

BOOK REVIEW

DISASTER LAW

BY KRISTIAN CEDERVALL LAUTA, ROUTLEDGE, 2015

W. JOHN HOPKINS*

Disaster law is a young discipline. Indeed, it is youthful enough for some to remain sceptical about its very existence. Nevertheless, despite the academic debates as to the boundaries and existence of the concept as a distinct academic subject, there is no doubt that law and disasters is an increasing focus. These legal developments can be traced to an increasing interest in disaster risk management (DRM) more broadly and its emergence from the shadows in the aftermath of several recent events. While the Indian Ocean Tsunami may have placed the study of disaster management front and centre, globally, it was the trifecta of Katrina, Canterbury and Fukushima that created a rude awakening for the developed world. Disasters are not merely something of concern to developing states. For reasons that are too complex to explore here, the interconnected nature of the world and the fragility of developed societies means that vulnerability is relative and encompasses all societies.

It is this generalisation of disasters that has taken the field of disaster management, if not to the heart of state decision making, then at least somewhere relevant, rather than its previous place in the forgotten extremities. However, although DRM has increasingly developed as a coherent subject bringing together scientists, engineers and social scientists, the legal academy has seemed reluctant to engage coherently with the subject. Those that have done so have largely engaged in relatively functional analysis or practical studies on the delivery of specific goals. For this reason, disaster law as a discipline has seemed somewhat adrift and more a servant of others than a discipline of its own. Cedervall Lautau in his book puts an end to this theoretical lacuna by providing a robust and rigorous basis upon which to build a more theoretically coherent discipline.

The text sets out explicitly to achieve this end, something it does through two distinct methodologies. The first section of the work develops a strong theoretical framework linking legal development with wider understandings of the nature of disaster outside the legal field. This is followed by two comparative sections examining the legal framework of disaster management and disaster responsibility. A final chapter addresses the overall development of disaster law as a legal discipline and the politico-legal nature of the emerging subject area.

* Dr. W. John Hopkins, Associate Professor, Law School, University of Canterbury

The work proper begins in chapter 2 with a discussion of the nature of “disaster” in the modern world. This is an issue that is rarely properly understood in legal studies on the issue, particularly at the domestic level. It is refreshing to find such a well written introduction to the field, starting with the classical work of Quarantelli. This outlines the developing nature of the concept of disaster from a divine intervention to a socio-economic phenomenon (via the interlude of “natural disaster”). Although most disaster scholars would see such a development as obvious, it is not something that is widely understood in legal studies of the topic. Although few lawyers would accept the divine intervention model, the continued acceptance of disaster as “natural” is remarkably widespread and Cedervall Lautá provides a clear and easily accessible correction for the reader. This discussion of the nature of the concept of disasters is complemented by discussions on risk, vulnerability and impacts. Some of the examples used are particularly vivid in illustrating the relative nature of disasters and their human source (0.2 mm of rain causing a disaster in the Chilean Desert – two hours’ worth of rain on an average Danish winter’s day), was a particularly memorable example.

After discussing the concept of disasters, Cedervall Lautá turns to the related and often conflated idea of emergencies. Cedervall Lautá provides an overview of the various legal approaches to emergencies both in theory and practice and concludes that the difference between the two notions require disasters to be treated separately. In particular, the state of Schmittian exception is challenged and instead replaced with the idea that disaster and management is part of the legal system. It, therefore, needs to be juridified rather than placed outside the law. This is a welcome analysis of the often too-easily accepted concept of exceptionalism which runs through emergency (and disaster) management in many states, including New Zealand. That the New Zealand model comes with a thin veneer of legality (in the form, for example, of the Canterbury Earthquake Recovery Act) does not change the fundamental point. One innovative consequence of this approach is to distinguish disasters caused by acts of war from those of nature. The latter is society’s “fault”, the former has external blame attached.

The theoretical section is then followed by two chapters which turn to comparative method. These examine first the juridification of disaster management, based upon the idea that such management is a responsibility of the state as recognised by the European Court of Human Rights. This canvasses the regional (focussing specifically on the EU and Nordic examples) and now global responses to disaster threats which have created a truly multi-level (if patchwork) body of disaster management law and governance structures. The limits of this development, particularly at the international level, are clearly identified by Cedervall Lautá but that it exists seems difficult to refute.

The final comparative section examines a much more controversial area which sits somewhat apart from the previous chapters. This is the question of responsibility and liability for disasters. The shift in the understanding of disasters which now sees them as social phenomena rather than externally caused divine or natural events brings with it the question of responsibility. If one no longer blames nature or god for the consequences of events, can one blame individuals? The chapter again provides an interesting overview of the case law and legislative frameworks in a number of jurisdictions, particularly the United States. As one might expect, significant time is also spent exploring the *l'Aquila* case and that of the Fukushima nuclear plant. This chapter poses some interesting questions around the normalisation of disasters within legal systems, as evidenced by the increasing allocation of liability for their occurrence. Although perhaps slightly disconnected from the previous chapters it certainly emphasises the fact that disasters are now an accepted part of the “normal” legal process and is a good correction for the general “public law” conception of disaster management law that is certainly the case in New Zealand.

The text concludes with an overview of the state of disaster law, taking the reader through the various theoretical ideas developed in the rest of the text. This is a dense and coherent conclusion, which might be improved if the author had been clearer in supporting one or other approach (risk vs theoretical) but it is nevertheless clear evidence of the central tenet of the text that disaster law is a coherent subject in itself, at the heart of modern law, not its periphery. At the heart of Cedervall Lauta's idea is that such disasters remain unforeseeable and legal systems must plan to accommodate such unforeseeability.

Overall, Cedervall Lauta provides a welcome and long overdue theoretical discussion of the field of disaster law that is essential reading for those wishing to explore the subject. Most importantly, the theoretical basis is closely tied to its practical importance. For those who have experienced the rather slipshod make do and mend approach to disaster management, particularly beyond the response phase, in New Zealand, such a text is a welcome breath of fresh thinking. Academics, practitioners and students in the field would benefit from reading such an accessible and thought-provoking text. This is particularly true in a country such as New Zealand, where the next disaster is unforeseeable, but inevitable. With greater understanding of the concept of disaster, New Zealand may be able to develop a legal framework capable of withstanding its impact. Aotearoa can ill afford another Canterbury.