

Book Review

- *The Challenge of Legal Pluralism. Local dispute settlement and the Indian-state relationship in Ecuador*, by Marc Simon Thomas. Routledge, 2016

Legal pluralism has provoked many important debates in international human rights law as its formal recognition by the State involves a critical revision of modern concepts of sovereignty, unity, autonomy and territoriality. In *The Challenge of Legal Pluralism. Local dispute settlement and the Indian-state relationship in Ecuador*, Marc Simon Thomas empirically demystifies the main dichotomy that is used to characterize legal pluralism in Latin America; that between customary law and national law. Ecuador is an excellent case to look at since its 2008 Constitution formally recognizes indigenous jurisdiction as equal to ordinary jurisdiction and establishes that their relationship must be governed by the principles of cooperation and coordination. However, and despite several drafts, to date Ecuador has not yet passed a law which regulates coordination and cooperation mechanisms regarding personal, territorial and material jurisdiction. By focusing on how internal conflicts are settled among highland Kichwa indigenous peoples in the parish of Zumabahua, Cotopaxi province, Thomas' legal anthropological study, based on his PhD research, aims to provide an understanding of the daily practice of this formal legal pluralism at the local level within the context of this "legal void" (p. 7). Based on a combination of ethnography and archival research during 2009 and 2010, focused on three cases of local dispute settlement, the book's main argument is that in daily reality legal practices at the local level are heterogeneous, interpenetrated and mixed. This conclusion challenges the conventional view of customary law as being per definition counter-hegemonic and a form of subaltern resistance to national law.

The first part of the book is dedicated to the theoretical and contextual framework in which Thomas' study must be read; it provides the necessary elements to fully grasp the second empirical part. It offers an insightful discussion of the evolution and main breakthroughs in theoretical debates about key concepts in the field of legal anthropology such as customary law, legal pluralism, interlegality and forum shopping. Thomas stresses that these phenomena cannot be studied in isolation from socio-political processes regarding indigenous-state relationships, questions related to multiculturalism, debates about

collective vs. individual rights and concepts of sovereignty. Furthermore, Thomas analyses the socio-political and historical scene of the fieldwork site, the parish of Zumbuhua, by using a wedding celebration narrative which reveals the cohesion and conflict nexus generally present in indigenous communities.

The second part of the book gives way to a rich and diverse empirical landscape by focusing on narratives of local internal conflicts, ranging from disputes over material goods and social relations to homicide. The first case is a description of the legal practices at the office of the *teniente político* in Zumbahua. It analyses in detail the *Rosita vs. Miguel* trial in which marital infidelity, money and physical altercation are the central dispute issues. The case provides a clear example of the interconnectedness between official and indigenous legal ideas and practices, understood in legal anthropology as the inter-legal reality of legal pluralism. Thereafter Thomas moves beyond the locality of the parish of Zumbahua by examining the *Toaquizas family members' vs the Tigua community* case, an internal conflict regarding defamation and intimidation, that the Toaquizas family took to the Court of Justice in Latacunga, the capital of the Cotopaxi province. Here Thomas argues that the legal void regarding coordination rules in the Ecuadorian legal system has given way to conflicts over local sovereignty.

Finally, the book examines the much debated case of *La Cocha-Guantópolo*, better known as *La Cocha 2*, a 2010 homicide case initially adjudicated by the indigenous authorities of the *La Cocha* community, but which ended up at the Constitutional Court. This case of indigenous justice received national media coverage, generally characterizing the trail and the punishments as savage, barbaric and as example of the violation of basic human rights. After public statements by President Correa the Ministry of Justice and Human Rights and The Office of the Attorney General even intervened, asking the five young indigenous men, whom the indigenous authorities had judged for the murder, to turn themselves in to ordinary justice. In this case the “internal” aspect of the conflict became the main legal question, touching the central nerve of the ongoing legal and political debate about the limits of indigenous jurisdiction and boundaries of formal legal pluralism. Based on a detailed legal and political analysis, Thomas concludes that this controversial case reveals that “everything is politics” (*todo es político*) (204p.) as the case pinpointed the power struggles at the national and local level about the definition of the “internal” aspect of the conflict. In fact, and after more than four years, the Constitutional Court decided that cases in which lives of persons - including indigenous - are at stake can only be resolved and punished within the state law jurisdiction. The indigenous movement and (inter)national experts on legal pluralism have perceived this ruling as a serious setback in the protection and promotion of indigenous peoples' rights as it will be guiding future cases involving the jurisdiction of indigenous authorities. The book concludes that legal pluralism does not mean the same for everybody and that its main (both

legal and political) challenge in Ecuador lies at the national level, while at the local level of indigenous communities legal pluralism is just part of daily reality.

This thoughtful book is an important English language contribution to the extensive body of mainly Spanish legal anthropological literature on legal pluralism in Latin America in general and on the challenges of coordination between judiciary and indigenous authorities in particular. Therefore, more in-depth dialogue between the empirical insights of this Ecuadorian case with those of other Latin American countries with high indigenous population, such as Peru, Colombia and Guatemala, would have enriched the theoretical discussion and conclusions. The study would also have benefited from an exploration of legal disputes that go beyond the “classical” indigenous justice cases related to criminal and family ordinary law. For example, an analysis of judicialization cases about natural resource exploitation in indigenous territory through the lens of legal pluralism and interlegality could have strengthened Thomas’ study. These kind of legal conflicts could illustrate a profound legal discomfort by foregrounding questions about modern assumptions about culture, nature and about how the world is made. Nevertheless, this is a compelling book, not only for legal anthropologists but also for legal and human rights scholars who would like to gain a better understanding of legal complexities in societies marked by cultural and legal pluralism.

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