

Customary Law and the Evolution of Coastal Zone Management

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ANTHROPOLOGISTS and others concerned with traditional Indo-Pacific fishing societies have suggested that customary law and indigenous legal institutions could provide the basis for the development of modern coastal management systems. The suggestion stems, in large part, from the recognition that fisheries development in the region has had mixed success.

While fisheries production has markedly increased, employment opportunities have diminished, social inequalities have been exacerbated, and peasant fishing households have been further impoverished. Traditional fishing communities have received the short end of the stick: a gift which they are apt to describe in rather more colorful terms.

It seems clear that an equitable system of coastal zone management should pay particular attention to the needs of traditional coastal communities, especially as such communities are often underdeveloped sectors of nations which are themselves severely disadvantaged in international terms.

It seems equally clear that one way to maintain the equity of the local community is to incorporate the basic principles of customary law within the national legal system. If this is to be successful, however, it is important not to underestimate the difficulties.

Some idea of what is involved in such a task can be gained from an examination of attempts by Sri Lankan governments, both colonial and post-colonial, to codify customary law in the nation's beachseine fishery.

Beachseines, which measure half a

mile along each wing and take a ton of fish in a good catch, were introduced by fishermen from south India in around 1870. A century later, they still supplied a third of the nation's catch. Built of local materials, they are laid from an oarpowered craft and then hauled up the beach by a full-time eight-man crew and as many as 100 part-time participants.

A simplified account of the customary law governing operation of these nets in southern Sri Lanka can be provided in terms of the answers to three questions. The first is who could use a beachseine at a particular site?

Beachseines require an area of 6,000 square yards with a sandy bottom, and all sites suitable for their operation were controlled by a named kinship group. The kinsmen, who were the descendants of the putative founder of the site, were alone entitled to build a net or join its crew.

The second question concerns the ownership and maintenance of nets. Each net was divided into eight shares which, like stock market shares, applied to the enterprise as a whole, rather than particular portions of the net. Shares could be freely bought, sold or used as security for various forms of mortgage. A shareholder provided one crewmember, himself or a nominee, each time the net was used.

The third important question concerns access to the water, for at most sites there were many more nets than could be used in a day. All nets were named and net owners were aware of the nets immediately preceding and following theirs in the sequence.

Additional rules covered such fac-

tors as the relative shares of the proceeds due to net owners and crewmembers, the organization of ritual activities, and the settlement of disputes. In the context of a semi-subsistence peasant economy, these were equitable and highly efficient procedures. Kinship control of the site kept the resource in the hands of the local community and made it relatively easy to settle disputes. Shareownership made it possible for poor fishermen to own nets costing more than twice a household's annual income. The rules governing access to the water also satisfied both equity and efficiency: they reduced the effect of seasonal and daily fish movements on the catches of individual nets. They also ensured that variations in the number of launchings and the speed with which nets were hauled, did not hamper maximum use of the resource.

As the development of better transport and storage facilities gradually incorporated even the most isolated communities into the national market economy, the government made several attempts to regulate the industry. These took three main forms.

The first, most common, response simply ignored customary law. Sites were registered and control was vested in a government-appointed licensee, who was given sole rights to construct and operate nets. In many cases, the licensee was a fish trader who was not a member of the local community.

In all cases, a fully capitalist mode of production was quickly established. The licensee was the sole owner of the

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nets. Crewmembers were paid a small wage, rather than a share of the catch. When local fishermen objected to this massive cut in their income, they were replaced by imported labor.

In purely economic terms, it could be argued, I suppose, that this was a very efficient system. The government found it easy to levy taxes, while capital and labor were employed in a manner which generated maximum profits. But the local communities, despoiled of their major resource, were not slow to respond. Nets were burned, licensees killed, and the fishing villages gained a reputation for violence which persists to this day.

The second response was the introduction of cooperatives. Many observers of peasant societies are struck by what appears to be a spirit of cooperation. Tasks ranging from gathering a harvest to building a house are carried out by groups of relatives and kinsmen, who are not paid for their efforts.

It is easy to romanticize these social arrangements, to see peasant villagers as possessing a unique cooperative mentality. This is mistaken. Reciprocal labor arrangements persist because they perform vital economic functions, because debts are calculated in time if not in money, and because the institutions are maintained not only by moral norms but by the abrasive force of envy and gossip. Attempts to introduce cooperatives which do not recognize this are doomed to failure.

This was certainly the case with the beachseine cooperatives, which immediately ran into organizational problems that were not apparent under the traditional system. For example, traditionally the right to participate in hauling a net was vested in the shareholders. They alone decided how many, and which, bystanders would participate if a large catch required additional labor.

No attention was given to this in the cooperative bylaws, with the result that while big catches drew far larger crews than required, it was difficult to muster the minimum shorecrew for a small catch. Further problems arose

with the division of proceeds. Crewmembers of nets which took a large catch were resentful when the proceeds were divided among all members of the cooperative, rather than the crew alone.

But the rock on which most of the cooperatives finally floundered was maintenance. Cooperatives distributed all their revenue and lacked the cultural institutions that would raise money for the replacement of damaged nets. The outcome was that cooperatives quickly became bankrupt. They were then replaced by the license system discussed earlier.

A third, somewhat belated, response was the attempt to codify customary usages and thus preserve the traditional system. This posed some difficulties, especially as those directly concerned knew considerably more about law than about fishing. The new laws governing access to the water, for example, allocated each net to a set time in the week, thus removing the catch equalization aspect of the traditional system and markedly increasing labor requirements. The reasons for the failure of the attempts had little to do with such difficulties, however, especially as the fishermen reacted to the innovations by ignoring them. Rather, the problems stemmed from the failure to appreciate that the customary law had evolved in the context of a semi-subsistence economy and had several features which were completely unsuitable for a market economy, especially in a society with a rapidly increasing population.

The most important of these is that the customary law was based on a common property resource concept, in which all members of the kinship group were entitled to build a net. Once the optimum number of nets, the number which will allow continuous fishing, is reached, additional nets will not increase the catch.

But because participation in the fishery is conditional on the ownership of a share, there is a built-in logic of escalation. For example, if there are 20 nets, an individual shareholder will receive about 1/160 of the catch. If his

two sons take over his share, they each receive only 1/320, whereas if they join with others in a net, they can expect 1/160.

In the socioeconomic conditions under which the system developed, there were two important constraints on this escalation. Because population growth was slow, new shareholders were balanced by the death of others, while profits were too low to encourage multiple shareholding.

In the market economy, both these constraints were removed. Better living standards led to higher population growth and higher prices provided both the incentive and the capital for multiple share ownership.

In one village where I lived, multiple shareholding was so prevalent that the average net was used only seven times a year! A reduction of 80% in the number of nets probably would not have decreased the catch, and it would have lifted the community's profits by two thirds. Although the fishermen in this village understood what was happening, they lacked the institutions to balance community interests against those of the individual, a situation not limited to peasant fishermen.

The point here is that peasant social structures are only in part a reflection of traditional rights and obligations; they are also an adaptation to environmental factors, including available resources, economic opportunities, and individual or social aspirations. It cannot be assumed, therefore, that particular institutions can be maintained when the balance between environment, opportunities and aspirations is altered.

The suggestion that customary tenure systems and conservation practices in traditional societies provide the basis for the development of modern coastal management should not be interpreted as an antiquarian's plea for the preservation of a traditional culture. Rather, it is a claim that new institutions, based on the principles embedded in traditional practices, have a critical role in equitable fisheries development. It is a difficult task, but one well worth trying.