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Christian Lund, *Nine Tenths of the Law: Enduring Dispossession in Indonesia*, Yale University Press, New Haven, 2020.

Scholars of legal pluralism have long been preoccupied with the paradoxes, uncertainties and competing legal claims, often land centred, that arise from layered and fractured postcolonial legal orders. Lund's book offers an extremely rich, wide ranging and nuanced account of these issues in the context of Indonesia from the period of Dutch colonization (1619) to the present.

The title, *Nine Tenths of the Law*, reflects his enduring concern with the complex relationship between possession on the one hand, and the last tenth, legalisation. Whilst aware "that property rights ("the law") are not merely about legal rights, but, more importantly, about the political and physical capacity to hold things of value: land in particular",<sup>[2]</sup> he is equally aware of "the importance people and companies attach to law, and the energies and efforts they invest in the legalization of their claims."<sup>[4]</sup> "[R]ecognition still matters a great deal."<sup>[5]</sup> But here is the twist: the meaning of legalisation for both Lund and, more crucially, his research subjects, is far from straightforward. He sees it as the legitimization of rules, claims, administrative operations "through reference to law regardless of whether a genuine correspondence between them and statutory law actually exists."<sup>[6]</sup> Clearly, this opens huge practical and theoretical problems, but it is also a reflection of reality on the ground, however imperfect and contradictory. "The affinity between statutory law and legalization is often assumed and asserted, as both villagers and company representatives did in Meka Haya, but not necessarily juridically accurate."<sup>[6]</sup>

Rather than employing a predetermined series of assumptions, categories or constructs in relation to law or actors, Lund, through a series of case studies, focuses upon the particular fields of contestation and the issues at hand. This opens extremely rich possibilities for both research and analysis. It means, for instance, that legalization (as defined above) is not the exclusive province of the state (parliaments, governments, public agencies or courts), but emerges as the by-product of "a much bigger cast of potential law makers",<sup>[7]</sup> including corporations, organised peasant groups, individual peasants, and even criminal gangs.

In some, arguably more optimistic settings, this can be termed the creation of 'law from below'. Chapter Three, *Indirect Recognition*, for instance, shows in minute - and necessary - detail, how "the boundary between legal and illegal was reworked [by two communities in West Java] and claims were legalized by indirect recognition."<sup>[66]</sup> Among the many techniques employed: alliances with statutory institutions, mapping negotiations with park authorities and the payment of taxes to local authorities as a means of mutual recognition. Lund is clear: "The element of indirect claim and indirect recognition is significant."<sup>[75]</sup> "Law's emancipatory potential was realised little by little"<sup>[76]</sup> rather than at the stroke of a pen or in a court of law. Indeed, seemingly extraneous processes to claims over land, like the registering of voting rights in a determinate location, could help in the solidification of such claims. Lund's emphasis is upon these competing, contradictory open-ended and, yes, even reversible processes.

Being rooted in political science, my emphasis is upon relations of power. For me they help to explain why, under determinate conditions, Brazil's Landless Workers' Movement (Movimento dos Trabalhadores Rurais Sem Terra, MST) sometimes leveraged its forces to great effect, asserting legal claims and changing facts on the ground, and on other occasions failed in this endeavour, most notably the wider project of land reform.<sup>i</sup> Power was multiply contingent, but most of it lay with landowners and institutions of the state. As an anthropological study, Lund's emphasis is more upon "relations of recognition between

claimants and institutions”[130] rather than relations of power, no matter how alive he is to their presence, or the evidence in his book speaks to them. With regard to Hernando de Soto’s prioritisation of property rights and land titling<sup>ii</sup>, for instance, Lund rightly suggests that “a fixation on government-recognised private property blinds us to other relevant forms of acquiring space, securing access to land, and gaining recognition and legalization of claims, livelihoods, and residence.”[127] Lund shows how “sometimes formal private property need not be part of what makes rights effective and land tenure secure and certain.”[127]

Chapter One sets out Lund’s theoretical concerns discussed above, some of the paradoxes of legality in Indonesia (including open violation of law by the state itself), the historical background to Indonesian land law, and his methodological approach. The latter included talking to primary protagonists in conflicts and repeatedly asking a fundamental question: “Who has what rights, and how are they established?”[21] The other chapters are, in some senses, reiterations of this theme.

Chapter Two, dealing with Legalization and Land Struggles in North Sumatra, discusses the structure of law, land and its occupation in the context of numerous dramatic ruptures arising from Dutch colonization (1619), Japanese occupation (World War Two), nationalist revolution (Sukarno (1945)), authoritarianism (Suharto 1965) and finally democratization, beginning in 1998 with the end of Suharto’s so-called New Order. Despite these upheavals, agrarian structures, particularly large plantations, “proved very resilient”. [27] As well as explaining the causes of this enduring regime of dispossession (the subtitle of his book), Lund shows how Indonesia was left with a layered residue of contradictory legal orders. These also led to seemingly contradictory behaviours for which he seeks clear explanations: “just as legalization has been seen by companies as an instrument to secure rights into the next regime, so for smallholders the preservation of certificates, documentation of claims through hearings, and recording of individual testimonies of violence and abuse have been ways of preserving the rightfulness, or at least the integrity, of their claims into the future.”[51]

Chapter Three documents the aforementioned processes of “indirect recognition” in the context of West Java. “In the end, land holding was indirectly legalized through the recognition of legal references of people’s identity-based presence in the area. The communities possession was consolidated by legalization.”[76]

Chapter Four, focuses on more organised forms of occupation in rural Java that re-emerged in the space left by New Order’s demise. Lund acknowledges that “successful land occupations have remained the exception”. [98] Nevertheless these “sovereign moments” were significant. Movements effectively mediated peasants’ access to land in processes full of contradictions sometimes related to the long-term preservation of movement integrity. The knowledge, for instance, that “success could eventually make the movement redundant”, [100] meant it did not always push as hard as it might. Likewise, peasants both sought legalization of their property, through movement protection, and sought a version of the same by engaging directly with government institutions in the hope of future statutory recognition.

If there is a disheartening chapter, then it is Chapter Five, Predatory Peace, which deals with processes of dispossession at Aceh’s Oil Palm Frontier. Ironically, the end of the war and signing of a peace accord (2005), together with the influx of huge government investments, following the Tsunami of December 2004, saw the Free Aceh Movement (Gerakan Aceh Merdeka, GAM) drop its rhetoric of rural transformation and throw in its lot with the oil palm boom. In explaining that experience, which included the “dispossession and alienation of

smallholders through the conjuring trick of [one-sided] contract schemes”,[124] Lund’s cases again draw readers attention to how “law is neither disregarded nor respected in a narrow sense...[but rather]...deployed to legalize and lock in settlement by invocation of state power.”[124]

Chapter Six, aptly named ‘On Track’, offers an antidote of sorts to the events in Aceh, insofar as it discusses a case (in a peri-urban rather than rural setting), where residents did succeed in occupying land, did receive a modicum of official recognition and did open up and access multiple rights, including certificates of domicile and infrastructural services (water, electricity and even roads). The chapter features the book’s most striking photograph, a Mosque, literally built upon the tracks of a disused railway line in the city of Bandung, West Java. This physical occupation, like informal settlements across the world, begs so many questions: Whose needs did it meet? How had it come about? Why was it tolerated by the putative owners of the line? What processes saw it consolidated? Are there wider lessons to be drawn, etc.? Lund explains the minute and gradual processes of physical, symbolic, institutional and legal construction behind such occupations. Rather than the binary of legal/illegal, occupied/dispossessed Lund describes grey areas: “Although the initial occupation was not condoned by the railway company, neither was it actively opposed.”[143] Surprisingly (until one looks closer), that opens up possibilities that settlers eagerly and creatively took up. Again, this story is repeated in so many urban environments across the globe, where necessity is the mother of invention, where formal attribution of authority is not the end of the matter and where, if push comes to shove, such authority often meets its limits.

Chapter Seven, Another Fine Mess, looks at the chaotic ways in which land is de facto and de jure repurposed when leases expire and, in legal theory at least, reverts back to state control. Whether by accident or design, the state fails to exert control (a situation uncannily reminiscent of so called ‘devolved’ lands in Brazil which have been occupied by a patchwork of private interests ranging from the smallest to the largest most hallowed commercial groupings). Lund unpicks the origins of Polonia neighbourhood, in Medan city, whose status remains unresolved and the source of constant tension between residents and its putative owners, the Airforce. In this, as in the other examples in the chapter he concludes that given the uncertainty “What was bought and sold was not land, or even land rights, but the land right opportunity to legalize this new possession as property.”[172] Despite their differences, businessmen, ordinary people, youth gangs and other Indonesians often share on thing in common, “possession precipitated legalization”[173] whilst “government institutions offered all actors the possibility of turning possession into property.”[174]

What is one to make of these variegated processes, outcomes and contexts? Amongst other things, that “all were law makers”, that law is “not the monopoly of government”, that occasional victories “legitimate and thereby undergird the general belief in law as the solidifier of rights”. [180] Lund’s book allows us to identify the potentialities in law for what they are, but that also entails acknowledging the huge asymmetrical structural constraints, including that “some have the basic advantage of being part of government structures” and as “institutional incarnations of the state, they have benefitted from the legal doctrine of state control over land”[180], that more often than not vitiate the promise of law. It is one of many uncomfortable paradoxes raised by a highly informative work that scholars from a wide range of disciplines would do well to engage with.

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<sup>i</sup> George Mészáros, *Social Movements, Law and the Politics of Land Reform: Lessons from Brazil*, Routledge, Abingdon, 2013

<sup>ii</sup> Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books, London, 2000