

LAW AND SOCIAL CHANGE IN PAPUA NEW GUINEA
EDITED BY D. WEISBROT, A. PALIWALA, AND A. SAWYERR
XXIV + 319pp., BUTTERWORTHS, 1982

BY
RICHARD JACKSON

The editors of this important book express the hope that it will be 'of interest and value not only to those in the legal profession....but also to those persons generally interested in.....the dynamics of change in a newly independent Third World nation'. Speaking as a person very ignorant of the law (it was only half way through this book that I realised that the successful prosecution of a person whom I took to be an arch-criminal, one Mr. Ors. would **not** solve the law and order 'problem') I can say at the outset that they have succeeded in at least the latter half of this hope. Whether or not the legal profession finds it as valuable and as interesting as I did is a question I must leave unanswered.

The book is organised into four sections. There are three 'introductory' chapters; four chapters clustered around the problem of achieving the oft-proclaimed PNG goal of replacing Anglo-Australian common law with 'customised' law; four chapters which examine legal institutions; and a rather thin (by comparison) section of two chapters on economic decolonisation. Paliwala and Weisbrot set the general tone of the book in their introduction, and it is a tone which is both critical of progress made since Independence and gloomy as far as the future is concerned. On the **Constitution** as a practical tool for decolonisation, they remark, for example, 'the Bench has virtually ignored the non-justiciable National Goals in the **Constitution's** Preamble, and treated the rest of the **Constitution** as little more than another statute to be narrowly construed'. On PNG's success in customising the law, their judgment is that such strategies 'may easily, but not necessarily, be a perpetuation of colonial strategies in a different form', of which more later. And overall they seem particularly depressed by their feeling that in recent years 'the political leadership has generally lost interest in law reform'. It would seem from all this that in PNG as elsewhere there is a danger that the rule of law may yet degenerate into the tyranny of lawyers. Nevertheless, it is difficult to disagree with Paliwala and Weisbrot's conclusion that 'the kind of entity that PNG is becoming will have more to do with the political economy of dependence than with the reform of the legal system'.

Bernard Narokobi then chronicles his own frustrations at attempted law reform. Fortunately, the editors have managed to catch Mr. Narokobi in one of his more reflective, as opposed to one of his more acidic, moods and obtained thereby a first-class piece of writing and fascinating piece of history whose only flaw is the absence of any rounding-off remarks. If Narokobi is the book's Sibelius, then Peter Fitzpatrick is its Berlioz. His piece is certainly the most substantial, the longest, and raises the most questions; his orchestration of the political economy of law in PNG is stirring stuff, a tour de force of gloom. I am being unfair to Fitzpatrick, but it seems as if his views can be paraphrased something like this: any buttressing of tradition can be seen as a continuation of colonial containment policies; any reformation can be seen as a further extension of bourgeois legality; natural resources exploitation is a means of buffering the traditional mode and continuing ethnic division; and industrialisation will inevitably mean even greater penetration by foreign capital; much of the Constitution is rhetoric only, much of the debate on it was diversionary, and even the CPC's proposals for provincial government are really 'for the continuing maintenance of neo-colonial ethnic diversity'; any change in land tenure will play into the hands of the 'big peasants'; but no change will, of course, continue neo-colonial subjection. If you agree with Fitzpatrick, then you can put the book down and forget the rest (indeed you might even think of defenestration). And, indeed, I have to admit that it is very difficult to objectively disagree with Fitzpatrick's overwhelming rationale. He makes very few errors of fact (John Kaputin was in for ten weeks and not ten days hard labour) but perhaps he uses dangerously few facts. Even so, I cannot help feeling that Fitzpatrick and several other contributors to the book are suffering from an extreme form of what is a currently widespread malady prevalent amongst expatriate observers of PNG: a mega-hangover from Independence orgiastic euphoria. The very same people who were so full of energy and ideas seven or eight years ago - ideas which had a lot of influence and which, indeed, could reasonably be asked to take part of the blame for the situation Fitzpatrick describes - are the gloom-sayers of today. There is too much emotion recollected with despair about this. Not a very good or fair way of dealing with Fitzpatrick's powerful analysis, I agree, but I wanted to read the rest of the book.

Well, things didn't get too much better. The recurring theme is gloom. David Weisbrot's delightful turn of phrase ('the accused was struck on the head by the soon-to-be deceased) manages to sweeten his bitter message that, far from custom taking a wider role in underlying criminal law, it is constantly being edged out. Jim Fingleton's previous contribution to John Ballard's book (which, strangely - because of publication delays? - is not referenced) is reprinted with minor amendments. Whilst very useful, Fingo's contribution does not give us a technical, inside look at the broad dilemmas of land policy which Fitzpatrick's analysis leads one to want. Heather McRae's essay is, for me, the best chapter in the book - possibly because her topic, family law, is the only one I have personally experienced. Even admitting that

bias, I feel McRae covers the full range of her topic and reflects the book's title better than anyone else. Her understatement-for-me-made her points far more resoundingly than those of more rhetorical contributors. And on top of that, whilst she also covers a large number of cases she does so without either lengthy digression or total mystification of the non-legal reader - a tribute to the clarity of both her mind and her expression. Diane Johnson's piece on equal rights for PNG women is, by the same criteria, less successful. Whilst she deals with those members of PNG society who are fortunate enough to be in the vanguard of Fitzpatrick's bourgeois legality in a precise and excellently researched fashion, she does not even approach the question of rural women's rights. Indeed she devotes almost all her efforts to examine the discrimination against 'women who wish to involve themselves in the affairs of the nation' a CPC phrase she herself quotes to attack CPC for its lack of affirmative action. She states that the 'logical starting point' for an examination of those parts of the National Goals and Directive Principles which lay out guidelines relating to women's rights 'is the background to the drafting of the Constitution'. But by 'background' she does not refer to the overall position of women in PNG but to the membership of committees and the like. She thus avoids the dilemmas which Fitzpatrick has earlier generally posed. Whilst the chapter is valuable it therefore remains partial.

On the section on legal institutions, I can say little except that Don Chalmers might introduce a little more of his natural wit into his very dry, if informative essay, Abdul Paliwala is far more precise and empirical (both epithets being meant as compliments) than I seem to remember; Bayne's chapter reminded me that the study of law demands of its practitioners abilities which I lack - those of combining intricate detail within an overall superstructure - and Mitchell provides a paper which is extremely timely in its analysis of what exactly are lawyers in PNG. If an expatriate senior private practitioner usually earns K100,000 a year, I am not surprised that the recent move for greater equalisation of salaries in PNG originated from UPNG's Law Faculty. In the final section, Professor Sawyerr's analysis of PACTRA is fascinating - but again depressing. Whether or not his analysis is correct it is absolutely clear that the Department of Foreign Affairs and Trade must ensure that Sawyerr is permanently padlocked to the Department's negotiating table - on the PNG side. Finally, Hugh Norwood who is so conservative that he is radical, provides by far the most sparkling essay, brilliant not only in style but also in its ability to show that there is indeed hope. Norwood clearly has little time for restrictive laws and regulations. But he also sees (and shows us) that such laws, even if they cannot be reformed, cannot also be always, or even usually, enforced. Perhaps it is the fact that Norwood is the only non-lawyer contributor that has resulted in his finding a pathway to a more hopeful situation? The squatter settler, Mr. G. Roots, is Mr. Norwood's inadvertent anarchist super-hero who breaks laws he does not know exist and in doing so forces the pace of a law reform process of which he remains ignorant. Since this book was written there has been a great burgeoning of Mr. Roots' activities in PNG - perhaps

due entirely to increasing harshness, not of the law, but of economic circumstances. But if such harsh conditions can create social forces which push aside inadequate, inappropriate, irrelevant laws as well as forcing into discussion such long-repressed questions as those relating to salary structures, then perhaps they can be seen to have a useful function.

Whilst it may well be true that the thrust of the book is correct and that the process of legal change in PNG over recent years has faltered; whilst the key issues raised by Peter Fitzpatrick remain, to say the least, challenging; other forces of change are also at work in PNG society and such forces always offer opportunities for progress. This is not a time for lawyers, or anyone else, to despair.