

**BIOCULTURAL RIGHTS: POLITICAL  
ECOLOGY, JURISPRUDENCE,  
RESISTENCE & ENGAGEMENT**

**HARRY JONAS**

**NATURAL JUSTICE: LAWYERS FOR  
COMMUNITIES & THE ENVIRONMENT**

# DARRELL ADDISON POSEY

- Entomologist, Anthropologist, Ethnobiologist
- Political & Juridical Ecologist
- Earth Parliament during Rio's UNCED aimed at valuing indigenous knowledge and rights
- Questioning mainstream legal paradigms

# CONVENTION ON BIOLOGICAL DIVERSITY

- Article 8j

Respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity

- Article 10c

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements

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# TOWARDS TRADITIONAL RESOURCE RIGHTS

“The challenge for international law and policy is to learn from the unique experience and culture of indigenous peoples in relation to sustainable development and to develop international environmental law in a way that respects established and emerging international rights and standards applicable to indigenous peoples”.

Craig and Nava (1994).



# DEFINING TRADITIONAL RESOURCE RIGHTS

- “...a bundle of basic rights that include human and cultural rights, the right to self-determination, and land and territorial rights... [that] recognize the right of Indigenous peoples and local communities to control the use of plant, animal and other resources, and associated traditional knowledge and technologies”

Darrell A. Posey







# TRADITIONAL RESOURCE RIGHTS

Basic human rights - right to development - rights to environmental integrity - religious freedom - land and territorial rights - right to privacy - prior informed consent and full disclosure - farmers' rights - intellectual property rights - neighbouring rights - cultural property rights - cultural heritage recognition - rights of customary law and practice

*National Laws and International Agreements Affecting Indigenous Local Knowledge: Conflict or Conciliation*

*Darrell A. Posey*

# POSEY ON TRADITIONAL RESOURCE RIGHTS

By prioritizing Indigenous peoples' rights to say NO to exploitation and by acknowledging their basic rights to control access over and receive benefits from traditional resources, commercial and research institutions should find equitable agreements and partnerships more easily attainable.







# DEVELOPING TRADITIONAL RESOURCE RIGHTS

The development of traditional resource rights will require “a process of dialogue between indigenous peoples, local communities and governmental and non-governmental institutions on an agenda which includes local economic interests, accountability, human rights and environmental concerns for long-term sustainability”.



# FROM UNCED TO Rio + 20

- Stronger drivers of loss of bioculture
- Loss of Biodiversity & Cultures
- Trend in environmental law:  
commercialization of genetic resources and  
traditional knowledge, carbon trading and the  
green economy
- Indigenous Rights: UNDRIP & Universal  
Declaration on Rights of Mother Earth
- Jurisprudence of regional and national courts







# INNOVATIVE PERSPECTIVES

- Indigenous Peoples' & Local Communities' Voices & Political Engagement
- Bioculture
- Commons
- Earth Jurisprudence & Wild Law
- Global Ecological Integrity Group
- Resilience
- Complexity Theory
- Political Ecology

# FROM POLITICAL ECOLOGY ...

- Destruction, Construction and Production of Nature
- Place, Progressive Contextualization, Scales and Networks
- Ethnicity, Race, Class, Gender and Agency
- Common Property Resources, Knowledges, the Tragedy of Commercialization
- Territorialization
- Resilience
- *Integrating, Denaturalizing, Localizing, and Constantly Evolving*
- Paul Robbins







# ... TO POLITICAL AND *JURIDICAL* ECOLOGY

The questions political ecologists focus on are always geographical, historical, anthropological, political, economic, and sociological – all at once a matter of culture/ power/ history/ nature”.

Aletta Biersack

Increasingly they/we will also have to *explicitly* factor in another critical dimension of social-environmental relations, political ecology’s own silent violence: **the law**.

# THE SILENT VIOLENCE

“While clearly not the driver of dispossession, the law is the culpable hand-maiden or enabler of policies which foster capitalist transformation through conventional dispossessory routes, and in the case of Africa, in conditions where governments are hardly impersonal arbiters”.

Liz Alden Wiley





# LEGAL DIMENSION OF POLITICAL ECOLOGY

- Nature of Law (positivist / natural law)
- Nature of Rights (legal / moral)
- Nature of Justice (Deep structure of the law)
  
- Political and Juridical Ecology becomes a kind of Critical Legal Studies focusing on biosphere relations.

# BIOCULTURAL RIGHTS & RESPONSIBILITIES

- Type of rights based on linkages between culture and customary & sustainable uses of nature.
- The essence of biocultural rights lies in their recognition of new kinds of claims based on stewardship as informing the content of pre-existing rights.
- International extension of Native Title to include any aspect of a community's way of life, including TK, culture and customs, customary uses of natural resources, & customary laws.







# EXPLORING BIOCULTURAL RIGHTS

- **Positivist:**
  - Legal Mapping/Legal cartography (Selective reading of the law from a community perspective - laws that support and those that hinder)
  - Lexography: + understanding politics of the law
- **Normative, natural law approach**
  - Ecocentric







# BIOCULTURAL JURISPRUDENCE

- Saramaka v. Suriname (2007)
- Inter-American Court on Human Rights:
  - Not indigenous
  - Land rights from their connection to territory
  - Rights over natural resources as well



# BIOCULTURAL JURISPRUDENCE

“Accordingly, the right to use and enjoy their territory would be meaningless in the context of indigenous and tribal communities if said right were not connected to the natural resources that lie on and within the land. That is, the demand for collective land ownership by members of indigenous and tribal peoples derives from the need to ensure the security and permanence of their control and use of the natural resources, which in turn maintains their very way of life.”

- Juxtaposed with CBD-ABS

# USING BIOCULTURAL RIGHTS: BIOCULTURAL COMMUNITY PROTOCOLS

- Resistance and Engagement:
- Integrating social activism with legal empowerment ...
- In processes that affirm community, territories and biocultural relationships ...
- To engage with conservation NGOs, private sector, State agencies ...
- According to community values, and customary, national & international laws ...
- Towards community wellbeing based on conservation & sustainable use of biodiversity





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