

ergänzen. Sichtbarer Ausdruck dieser Komplementarität sollte das Recht aller Menschen sein, sich hilfeschend an ihre Mitmenschen wenden zu dürfen.

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**Between Kinship and the State. Social Security and Law in Developing Countries.**

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This is a collection of papers that examines social security and folk or customary law and the mutual relevance of these. The papers were read at a symposium at Tutzing. Third World or Developing countries lack the instrument of modern social security with which the "First World" is familiar, consequently collaboration with legal anthropologists was necessary. It is more than likely that this collection is the first of its type. In a sense it is evidence of a groping to find both the problems and the solutions to a state of affairs generally recognised as being very real. Taking on an interdisciplinary and comparative exercise such as this for the first time, involving as it did researchers from the field itself, was bound to raise conflicts in the use of terminology, concepts and so forth, however one is struck by the many similarities and the ease with which the papers read, are understood. At the outset the editors chose to work with the terms, traditional solidarity and modern social security. In concluding the preface Woodman and Zacher state:

"In scholarship as in genetics, the finest specimens are often produced from an enterprising cross-breeding of contrasting varieties, and certainly not by a narrow concern for purity of time. In our view the interchange gave birth to many insights which will permanently enrich the understanding both of social security and of legal pluralism in the modern world. We believe that even those readers who approach this book with a due measure of scepticism must learn, as we did, and will, after reading it, agree with us."

I found this to be true.

Woodman is the President of the Commission on Folk Law and Legal Pluralism and Zacher is the Director of the Max-Planck Institute for Foreign and International Social Law and the preface reflects their experience. At the outset the preface places the reader in a position to appreciate the collection of twenty-four papers which would otherwise be less comprehensible as a collection with a common purpose and this objective is more exactly carried through and achieved by and in the Introduction.

The first part of the book deals with the General Orientation and contains three papers. These three papers make the most meaningful contribution to the collection. They are the result of the digestion of what follows as well as other material in point published to date.

The first of the three is the Introduction. The authors discuss "some conceptual, empirical and theoretical issues concerning social security in developing countries and indicate how the contributions to this volume relate to them". In so doing they have succeeded in giving structure to the volume and they have also distinguished some of the major fields of inquiry and have grouped the contributions accordingly. The manner in which the sequence of the contributions has been arranged has indeed made the totality of the collection meaningful.

The second paper in this part of the book questions whether traditional solidarity and modern social security, harmonise of conflict. We are brought face to face with the reality that in developing countries it is the privileged urbanised population that has the benefit of modern social security while the usually impoverished rural population must rely upon eroding traditional social solidarity. In this contribution by Zacher solutions are sought and importantly he mentions that "the elementary units of social solidarity in which people work and meet their needs, such as families, village and clan communities, have to be strengthened and stabilised. Their ability to subsist must be promoted" (p 33). He then suggests how this can be done. However he goes on to note that the preservation and promotion of the ability to subsist does not suffice because these communities must also find and realise new rules brought about by changing conditions. Thus they must adapt to changes in economic and social conditions which come about through outside work and education opportunities and they must adapt to changing social values such as claims to equality by women or to the emancipation of the individual which is also necessary. In other words, what we are being told is that the old allowed to become impoverished by change, which unfortunately has been the case in so many developing countries where the pattern has been a movement towards urban areas leading to a break-down of social solidarity in the traditional rural areas which is eventually followed by a movement of the poor from the rural to the urban areas. These poor lose their traditional social security and the majority of them are not able to integrate into the public service or other para-statal organisation and so they never become part of the population that qualifies for modern social security.

Zacher's final remark is that a transplantation of a system that works for an industrial nation to a developing nation is simply not possible but he suggests that a basis may be found for discussion in which these countries may combine their experiences beneficially. It is along this vein that this collection of papers seeks to make a contribution.

The third and final contribution to the first part of the work is by Fuchs and it deals with social security in Third World countries. The starting point chosen is "the origins of social security in industrialised countries today, seeking parallels, similarities and differences".

Another way of describing the two concepts other than traditional social solidarity and modern social security is "formal and informal social security". Fuchs in his "perspectives for the future" also notes that modern social security seems to have done little or nothing to overcome absolute poverty but has reinforced existing inequalities. Fuchs' view is that people's needs in developing countries require solutions different from those offered by social security, and this he states must be the most important lesson learnt from the past.

His argument is that the "role of social security has to be thought out afresh from a new angle". He seems to support the idea that the informal or traditional should be used as a basis so that the cultural attitudes of the people are reconciled with the necessities of organised social security.

Anyone interested in developing countries will find themselves attracted to the array of papers presented, more especially as it will soon be noticed that the writers have to have a deep understanding of the legal, social and economic contexts of the geographic area chosen in order to be able to deal with the theme. The topics are so varied that short of repeating the table of contents there is no way of indicating the separate content of each. They are arranged in parts under the following titles: Change in Local Social Security Systems; Social Security and Legal Pluralism; and Law, Politics and Social Security Strategies.

Some papers e.g. "Support Among the Bakwena" and the "Situation of Unmarried Mothers and Their Children in Tanzania: Protective Legislation and Social Reality" take the concept of social security to an extent probably not intended by the organizers of the symposium, however, an insight into prevailing social problems indicates that "social security" in developing countries needs or permits a wider definition than that in developed countries, and this also helps to illustrate the overlapping of folk law and civil or common law i.e. legal pluralism which has, after colonisation, maintained an extended life.

The social security laws of a particular state can be complex enough but since independence there is a lot of movement by Africans from one state to another and this makes the resolution of disputes even more intriguing. "Social Security" in the context of "French-African and intra-African labour migration" by Otto Kaufmann presents very interesting reading, and although this deals with West Africa similar problems have arisen in the Southern part of the Continent as well. The two main principles of the international conventions concerning social security of migrants i.e. those of equal treatment between nationals and foreigners and of the maintenance of rights in the course of acquisition or already acquired in modern social security systems, though not devised for developing countries, do cause problems in the latter countries and these are discussed. Here again the retention of traditional systems together with a modern system is advocated, and the view is that even if the result is incomplete the mixture is better than nothing.

A. Azer's "Dilemmas of Egypt" gives a strong indication of factors that militate against an effective system. Stephen Conn and Steve J. Langdon have contributed "Retribalisation as a strategy for achievement of group and individual social security in Alaska native villages - with a special focus on subsistence". Alaskan native groups have adopted a strategy of seeking general welfare including social security through retribalisation - a term of dual meaning i.e. general welfare includes subsistence activities and cultural continuity while social security is directed to the satisfaction of some economic and health needs only. Thus if you attain general welfare you also encourage social security, general welfare is needed for retribalisation.

Retribalisation involves first, the establishment of clear unambiguous federal recognition of tribal status of those Alaska natives who are organised into local of traditional village councils; secondly reconstitution of an organic integrated communal village society, the members of which are linked thorough bonds of kinship and a shared cultural system of meaning, beliefs, values and activities including ceremonies and rituals. This requires leadership, vision and control of the educational system among other factors. The tribal government would have to be effective and improve general welfare since it has to bolster its credibility.

The final paper deals with "Social Security and Free Legal Aid in the Phillipines" by E. R. Pijuan, and it introduces (for some) an additional social security benefit of "free legal aid" which is directed at protecting the citizen's "right to justice".

All those who wish to acquire a better understanding of the modern problems that behest so-called developing countries in the Third World as well as those who wish to acquire an understanding of social security benefits and or pluralism in those countries, will agree with me that this book is a valuable and useful addition to the paucity of literature presently available.

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### **Sovereignty and the Ingress of Aliens**

Almqvist & Wiksell International, Stockholm 1986, US \$ 27.50

Diese Doktorarbeit hat sich zum Ziel genommen, die These der Freiheit der Staaten in der Zulassung oder Abweisung Fremder zum Staatsgebiet kritisch unter die Lupe zu nehmen. Die Familieneinheit und das Asylrecht werden als Hauptanwendungsfälle herangezogen, um das Dogma der staatlichen Souveränität im Einwanderungsrecht aus den Angeln zu heben. Zu diesem Zweck werden in einem ersten Teil die völkerrechtlichen Grundlagen der staatlichen Souveränität in bezug auf die Zulassung von Fremden zum Staatsgebiet und deren Grenzen geschildert. Kaum überraschend kommt der Autor zum Ergebnis, daß es eine absolute Freiheit der Staaten auch bei der Einreise und Aufenthaltsgewährung nicht gibt, sondern daß in vielfältiger Weise Vertragsrecht und Gewohnheitsrecht die staatliche Souveränität begrenzen. Dies wird in weiteren Teilen über die Familieneinheit und das Asylrecht im Detail dargelegt. Der Autor analysiert die verschiedenen völkerrechtlichen Instrumente über den Schutz der Familien im Fremdenrecht und gibt einen - wenn auch sehr summarischen - Abriß über die nationalen Gesetzgebungen. Daraus wird gefolgert, daß abgesehen von vertraglichen Pflichten, wie z.B. Art. 8 EMRK, das Prinzip der Familieneinheit der staatlichen Freiheit bei der Zulassung Fremder keine Grenzen setzt.