ILLEGAL LOGGING AND LOCAL DEMOCRACY: BETWEEN COMMUNITARIANISM AND LEGAL FETISHISM*

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INTRODUCTION

Social practices that are usually labeled as illegal logging are the subject of two different, and indeed opposing, views. On the one hand, a legalistic view (that at its worst can be characterized as legal fetishism) uses the language of the law to condemn those practices and puts the law above all other consideration. On the other hand, communitarian views put the emphasis on the conditions under which members of local communities engage in logging practices, and tend to avoid any definition of those practices that can imply 'blaming the victims'; the very notion of 'illegal logging' is just one of those definitions. From a legalistic point of view, the law should be enforced by a strong national government, against anyone who misuses natural resources such as forests, regardless of the 'reasons' that they may have at a local level. From a communitarian point of view regulation of natural resources should be left to the local community. National institutions (and especially the legal system) are seen as illegitimate encroachments into the only true space for democracy and the rule of law: the local community. These are indeed extreme views, but it is my impression that too many observers are close to one of them. In this paper, I argue for the need to transcend this dichotomy and I consider some of the contributions and the limitations of social sciences for this task. I take as a reference the case of Mexico, where peasant communities own and control more than two thirds of the country's forests.

My main argument in this paper is that the social sciences can play a mayor role in assisting our understanding of deforestation and above all, can help us to find a way out of the dilemma between legalism and communitarianism. At the same time, I point to an issue upon which the social sciences are still far from providing us with secure answers: the means by which democratic institutions are created at the local level for the sustainable use of forests.

DIFFERENT ECONOMIC PROCESSES, ONE SINGLE LEGAL CATEGORY

There is an obvious contribution of social sciences to the understanding of deforestation. It refers to the empirical demonstration that behind the phrase illegal logging one can find a wide variety of economic processes. 'Logging' in the sense of transforming trees into wood for some economic purpose, is by no means the only activity that threatens forests. In the case of Mexico, and this applies to many other countries, deforestation takes pace mainly through three different categories of practices: Unsustainable forestry, the conversion of forested areas into agriculture, and the intensification of certain practices associated with traditional rural society. Although we can find situations in which all three of these categories occur, it is important to recognize their differences because they are part of different economic processes. Let us summarize the context of each of these processes for the case of Mexico.

Unsustainable forestry, as the extraction of timber beyond the rate of renewal, is a well-known cause of deforestation. Misconceived and erratic government policies have played a mayor role in encouraging unsustainable forestry. For most of the twentieth century, the primary way in which the Mexican government tried to avoid the destruction of forests was by establishing *vedas* (i.e. moratoria upon logging). This of course created a black market for forest products and prevented the development of professional skills among the owners of forests and forest resources. Moreover, when forest projects were approved, permits were given not to the owners of those forests but to private or state owned corporations. Although more than three fourths of Mexico's forests are the common property of agrarian communities (*ejidos* and *comunidades*), the communities were usually only able to collect a small rent for allowing those corporations to use their forests. In the late 1980s, government policies began to promote forestry projects conducted directly by the owners of the forests. Thus, in many regions of the country they have just begun to engage directly in the use of their own forests. The learning process is only beginning and there are still serious problems with community forestry, but most scholars agree that sustainable use of the forest by the owners is a better alternative than just making all logging illegal.

The second category of practices that lead to deforestation is the conversion of forests into agricultural areas. In fact, this has been the major cause of deforestation in many countries like Mexico. Although available data are extremely

scarce, there is general agreement that much more tropical forest has been lost to agriculture and cattle raising than to forestry. The causes for this 'change of land use' are multiple, including encouragement by fundamentally misguided public policies. One of the worst mistakes of agricultural policy of the last four decades is the principle of "beneficial use," based upon the belief that land in the tropics would invariably be more productive without its native vegetation. Let us point at some of the most salient features of those policies:

1. Peasants' property rights over forests were protected only if they converted them into agricultural production.
2. Colonization policies populated the tropics with peasants with no previous experience in the management of these fragile ecosystems.
3. Public loans were available for cattle raising, even in natural protected areas.
4. Huge agricultural projects were intended to profit from the supposed fertility of land in the tropics (TUDELA, 1988).

Many of those policies were still in effect during the 1980s, so it is not surprising that many rural communities still wish to transform their forested areas to agricultural and/or livestock uses. This happens particularly where there is no timber with significant economic value as in the seasonally dry forest type (the *selva baja caducifólia*) and residents have not developed the ability to make a sustainable use of the resources of the forested areas. In all of these cases, peasants do not take advantage of the forest. They simply remove it because it is an obstacle to short-term profitable activities. In spite of recent efforts (SEMARNAP, 2000; GIUGALE et al, 2001) there is still a long way to go before the inertia of many decades of wrong-headed policies can be offset by new policies.

The third category of practices that lead to deforestation is associated with certain traditions in rural life. The domestic use of wood as fuel, overgrazing in forested areas, and the use of fire in 'swidden' agricultural systems, are some of the traditions that pose a threat to tropical ecosystems. The impact of the last of these may depend not on how carefully or recklessly fire is used, but also on climatic conditions. Mexico had a very dry year in 1998, and fire became the leading cause of forest degradation in that year (SEMARNAP, 2000).

This brief account does not try to cover all the different processes that lead to deforestation. Talking about local processes does not mean locating 'causes' at that level – regional markets and national policies are frequently the driving forces at work. I only try to illustrate how different practices can fall into the same legal category. Cutting trees without a permit (an illegal action) can be part of very different economic activities. It can be the product of forestry or of agricultural production, of using the forest illegally versus just destroying it. Also, illegal forest activities can be related to consumption practices of poor rural societies (e.g. fuelwood) or to those of affluent urban societies (e.g. the commerce of high value flora and wildlife species). Finally, such activities can be seen as the normal way of doing things (mainly by local

communities), or as crimes (through the urban gaze), regardless of the fact that they might be the same from the point of view of the law. In a very important sense, we can be deceived by the categories of law.

Certainly, there are situations in which enforcing the law against those responsible for deforestation is just a matter of 'political will', and optimal results can be achieved. In fact, some efforts have been made in Mexico to 'map out' the predominant activities leading to deforestation in the different regions where intense deforestation processes occur (PROFEPA, 1998). Although they are only a preliminary basis for the search for much more robust information, these efforts can help to design different enforcement strategies.

However, once we recognize the variety and the complexity of the social processes behind deforestation, the law itself becomes problematic. Apparently, the 'distance' between law and social reality is so large that we should have to abandon a legal perspective in favor of that of another discipline or a combination of disciplines. It is only through a socio-legal approach that we can fully understand the nature of the problems at hand.

THE ROLE OF LAW IN SOCIETY AND THE MEANING OF ILLEGALITY

I use the word socio-legal research in a very broad sense, in order to include every analysis that looks at the meaning and the role of law for the organization of society. Rather than a unified discipline, it is a field in which many disciplines and perspectives converge. Even if there is nothing close to an academic community that share basic tenets, there is a vast literature that documents and reflects upon the relevance of law in society. There is nothing in this literature like a 'general theory of illegality' that we could use in order to understand illegal logging. Therefore, we have to resort to rather general ideas about law and society.

Although the contributions of socio–legal studies are extremely diverse, they help us to see law as performing two basic, and by no means contradictory, functions in society. On the one hand, law brings about what mainstream sociology calls the 'stabilization of expectations' – a function that lends itself to pragmatic analysis. On the other hand, law provides social actors with a series of categories that serve as representations of social relations which in turn inspire interpretive or hermeneutic approaches, i.e. those that try to understand the meaning that social actors ascribe to the situations they confront. There are substantial differences between these two aproaches to the law, but taken together they convey what we can learn about the role of law in society from the social sciences - i. e. from that intellectual project that tries to go beyond metaphysics on the one side and common sense on the other. From abstract theories to case studies, socio–legal research teaches us that in modern societies, social relations cannot be maintained if they are not, at the same time, legal relations. Although there is always the risk of believing that law 'creates' society, it is

possible to say that, at least in modernity, society cannot reproduce itself without a legal system.

Pragmatic analyses tend to see social action as guided by some form of rational calculation, based on the knowledge of legal rules and on the expectation that they will also guide the behavior of others. The 'Law and Economics' movement can be considered as one example of this kind of approach (POSNER, 1995). However, those analyses take for granted that legal rules will be enforced when violations occur. Since this is not the case when we talk about illegal logging, they are not very useful for understanding it.

There is no doubt that law is made up of categories that provide definitions of the world, its inhabitants, and the relations between them. This is why hermeneutic analyses can be very helpful for our purpose: they look at the way legal categories become part of people's definition of their situation, as well as the situation of others, even when one of them is described as being 'outside' the law. Legal categories transform humans into citizens (and, of course, non-citizens), forests into natural resources, land into property, and so on. In fact, legal categories are so powerful, that it takes some intellectual effort to analyze social relations without using them. Very often, we do not realize that we define a situation through concepts that only make sense within the realm of the law. For example, in most contexts, saying 'I am an Italian', can mean the same as 'I am an Italian citizen'. However, when we come to examine the question of citizenship from a socio-legal perspective, the distinction between identity and citizenship is essential. One has to differentiate between the experience of belonging to a national community, i.e. a complex situation that involves a multiplicity of elements, and even mixed feelings, on the one hand, and citizenship as a legal category, which does not have to correspond to any particular form of experience. It is a way of construing individuals from the perspective of the legal system.

The very idea of 'illegal logging' is a good example of this. At its worst, it is a typical example of 'seeing like a state' (SCOTT, 1999). There is not one specific form of logging that can be said to be intrinsically illegal, thus it is not difficult to recognize that it is solely in the legal system where certain practices become illegal - or legal. However, keeping this in mind in a systematic way is far more difficult.

By the same token, unless one thinks that lawmakers never make mistakes, it should be obvious that not every form of logging that is declared illegal will be a major cause of deforestation, and similarly, that not every form of legal logging is sustainable. The main problem with looking at society through legal categories is the risk of falling into a scheme that separates the law, on the one hand, and social 'reality' on the other. In that scheme, law must be outside reality, it would only exist as our own frustrated expectation of what should be and is not. It is perfectly correct for us to denounce practices that contradict legal norms in which we believe. But it is important to recognize that, in doing this, we are talking within the legal system. Every time we say 'this is illegal' and are listened to by a socially significant actor, even if we are not before a court, we are embracing one version of the law, when in fact there are many of them. And if we want to understand the ways different versions of the law influence

the behavior of social actors, we must at least for a moment take some distance from legal categories. If we wish to avoid a scheme in which law is not part of reality, we must bracket, as it were, our own expectations. A recent example of this strategy is the work of Paul Kahn (KAHN, 1999) although it can certainly be traced back to the origins of modern social science. Indeed, since the nineteenth century social thinkers have tried this 'detached' position, although with different implications.

When we stop seeing society through legal categories, and recognize them as (problematic) objects to be analyzed, we can consider two basic questions. First, we can distinguish between the nature of social relations on the one hand (in our case, political and economic relations regarding forests) and, on the other, the legal categories through which they are represented and regulated – a perspective that shows us that ambiguity is an essential feature of law. Second, we can study situations in which illegality appears as a salient feature, in order to recognize the different, and often contradictory, legal categories that social actors use to define the situation. Let us consider these two questions.

When we think about the contrast between social relations and their legal representation it is clear that while social relations are fluid, diverse and in constant change, legal categories tend to be permanent, general and fixed. This generality makes legal categories fundamentally ambivalent. Thus, the same legal category can be used to represent very different social processes, as we saw in the case of illegal logging. Conversely, the same set of social relations can be subject to different legal labels, and we can see this when we think of people and forests. When a social group exerts some form of exclusive control over a forested area, two quite different legal categories can be used: property and sovereignty. When social relations over land are of an economic nature, we use the legal category of 'property' in order to represent it, whereas we use the notion of "sovereignty" when we see social relations of a political nature. In many cases, that distinction is clear enough. A group of people that controls an area as property owners, can be differentiated from a wider group that constitutes a political community, that is, a group that exerts sovereignty over a much larger territory (e.g. a nation-state). Also, the same forest can be subject to two clearly different social relations – e.g. it can 'belong' to the Rotary Club and it can 'belong' to the County of Wartdforshire, *at the same time*. In that case, it is easy to understand the distinction between those two forms of belonging and their correspondence with certain legal categories. However, precisely in the case of forests in developing countries, there are many cases in which things become much more uncertain. Frequently, it is not clear whether a local community is only a group of owners or a political community. Many combinations of economic (property) rights and political (sovereignty) claims may occur and this is why lack of clarity and conflict are so frequent in tropical forests.

Moreover, it is too frequent that national states do not even have a legal category that allows indigenous communities to give any meaning (within the legal system) to their presence in a territory. As long as those territories are not 'theirs' in any legal sense, they will not be able to defend themselves in the realm of the law. In

the meantime, deep ecologists in the West can celebrate that those communities belong to the earth, rather than the opposite. It is interesting to observe that such "ecocentric" views are not confined to refined urban societies; they are now also present in many tropical forests around the world, thus bringing additional complexity to the debate on who owns what.

Certainly, we can examine (and even admire) those local communities without the categories of the law; anthropologists have done that successfully for more than a century. But, again, when the issue is 'illegal logging', we cannot ignore the legal system. Particularly when we want to find a way of including local communities, we have to face the issue of their legal status. And we are forced to do so even if we want to transcend the typically modern public/private dichotomy.

In modern states, sovereignty is frequently expressed at various geographical scales, something that was recognized by the European constitutional legal tradition even in the heyday of the nation–state (JELLINECK, 1981). National, sub-national and local authorities claim the political representation of different levels of social groups. Things become even more complicated with the emerging claims for a global citizenship that would entitle members of different national communities to have a voice in the way a particular forest is being managed. Federal constitutions have been successful in dealing with this complexity. Far more serious problems arise when it is impossible to make the distinction between political control of a territory, on the one hand, and property rights on the other. The consequences of being a political community, and not only a simple group of property owners, are enormous. It goes without saying that we are talking about the distinction between a private and a public sphere, which is one of the fundamental principles of modern society. Property owners can enjoy the benefits of using a forest, but they are 'subject' to the legal order of a wider political community. They cannot enforce by themselves whatever claim they may have over their forest. However, when the group becomes a political community and creates a local authority, the nature of social relations is completely different. They have to deal with the responsibilities of government - collecting taxes, securing the public order, and so on. In fact, some groups may prefer to be treated as political communities, and even fight for that recognition, whereas others may choose to be seen as simple landowners. External actors, such as government agencies, international organizations or even NGOs may also have different views. Legal definitions are not only varied, they can be the very source of social conflict.

In fact, the lack of a clear distinction between owners and rulers is the main problem for forest management in Mexico at present. Agrarian communities, which are defined as mere owners of forested lands from a legal perspective, have been forced to act as local governments. As I have shown elsewhere (Azuela, 1995) *ejidos* in tropical regions fulfill some of the functions that local authorities are unable to perform: from policing to tax collection and the administration of some basic infrastructures. At the end of this paper, I will consider the problems associated with this lack of clarity. For the moment, the point is that the distinction between social relations and their representation through legal categories is more than an academic

abstraction. As long as it is also a field of social conflict, it is important for academic research to maintain that distinction in order to see the way social actors mobilize different legal definitions. Also, from a political point of view, taking that distinction for granted amounts to taking sides *a priori*, for an abstract formula, regardless of the way it works in reality.

There is a second question we can understand better when we see legal categories as external observers, and it is precisely the question of illegality. This can be particularly important for the study of 'illegal logging' where it takes place through practices that are the normal operation of society at local level and, not surprisingly, are also seen as legitimate by most local actors.

Illegality has given rise to a vast literature from at least three different regions of social sciences. Please take note that, taken as a whole, this phenomenon covers a good part of the human race and its relation to legal systems. Economics, and more recently a sociological version of 'new institutionalism', have been concerned with the 'informal sector', which almost by definition operates outside the law (BRINTON & NEE, 1998). Anthropological research has produced a huge amount of empirical and theoretical work on 'legal pluralism', under the idea that rural (pre-modern) societies cannot be ruled out simply as illegal. Instead, they are seen as having a different type of legal system from that of modern societies. Similarly, 'irregular human settlements', a pervasive element in the urbanization of developing countries, is a field in which the tensions between state legal systems and 'different' local arrangements have attracted the attention of social scientists. I have dealt with this elsewhere (AZUELA, 1987) and it is impossible to review all the problems involved here (for an overview, see FERNANDES & VARLEY, 1998). However, it is worth mentioning one version of it as it is closely related with communitarianism in a wider context.

For a good number of scholars in Latin America, the illegality of low-income urban settlements is not a problem, but a solution. Wherever neighbors have managed to avoid the enforcement of state law, and have been able to create their 'alternative' way of settling disputes and create order at local level, this has fascinated observers. Boaventura de Souza Santos, by far the most prominent figure in this movement, offers a vivid account of the way residents of Rio de Janeiro's *favelas* generate their own legal system (SANTOS, 1996). By celebrating the existence of an 'alternative' law, a celebration that has an obvious anti-statist component, this literature has succeeded in reaffirming what just one version of state law says: that those settlements are illegal by definition. At the same time, lawyers who are working to defend residents' interests, and who have managed to stop forced evictions and to obtain legal recognition for these settlements, have done so by defining the situation in exactly the opposite terms. Taking as a platform the recognition of housing as a fundamental right in international law, and arguing that forced evictions are violations of that fundamental right, several NGOs have conducted an international campaign against evictions (COHRE, 2001). In many developing countries this has improved the situation of urban settlers, insofar as it has provided some security of tenure. In the view of these

lawyers, it is the eviction that can be seen as illegal, not the settlers' possession of the land where they live. The paradox we want to show here is that, by accepting as valid the definition of human settlements as illegal, 'progressive' social research gives a poor service to the cause of those it is supposed to care about. Obviously, the prejudice against all forms of state legality is the origin of this trap. But the analytical error resides in taking legal categories as unproblematic.

There is an obvious danger of repeating this mistake in the case of logging. There can be no doubt that communitarianism has gained momentum in the last two decades. It is the strongest ideology amongst NGOs involved in rural issues and it permeates the work of many academics. In this context, a small dose of legal anthropology and a couple of case studies will apparently be enough to convince ourselves that the very idea of 'illegal logging' is just a demonization of local practices. In that context, all we need is to follow whatever local communities decide by whatever procedure, as if nation–states could be easily 'legislated out'.

The problem with this view is not that it takes seriously local communities, but that it fails to recognize that, apart from local interests, there are wider social interests involved in the use of forests, which can be seen as legitimate by many relevant actors. Unless one believes that sub-national, national and international (both governmental and non-governmental) organizations have no role to play in the definition of the way forests are to be used, one has to recognize the relevance of perceptions and interests that are defined beyond the local level. In fact, one of the main problems in designing institutions for sustainable forestry is precisely the need to balance social interests that are defined at different geographical levels. Before we turn into the area of social science that offers a perspective for this problem, let us summarize the main points in this section. Creating some distance from legal categories is important for three reasons. First, concrete social practices engaged with forest resources can be seen both as legal or illegal (as can any form of human action), depending on the side one wants to take. Thus, a universal definition of illegal logging means taking sides in a number of cases whose particular conditions remain undetermined. It is only when one wants to influence a decision that it is necessary to embrace the notion of illegal logging as a definition of the situation. A universal fight against illegal logging can be meaningful only for those who want to combat all forms of logging, as well as for those who are ready to place legal arguments over and above any other consideration - i.e. for those who want to defend trees or legal rules at any rate.

Second, taking distance from the law is still more important when it is not only social practices, but also the very nature of social relations that is at stake. This is particularly clear in the tropics, where the legal status of local communities is unclear.

Last, but not least, looking at the law and its categories as external observers is a fundamental methodological requirement in order to see the way social actors represent their positions through normative categories. If law plays any role in social relations, it is because social actors use its categories to give meaning to what they do and what they are.

COMMON POOL RESOURCES AND NEW INSTITUTIONALISM

The main source of optimism for the sustainable management of forests by local communities comes from a movement that, in the last decade, has used the theoretical platform of 'new institutionalism' in order to provide an alternative view from that of the 'tragedy of the commons' (HARDIN, 1968). What has also been called the Institutional Development Analysis (IDA) framework, is a growing movement of empirical research that has gathered around the proposals of Elinor Ostrom, Margaret McKean and others. It has established the basis of a theoretical framework that promises a better understanding of the conditions under which local communities can use 'common pool resources' (such as forests or irrigation systems) in a sustainable way. Among the many merits of this movement, is the fact that it recognizes the need to reconcile local institutional arrangements with wider institutional contexts – both at regional and national levels.

One of the concerns that mobilize scholars for studying 'the commons' is that many countries have promoted institutional reforms that suppress communal forms of forest property as part of 'modernization' schemes. As McKean puts it, in many instances common property regimes have been "legislated out of existence" (McKEAN, 2000, 34). Adherents to this movement have shown that in different countries, under certain circumstances, common property can be the best institutional arrangement for forest management. Although the IDA framework has an obvious sympathy for common property regimes, there is also a clear commitment to be more sensitive to empirical findings than to any *a priori* ideological position (OSTROM, 1990).

The case of Mexico is particularly interesting for the IDA framework, because most of its forested land is the common property of agrarian communities, and this is legally recognized. Moreover, the 'modernization' of Mexican agrarian law in the early 1990s did not alter this basic feature. While peasants who are members of an agrarian community are allowed to put their agricultural land into the market as a result of those reforms, the forested areas of communities are to be maintained as common property. Communities are not allowed to subdivide those areas and only in very exceptional cases can forests become private property.

One the most attractive aspects of the IDA framework is that it does not see local communities as self-contained social universes that can succeed isolated from wider political entities. The idea of 'nested institutions' is central to this theory (OSTROM, 1990) as it recognizes that national or sub-national governments have a role to play in the maintenance of common property arrangements at local level. As McKean puts it, "where local communities' resource claims go unrecognized by national governments, the best they can hope for is that higher layers of government will overlook them rather than oppose them" (McKEAN, 2000, 43). This implies not only a national legal framework, but also the willingness and the capacity of those higher layers of governments to enforce it. In terms of this theory, this willingness is essential for common property arrangements, because one of the basic conditions for its success is that "the criteria for membership in the group of eligible users of the resource must ... be clear"

(McKEAN, 2000: 44). In consequence, the right of owners to exclude non-owners must also be enforceable. By recognizing the need for a link between local and central institutions, this theory has opened the way to pose problems that most communitarian analysis ignores.

The task of building links between the local dimension and wider spheres meets enormous obstacles. The case of Mexico gives us good examples of at least three major problems. First, national institutions are far from being mere enforcers of local communities' rights. Increasingly, NGOs and public opinion expect to monitor local communities and, if necessary, enforce the law against them whenever they practice unsustainable forestry. In this respect, decentralization is not an option that environmental NGOs support. Moreover, new international actors, both non-governmental and inter–governmental, are bringing ever more pressure upon the national government to act upon whatever is seen as 'illegal logging'. Too often, without knowing what happens at local level, a rock star or a member of the Kennedy family can construct heroes and villains just by calling a press conference.

Second, local communities that embark on conservation or sustainable forestry projects can also have local enemies. Once again, regardless of how we choose to define them (poachers, invaders, defectors, and so on) there can be many sources of local conflict over the use of resources. In a Natural Protected Area like the Lacandona Reserve in Chiapas, the indigenous community that holds common property rights over the area is the victim of other communities' problems. Newcomers penetrate the area in order to settle there. Not surprisingly, the enforcement by national authorities is not an easy task when this happens just twenty miles away from the stronghold of the Zapatista army. In other regions of the country, neighbors can find it difficult to accept that members of a community obtain income from their forests, and may feel tempted to organize different forms of 'civil resistance' in order to stop logging, without waiting to see what forest authorities have to say. Last but not least, communities without strong surveillance mechanisms can be the victims of neighbors who want to make use of their forests.

Third, we can also find the opposite situation when a local community has not found a way of making a sustainable use of its forests. Thus it is frequent that community leaders protect those of its members who embark in something that external observers may see as illegal. When this entails a traditional social practice, like those we described in section 1, federal law enforcers can encounter a hostile environment, which can range from kidnapping to assassination. After two inspectors were killed during a visit to an *ejido* in the State of Campeche in 1996, the Office of the General Attorney for Environmental Protection in Mexico instructed inspectors to avoid 'dangerous places', a category that could include a large proportion of the forests of the whole country.

In short, the use of forests can give rise to many social conflicts that involve only local actors. That is why they cannot be addressed solely through the intervention of national authorities. To put it in its simplest form: while sometimes communities' property rights are too weak, there are also instances in which they are too strong, i.e.

when (non-owners) local actors are completely deprived of the opportunity to express their views about the way resources are used in *their* community. This problem is usually overlooked by communitarian views, but can be very important when rural communities grow and so does the division between owners and non–owners. Citizens in modern societies are allowed to participate in the decisions regarding the use of *other* people's land in the communities where they live, through conventional planning processes. Those places are *their* communities in a fundamental political sense. In many countries like Mexico, 'neighbors' of tropical forests, who are not part of the group that owns them, want to have a say in the way they are used (AZUELA, 1995). We are talking about local democratic institutions in which both property rights and citizens' rights are reconciled. How does this sort of institutional arrangement come about?

THE MYSTERY OF LOCAL POLITICAL POWER

We have reached a point in which social sciences do not seem to give us a clear answer. How can we 'build' a local democracy that gives room to such a complex set of social interests? It is true that the origin of state institutions has been the subject of great efforts in the field of historical sociology (ELIAS, 1994; MANN, 1986). However, it is difficult to find anything specific about the new challenges of the relationship between people and forests at the local level as well as its articulation with larger geographical levels. Indeed, most communitarian analyses of deforestation tend to ignore the complexity of local societies and, in particular, the conflicting nature of relations between owners and non–owners. There are two aspects of this complexity. First, the traditional distinction between the urban and the rural world has been replaced by a complex web of social interests that operate at different geographical levels. Between big urban centers and small rural villages there is a setting of small cities and towns. Within an increasingly complex social geography, at least three groups of actors interact: Regional authorities (that can include elected legislatures), economic agents (that transform or simply transport forest products) and citizens (and citizens' organizations) who want to participate.

Secondly, enforcing the law against 'illegal' loggers is something that cannot be accomplished by national authorities alone. Enforcers in countries like Mexico know that it is not just a question of 'getting there'. Enforcement always implies making decisions about what is legal and what is illegal and, above all, it frequently entails decisions about what to do – what kind of sanctions should be imposed and their severity? What should be done with seized timber? Should permits be temporarily or permanently suspended? and so on. None of these decisions can be successful if they do not have a minimum of legitimacy at the local, if not regional level. To the extent that law is an external rule that is imposed upon a community, that community will not be part of the social basis that supports the rule of law. Some form of participation of local actors in the definition of what is legal and what is illegal seems to be essential to the construction of any legal order. We are not talking here about some utopian

process by which *the will* of a community could be easily translated into law. Precisely because the problem is the multiplicity of local and regional wills, perceptions and interests, a strong third party is necessary, i.e. a local state that is both democratic and capable of enforcing what the majority has accepted as legitimate.

Even if we convince *legalists* that local arrangements are important, they would have to drop the view that legal changes are all we need to engender new social arrangements. Law can help in the reproduction of society, but it cannot create it. The consolidation of property (as the operation of markets) depends on what economic agents do, as much as the consolidation of democracy depends on how political actors behave. A legal system can be used to defend interests, but it cannot create them. On the other hand, communitarian views are often associated with prejudices against state institutions in general. This is why the communitarian perspective has difficulty recognizing that local communities must transform themselves into political entities if they are to handle social conflicts successfully. Wherever there are owners and non-owners and wherever there are different views of how the forest should be used, the institutions of political representation become inevitable. Unless we manage to go beyond those two ideologies, we will be unable to think of a sustainable use of forests, which is not only efficient but also legitimate. How can this come about? It is a question that social sciences have yet to answer.

I have tried to show that, in order to understand the relationship between deforestation and the law, it is necessary to transcend prejudices that dominate the two main ways of looking at deforestation practices. When looking at those practices from a legal point of view, it is important to recognize the way society actually works at the local level. Similarly, when looking at the law from the point of view of local communities, it is necessary to recognize that there can be legitimate interests apart from those of the collectivities that own forests. These two steps lead to the construction of alternative legal arrangements that are capable of recognizing the plurality of interests around forests and, at the same time, inhibit practices that lead to deforestation. Strong democratic arrangements at the local level seem indispensable for the attainment of such an ambitious goal. Nevertheless, while it is easy to agree with the need for local democracy, it is difficult to specify the way it comes about. It is my contention that social scientists should make a new effort in order to elucidate the conditions under which this new form of local democracy becomes possible.

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RESUMOS/ABSTRACTS

ANTONIO AZUELA

ILLEGAL LOGGING AND LOCAL DEMOCRACY: BETWEEN COMMUNITARIANISM AND LEGAL FETISHISM

Abstract

The paper considers two major views of illegal logging: "Communitarian" and "legalistic". The former emphasizes the positive role of local communities and sees law enforcement programs as, at least potentially, counterproductive to environmental policy. While this perception fails to take the rule of law seriously, it shows the importance of local arrangements for sustainable use of forests. On the other hand, there is a view of deforestation that defines it only in juridical terms as 'illegal logging', without taking into account the variety and complexity of social problems at local level. The paper reviews some of the ways social sciences help us to overcome the limitations of both views. However, it also points at an issue that has not been sufficiently addressed by social disciplines: the question of local democracy. While most observers agree on the need of democratic institutions at the local level, there is not enough research and deliberation on the social conditions that make those institutions possible. This is a challenge for social sciences, due to the growing complexity of rural societies, a complexity that includes *inter alia* conflicts between owners and non-owners of natural resources, as well as the presence of 'external' social actors such as NGOs.

Keywords: Illegal logging, common property resources, deforestation, Mexico, local government, environmental crime.

EXTRAÇÃO ILEGAL DE MADEIRA E DEMOCRACIA LOCAL: ENTRE O COMUNITARIANISMO E O FETICHISMO LEGALISTA

Resumo

O artigo aborda duas visões importantes sobre a "*extração ilegal de madeira*": a perspectiva "comunitária" e a perspectiva "legalista". A primeira enfatiza o papel positivo de comunidades locais e vê os programas de aplicação da lei, pelo menos

potencialmente, como contraproducentes para as políticas ambientais. Embora esta perspectiva não leve a sério o poder da lei, ela mostra a importância dos acordos locais para o uso sustentável das florestas. Por outro lado, há uma visão do desmatamento que o define apenas em termos judiciais como "extração ilegal de madeira", sem levar em conta a variedade e complexidade dos problemas sociais no nível local. O artigo revê algumas das maneiras pelas quais as ciências sociais nos auxiliam na superação dos limites de ambas as visões. Entretanto, o artigo também trata de uma questão que não tem sido suficientemente discutida pelas disciplinas sociais: a questão da democracia local. Enquanto a maioria dos observadores concorda com a necessidade de instituições democráticas no nível local, não há pesquisa suficiente nem deliberações sobre as condições sociais que tornam estas instituições possíveis. Este é um desafio para as ciências sociais devido à crescente complexidade das sociedades rurais, uma complexidade que inclui conflitos *inter alia* entre proprietários e não proprietários de recursos naturais, assim como a presença de atores sociais "externos", como as ONGs.

Palavras-chave: extração ilegal de madeira; recursos comunitários; desmatamento; México; governo local; crime ambiental.

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USE AND MISUSE OF THE CONCEPTS OF TRADITION AND PROPERTY RIGHTS IN THE CONSERVATION OF NATURAL RESOURCES IN THE ATLANTIC FOREST, BRAZIL

Abstract

The relationship between resource management, local populations, and property regimes has long puzzled researchers and policy-makers. The constant failure of conservation policy reliant upon privatization and statization, has led both policy makers and researchers to recognize the importance of customary practices to achieve conservation. Yet, the overemphasis on "traditional populations" and "collective property regimes" as the way to promote conservation can be misleading. In this paper, we discuss the debate on local populations and resource conservation in the Southeastern Atlantic Forest, Brazil. The analysis focuses on 1) the concept of traditional populations; 2) the complexity of overlapping property regimes; 3) the potential for a loose relationship between "traditional populations" and "collective property regimes," and; 4) the implications of this approach for "non-traditional populations." We conclude that the bias toward "tradition" and "collective property regimes" threatens the entire