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**Book Review: A Sourcebook of African Customary Law for  
Southern Africa**

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## BOOK REVIEWS

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### A Sourcebook of African Customary Law for Southern Africa

by T W BENNETT

Juta & Co Ltd Cape Town Wetton Johannesburg 1991 484 p  
Price R85,80 (VAT incl)

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For lawyers, and particularly constitutional lawyers, these are exciting times in South Africa. There is a sense that the removal of formal apartheid has opened up a legally fertile ground in which to critically analyse and assess appropriate legal and constitutional models for a democratic South Africa. But, as South Africa edges towards a new legal and constitutional dispensation, one issue has of late contributed to the debate about what a new legal order will encompass. It is an area of law persistently marginalised and ignored within the legal framework: customary law and how and which of its major tenets are to be incorporated into a new democratic legal system.

A consequence of the marginalisation of customary law has been the dearth of quality legal scholarship dealing with the subject. T W Bennett's *A Sourcebook of African Customary Law for Southern Africa* steps into this breach. It is a well-researched, detailed and thoughtful contribution to the subject.

The author deals with a host of sensitive and controversial issues, including but not limited to, questions of human rights, gender equality and customary law.

He critically assesses the manner in which customary law and custom has been manipulated and used by successive South African administrators for their own political ends to regulate and control African life. This is without due regard for the intrinsic value of particular institutions and practices, and their relationship to the communities they were ostensibly to serve. Bennett highlights this cynical exercise in the codification of customary law, and to a lesser extent the judicial interpretation of aspects of customary law.

The organisation of the book is impressive. There are ten chapters covering in detail the particular topics allocated; from customary law

theory and the application of customary laws to substantive law questions of marriage and succession. At the outset the author attempts to locate the practice of customary law and its response to external influences within a theoretical context. The author journeys through different ideological models and outlines their respective responses to, and interaction with, customary law.

Bennett looks at the court structure and raises important questions about the incorporation of traditional structures into a formal legal framework. The provisions in customary law relating to, *inter alia*, marriage, succession and property and the rights and status of women and children within customary law are also analysed.

The author draws on international norms and the growing international consensus about gender equality and highlights discussions about one of the most vexing issues facing customary law, namely the subordinate status of women and children under customary law. His attempt is not to provide answers, but to raise the questions in a sensitive and sympathetic way, and to suggest ways of dealing with the issues constructively.

He discusses the problems that arise when there is a conflict between African customary and South African law and/or where jurisdictional questions are ambiguous. The problems he highlights through the cases point to the human suffering and uncertainty that the existence of a dual legal system has engendered. These conflicts of law and jurisdictional issues posed difficult problems for the legal architects and constitutional makers of a post-apartheid South Africa.

The author has drawn his material from an impressive array of sources and the book's bibliography is voluminous and a wonderful reference source. I found it a pleasure weaving through a collection of interdisciplinary materials, a rare experience in a legal source-book.

The book successfully combines the many aspects of customary law into a theoretical as well as an international framework. The author has dealt with the subject so thoughtfully and resourcefully, that there is little within it to criticize.

I would, however, liked to have seen greater attention paid by the author to the growing feminist scholarship in this area. This criticism is more a reflection of my own particular interests and does not detract from the immense contribution this book makes to the subject.

It is an indispensable source for any scholar, legal or otherwise, interested in the issue of customary law and an invaluable textbook for students.