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 question of an appropriate and well-functioning legal system. For Papua New Guinea, the question was considerably more complex, especially in view of the decolonial context in which such an undertaking was initiated. To that effect, the contributors to this much needed work have accomplished what they intended to do in 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, thus acquiring profound political significance in the process. The debate over the role of customary law in the national *corpus juris* 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 Plan-

ning 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 the 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 principle source of legal authority and the relegation of Anglo-Australian law to secondary roles, the administration of the constitutional scheme resulted in a reverse situation.

The integration of customary law with the criminal justice system proved to be a "major problem area." The role of customary law made minor inroads in the constitutional and judicial system, being considered in limited situations where the "reasonable man" test was applicable in provocation issues as well as 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." 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 determination 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 entities in the country which that system had protected." Corollary 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 was a con-

tract between individuals, while native custom considered 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 weighs the concerns of the kin group in child custody disputes. The reconciliation of these two divergent systems of jurisprudence will require more reflective consideratian 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." Among the many underlying conclusions that may be drawn from the essays is the nature of issues raised in a new nation attempting to cope with change while still committed to the traditions of the past. The inherent ambivalence in the constitutional debates and policy making reveals the problems of modernity itself and the will to fashion a new order in the allocation of power and authority set in a familiar context of customary institutions.

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