

## BOOK REVIEWS

D.R.C. CHALMERS AND A.H. PALIWALA, *AN INTRODUCTION*

*TO THE LAW IN PAPUA NEW GUINEA*

(The Law Book Company Limited, Sydney, 1977)

pp. v-xv, 1-140

K6.30

Reviewed By H.C. Norwood\*

In the preface to this short book the authors state that it has been made simple in the hope that members of the public will read it as well as students, lawyers and judges. The present reviewer has been heartened by these words as he knows little law but has, through his close association with the University of Papua New Guinea's Law Faculty, acquired some knowledge of the legal profession in Papua New Guinea.

This is a short soft-cover book of 140 pages which briefly analyses the nature of world legal systems, the Papua New Guinea legal system, the courts, constitutional law, criminal law, civil law and the place of lawyers and legal services in the country.

Despite its brevity, the book finds a place for considering the nature of law in societies throughout the world. It would not have suffered greatly had this subject been left for consideration in more lengthy tomes.

Chapter I, entitled 'What is Law?', covers 'legal systems of the world'. Some of the comments made about this subject in Chapter I and throughout later chapters are distinctly controversial, the most contentious comments frequently being prefixed by 'some people say', 'many people think', 'some people suggest', or like qualifications.

The authors divide the legal systems of the world into three types i.e. western legal systems, socialist legal systems, and customary and religious legal systems. They have a suspicion of western legal systems pointing out (at p.4-5) that 'some people suggest that the law operates unfairly against the poor' and that 'some people say that the practice of law is not the same as legal theory'.

In their discussion of socialist legal systems, the authors claim (at p.8) that on the whole, the Chinese legal system is more different from that of western countries than the Russian system, and (at p.9) that according to socialists, 'as socialism develops, courts and lawyers will be replaced by methods of settling disputes which are in many ways similar to the peaceful methods of discussion (though not the warfare) which existed in Papua New Guinea before the arrival of Europeans'. One gets the impression from Chapter I that, on the

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whole, at least in the opinion of 'some people', socialist law is preferable to western law. The difficulties encountered by people trying to obtain basic human rights and freedom of speech in socialist countries are not mentioned. The consideration of the nature of law in this volume does not carry conviction as an altogether dispassionate examination of the place of law in different world societies.

The authors make some questionable statements about British constitutional law. They say (at p.42) that 'in theory in the United Kingdom the Queen is vested with all legislative, executive, and judicial authority'. Surely they cannot really have meant to write this. A student writing such a sentence in an examination would surely merit adverse comment from his examiners. Even Charles I at the height of his personal rule never maintained that he was theoretically vested with all legislative authority. And in due course that monarch came to learn a great deal about the independence of Parliament. Elsewhere in the book the authors refer to the 'English Parliament' and to the 'English colonies', neither of which have existed since the Act of Union in 1707.

Turning to Papua New Guinea, the authors quote many instances which illustrate aptly the legal problems of the country. The exceedingly tricky question of how to reconcile national with customary law is a major theme of the whole book. Yet in places the volume has a rather patchy nature which makes it difficult to follow some themes on a systematic basis. For example, in discussing the nature of equity in Papua New Guinea the authors state (at p.61) that 'although England is the mother country for common law and equity, the system has spread, as we have seen in Chapter I, to many countries'. But reference back to Chapter I leaves the non-lawyer still guessing as to the nature of equity, for the subject is nowhere mentioned there.

I used the book to enlighten myself on three themes: constitutional law, land law and the Village Courts. In each case I have learnt from the book but it has also been necessary for me to consult the original statutes to ascertain some fundamental points.

*Constitutional Law.* The nature of the *Constitution*, and the legislative, executive and judicial functions are covered in Chapter 3, together with the Ombudsman Commission and the relationship between central and provincial government. Chapter 4 examines the constitutional provisions relating to the enactment of legislation. But one could hope for a more explicit information on some aspects. The right of the Head of State to declare a national emergency on the advice of the National Executive Council and thereafter, with the consent of the National Executive Council to make Emergency Regulations which can override most laws of Papua New Guinea including some of the basic constitutional rights, is set out (at p.54). But surely the exercise of these draconian powers is severely curtailed by s.231 of the *Constitution* which provides for the expiration of all emergency regulations unless confirmed by Parliament within 28 days. This point is not mentioned in the book.

*Land Law.* Land is such a sensitive and contentious subject in Papua New Guinea that Parliament set up a special system of Land Courts under the *Land Disputes Settlement Act* 1975 (No. 25 of 1975). These Courts place greater emphasis on mediation than on reaching judicial decisions for or against either party. The land dispute settlement system as it operates is summarised (at p.58), but the normal exclusion of lawyers from Local and District Land Courts under s.70 of the *Land Disputes Settlement Act* 1975 is surely worth a mention. There must be few courts in the world from which lawyers are, by statute, excluded. (Possibly it would be in the public interest to extend this principle to other courts). The authors state (at p.118) that 's.56 of the *Constitution*

says that only citizens can now *hold* freehold land'. In fact, s.56 states that 'only citizens may .... *acquire* freehold land', which is surely a different thing.

*Village Courts.* The Village Courts system is outlined, with full emphasis given to the control which they theoretically have over everyday community life. But it is necessary to refer to the original statutes to ascertain whether the Village Courts have the crucial power to imprison offenders. The authors state (at p.88) that 'a person who fails to appear before a court may be imprisoned for up to one month', which clearly implies that Village Courts have such powers in their own right. But s.36 of the *Village Courts Act* 1973 (No. 12 of 1974) prohibits imprisonment by Village Courts except when such a penalty is endorsed by a Local or District Court magistrate. The power of Village Courts to enforce customary rules in practice gives considerable authority to male conservative elements in villages, and indeed a case has been recorded of a Village Court punishing a woman for smoking, it being held to be against custom for women to smoke. An unfortunate misprint (at p.64) refers to 'bribe price' (*sic*) which could mislead readers from outside Papua New Guinea.

Generally I would not consult Chalmers and Paliwala if I wanted dispassionate information about the nature of law in society. Their discussion of the nature of British constitutional law should also be treated with reservation. However, the authors are on surer ground when they discuss the law in Papua New Guinea. They know their subject and stress the efforts being made to assimilate the beneficial parts of customary practices into the body of National Law. Brevity is a virtue to be commended amongst lawyers. But the authors' coverage of some aspects of the law is brief to the point of being cursory. It would be a better book had they confined themselves to the stated subject and worked through the relevant aspects in a more systematic way.

The book was published in Australia. This has led to the familiar problem of stocks being sold out in Port Moresby's book shops and presumably it will be many months before these are replenished. There are now publishers in Papua New Guinea who are perfectly competent to publish a text book of this size. It is a pity that basic texts about Papua New Guinean matters are still being published outside the country.