David Weisbrot, Abdul Paliwala, and Akilagpa Sawyerr, eds., *Law and Social Change in Papua New Guinea.* Sydney: Butterworths, 1982. Pp. 319, bibliography, index.

Among the major issues confronting newly independent nations is the problem of creating an appropriate and well-functioning legal system. For Papua New Guinea, the question was considerably more complex, especially in light of the decolonial context in which just such an undertaking was initiated. The contributors to this much needed work have accomplished what they intended by capturing "the flavour of the exciting legal developments in Papua New Guinea of the past decade."

Broadly speaking, a formalized legal system serves two major purposes. First, to resolve public and private disputes according to established social principles. Second, to mete out justice for offences against society. In effecting both purposes, the legal system assumes the role of an agent of social control, acquiring profound political significance in the process.

The debate over the role of customary law in the national *corpus juris* of Papua New Guinea reflected the underlying ambivalence of the political decision-makers. In the opinion of nationalists John Kaputin and Father John Momis, law was "no longer to be a colonial fraud, but a genuine expression of the felt needs and aspirations of our Melanesian people." Bernard Narokobi advanced similar ideas as a member of the Constitutional Planning Committee (CPC), arguing that if independence was "to mean anything, we must free ourselves from the imposed web of laws, built up over the years, based upon special conditions in England and Australia." Legal conservatives, on the other hand, resisted the recognition of custom as the underlying principle of law, advocating instead that common law and equity would better promote economic development, particularly in the "state's promotion and the self-advancement of the big peasantry." Though the CPC urged the recognition of customary law as

the principal source of legal authority and the relegation of Anglo-Australian law to a secondary role, the administration of the constitutional plan resulted in the reverse.

The integration of customary law and the criminal justice system proved to be a "major problem area." In practice, customary law made few inroads in the constitutional and judicial system, being considered in limited situations where the "reasonable man" test was applicable in provocation issues, and in sentencing procedures. The Law Reform Commission, established to "develop a new Melanesian jurisprudence," proposed that the courts be required to "ascertain and apply customary law whenever possible." While it was forthrightly assumed that the village court magistrates would be well acquainted with local custom, the public legal service had "little training in or feeling for customary law." However the complexities of not only interpreting but also incorporating custom into the national legal system may be mitigated through the "expansion of the role and jurisdiction of officially recognized customary dispute settlement agencies."

The policy that a nation follows in the administration of land is of central significance, both as an indication and a determinant of its social and economic development strategy. The inherited national land administration system reflected the aims and attitudes of the preceding colonial administration. The report of the 1973 Commission of Inquiry into Land Matters "stressed the fundamental importance of land as the basis of social, political and economic relations." The report also "strongly challenged the established system of land administration, and asserted priorities which threatened the privileges of dominent commercial entitites in the country which that system had protected." Subsequent legislation, particularly the Land Disputes Settlement Act, were attempts to "balance traditional flexibility with the increasing need in some areas for greater certainty in land rights."

One of the more provocative legal issues involved family law. Perhaps in no other matter did the conflict between custom and common law become more apparent. Under the European system, marriage is a contract between individuals, while native custom considers marriage to be essentially an alliance between kin groups. Under European law, the interests of the children are the primary concern of the courts, while custom looks to the concerns of the kin group in child custody disputes. The reconciliation of these two divergent systems of jurisprudence will require more reflective consideration and more decisive action.

This well-edited volume describes and discusses the "significant legal events of the period both as to the initiation and development of reform

proposals and their ultimate fate." The essays thus reveal the issues raised in a new nation attempting to cope with change while still committed to the traditions of the past. The inherent ambivalence in constitutional debates and policy-making reveals the problems of modernization itself and the need to fashion a new order with the allocation of power and authority set in a familiar context of customary institutions.

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