INDIGENOUS PEOPLES, THE ENVIRONMENT AND LAW: AN ANTHOLOGY

BOOK REVIEW

L. Watters (Ed.) (2005). Durham, North Carolina: Carolina Academic Press.

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Post-colonial legal systems often claim to derive their legitimacy from the consent of the governed.[1] Closely tied to this concept is the right to self-determination—the freedom of a people to choose their own political, economic and cultural path. Yet, what can be said of the law when it governs over those who have enjoyed little say in its content and never wholly consented to its application? What occurs, in other words, when people are governed by a legal system that fails to account for their differing values and worldviews? It is virtually impossible to consider the issue of indigenous rights and the law without ultimately confronting this question.

Professor Watters' recent book tackles this fundamental issue.[2] However, he chooses to shift the focus away from domestic legal systems and instead assesses the debate in terms of the ever-expanding body of international law on the subject. Professor Watters spent time in Aotearoa New Zealand as a visiting professor at the University of Auckland Law School. Although one chapter of this anthology uses the 1992 Fisheries Claims Settlement Act as a case study, this book is by no means solely focused on Māori legal issues. Instead, Professor Watters examines indigenous resource claims from numerous other countries in order to compile a formidable collection of case studies. He then attempts to distill these case studies into an "emerging framework" that sheds light on how indigenous resource claims might be settled in the future. Professor Watters is particularly focused on examining how this nascent legal framework for integrating indigenous rights has the potential to positively impact the natural environment and promote sustainable development.

The focus of the book is necessarily broad: simultaneously considering indigenous legal issues, environmental issues, as well as domestic and international law. Such a presentation runs the risk of becoming a "catch-all" exercise lacking in analytical focus and consistency. Fortunately, this pitfall is avoided with useful introductory remarks to each chapter, reiterating the underlying themes of the book and highlighting the essential common threads that bind together an otherwise diverse collection of scholarly work. Bearing this in

mind, throughout the book those familiar with indigenous issues will see numerous areas where further detail and debate are required. The chapter on Māori fisheries claims, for example, is hardly a comprehensive discussion of the issue. However, one must recall that the basic objective of the book is to bring the issues facing indigenous peoples into context, and to link them together with their implications in environmental conflicts in a novel fashion. As such, none of the chapters are designed as stand-alone authorities on the subjects they cover.

Of the themes that run through the book, perhaps none is more prevalent than the relationship of indigenous peoples to the natural environment. Whether in the context of a spiritual and cultural ethos that places environmental values at the forefront of thinking or in daily land use practices and conservation techniques, this anthology reminds everyone that indigenous peoples have a unique contribution to make to international environmental law.

While the post-colonial history of indigenous peoples is frequently a narrative of exploitation and marginalization, this anthology suggests we may stand on the cusp of a new, dynamic stage. For example, the final chapter on globalisation contains two articles that admirably attempt to distill the myriad economic, political, cultural, and technological factors that drive globalisation and assess the impact of the phenomena on indigenous peoples. With much of the driving force of globalisation linked to traditional Western economic objectives, indigenous peoples may indeed have much to fear from yet another onslaught against their basic values and natural resources. On the other hand, the discussion also suggests a brighter alternative scenario—one in which globalisation provides new opportunities for convergence between indigenous societies and the nascent values that will shape tomorrow's global society. The chapter presents the argument that globalisation provides for the possibility of a new "global culture" that transcends traditional boundaries and links both indigenous and non-indigenous societies in a shared set of beliefs, values, and priorities.

In the end, however, one wonders at the viability of this brighter scenario. What has become quite clear—certainly clear upon examination of this anthology—is that the struggle for indigenous rights cannot be decoupled from disputes over the land, resources and knowledge that sustain indigenous cultures. It has been astutely pointed out by many observers that control over economic resources has historically played a crucial role in State formation.[3] Most States view the right to regulate and exploit their resources as an integral aspect of their sovereignty. As such, international law has witnessed significant progress in terms of recognising "non-economic" human rights including various civil, cultural and political rights. However, by tightly linking human rights to economic empowerment and resource control, indigenous peoples face an uphill battle against governments unwilling to surrender control over national resources.

Nonetheless, by skillfully charting developments in the treatment of indigenous rights in international law, and by suggesting a unique way to proceed, the anthology makes a robust contribution to this ongoing debate. In exploring the range of issues affecting indigenous peoples, and in examining a variety of examples to illuminate critical themes in

the quest for environmental justice, this anthology is a seminar in sustainable development from an interdisciplinary perspective. Law is explored with more depth by drawing on the valuable contributions of anthropology, history, political science, and sociology to shed light on the compelling themes that confront the international community. As the line between environmental law, natural resource management, and human rights becomes less distinct, this interdisciplinary approach to law becomes even more indispensable. As with many contributions in this field, the anthology makes a passionate appeal for greater recognition and respect for indigenous rights. However, by using environmental conflicts and sustainable development as proxies to exemplify the implications of failing to secure these rights, Professor Watters shows the true ramifications of the issue in ways that others have not. This important anthology ultimately achieves its objective in laying out a new conceptual framework for approaching the enduring issues of environmental preservation and indigenous rights. It ought to pique the interests of Māori and Pākehā scholars alike who are searching for a way to place Māori issues within a larger global framework and to flesh out the essential commonalities and differences among indigenous resource claims in other parts of the world.

Endnotes

[1] This oft-used phrase is traceable to John Locke who argued that political power "has its origins only from compact and agreement, and the mutual consent of those who make up the community." Locke, J. *Second Treatise of Government* (1690) in R Cox (ed) (Harlan Davidson, Wheeling, Illinois) p 171. Nevertheless, some have argued that "consent of the governed" is impossible to achieve in a diverse polity, and governments that purport to act with such consent often do so at the expense of marginalized groups and minorities. See for example Barnett, R. "Constitutional Legitimacy" (2003) 103 *Columbia Law Review* 111.

[2] This book follows in the path of several previous works that address this fundamental issue. For example, see Anaya, J. *Indigenous Peoples in International Law* (2 ed, Oxford University Press, Oxford, 2004). Anaya's comprehensively updated version of his well-received 1996 book is essential reading for those seeking to understand the broader theoretical framework for the recent integration of indigenous rights and values into international law.

[3] See for example Graham, L. "Resolving Indigenous Claims to Self-Determination" (2004) 10 *International Law Students' Association Journal of International & Comparative Law* 385, 398-405.