthony Good also deals with the comparison between "law" as it manifests itself in different social and cultural settings. Drawing on the debate that took place in the 1960s between the anthropologists Bohannan and Gluckmann, he endorses von Benda-Beckmann's position on the need for an encompassing analytical framework "to bridge the social and theoretical space between small-scale case studies and normative or empirical

generalisation” (von Benda-Beckmann and von Benda-Beckmann 2006, 1). Good subsequently applies a comparative approach to the “folk models” of law as they are applied by professional categories, such as legal scholars and anthropologists, emphasizing the sometimes fundamental differences between them.

Melanie Wiber takes on the topic of property, to which von Benda-Beckmann paid much attention during his career. She employs the vantage point of “property” as a boundary object, located at the intersection of many disciplinary traditions as well as heated normative concerns. Departing from this position, Wiber points out that von Benda-Beckmann’s motivation in repeatedly engaging with other scholars, policymakers and activists “was to encourage more reflection on the complexity of property dynamics” and to warn against standardization. Toward this end, he developed a rigorous framework that distinguishes various layers and elements in property analysis. This “empirically-based, analytically focused approach” was vigorously injected into a variety of disciplinary venues. Throughout this effort, von Benda-Beckmann showed himself to be averse to the normative approach to (privatizing) property that currently enjoys popularity, and constantly drew attention to the power politics involved in developing a “future perfect”.

Dik Roth, Rutgerd Boelens and Margreet Zwarteeven continue the reflection on von Benda-Beckmann’s involvement with property analysis, but concentrate on its relevance for water governance. They point out that the water field in which von Benda-Beckmann involved himself had long been dominated by engineers and economists. His contribution was to draw attention to how local water users, governments and third parties help to shape arrangements for distributing, operating and maintaining water, thereby generating specific forms of “water rights”. Von Benda-Beckmann’s analysis of legal pluralism entailed “a symmetric treatment of different sources of law and rules”, suggesting that customary law was not to be romanticized but examined similarly to state law. Here again, his emphasis was on seeking the nuances of empirical situations and their prevailing “bundle of rights”. The authors conclude their article with a review of three issues in which von Benda-Beckmann made a special mark: the current debate on the human right to water, the question on whether or not customary rights should be formally recognized, and, finally, the ongoing process of glocalizing water governance.

Monique Nuijten takes another direction, investigating the significance of von Benda-Beckmann’s work for the study of power and political agency. She illustrates her arguments with examples from the social movement, Platform of Mortgage Victims, standing up against the surge of house evictions that followed the financial crisis in Spain. Nuijten widens the concept of law and legal system to include the normative registers that marginalized people draw upon when protesting injustice. Their grassroots politics are argued to constitute a counter-hegemonic approach to state law and authority and a good example of legal pluralism. In her view, von Benda-Beckmann’s work is important not only because it allows for the reality of legal plurality, but because he understood law in the context of political encounters and interactions of everyday life.

Jacqueline Vel and Adriaan Bedner finally turn the spotlight on Indonesia and the Minangkabau with which von Benda-Beckmann was concerned throughout his career. They centre their attention on the effects of administrative decentralization and the last book realized by von Benda-Beckmann and his wife on the topic, entitled *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation* (2013). The question they ask is whether the reinstatement of traditional village government (or *desa adat*) in Sumatra, embodied in the “*nagari*”, which the von Benda-Beckmanns describe, is replicated in other parts of the country. Noting that “the work of Franz and Keebet von Benda-Beckmann on village government [...] is

unmatched in its length, breadth and depth,” they point out its utility as benchmark for forthcoming studies on the topic.

Common threads

The contributors to this special issue have highlighted, generally with great appreciation, the manifold contributions von Benda-Beckmann has made to academia and practice. They note that von Benda-Beckmann, as a lawyer turned anthropologist, participated vigorously in the theoretical debates occurring in both disciplinary fields. While appreciating the important differences in epistemological and methodological outlooks, he proved to be a firm defender of the sub-discipline of legal anthropology, advancing a definition of law that was delinked from the state and explicitly allowed for multiplicity. By viewing law as a social fact, intimately related to phenomena as politics, economics, social relations and religion, he gave it a broader, more holistic perspective. This was of course not new – anthropologists had long recognized the embedding of “law” in broader social and cultural wholes (it did create more controversy in the legal discipline). In the late 1970s, however, when von Benda-Beckmann and his band of colleagues launched the “movement” in recognition of the importance of legal pluralism, the anthropological strain was, however, in need of revitalization. His foremost academic achievement has thus been to put legal pluralism on the map.

But von Benda-Beckmann’s work transcended the bounds of academia. Nuijten suggests that his societal engagement was in fact a direct offshoot of his academic approach; after all: “as the von Benda-Beckmanns argued, ‘the most important place to look at the social working of law is in everyday life.’” One could argue that, having been drawn into the “everyday life” of people around the world, who draw on and battle with law, he could not avoid taking sides.

The “taking of sides” was, in his case, always nuanced but none the less forceful. It commenced with his engagement with lawyers deploying (state-bound) normative perspectives to law (a viewpoint that anthropologists, with a lack of societal responsibility, were more ready to accept). Here, von Benda-Beckmann was keen to point out the reality of multiple legal orders enjoying normative legitimacy. Aware of the power differentials that characterize situations of legal plurality, he repeatedly involved himself in debates with the powerful players, such as the World Bank. Turner thus points out that he accepted the World Bank’s invitation “to explain his view on legal pluralism and development without making any conceptual concessions.” Anders likewise mentions that at a certain moment, “he developed a close relationship with the German Development Agency, which he advised on the development of policies that take informal forms of social security into account.”

Von Benda-Beckmann’s engagement with the development discourse took flight during his 10-year period of tenure at Wageningen University, The Netherlands. Many of his insightful publications on development issues date from that time period. Roth et al. thus note his critical role in furthering the science of water management, which had previously been dominated by engineers and economists, and which he infused with a nuanced perspective on water rights. Wiber points out his dislike of “the normative approach to (privatizing) property”. While displaying “an almost allergic reaction to hierarchy and power plays,” as Turner notes, he was also, however, wary of unwarranted romanticization. “As a critical and socially engaged anthropologist he sympathized with those whose rights to natural resources like land and water risk becoming marginalized. However, he did not believe that such marginalisation itself qualified [subordinate] legal systems as better or

more true,” Roth et al. argue. His engagement with activists, which generally took place through the Commission on Legal Pluralism, was thus suffused with a desire to convey a deeper understanding of the multiplicity of law. At the same time, he had a strong commitment “to the protection of the rights of marginalized groups and so-called target populations,” Anders notes, and championed their causes.

In concluding this postscript, we echo Franz von Benda-Beckmann’s former colleagues, Beyer and Weilenmann, who close their *In Memoriam* with the following statement:

Mit seinem wissenschaftlichen Werk und seinem menschlichen Wirken hat er uns allen gleichsam etwas sehr Wertvolles hinterlassen, was seine zu kurze Lebenszeit überdauern wird. Für dieses grosse Erbe sind wir ihm dankbar (Beyer and Weilenmann 2013, 109).

Through his scientific work and his human works he has, as it were, left us all something very valuable. This will outlast his too short lifetime. We are grateful for this great legacy [translation authors].

Disclosure statement

No potential conflict of interest was reported by the authors.

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