

## ELLEN DESMET: INDIGENOUS RIGHTS ENTWINED WITH NATURE CONSERVATION

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With the loss of biodiversity and diminishing abundance of wildlife, effective nature conservation law has never been more urgent. Species are becoming extinct at up to 1,000 times higher than in pre-industrial times,<sup>1</sup> leading scientists to warn that the planet is sliding into the sixth mass extinction.<sup>2</sup> Many of the remnant species-rich enclaves are in areas inhabited or used by Indigenous peoples. In addition to Indigenous legal traditions, in both domestic national law and international law a range of institutions, rules and policies have been adopted that ostensibly recognise the importance of biodiversity to Indigenous livelihoods and affirm Indigenous rights to harvest and manage such wildlife.<sup>3</sup> But many policy and legal issues remain unresolved in this realm, including the status and relevance of Indigenous people's traditional environmental knowledge and the scope for Indigenous involvement in protected area management.

Ellen Desmet's tome, *Indigenous Rights Entwined with Nature Conservation*, provides a timely and significant contribution to the relatively modest literature on this topic,<sup>4</sup> although there is a much larger body of scholarship on human rights and the environment.<sup>5</sup> Desmet, a postdoctoral research fellow at the Human Rights Centre of Ghent University in Belgium, critiques how

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<sup>1</sup> B. Normander, *State of the World 2012: Moving Toward Sustainable Prosperity* (The Worldwatch Institute, 2012), chapter 15.

<sup>2</sup> A.D. Barnosky, N. Matzke, S. Tomiya, G.O.U. Wogan, B. Swartz, T.B. Quental, C. Marshall, J.L. McGuire, E.L. Lindsey, K.C. Maguire, B. Mersey & E.A. Ferrer "Has the Earth's Sixth Mass Extinction Already Arrived?" *Nature* (2011) 471: 51.

<sup>3</sup> B.J. Richardson, "The Ties that Bind: Indigenous Peoples and Environmental Governance" in B.J. Richardson, S. Imai and K. McNeil (eds), *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Hart Publishing, 2009): 337-70.

<sup>4</sup> Some of the significant earlier works include L. Watters, *Indigenous Peoples, the Environment and Law: An Anthology* (Carolina Academic Press, 2004); L. Westra, *Environmental Justice and the Rights of Indigenous Peoples: International and Domestic Legal Perspectives* (Earthscan, 2008).

<sup>5</sup> See for example the *Journal of Human Rights and the Environment*, and D. Anton and D. Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, 2011).

Western nature conservation has been based on 'often flawed perceptions of nature and has frequently entailed a denial of the rights, needs and knowledge of indigenous peoples and local communities' (p. 46). Furthermore, she indicts legal instruments for protected areas and wildlife management that 'sometimes reflect erroneous or romanticized ideas with regard to the characteristics of [Indigenous] communities' (p. 42).

Over some 700 pages of weighty analysis, the author focuses on investigating two overarching questions that relate to current legal developments that touch on Indigenous peoples and nature conservation: 'What exactly does this policy shift mean in terms of international human rights law? And how has this new paradigm been translated and applied at the national and local level?' (p. 2). The "policy shift" in question is from a period when nature conservation law ignored indigenous peoples to an era where it increasingly purports to recognize and respect their rights and interests. Yet, using a combination of human rights analysis and legal anthropological research methods, Desmet finds that many nature conservation initiatives still do not meet the standards of international human rights laws, and at national and local levels there is often a significant discrepancy between legal principle and practice. Her findings are derived not only from a broad analysis of the global and local interface between indigenous rights and nature conservation, including the work of international bodies such as the World Bank and the International Union for the Conservation of Nature, but also an extensive case study based on ethnographic fieldwork of Peruvian nature conservation legislation and its application in the Güeppí Reserved Zone. The book does not offer a one-size-fits-all model of how to reconcile the ecological and human rights dimensions of nature conservation. Rather, the most appropriate legal and policy arrangements are said to depend heavily on each local context and time.

Desmet also draws attention to the need sometimes to accommodate the interests and rights of non-indigenous local communities that may live near protected areas and whose interests, as in her case study of the Güeppí Reserved Zone, can differ markedly from their indigenous neighbours. And within each indigenous community they may be a diversity of conflicting values and preferences regarding environmental protection and economic development. Furthermore, the author persuasively argues that environmental knowledge and wisdom is not exclusively held by Indigenous peoples, and that successful nature conservation may best be secured through decision-making processes that combine Western and local environmental knowledge. Desmet further demonstrates her nuanced treatment of the subject-matter by highlighting how

'not all indigenous practices are necessarily sustainable' owing to 'technical innovations brought along by globalization ... combined with the needs created by the liberal market economy' (p. 63).

The book concludes with an assortment of practical recommendations for lawyers, including on drafting legal instruments and their implementation, which include advice about integration of women's perspectives in decision-making and elimination of anachronistic and paternalistic restrictions such as limiting community hunting to use of 'traditional methods' (p.649). Curiously missing from her analysis and recommendations however are the role of institutional structures. Desmet focuses on rights but says relatively little about the important place of institutional mechanisms such as those established for the joint management of national parks in Australia and the wildlife management regimes created under Canada's comprehensive land claims agreements.<sup>6</sup> Her recommendations also include insightful advice on comparative law research methods and the contribution of ethnographic fieldwork.

With its interdisciplinary style and multi-jurisdictional coverage, Desmet's book will undoubtedly become a landmark reference work for scholars, students and policy-makers around the world interested in the interconnections between nature conservation and the rights of Indigenous peoples. Her volume should also appeal to scholars of human rights law and legal pluralism. The case study of Peru, which occupies nearly half the book, brings into the English environmental and human rights literature an important perspective from Latin America that is often not visible. Readers, however, will likely be frustrated by the book's absence of an index, which is unfortunate given the size and scope of this volume. On the other hand, the tables of cases and legislative materials and the substantial bibliography helpfully direct readers towards further research into this topic. Overall, *Indigenous Rights Entwined with Nature Conservation* is an impressive work that exemplifies many of the hallmarks of legal scholarship at its best.

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<sup>6</sup> See G. Nettheim, D. Craig, and G. Meyers, *Indigenous Peoples and Governance Structures: A Comparative Analysis of Land and Resource Management Rights*, (Aboriginal Studies Press, Canberra, 2002).