Law of the Forest: in A New Book, Professor Errol E. Meidinger Explores Lawmaking in an Environmental Context

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In a new book, Professor Errol E. Meidinger explores lawmaking in an environmental context.

Who makes the law? The job does not stop with legislatures. In fact, argues UB Law Professor Errol E. Meidinger, nongovernmental organizations can establish regulations that function very much like law, often with economic consequences for disobedience.

Meidinger’s recent research examines “private lawmaking” in the context of forest certification initiatives. As he explains, “People who are concerned about forest management develop standards for proper forest management and then develop mechanisms for enforcing those standards.” Such standards are “technically voluntary,” he says, but the consequences of ignoring them can be steep. For example, he says, a chain store that sells a lot of lumber can be pressured by protesters to pledge that it will only buy wood harvested from a sustainable forest, rather than, say, a South American rain forest. The store could ignore the pressure — but its sales would be at risk.

Meidinger is one of three editors — his colleagues are professors in Switzerland and Germany — of the new book Social and Political Dimensions of Forest Certification. The book, from a German publisher, deals with this politically contentious issue from a number of viewpoints, including economic and social justice, effects on communities, policymaking, regulation and legal systems. Meidinger’s two essays in the volume deal with forest certification “as a global civil society regulatory institution” and as environmental lawmaking.

“This is a new kind of institution for protecting the environment and other resources: a way of organizing human behavior in a patterned and systematic way,” Meidinger says. “Forest certification is both practically and intellectually important.”

This book is a first effort to say this isn’t only about whether the bunnies and the birds are being well protected, because forest certification is aimed ultimately at protecting human communities. This is an effort to explore the social and political dimensions of forest certification. Does it lead to better, more predictable jobs? Does it lead to better livelihoods? Does it achieve the goal of not abridging indigenous rights?”

Meidinger says the push for forest certification grew out of two main
groups: environmental coalitions such as the Worldwide Fund for Nature, and forest industry interests in the United States and worldwide. The movement is a major one not just in environmental law, but also in other areas, he says, as governments have failed to establish real, enforceable regulations to protect the global environment and systematically disadvantaged people. There are environmental issues, of course: clear-cutting, the use of chemicals, the introduction of genetically modified species. And there are social policy issues, including the protection of indigenous people's rights and issues of fair employment.

But as a law professor, he says it is the legal aspects of the movement that particularly pique his interest.

"I tend to view this as a kind of law-making because it is an effort to develop general standards of what is allowable and what is not," Meidinger says. "It is an effort to do that in a systematic and public way. It has an enforcement mechanism. And there are sanctions involved if you do not conform."

"A rule comes to be thought of as law if compliance is widely expected and if there are sanctions for non-compliance. Very often a state passes a statute saying you must conform to the rule, but that is not the only way it can become law." He points, for example, to the tort system, under which a person is liable if he acts unreasonably and someone else is injured, even if no specific law exists to address the particular behavior. Similarly, Meidinger says, lawyers can be sued for malpractice if they do not conform to the standards set up not by the state, but by professional boards.

On forest certification, he says, "There's a hope that these standards will be adopted by governments. But in a sense, governments delegate some authority to NGOs. This leads into some really fairly profound questions about what law is. From a jurisprudential standpoint, I don't think there is much justification for saying something is a law only if a nation-state says it's a law."