UC Berkeley

Working Papers

Title

Locality and custom : non-aboriginal claims to customary usufructuary rights as a source of rural protest

Permalink

<https://escholarship.org/uc/item/9jf7737p>

Author

Fortmann, Louise

Publication Date

1988

A1458
no. 88-27
Nov. 1988

11/29/88

LOCALITY AND CUSTOM: NON-ABORIGINAL
CLAIMS TO CUSTOMARY USUFRUCTUARY
RIGHTS AS A SOURCE OF RURAL PROTEST

Louise Fortmann
Department of Forestry and
Resource Management
University of California at Berkeley

INSTITUTE OF GOVERNMENTAL
STUDIES LIBRARY

NOV 17 1988

UNIVERSITY OF CALIFORNIA

Working Paper 88-27

INSTITUTE OF GOVERNMENTAL STUDIES
UNIVERSITY OF CALIFORNIA, BERKELEY

LOCALITY AND CUSTOM: NON-ABORIGINAL CLAIMS TO
CUSTOMARY USUFRUCTUARY RIGHTS AS A SOURCE
OF RURAL PROTEST

Louise Fortmann
Department of Forestry and
Resource Management
University of California at Berkeley

Working Paper 88-27

November 1988
Institute of Governmental Studies
Berkeley, CA 94720

Working Papers published by the Institute of Governmental Studies provide quick dissemination of draft reports and papers, preliminary analyses, and papers with a limited audience. The objective is to assist authors in refining their ideas by circulating research results and to stimulate discussion about public policy. Working Papers are reproduced unedited directly from the author's pages.

LOCALITY AND CUSTOM: NON-ABORIGINAL CLAIMS TO CUSTOMARY USUFRUCTUARY RIGHTS AS A SOURCE OF RURAL PROTEST¹

Louise Fortmann
Department of Forestry and Resource Management
University of California at Berkeley

Between 1983 and 1986, Adamsville, a small mountain community surrounded by national forest, was the site of three protests. In the first, the Woodcutters' Rebellion, local residents protested the imposition of a fee for cutting firewood on national forest land. In the second, the Megavoltz fight, most of the town protested against the construction of a wood-fired power plant. In the third, the Great Commute in which a large proportion of the town participated, local residents protested in favor of increasing the amount of timber that could be logged on the adjacent forest. The Woodcutters' Rebellion is most simply explained as the defense of claims to rights to access to a resource. But participation by most of the town in both the Megavoltz fight and the Great Commute poses an apparent paradox. The Megavoltz fight would appear to be a classic example of environmentalist, anti-growth protest. The Great Commute, in contrast, seems to constitute an ideological flipflop, i.e., an anti-environmentalist, pro-growth protest. This apparently paradoxical behavior can be resolved if the three protests are understood as the assertion of local claims to non-aboriginal customary usufructuary rights. Adamsville residents were completely consistent in their actions; in each case they were defending their claim to customary usufructuary rights to local resources, namely firewood and timber.²

My argument is that: (1) local people make claims to customary usufructuary rights to natural resources that are not enforceable under U. S. formal property law; (2) these claims to rights are legitimized in the minds of local users by their continuing proximity to the resource; (3) these claims can be distinguished from conventional practice by their articulation and defense as rights; (4) they should be understood as claims to a truncated form of customary property law co-existing with U.S. formal property law³ and (5) the conflict between claims of local residents to customary usufructuary rights and claims made under formal law can trigger rural protest.

Recognizing the existence of local claims to customary usufructuary rights and their importance as a source of rural protest would broaden our understanding of property relations and sharpen our understanding of the origins of rural protest. Thus we are dealing with two general propositions. One is that claims to customary rights are a source of rural protest, a proposition which is unaffected by whether or not the belief that one has customary rights is itself a delusion (Thomas and Znaniecki, 1958:81). To date rural protests have largely been analyzed in terms of class conflict (McNall 1988), relative deprivation (Morrison and Steeves, 1967), or environmentalism (Schnaiberg, 1986). But the Adamsville protests demonstrate these explanations fail to encompass the roots of all rural

protest. As this study shows, the conflict between formal and informal law rooted in specific localities is also a source of rural protest. The conflict explains the emergence of rural protest which otherwise would seem inexplicable if we were limited to the explanatory power of class, relative deprivation and environmentalism. Sociological analysis of the causes of rural protest would be more accurate if the existence and influence of customary property claims were recognized.

The second proposition is that these claims should be understood as part of a truncated customary property law. That is, claims to customary property rights long recognized in peasant societies (Scott, 1977a and 1977b; Panel on Common Property Resources Management, 1986) are also important, if often unrecognized, legal phenomena in the U.S. Relying on the existence of coercive force as a test of the existence of customary law has led to an underestimate of local perceptions of rights which in turn lead to action. This suggests more generally that definitions of property rights in the United States have typically been too narrowly drawn in sociological studies.

This article proceeds in four parts. The first section introduces the concept of legal pluralism. The second section considers the nature of the claims at issue and whether they can be considered a claim to customary property rights rather than simply conventional practice. The case study in the third section demonstrates that claims to customary usufructuary rights are the cause of some rural protest. The final section discusses the implications of the findings.

I. Legal Pluralism

My argument relies on the concept of "legal pluralism"-- the co-existence of multiple legal systems in a single society (Fuller, 1969b; Popísil, 1974; Galanter, 1981; Allot and Woodman, 1985; Griffiths, 1986)-- first suggested by Eugen Ehrlich (1913) and Max Weber (1922, pp. 316-319, 699-701). Legal pluralism rejects the idea that the state is the only source of law. Examples of law co-existing with systems, variously known as "indigenous", "customary" or "folk" law, are myriad (Fuller, 1969a; Galanter, 1981; Griffiths, 1985; Podgorecki, 1985). Systems of law imposed by a colonial or national power have co-existed and conflicted with local custom and indigenous law since antiquity (Weber, 1922, pp. 753-754; Holdsworth, 1922, pp. 3-4; Pollock and Maitland, 1923, pp. 184-188; Moore, 1973; Linebaugh, 1976; Cronon, 1983; Guha, 1985; Guha and Gadgil, 1987). For example, one of Marx's early works described the conflict of peasants in the Rheinland with the government. At issue was a new law on the theft of wood which among other provisions did not distinguish between taking fallen wood to which peasants had "ancient Germanic rights (leges barbarorum)" and taking timber or standing trees (Linebaugh, 1976:7). Historical conflicts between local systems of communal rights and private rights have been recorded as well (Bloch, 1966; Blum, 1978; Hopkins, 1985). Contemporary customary property rights in developing nations have been extensively studied and in some cases have come to be recognized as legitimate by the state (Cernea, 1981; Fleming, 1983; Fortmann, 1985; Meek, 1949; Noronha and Lethem, 1983; McCutcheon, 1981; Shepherd

and Richter, 1979; Uhlig, 1980; Vadya et al., 1980; Weinstock, 1983). In developed countries the customary law and usufructuary rights of certain ethnic minorities have received recognition through treaties or under the rubric of aboriginal rights (Bennett, 1978; Maddock, 1981; Cohen, 1986; Wilkinson, 1987). Native American law is probably the most familiar example in the United States.

Legal pluralism also applies to the more mundane aspects of contemporary American society. In the U.S. the same statute has been found to be subject to varying local interpretations and local legal cultures have been found to vary (Galanter, 1981). Indeed, vigorous customary mercantile laws have been shown to be observed alongside, sometimes in preference to, formal American business law (Macaulay, 1963; Galanter, 1981; Moore, 1973). That is, some businesses are conducted in large part without recourse to formal law, the courts or lawyers but instead in accordance with codes of conduct and means of dispute settlement developed over time by business people themselves.

In contrast to the attention given to both customary aboriginal property law and to non-aboriginal customary law other than property law, there has been little if any analysis of the subject of this article-- claims to customary property rights among non-aboriginal contemporary populations of the United States. The dearth of such studies is surprising given the many examples for analysis. Customary usufructuary claims to land and natural resources can be quite clearly discerned in at least four recorded forms. One is the persisting practice of poaching in which usufructuary rights to game are claimed and exercised, albeit by stealth (Ives, forthcoming; Sciala, forthcoming). The second is the practice of the "open range" under which all unfenced land regardless of use and ownership is considered open for grazing. Open range was the custom in some places in the South as late as the 1970s (Jones et al., 1965; McDonald and McWhiney, 1975; Hahn, 1982a and b; King, 1982). Open range claims have been reported historically both in the West generally (Anderson and Hill, 1975) and in contemporary states such as California (Ellickson, 1986). The third example is the informal East coast system of allocating rights to use lobster fishing grounds (Acheson, 1987). The fourth is customary usufructuary claims based on old Spanish land grants (Knowlton, 1970; Trillin, 1976).

In short, not only is it possible for a system of customary claims to usufructuary rights to co-exist with the official legal system, such claims have been observed in the U.S. up to and including the present.

II. Claims to Customary Rights or Conventional Practice?

The Nature of the Claims

The people in this study make two kinds of usufructuary claims— (1) claims to a right to subsistence use of forest resources and (2) claims to a right to a livelihood from the commercial use of forest resources. The first type of usufructuary claims, hereafter called subsistence claims, consists of claims that local people may use forest products such as fuelwood for their subsistence needs and that this use should take preference over use by

outsiders.⁴ The second type of usufructuary claim, hereafter called livelihood claims, consists of claims on government action in the form of forest policy favorable to local forest-based commercial livelihoods. The argument is that local people have the right to make their livelihood from the forest and that government policy should not endanger these livelihoods.⁵

Local people's expectation that they are entitled to make these claims is based in customary acceptance of usage that has evolved over time, albeit over a fairly recent time.⁶ The users' expectation that they should be able to continue their forest utilization or to demand the protection of their livelihood does not imply that they think they are acting under formal law but that they believe this usage is legitimate, more specifically, that their continuing proximity to the public resource gives them rights in the same fashion that communities outside the U.S. claim rights—sometimes respected by other communities—to adjacent land even when it legally belongs to the national government (Cf. Moench, 1988). And there is an historical precedent for this belief since in 1905 the U.S. Forest Service recognized some customary rights of people already settled on land in or adjacent to the new forest reserves (U.S. Department of Agriculture, 1905: 13, 16-17, 22).

The Question of Enforceability

The proposition that non-aboriginal claims to customary usufructuary rights should be understood as a part of a truncated customary property law requires establishing that these claims can legitimately be considered a form of a claim to a customary property right and are not simply conventional practice. The case for these claims being subsumed under customary law could seem problematic because customary law is generally held to involve a means of enforcement. Weber (1922:315) argued that the test of the existence of a right, legal or otherwise, is the existence of a specialized coercive force for its enforcement. Hoebel (1954: 26, 28) similarly distinguished legal from social norms by "the legitimate use of physical coercion by a socially authorized agent." Consistent with this view, studies of U.S. customary law have tended to focus on the regulation of behavior through various forms of social control (Macaulay, 1963; Moore, 1973; Galanter, 1981).

Customary law is typically enforced through specialized institutions such as customary courts or through sometimes highly effective informal social control. In the case at hand, there is no specialized means of coercion. The claims involve an entity, the U.S. Forest Service, an arm of the federal government which employs professional staff who are not subject to local social control in the same way the members of a community bound by ties of kinship and permanent residence would be. In such situations customary law has been characterized as having limited effectiveness (Galanter, 1981).

The lack of a specialized coercive force, however, need not exclude these claims from the realm of customary law. Not all theorists consider the presence of a coercive force as a necessary characteristic of law, arguing that

other means such as consensus bring about the preservation of order. Barkun (1968, p. 16) notes that in "horizontal" legal systems,

The implementation of its rules cannot very well depend solely upon force (it is nowhere sufficiently concentrated so that force can be effectively and invariably applied); instead self-help and self-restraint take the place of the sovereign.

Writing specifically in respect to customary law, Allen (1964, p.70) observed:

Custom, as has been said, grows up by conduct, and it is therefore a mistake to measure its validity solely by the element of express sanction accorded by courts of law or by any other determinate authority. The characteristic feature of the great majority of customs is that they are essentially non-litigious in origin.

In a sense, then, the focus on coercive force obscures the real issue in the question of claims to rights, namely, their enforceability. If claims to rights can be enforced through the claimants' ability to use other sources of power to defend their claims despite the lack of a specialized coercive force, then we can argue that the claimants have a de facto though not a de jure right.⁷ The greater the success in enforcing the right, the stronger the right is. Indeed, we can argue that people who are able to enforce their claims to customary rights, in a sense, have stronger rights than those who are unable to enforce their legal rights due to corruption or bias in the police or judiciary or lack of access to legal counsel.

Support for the importance of alternative routes to enforceability can be found in the work of Nelson (1986, pp. 364, 371-373) who has applied Reich's (1964) concept of the "new property" to natural resources, suggesting that over time private rights to government action have been created in this realm as well. For example, he notes that when the Reagan Administration attempted to sell public lands, they discovered that "a wide array of public land users considered themselves as holders of vested rights to continue existing land uses." He argues that "...the long-run trend of public land zoning is towards a system of collective private rights to use public lands," asserting that the ability of various organized groups to control use through political power has made them "partners with the government in owning wilderness areas" (Nelson, 1986, p. 371).

Strategies for Enforcing Claims to Rights: Articulation and Defense

Whether the claims to rights described here will, as Nelson suggests, evolve into formal property rights is beyond the scope of this article. My concern is to demonstrate that these claims to rights can be distinguished from conventional practice and therefore properly belong in the realm of customary property law. The distinction can be found in the attempt to enforce claims as rights. Claims become noticeable as claims rather than as mere practices when they are threatened. If claims to rights which are threatened cannot continue to be exercised by the simple expedient of greater stealth, they are likely to be both articulated as rights and defended. This phenomenon of claims surfacing under threat leads us to conclude that a customary property claim can be said to exist when the following strategies of

enforcement are used: 1) the customary expectation that the usage is a legitimate right or claim is articulated and/or 2) the customary usage is defended as a legitimate right or claim.

Articulation: An elementary test for distinguishing perceived customary rights from conventional practice is whether or not local people claim they have a right. That is, they express their expectation that they will be allowed to continue this practice not just because they have always done so but as a matter of right.⁸

Once an expectation has been articulated, there is an argument for its importance relative to that of legal title in Sax's (1980, pp. 187,188. 193) discussion of the public trust doctrine:⁹

[W]e know that insofar as expectations underlie strong and deeply held legal-ethical ideals, they are not limited to title ownership...The historical lesson of customary law is that the fact of expectations rather than some formality is central...conversely, where title and expectations are not congruent, title should carry less weight.

However, this test is clearly not sufficient, otherwise rights could be had simply by declaring them. Thus, a second, related test is the active defense of the right as a right.

Defense: A traditional test of a customary law was the demonstration of its institutionalization in the form of its use in settling disputes tried in customary courts (Allott et al., 1969, p. 8). When, as in the case at hand, one of the actors in disputes over usufructuary claims is the state which does not recognize customary law, clearly this is not an appropriate test. I am proposing instead the defense of the claim against state actions as the test. That is, the defense of the claim to a right is in a sense holding it up as the rule that ought to be used to settle the dispute.

Defensive actions may range from moral suasion to political action to violence and do not necessarily require that the users constitute a clearly bounded group in order to achieve their ends. Some subsistence claims may be defended with individual strategies including increased stealth in use, attempts to influence the decision-making of government officials, or the selective use of violence to put the government on notice that this use is not to be interfered with. (Cf. Jordan (1983) and Jones et al. (1965) for examples of the latter, particularly in the form of woods-burning in the American South). Livelihood claims and subsistence claims that may be adversely affected by changes in management or use that cannot be addressed through individual action generally must be defended by collective public action. Since, as already noted, the involvement of outside government institutions as parties in the disputes means that the social control that usually serves to enforce custom is unlikely to be effective, the user group must find other ways to protect its claims to rights. In contrast to institutionalized systems of customary law, the source of coercive power to defend these usufructuary claims depends on claimants' ability to use creatively the forms of power and influence they do

control. As we shall see, this may involve switching the arena of the dispute to one where the claimants' power can be utilized.

III The Case Study

Forest resources offer a particularly interesting case for studying property rights because the penetration and enforcement of state law have often been more attenuated in forest areas than elsewhere. Forests have often been a particularly contested arena for clashes between central and local forces in general and national and customary law in particular.¹⁰

Uncontested customary property rights offer relatively little scope for identifying or analyzing them. The activities which constitute the exercise of subsistence claims tend not to be particularly noticeable. Rather they are part of the rhythm of everyday life. Hence, many rights are best studied when they come under stress, i.e., as trouble cases (Hoebel, 1954, p. 35). This approach has been used here. The case study involves three incidents of stress within three years: 1) a threat to subsistence claims to fuelwood in the form of the imposition of a woodcutting fee that increased the cost of subsistence use, 2) a perceived threat to subsistence claims to fuelwood due to the proposed substantial increase in use by an outside company, and 3) the perceived threat to livelihood claims in the form of a decrease in the allowable cut (the maximum number of board feet which can be cut in a given time period) on the national forest. The study describes the articulation and defense of usufructuary rights in response to these three incidents. The data were collected from local newspapers, U.S. Forest Service and county documents, and key informant interviews in 1985 and 1986.

Adamsville¹¹

A town of some 4500, Adamsville lies at 3,423 feet amid the Feather National Forest in northern California. Crop farming, cattle ranching, and the forest products industry dominated Adamsville up to the 1960s, when urban retirees gradually moved to the area and Adamsville began to provide a growing tourist trade with increasing numbers of over-night accommodations, lake-side resorts, restaurants, and services. Despite this diversification and the presence of a junior college, the town remained economically dependent on forest resources. An estimated 43 percent of the county workforce depends on the national forest in some way—generally through timber harvesting or direct Forest Service employment (Feather National Forest Draft Management Plan, 1985, Table 3-12). Timber harvesting is the core of the local cash economy. In 1984, an estimated 29 million dollars of timber were harvested in the county (Fay, Lipow, and Fay, 1986- 87).

Residents use a variety of resources from forest lands for subsistence purposes. Of these fuelwood is a particularly essential part of the local way of life. Residential heating with wood is customary. For many families it is an economic necessity as electric heat can cost up to \$200 a month, a sum that families with unemployed wage earners simply cannot afford. Once timber harvesting is over for the year, many men have time to cut and bring home firewood, which some sell for extra cash. One indication of this importance is the number of personal use firewood permits issued for the Feather National

Forest which increased from 6,000 to nearly 18,000--denoting a harvest of roughly 65,000 cords of wood--in the four years from 1979 to 1982 (Feather National Forest Draft Management Plan, 1985, Table 3-36).

The Local Exercise of Usufructuary Rights

The people of Adamsville have used the resources of what is now the national forest for over a century. With 71 percent of the county included in the National Forest, the U.S. Forest Service controls the terms of legal (under formal U.S. law) access to most forest land and forest resources in the county. Although the Forest Service has statutory authority over National Forest land, its ability to enforce federal law against local custom has not been uniform or comprehensive. On the whole it has been more successful in enforcing federal law concerning the commercial sector. In the realm of subsistence activities, local custom has often held sway. Cutting and collecting firewood, hunting, and fishing can all be exercised individually without the products ever entering the marketplace. The Forest Service's ability to regulate or exclude these activities depends on the cooperation of local people and on having the personnel to police thousands of acres of forest. Its inability to do so is visible every spring in the form of gates which have been rammed through or had their padlocks shot off. Usufructuary rights to non-timber forest products have thus continued to be relatively easy to exercise regardless of Forest Service policy and federal law. In contrast, the use of the forest to sustain the local timber-based economy is more easily controlled as commercial products are more easily detected (e.g., Adamsville newspaper 9 April, 1986). Timber poaching cannot occur on a scale to support the entire town. Timber harvesting thus depends upon the decisions and procedures of the Forest Service.

While they recognize the statutory authority of the Forest Service, local people feel that by right their interests should be considered before the interests of outsiders. This claim pits the rights of local citizens against the equal (under U.S. statute) rights of other U.S. citizens. Nonetheless, the claim of local people to preferential exercise of rights has an historical basis in the aforementioned 1905 Forest Service "Use Book" (Department of Agriculture, 1905) in which the following guidelines appear:

Persons having valid claims under the public land laws, or legal titles to land within forest reserves, are free to occupy and enjoy their holdings...The Forest Service will do all in its power to protect such claimants and owners, and will grant preference in the use of privileges to actual residents in or near forest reserves (p.13) The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, firewood, fencing, buildings, mining, prospecting, and other domestic purposes... (p. 105)

Thus, under the explicit agency custom of some 80 years ago, local people did have special rights to resources on the national forest.

It was in this context that between 1983 and 1986, Adamsville was the site of three protests. These protests illustrate the articulation and defense of local usufructuary claims-- the right to use forest resources, the right to exclude outsiders, and the right of local people to be assured of a livelihood from forest resources.

The Articulation of Claims to Usufructuary Rights: The Woodcutters' Rebellion

In the winter of 1982-83, the Forest Service attempted to establish a nationwide policy on cutting firewood on national forest land. The bone of contention was the imposition of a five dollar fee for each cord of wood which hitherto had been free with a permit. The announcement of the fee drew a rapid response. A resident of a nearby community articulated the right to collect fuelwood without paying and proposed a "Woodcutters' Rebellion" against the Forest Service plan in a letter to the editor of the local newspaper:

It's difficult to convince the Forest Service that they do not own the forests, that they are just civil servants of the people and paid by the people by their taxes . . . Speak up, join the 'Woodcutters' rebellion.' Refuse to pay for dead wood that you already own as citizens. Tyrants only understand one language. Speak up, put your feelings into action.

Adamsville newspaper, 12 Jan 1983:3B

After the initial articulation of the right to free firewood, residents of Adamsville and surrounding forest communities defended their claims by waging a campaign of moral suasion ranging from unfriendly editorial cartoons to harsh letters to the newspapers, the Forest Service, and local elected representatives. The most plaintive calls against the fee were moral-economic.

Being a logger and unemployed most of last year, I have at least been able to keep my family warm, even with the high cost of having the right [firewood-cutting] equipment. So please voice your right to be able to cut firewood in our forest lands without having the added cost that will always continue to increase over the years.

Adamsville newspaper, 23 Feb. 1983

The rhetorical momentum of the Woodcutters' Rebellion was not matched by an equal degree of collective action. Individually community members contacted Forest Service officials and expressed their displeasure with the policy. But collective action failed to emerge, possibly because the fee did not threaten access to the resource for most community members and because they had an "exit" in the form of poaching.¹² As Hirschman (19670) has noted, when "exit" is an option, "voice" is less likely to emerge. Not surprisingly, rhetoric alone failed to reverse official policy: the five dollar fee was implemented and enforced. But those who could not or would not poach, felt their rights had been infringed upon. The prime importance of the Rebellion was pedagogic. It indicated to the Forest Service both the

importance of firewood to the community and the people's firm belief in the legitimacy (indeed, righteousness) of their claims to usufructuary rights to that wood. It also served as an important lesson to the community that rhetoric and righteousness would not protect their claims to rights. In the next protest, they changed their tactics from moral suasion to mobilizing power. For our purposes, the Rebellion indicates that infringement of customary usufructuary rights may be the cause of grievance.

Defending Usufructuary Claims to Rights to Subsistence Use: The Battle over the Megavoltz Power Plant

Following on the heels of the impotent Woodcutters' Rebellion, the battle against Megavoltz involved both protecting their claims to the right to collect firewood and the right to exclude outsiders. The battle began on June 1, 1983, when Megavoltz, a southern California firm, applied for a building permit to construct an 11 megawatt wood-fired power plant in Adamsville. A small group of local environmentalists carefully constructed a campaign against the plant that incorporated a wide variety of issues including air pollution, groundwater temperature, and loss of local resources including firewood to outsiders. The protest was characterized throughout as "pro-environmentalist" by plant supporters. But it was the issue of fuelwood availability that resulted in an outpouring of active involvement in protest uncharacteristic of any environmentalist protest there before or since. What was begun by a small group on environmental grounds was seized by the community for their own purposes—to defend their claims to rights against outsiders.¹³

Local sensitivities over firewood which had been raised in the Woodcutters' Rebellion were rekindled with the proposed the new plant . For example:

Once there was information out [about the plant], everyone got going against it. Here's the Forest Service pushing wood cutters onto marginal land--they've just kept getting stricter and stricter. Fifteen years ago, you could go anywhere and get your wood. Now, they charge you money, make you get a permit, send you off, and you can only cut wood on selected areas that they show you on their maps. You get there, and there's nothing worth cutting. People here are choosy about what they burn, and the Forest Service isn't helping at all. The Forest Service bigwigs were pushing the plant. They wanted to get rid of all that small stuff that no woodcutter would ever take, but they're blocking firewood cutting.

Adamsville businessman Wood is my main reason for opposition. Since [wood] is a part of my life style and livelihood a powerplant of this magnitude, I feel, is going to deplete our present wood supply, especially with the influence we already have with the [nearby] plant. The cost of fuelwood is already on an increase while the supply continues to diminish. I use wood to heat my home and cook by. It's more efficient and costs less than electricity. This provides me with a

little more self-sufficiency and allows me to survive when there is no work, since my occupation is seasonal and which is common in this county. This powerplant will increase competition for wood gathering and I, like many, do not need the extra stress of how or where we can get our wood.

Letter 0, Final Environmental Impact

Report

The opposition to the plant focused on the firewood issue, at one point issuing a cartoon showing a ravenous monster hooked up to power lines by its toes and fingers, choking down whole logs that are dropping into its mouth from an endless conveyor. In the foreground stands a minute figure with a small bucket extended, issuing the Dickensian plea, "Please, sir, just a chip or two for our woodstove?" Such images were buttressed by the Environmental Impact Report (hereafter EIR) written by an independent consultant chosen by the County Planning Director and paid for by Megavoltz. It estimated that if the plant were built, in-forest demand for fuelwood in Feather County would increase to 2.5 to 3 times its current level (Casaday, 1984) and concluded that "powerplant demand would compete substantially with local firewood gathering" (Final EIR, 1984, p. 2). The prevailing fear that firewood would be harder to find if the plant were built was voiced in ten of the eighteen letters from individual Feather County residents commenting on the draft EIR.

In addition, the argument of plant opponents that burning firewood for space heating was more energy-efficient than burning it to make electricity got a sympathetic reception from Adamsville residents who were not convinced that "their" trees being made into electricity for Los Angeles (as the debate was often portrayed) could be to their advantage. Opponents also pointed out that when a fifty mile radius was sketched around five wood-fired plants either proposed or under construction, the wood-gathering area of the five circles intersected almost precisely at Adamsville. The suggestion that not just Megavoltz, but everyone had designs on wood supplies in Feather County played to a gallery already suspicious of outsiders.

The conflict must be understood in terms of the muted, ongoing conflict between southern and northern California over resource use. The articulation of the claim to the resources and the fear that Adamsville would be drained of "its" resources for the benefit of outsiders, particularly southern Californians, appeared repeatedly in interviews and letters to the newspaper. One Adamsville resident commented:

If we'd let it happen with this power plant, why, we'd be just another Owens Valley...they'd be coming from Southern California taking our water and trees, and leaving us nothing in return.

A letter in the 1983 Thanksgiving issue of the Adamsville newspaper sounded the same theme:

If we, as citizens of Feather County do not stand up and take charge of our lives, the politicians will do it for us. Our Board of Supervisors are a bunch of foxes who are guarding the Feather County chicken coop. When our groundwater and firewood has gone to Megavoltz; when our trees have gone to Western Timber Association; when our land has been raped by Inca Mining Corp. of Canada, and we have been made another Owens Valley by industrialists who don't give a darn about our community, do you think that the Board of Supervisors are going to sit by and patch up this cancer with a band aid?... We want our natural resources left intact...

In this context, Megavoltz was badly hurt by their southern Californian outsider status.

Like the Woodcutters' Rebellion, the power plant fight was characterized by rhetorical embellishments. But plant opponents systematically set out to find an arena where they had the power to defend their claims to rights. There were two possibilities. One strategy might have been to persuade the Forest Service not to permit woodcutting for the plant on national forest land. While, contrary to the company's wishes, the Forest Service did not guarantee that the availability of domestic fuelwood would not be adversely affected by the plant, nonetheless, it supported the plant. The Woodcutters' Rebellion had confirmed the general experience that there was little direct leverage available to local communities to change basic U.S. Forest Service policy.¹⁴ It seemed unlikely in this case that Forest Service power could be used to protect local claims to subsistence rights.

The second possibility was to obviate the need for Forest Service action by preventing the construction of the plant. Since the plant could not be built without a height variance for its smokestack, the obvious arena for action was the county permit process. At the county level, local residents had power as voters which they could and did use to influence county decision-making to defend their individual claims. To return to the theoretical argument, in the absence of a coercive force, claimants to customary rights must find ways to exercise such power as they do have to defend those rights. In this case, they could defend their claims to customary rights by influencing local decision-making that affected the competitor for their rights, the power plant, because they could vote the decision-makers out of office. Since such opportunities are not necessarily readily available, the attempt to defend customary claims to rights, as shown in the other two protests, will not always be successful.

The strategy of defending claims by affecting county decision-making had three interrelated components—making public opposition visible, forcing the use of a more responsive and detailed approval process, and direct pressure on decision-makers. Public opposition was made visible within a week of the first public meeting about the plant in the form of a petition to the Board of Supervisors signed by 1,080 Feather County residents. This was important since in California the requirement for an EIR turns in part on whether there is significant public controversy surrounding issues of technical merit.

Opposition was also made visible in some 25 letters questioning the plant in the Adamsville newspaper. Anti-plant activists took advantage of public service radio announcements, and discussed the plant on a local radio talk show until the station management took one of the shows permanently off the air. There were numerous public meetings. Based in part on the visible public protest, the county planning director ordered an EIR.

In December, as the EIR neared completion, plant opponents specifically targeted the Supervisors, and through them, the County Planning Department. Brochures were placed in the mailboxes of Adamsville residents including the names and phone numbers of the five Feather County Supervisors with an exhortation for citizens to call and make their sentiments known. Those phones rang.

The draft EIR was issued in mid-January, summarized in the local newspaper, and made available in summary and full form at the county library. Twenty-three letters of comment (17 from plant opponents, 1 from an apparent plant supporter, 4 on technical matters from state agencies and 1 from Megavoltz) were submitted.

Resistance effectively peaked nine months after the plan was proposed. At the end of February, 1984, the Adamsville newspaper printed a full page paid advertisement with the names of 1,634 Feather County residents who had signed a petition asking that the plant not be built, no matter what the conclusions of the EIR. Another 1000 names came in too late to be printed. At least a fifth of Adamsville's 4500 residents had taken a public stance against the plant.¹⁵ This high level of collective mobilization which contrasts with that of the Woodcutters' Rebellion may be in part attributed to the fact that if access to firewood were reduced, residents were in a no exit situation.

In mid-April, 1984 the planning director denied the request for the necessary height variance for the plant and the company withdrew its application. Adamsville had successfully excluded outside competition for firewood, articulating and defending its claims to usufructuary rights to firewood.

Defending Usufructuary Claims to the Means of a Livelihood: The Great Commute

One of the statutes affecting Forest Service operations is the 1976 National Forest Management Act. Under its provisions every national forest must draw up a management plan. As part of the process, a draft plan must be submitted for public comment which must be taken into consideration in finalizing the plan. The Feather National Forest Draft Management Plan was submitted for public comment in 1986.

In responding to the draft plan much of the town was concerned that their ability to earn a livelihood through timber harvesting would be endangered by reductions in the allowable cut. They argued that local people had a legitimate claim to a livelihood right to forest resources, that the Forest Service decision-making process should recognize the primacy of local livelihoods. In a sense, this once again boiled down to excluding outsiders, for pressures to reduce the allowable cut were coming from

environmentalists, defined by many in the timber industry as outsiders regardless of whether they lived in the area.¹⁶

In this case local residents had less latitude in mounting their defense as there was no choice of arena. The decision would be made solely by the Forest Service. Since the Forest Service had not disclosed how public input would be evaluated, it was not clear what would be adequate to sway the decision (Adamsville newspaper, April 30, 1986). Unlike the Woodcutters' Rebellion, activism was part of an official process, but the rules of the game were by no means known. Activists on all sides of the issue were left with the same strategy—mobilizing as many people as possible to take a stance on the public record in the form of letters and/or public testimony.

Pro-cut organizers tried to develop a morally and politically persuasive articulation of the right and to defend it with symbolic protest and public testimony claiming the right. They set out to mobilize the maximum number of people and to make them as visible as possible.¹⁷ Organizers ran an ad in the local paper and soon had recruited several hundred dues-paying members of the Feather Citizens for Multiple Use (FCMU) and formed a committee to review the draft forest management plan and develop a strategy to protect the people's claim to a right to a livelihood from a timber-based economy.

FCMU's effort succeeded in repeatedly eliciting the articulation of the primacy of the local livelihood right in letters to the local newspaper and in public testimony:

The Forest Service [must] recognize that Feather County has schools, churches, stores, and community facilities which are an integral part of the forest environment along with the spotted owl.

Resolution of Chamber of Commerce
Adamsville newspaper 9 April, 1986

The final Feather National Forest Land and Resource Management Plan should be the one that benefits the majority of the people that live within the boundaries of the forest and the surrounding area. Keeping this main industry of the county should be our prime concern, and then try to attract additional industry and tourism. We are living in a depressed area and if the timber industry dies, so does the county.

Letter from 49 year resident of Feather County.

Adamsville Newspaper 23 April, 1986

We who live here, work here, pay taxes here and die here should be able to get the government's ear. We're part of the forest and our lives are at stake.

Local timber industry executive in public hearing
Adamsville newspaper 7 May, 1986

FCMU members organized a "Commute" on the day of the plan's public hearing. The mill let the shift off. Local businesses closed for the afternoon. An estimated 185 logging trucks, water trucks, pick-up trucks, tractors with signs--"Save Our Jobs", "Don't Take Away Our Livelihood", "Trees Mean

Jobs"-- kids on bicycles with orange flagging, marchers with placards all "commuted" down Main Street past lawns sprouting posters to the school where the hearing was to be held. It was a visible affirmation of the town's stance. That evening 30 people testified, claiming the Forest Service should recognize the priority of local jobs, local people, local interests.

While at the time of writing the Forest Plan is still being revised and the effects of the protest have yet to be seen, the outcome does not affect the argument made here: the Great Commute was both an act that articulated customary claims and a defense of them.

IV Discussion

The case presented here has shown that some non-aboriginal rural people in the contemporary United States consider themselves to have customary usufructuary rights to local resources and that these rights can be interpreted as a form of customary law. Both proposed indicators of the existence of claims to customary usufructuary rights were found. First, the claims were articulated as rights—not necessarily as rights under formal U.S. law (although even that was occasionally asserted), but nonetheless as legitimate. People perceived themselves to have a right based on what they saw as a morally compelling argument, i.e., that the forest ought to be used and managed for the good of the local residents. Second, the rights were defended. Actions as diverse as letters to the editor, petitions, public testimony, symbolic protest and manipulation of the local governmental system were used to defend what were perceived to be rightful claims.

From this finding follows a strong argument for broadening our understanding of non-aboriginal property rights in developed countries. Once we recognize that local systems of customary property rights are by no means restricted to the developing world, we are in a better position to understand events in our own rural areas. The application of the concepts discussed here to other areas will probably reveal that the diversity of local customary property law in the United States parallels that of other societies.

The case study also showed that the conflict between customary and official claims is a source of rural protest. Recognizing the existence and influence of such conflict allows us to resolve the paradox of seemingly inconsistent local action in the case at hand. For example, while the Woodcutters' Rebellion clearly concerned rights of access to forest resources, the Megavoltz fight and the Great Commute superficially appear to be ideological flipflops-- community members, who had turned out in unprecedented numbers on the "pro-environmental side" of the Megavoltz issue, also turned out on the "anti-environmental side" of the Great Commute. This seeming inconsistency disappears when the actions are seen not in terms of environmental ideology but in terms of defending claims to customary usufructuary rights. Taken separately, each of the protests could be explained in different ways. Taken together, it is clear that they are defenses of local claims to property rights. These findings clearly point to the need for more careful attention to local property relations as a source of social action.

They also suggest that some of the numerous highly localized "environmental" protests might be more accurately analyzed as the defense of customary property claims.

Recognition of the importance of custom and locality also offers scope for expanding our understanding of the relationship between localities and the state especially in the realm of conflict between formal and informal law. In the case at hand—in which only one of the three protests resulted in a successful defense of the claims to rights—Forest Service recognition would be necessary if local claims were to be pressed successfully. The successful defense occurred when the source of the threat was not the holder of the formal legal rights. In the Megavoltz controversy, claimants' power as voters could be used to mobilize the county's zoning authority against the company. In the other two cases there was no source of power which could be used against the Forest Service. Local people had to fall back on moral suasion, a weapon by no means always effective.

This raises the question of whether it is possible to develop a state administrative apparatus that can offer recognition to local claims within the context of national priorities and values.¹⁸ The issue of institutional recognition of customary usufructuary claims is more complex than the cases of community rights raised by Sax (1984), Quayle (1984), and Dietzgen (1987), because the rights in this case study are connected not to a community but to a locality, the forest. The activities undertaken in defense of the claims indicate that the locality in which there is a common understanding of customary usufructuary rights exceeds community boundaries. But the boundaries of that locality and the identification of its members are not always easily defined since kinship, residence, and formal property rights are disjoint. There are no easily defined or defended ethnic or physical boundaries of people who live in continuing proximity with the forest. For instance, although this study focuses on Adamsville, a few participants in the protests were from communities fifteen miles away. Users of forest resources are found over an even greater area. And while there is a local consensus that residents of a nearby Standard Metropolitan Statistical Area should not be allowed to collect fuelwood, there is no immediately clear consensus over where "we" stops and "they" begins. Thus, a better understanding of processes by which customary usufructuary rights are defined, perpetuated and defended calls for more research on the structure of locality, the social action it encompasses, and factors that shape its relationship with the state including the necessity of communicating by means of protest.

References

- Acheson, James M. 1987. "The Lobster Fiefs Revisited: Economic and Ecological Effects of Territoriality in Maine Lobster Fishing." Pp. 37-65 in The Question of the Commons, edited by Bonnie McCay and James M. Acheson. Tucson: University of Arizona Press.
- Allen, Sir Carleton Kemp. 1964. Law in the Making. Seventh Edition. Oxford: Clarendon Press.
- Allott, Antony. 1980. The Limits of Law. London: Butterworth.
- Allott, A.N., A.L. Epstein and M. Gluckman. 1969. "Introduction. Part I Problems of Research." Pp. 1-21 in Ideas and Procedures in African Customary Law, edited by Max Gluckman. London: Oxford University Press.
- Allot, Antony and Gordon R. Woodman (eds.) People's Law and State Law: The Bellagio Papers. Dordrecht: Foris Publications.
- Anderson, Terry L. and P. J. Hill. 1975. "The Evolution of Property Rights: A Study of the American West" Journal of Law and Economics 18: 163-179.
- Barkun, Michael. 1968. Law without Sanctions: Order in Primitive Societies and the World Community. New Haven: Yale University Press.
- Bennett, Gordon I. 1978. "Aboriginal Title in the Common Law: A Stony Path Through Feudal Doctrine" Buffalo Law Review 27: 617-635.
- Blahna, Dale J. and Susan Yonts-Shepard. 1987. "Preservation or Use? Confronting Public Issues in Forest Planning and Decision Making." Unpublished Paper.
- Bloch, Marc. 1966. French Rural History: An Essay on Its Basic Characteristics. Berkeley: University of California Press.
- Blum, Jerome. 1978. The End of the Old Order in Rural Europe. Princeton: Princeton University Press.
- Bureau of the Census, Department of Commerce. 1914. Thirteenth Census of the United States Taken in the Year 1910. Statistics for California. Washington, D.C.: Government Printing Office.
- Casaday, Ken. 1984. Draft Environmental Impact Report for the Megavoltz 11 MW Wood-fired Powerplant, Adamsville, California. Prepared for the Feather County Planning Department.
- Cernea, Michael. 1981. "Land Tenure Systems and Social Implications of Forestry Development Programs." World Bank Staff Working Paper, No. 452. Washington, D.C.: World Bank.
- Christensen, Jon. 1988. "A Real 'Milagro Beanfield War' in New Mexico." San Francisco Chronicle July 5, 1988: A11.
- Cohen, Fay. 1986. Treaties on Trial. The Continuing Controversy over Northwest Indian Fishing Rights. Seattle: University of Washington Press.
- Comaroff, John. 1975. "Talking Politics: Oratory and Authority in a Tswana Chiefdom" in Maurice Bloch (ed.) Political Language and Oratory in Traditional Society. London: Academic Press.
- Cronon, William. 1983. Changes in the Land. New York: Hill and Wang.
- Culhane, Paul J. 1981. Public Lands Politics: Interest Group Influence on the Forest Service and the Bureau of Land Management. Baltimore: Resources for the Future.

- Dietzgen, Annemarie. 1987. "A Sociological Approach for the Protection of Distinctive Communities". Unpublished M.S. Thesis, University of California at Berkeley.
- Ehrlich, Eugen. (1913) 1962. Fundamental Principles of the Sociology of Law. translated by Walter L. Moll. New York: Russell and Russell Inc. (first published, 1913; published in translation, 1936.)
- Ellickson, Robert C. 1986. "Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County" Stanford Law Review 38: 623-687.
- Fay, James S., Anne G. Lipow, and Stephanie W. Fay. 1986. California Almanac 1986-87. Novato: Presidio Press and Pacific Data Resources.
- Feather National Forest Draft Management Plan. 1985.
- Fernandes, Walter and Sharad Kulkarni (eds.). 1983. Towards a New Forest Policy: People's Rights and Environmental Needs. New Delhi: Indian Social Institute.
- Final Environmental Impact Report for the Ultrapower 11 MW Wood-fired Powerplant, Adamsville California. 1984. County of Feather.
- Fleming, William A. 1983. "Phewa Tal Catchment Management Program: Benefits and Costs of Forestry and Soil Conservation in Nepal. Pp. 217-288 in Forest and Watershed Development and Conservation in Asia and the Pacific. Edited by Lawrence S. Hamilton. Boulder, Colorado: Westview Press.
- Fortmann, Louise. 1985. "The Tree Tenure Factor in Agroforestry with Particular Reference to Africa" Agroforestry Systems 2 (4): 229-251.
- Fuller, Lon L. 1969a. "Human Interaction and the Law" American Journal of Jurisprudence 14:1-36.
- Fuller, Lon L. 1969b. The Morality of Law. New Haven: Yale University Press.
- Galanter, Marc. 1981. "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law." Journal of Legal Pluralism and Unofficial Law: 1-47.
- Griffiths, J. 1985. "Introduction" Pp. 13-20 in People's Law and State Law: The Bellagio Papers. Edited by Anthony Allot and Gordon R. Woodman. Dordrecht: Foris Publications: 13-20.
- Griffiths, John. 1986. "What is Legal Pluralism" Journal of Legal Pluralism and Unofficial Law 24: 1-55.
- Guha, Ramachandra. 1985. "Forestry and Social Protest in British Kumaun, c. 1893-1921." in Subaltern Studies IX. Edited by Ranajit Guha. Delhi: Oxford University Press.
- Guha, Ramachandra and Madhav Gadgil. 1987. "Forestry and Social Conflict in British India: A Study in the Ecological Bases of Agrarian Protest". Unpublished paper.
- Hahn, Steven. 1982a. "Hunting, Fishing and Foraging: Common Rights and Class Relations in the Postbellum South." Radical History Review 26:37-64.
- Hahn, Steven. 1982b. "The Yeomanry of the Nonplantation South: Upper Piedmont Georgia, 1850-1860." Pp. 29-56 in Class, Conflict and Consensus: Antebellum Southern Community Studies. Edited by Orville Vernon Burt and Robert C. McMath. Westport, Connecticut: Greenwood Press.
- Hirschman, Alfred. 1970. Exit, Voice and Loyalty. Cambridge, Mass.: Harvard University Press.

- Hoebel, E. Adamson, 1954. The Law of Primitive Man. Cambridge, Mass.: Harvard University Press.
- Holdsworth, W.S. 1922. A History of English Law. Volume I Third Edition. Boston: Little, Brown and Company.
- Holdsworth, W.S. 1923. A History of English Law. Volume II Third Edition. Boston: Little, Brown and Company.
- Hopkins, Harry. 1985. The Long Affray. The Poaching Wars 1760-1914. London: Secker and Warburg.
- Ives, Edward D. Forthcoming. George Magoon and the Down-East Game War: A Study in History, Folklore and the Law. Urbana: University of Illinois Press.
- Jones, Arthur R., M. Lee Taylor, and Alvin Bertrand. 1965. "Some Human Factors in Woods Burning: A Study of Change in Beliefs of the Residents of a National Forest in Louisiana." Bulletin No. 601. Louisiana State University and Agricultural and Mechanical College Agricultural Experiment Station in Cooperation with Southern Forest Experiment Stations, Forest Service, U.S. Department of Agriculture.
- Jordon, James William. 1983. "Frontier Culture, Government Agents and City Folks." in Allen Batteau (ed.) Appalachia and America: Autonomy and Regional Independence. Lexington: University of Kentucky Press.
- Kaufman, Herbert. 1967. The Forest Ranger. Baltimore: Johns Hopkins University Press.
- King, J. Crawford Jr. 1982. "The Closing of the Southern Range: An Exploratory Study" Journal of Southern History XLVIII (1): 53-70.
- Knowlton, Clark S. 1970. "Violence in New Mexico: A Sociological Perspective" California Law Review 58 (4): 1054-1085.
- Lam, Maivan. 1985. "The Imposition of Anglo-american Land Tenure Law on Hawaiians" Journal of Legal Pluralism and Unofficial Law 23: 103-128.
- Leshy, John D. 1987. The Mining Act: A Study in Perpetual Motion. Washington, D.C.: Resources for the Future. 521 p.
- Linebaugh, Peter. 1976. "Karl Marx, the Theft of Wood and Working Class Composition: A Contribution to the Current Debate" Crime and Social Justice 6: 5-16.
- Macaulay, Stewart. 1963. "Non-contractual Relations in Business: A Preliminary Study." American Sociological Review 28: 55-67.
- Macpherson, C.B. 1975. "Capitalism and the Changing Concept of Property" Pp. 105-124 in Feudalism, Capitalism and Beyond. Edited by Eugene Kamenka and R.S. Neale. Canberra: Australian National University Press: 105-124.
- Maddock, Kenneth. 1981. "Walpiri Land Tenure: A Test Case in Legal Anthropology" Oceania 52(2): 85-102.
- McCutcheon, Mary Shaw. 1981. "Resource Exploitation and the Tenure of Land and Sea in Palau." Unpublished PhD. Dissertation. University of Arizona.

- McDonald, Forrest and Grady McWhiney. 1975. "The Antebellum Southern Herdsman: A Reinterpretation." Journal of Southern History XLI (2): 147-166.
- McNall, Scott. 1988. The Road to Rebellion: Class Formation and Kansas Populism, 1865-1900. Chicago: University of Chicago Press.
- Meek, C.K. 1949. Land Law and Custom in the Colonies. London: Frank Cass.
- Merriman, John M. 1975. "The Demoiselles of the Ariège, 1829-1831" Pp. 87-118 in 1830 in France. Edited by John M. Merriman. New York: New Viewpoints.
- Moench, Marcus. 1988. "'Turf' and Forest Management in a Garhwal Village" Pp. 127-136 in Whose Trees? Proprietary Dimensions of Forestry. Edited by Louise Fortmann and John Bruce. Boulder: Westview Press.
- Moore, Sally Falk. 1973. "Law and Social Change: The Semi-autonomous Social Field as an Appropriate Subject of Study." Law and Society 7(4): 719-746.
- Morrison, Denton E. and Allan D. Steeves. 1967. "Deprivation, Discontent, and Social Movement Participation: Evidence on a Contemporary Farmers' Movement, The NFO." Rural Sociology 32 (4): 414-434.
- Nelson, Robert H. 1986. "Private Rights to Government Actions: How Modern Property Rights Evolve." University of Illinois Law Review: 361-386.
- Noronha, Raymond and Francis Lethem. 1983. "Traditional Land Tenure and Land Use Systems in the Design of Agricultural Projects." World Bank Staff Working Paper No. 561: Washington D.C.: World Bank.
- Obi, S.N. Chinwuba. 1963. The Ibo Law of Property. London: Butterworths.
- Panel on Common Property Resource Management, Board on Science and Technology for International Development, National Research Council. (eds.) 1986. Proceedings of the Conference on Common Property Resource Management. Washington, D.C.: National Academy Press.
- Perry, J.A.G. 1981. "Land, Power and the Lie." Man 16 (2): 235-250.
- Podgorecki, Adam. 1985. "Intuitive Law versus Folk Law" Pp. 71-72 in People's Law and State Law: The Bellagio Papers. Edited by Antony Allot and Gordon R. Woodman. Dordrecht: Foris Publications: 71-72.
- Pollock, Sir Frederick and Frederick William Maitland. 1923. The History of English Law Before the Time of Edward I. Volume I. Second Edition. Cambridge: Cambridge University Press.
- Pongsapich, Amara. 1982. "The Development of the concept of Land Ownership and its Consequences in Thung Kula Ronghi Area" Paper presented at the Second Thai-European Research Seminar. Saarbruecken, Federal Republic of Germany.
- Popisil, Leonard. 1974. Anthropology of Law: A Comparative Theory. New Haven: HRAF Press.
- Quayle, Brendan. 1984. "Images of Place in a Northumbrian Dale" Pp. 225-241 in Locality and Rurality: Economy and Society in Rural Regions. Edited by Tony Bradley and Philip Lowe. Norwich: Geo-Books.

- Regan, Colm. 1981. "Colonialism and Deforestation: A Case Study of Ireland" Maynooth, Ireland: Department of Geography, St. Patrick's College.
- Reich, Charles. 1964. "The New Property" Yale Law Review 73: 733-787
- Rose, Carol. 1986. "The Comedy of the Commons: Custom, Commerce and Inherently Public Property" University of Chicago Law Review 53 (3): 711-781.
- Sax, Joseph L. 1980. "Liberating Public Trust Doctrine from Its Historical Shackles" University of California Davis Law Review 14:185-193.
- Sax, Joseph L. 1984. "Do Communities Have Rights? The National Parks as a Laboratory of New Ideas" University of Pittsburgh Law Review 45: 499-511.
- Scheiber, Harry N. 1984. "Public Rights and the Rule of Law in American Legal History" California Law Review 72: 217-251.
- Schnaiberg, Allan. 1986. "Reflections on Resistance to Rural Industrialization: Newcomers' Culture of Environmentalism" Pp. in Differential Social Impacts of Rural Resource Development. Edited by Pamela D. Elkind-Savatsky. Boulder: Westview Press.
- Sciala, Michael. Forthcoming. *The Name of the Game: An Ethnography of Poaching*. Unpublished M.S. Thesis. University of Idaho.
- Scott, James C. 1977a. "Protest and Profanation: Agrarian Revolt and the Little Tradition Part I" Theory and Society 4 (1): 1-38.
- Scott, James C. 1977b. "Protest and Profanation: Agrarian Revolt and the Little Tradition Part II" Theory and Society 4 (1): 211-246.
- Shepherd, K.R. and H.V. Richter (eds.) 1979. "Forestry in National Development: Production Systems, Conservation, Foreign Trade and Aid." Canberra: Development Studies Center, Australian National University.
- Thomas, W.I. and F. Znaniecki. 1958. The Polish Peasant. 2nd Edition New York: Dover Publications
- Trillin, Calvin. 1976. "U.S. Journal: Costilla County, Colorado: A Little Cloud on the Title" New Yorker 52 (26 April): 122-132.
- Uhlig, Harald. 1980. "Problems of Land Use and Recent Settlement in Thailand's Highland-Lowland Transition Zone" in Jack D. Ives, Sanga Sabhasri and Pisit Vorauri (eds.) Conservation and Development in Northern Thailand. Tokyo: United Nations University.
- United States Department of Agriculture, Forest Service. 1905. The Use of National Forest Reserves. Regulations and Instructions. Washington, D.C. Government Printing Office.
- Vayda, A. P., Carol J. Pierce Colfer and Mohamad Brotokusumo. 1980. "Interactions Between People and Forests in East Kalimantan." Impact of Science on Society: 30:179-190.
- Weber, Max.(1922) 1978. Economy and Society Volumes 1 and 2, edited by Guenther Roth and Claus Wittich. Berkeley: University of California Press.
- Weinstock, Joseph A. 1983. "Rattan: Ecological Balance in a Borneo Rainforest Swidden". Economic Botany 37: 58-68.
- Wilkinson, Charles F. 1987. American Indians, Time and the Law. New Haven: Yale University Press.

Wunderlich, Gene. 1979. "Landownership: A Status of Facts" Natural Resources Journal 19: 97- 118.

Local Newspaper Articles

Lisa Amand "Road Talk Tops Busy Chamber Meetings" Adamsville newspaper, 9 April, 1986

"Goodhalls plead guilty" Adamsville newspaper 9 April, 1986

"Economic Development Council Forum Achieves Consensus" Adamsville newspaper, April 30, 1986

Jane Braxton Little "Feather Rallies Behind Maximum Timber Harvests" Adamsville newspaper 7 May, 1986

¹ This research was funded by the Forest and Rangeland Resource Assessment Program of the California Department of Forestry and Fire Protection. The research assistance of Paul Starrs and the thoughtful comments of David Brokensha, John Bruce, William Burch, Jr., Elizabeth Colson, Sally K. Fairfax, Andrea Peterson, Emery Roe and Carol Rose are very gratefully acknowledged. Writing was facilitated by the support of the Survey Research Center, University of California at Berkeley.

² Because customary usufructuary rights may be a relatively unfamiliar concept, some definitions are necessary. Simply put, customary law is a "legal system in which the community makes law and changes it by changing its practice without help from the legislator" (Allott, 1980: v). In the study area poaching (an illegal customary usage) and fuel collection (a legal customary usage), have both been practiced and generally accepted by local custom within living memory. Customary property rights are rights to property (by which for the purposes of this article is meant land and natural resources) which are recognized by the local community by virtue of local customary usage, that is, long-standing usage recognized and accepted by the community. The property rights associated with a piece of land or with natural resources are conventionally discussed in terms of a bundle (Cf. Wunderlich, 1979: 108-111). Individual rights in this bundle can be held by different people. For example, traditionally among the Ibo of Nigeria, men were entitled to the oil of a palm tree, while women held the right to the kernels (Obi, 1963: 98). One part of the bundle of property rights is the right of usufruct, that is, the right to use. The holder of a usufructuary right may a resource owned by another but may not sell or destroy it. For example, in many traditional societies it was the custom for a family to be allocated a piece of land for farming or grazing. However, the family could not sell the land which belonged in perpetuity to the group making the allocation. As used here, "customary usufructuary claims" means claims of entitlement that are based on customary usage and are not protected by formal law. (I shall use the term formal law to refer to government-made law, i.e., law made by legislatures, courts and administrative and regulatory agencies and enforceable through the courts.) There are certain semantic difficulties inherent in this topic. "Claim" understates the local sense of right, while "right" in the U.S. context carries connotations of legal enforceability. I have used both terms, using "right" to mean a customary, not a legally enforceable, right.

³ The term "truncated property law" refers to the fact that these are claims to right of use that are separate from the responsibility (and rules of how) to manage the resource which in many customary systems is also linked with usufructuary rights. Such truncated systems might be expected to emerge in two ways. In one case, the sense of right is the remnant of a former system.

For example, customary sanctions against resource misuse might atrophy as a customary legal system becomes subsidiary to a national legal system, leaving only the sense of right (John Bruce, pers. comm. 1988). In the second case, the sense of right is based on a customary usage that was not followed by the emergence of customary regulation of use. For example, in the site of this case study, the population density of the county at the turn of the century was less than 2 people per square mile with no settlements as large as 2500 (Bureau of the Census, 1914: 604). Thus, there may not have been the sort of pressure on the resource that is frequently considered to result in the generation of regulatory norms (Panel on Common Property Resource Management, 1986).

⁴ This type of claim is similar to that described by Scott (1977b:214) for Asia: "[T]he assumption is that the village has a right to the resources (e.g. land, forests, pasture) which it has traditionally used and that claims on local resources are only admissible after the usual subsistence needs of the village have been met."

⁵ Support for the legitimacy of widening the traditional ambit of usufructuary claims to include livelihood claims can be found in the work of C.B. Macpherson (1975:116) who defines the "right of access to the means of labour" as a property right. He writes,

"... to see as one's property a right to earn an income through employment is to see (or to come close to seeing) as one's property a right of access to some of the existent means of labour, that is, to some of the accumulated productive resources of the whole society (natural resources plus the productive resources created by past labour), no matter by whom they are owned." (emphases added)

⁶ Traditionally under English law, antiquity (by which was meant the period predating the reign of Richard I) was one of the tests for determining the existence of a customary law (Allen, 1964: 133). This standard is no longer uniformly applied. Under English law "some relatively recent usages [have been] upheld as good custom" (Rose, 1986:741fn.). The state courts of Oregon, Florida and Hawaii have accepted the principle that beaches can be claimed for the public on the basis of custom (which clearly is of relatively modern origin) (Rose, 1986:714 fn 16). For a discussion of custom in Hawaiian property law, see Lam (1985). For the influence on western mining law of the customs developed by miners in the California Gold Rush to regulate claims, see Scheiber (1984) and Leshy (1987).

⁷ That is, claimants can enforce their claims to rights in practice despite the lack of legal recognition. In the case of dual legal systems, it is possible to have a de jure right in one system that is, at best, a de facto right in the other. The conflict arising out of the enforcement of American law against usufructuary rights originating with Spanish land grants described by Trillin (1976) and Christensen (1988) are cases in point.

⁸ The importance of the firm articulation of a right can be found in other cultures. It would be interesting to explore the parallels between the articulation of rights in cases such as the one at hand and the strategic use of oratory in land and other disputes in Africa. See, for example, Comaroff (1975) and Perry (1981).

⁹ Sax was not making a property right argument. See Rose (1980: 721n) on this point.

¹⁰ For a discussion of these forest struggles worldwide, see Holdsworth, 1922: 94-108; Merriman, 1975; Scott, 1977b: 215-218; Regan, 1981; Pongsapich, 1982; Fernandes and Kulkarni, 1983; Guha, 1985, Guha and Gadgil, 1987.

¹¹ The names of the town, county, national forest and company have been changed to protect the identity of the community. Inquiries are welcome from scholars whose research requires more exact references to the local documents I have cited.

¹² It would be interesting to know to the extent to which firewood poaching rose in response to the fee. Unfortunately such data are almost impossible to come by.

¹³ Shortly after the Megavoltz protest a local firm expanded its own much larger co-generation facility which burned mill wastewood and therefore did not threaten local access to firewood. Environmentalist opposition to this plant found no support in this community.

¹⁴ Traditionally the Forest Service transferred its personnel frequently in order to prevent their "capture" by the local community (Kaufman, 1967: 218). Culhane's (1981) more recent analysis shows strong local interest groups can influence policy. However, Blahna and Yonts-Shepard (1987) found that even when the Forest Service seeks out local opinion, its methods tend to result in the "loss" of issues.

¹⁵ This underestimates the number of Adamsville residents who signed since addresses could only be determined for those who signed the petition filed with the county planning department. Of those 901 were from Adamsville. However, it can be assumed that a similar proportion of the 1000 signers of petitions that came in too late to be filed were also from Adamsville. Thus, the actual proportion is likely to be nearer a third and the percentage of adult residents higher still.

¹⁶ The implicit argument of industry activists was that environmentalism was inherently an outside interest. Members of the timber industry have suggested that "old-timers" (that is insiders) are people who have "moved to the area to work in timber" and everyone else is a newcomer (outsider). The percentage of participation in the comment process by outsiders defined geographically was in fact about equal for both sides. (Personal communication, Court Bennett, Feather National Forest, 1988).

¹⁷ Anti-cut activists gauged the mood of the community and restricted their efforts to submitting written comments on the plan.

¹⁸ I am grateful to Philip Selznick for raising this issue.

U.C. BERKELEY LIBRARIES

C098095419