

BOOK REVIEW

Ottley, B., Weisbrot, D., & Zorn, J. (2021). *Making Law in Papua New Guinea*. Carolina Academic Press.

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*Dr. Gaurav Shukla*¹

The book *Making Law in Papua New Guinea* is divided into 11 substantial parts/chapters with an epilogue summarizing the legal history and the future recourse for PNG. In the beginning, the authors introduce the reader to the social and cultural background of PNG from the perspective of Western society and its approach towards the indigenous people, which provides an insight into the beliefs and psychological setup of the social order of the country. The book asserts that the influence of clans in political decision-making is substantial and this influence rejects policy matters in the diversified political status of the South Pacific.

In further chapters, the process of community-based dispute settlement is well featured and explained. This out-of-court settlement is well known in other ex-colonies of Britain. The part dealing with customary rules explains the process of marriage and the tradition of the bride price, which explains the nature of the peculiarities of PNG culture.² In these chapters, the authors describe and criticize what they see as the difficulties faced by the colonial authorities regarding the understanding of customary law that doesn't distinguish between a tortious act and a crime. According to the British, the people of PNG had no understanding of criminal law; however, this helped them to impose their codes and courts above the customary law.

The authors further emphasize one of the key differences between Western legal systems and the customary law of PNG. They argue that custom law and colonial law have different views on the concept of responsibility for criminal acts. Where the Western legal system emphasises individual responsibility, customary law was

¹ Lecturer, School of Law and Social Science (SoLaSS), The University of the South Pacific, Fiji, email: gaurav.shukla@usp.ac.fj

² This practice of bride price resembles the Muslim personal law, where the bridegroom has to pay an amount known as Mahr (Dower) (bride price) to the bride's family for the loss of a female member. This also resembles the tradition of bride price in African countries, such as "lobola" in South Africa and southern Zimbabwe, "roora" in Shona communities, and so on. The bride price was also prevalent in China.

based on collective rights and collective responsibility. Therefore, the dominant tradition of customary law determines collective responsibility in criminal as well as in tortious acts, putting the burden on the entire clan, and every one in the clan shares responsibility. The authors argue that it would be wrong to treat these rules as exogenous from a supreme authority, as these rules seem neglected to an outsider; however, the rules do exist and are taken seriously. The authors further emphasise that the alternative to the impartial judge, the customary law, had knowledgeable and experienced big men or elders. These big men or elders can hardly be called impartial or disinterested parties to the dispute; however, the perception was that the knowledge of these big men or elders is advantageous and helps to resolve disputes due to their understanding of the participants and the situation. These arguments are further elaborated with the help of the inclusion of understanding in disputes rather than relying on the material pieces of evidence that form a crucial aspect of an adversarial or inquisitorial justice system.

The latter part of the book describes the historical facts about the integration of the Western legal system with the customary law of PNG. The struggle between the occupier and the occupied, with the unpleasant events that happened during this period when violence erupted, is well documented. The authors present a series of problems that occurred throughout the colonial period, igniting the conflict between the Western legal system and the customary principles of the Papuans and New Guineans. At the end of these instances, the establishment of legal authority is well narrated, highlighting the implementation of different legislative acts in making the present PNG legal system. The role of the legislative council and the power to govern almost every aspect of life ranging from criminal acts to the personal enactments of adoption, custody, and marriage is explained in a precise manner, allowing the readers to acquaint themselves with the development of Western laws in PNG. During the period of William MacGregor, the first administrator, attempts were made to give Papuans and New Guineans a limited role in the administration. The jurisdiction and structure of the Colonial Administration, Colonial Legal System, and Local Ordinances are well explained, giving a clear review of the footprints of western law in PNG.

The alternative framework for understanding Western law as it relates to PNG instead sees law as being in a dynamic relationship with PNG society, especially when enforcing the Native Regulations and ensuring that the instructions of the resident magistrates are called out by the villagers potentially serving Native Magistrate Courts. The aspects of seeking balance in land, labour, and other critical issues are in the true colour of colonial occupation. The introduction of forced labour and its ramifications on account of developing PNG is one of the most perfect

examples of colonisation. It was evident that due to the lack of barristers, solicitors, and other legal experts, the role of a person such as Hubert Murray, the sole judge of Central Court in 1904, became indispensable for the administration of justice.

The authors are thorough in their examination of the Australian occupation of the German-occupied parts of PNG, which started during the post-World War I years with the effects of the treaty of Versailles and ended with complete enforcement of the Western legal system on the entire territory. The authors have achieved their aims and objectives of identifying the ways by which the Australian legal system was changed and adapted to meet the peculiarities of governance and economic development that were aimed by the colonial administration during the years between the two World Wars.

The authors' unbiased description of the beliefs of white race supremacy over other races and the indulgence of this belief by some of the most influential jurists such as David Hume, Immanuel Kant, and Voltaire, who adopted the theory of polygenism, was disturbing to read. When the codified laws of the Western legal system were implemented in the territory, the suppression of the customary laws was obvious, with no efforts made by the colonisers to adapt them according to the customs and traditions of PNG. This imputation of codified laws saw customary traditions as mere rules and not laws since they were out of the knowledge of the expatriate magistrate. However, this codification saw conflicts between criminal law and custom, for instance in cases of sorcery and certain sexual practices, e.g., age of consent or homosexuality. These developments are posed by the authors in quite an assertive way, leading towards the changes brought by World War II. Two dimensions are posited here: control over the legal system, and the degree to which the legal system changed after the war, as opposed to functioning as a coordination mechanism more subject to state oversight on control and management of the occupation.

The later parts of the book give a clear road map for re-establishing the authority and administration of colonial governance in PNG. The authors take on the important issue of legal system change and the tradition for treating law as essentially a static factor. Toward the end of the book, the authors establish the undeniable fact that for centuries the law has been instrumental in the domination and oppression exercised by the ruling classes. However, the efforts of the authors should be appreciated in bringing unbiased legal historical facts to the surface. Though the facts were stated in good sequence, more emphasis was placed upon the coloniser than the colonised. There could be a greater focus on the freedom movement in PNG and how it has influenced the law-making process. The impact of occupancy on the socio-legal structure of the occupied could have been researched and explained in more detail.

There are a few instances where the reader may not be able to follow the authors' train of thought regarding certain points made and their conclusions.³

The authors close the door on a comprehensive journey of legal history with clear identification of the issues leading to the hindrance of progress in PNG. They also describe how the lack of adherence to legal systems has impacted the lives of the people. The epilogue can be taken as constructive criticism for those who want to shape PNG's future.

The book is an asset for those wanting to know about the legal history of PNG. It gives an excellent historical background of colonial occupation and the conflicts associated with implementing Western legal systems over the customary traditions of dispute resolution. The book is not only handy for research studies on PNG legal history, but has quite a good number of lessons for those who are researching the legal field in general. The colonial exertion in controlling the occupied through laws and their justice system is well considered in the book and can be referenced also by those who are starting their journey of law through legal history and by its dignities. The book *Making Law in Papua New Guinea* is divided into 11 substantial parts/chapters with an epilogue summarizing the legal history and the future recourse for PNG. In the beginning, the authors introduce the reader to the social and cultural background of PNG from the perspective of Western society and its approach towards the indigenous people, which provides an insight into the beliefs and psychological setup of the social order of the country. The book asserts that the influence of clans in political decision-making is substantial and this influence rejects policy matters in the diversified political status of the South Pacific.

³ E.g., page 14, paragraphs starting with, "By way of contrast, the cultural fit...", and "The Western legal system..." not leading the readers to next section, "First Western Contact with the Pacific Islands", page 22, paragraph ending with "...the Republic of Palau did likewise in 1994", and paragraph starting with "The economic vulnerability..."