THE PEOPLE'S LAW?

Jean Zorn and Peter Bayne (eds.), *Lo Bilong Ol Manmeri* (Port Moresby, 1975). 198 pp., K2.00.

Lo Bilong Ol Manmeri is a collection of selected Seventh Waigani seminar papers on the legal system of Papua New Guinea. Although there are five sections, the papers centre on the themes of law and order. While law is clearly related to order in any system, there has been a tendency in some societies in recent years to convert the dual concepts of law and order into a single concept of *lawnorder* which translates to mean virtual of actual repression of "undesirable" elements in society. A few of the authors seem to be leaning in this direction, but there are strong and positive reminders of the importance of protecting the rights of individuals and groups within the society. Nevertheless, the overall impression that one might receive of Papua New Guinea from this book would be that of a country with inadequate laws, courts, police, and government institutions, incapable of coping with a population traditionally disposed to warfare. Michael Adams suggests that the level of violence is probably overestimated, but nowhere in this volume are there hard data to indicate whether Papua New Guinea's crime rate is actually increasing, decreasing, or stabilized.

Let us consider two questions. What should be the character of the law in Papua New Guinea? And how will Papua New Guinea exercise social control over the population?

In the first section of the collection, it becomes clear that there is a desire on the part of Chief Minister Michael Somare that the legal system should undergo extensive reforms to make the laws and institutions more comprehensible to the Papua New Guinea people. It is abundantly clear that the laws and institutions based on Australian law make no sense to most Papua New Guineans; it is hard to believe that they make much more sense to most Australians, who are surely as frustrated when "known criminals" are released on a "technicality" as are the people of the Highlands. Indeed, since it takes several years of intensive tertiary instruction to prepare some of the brightest young people in Australia and Papua New Guinea to be lawyers, it would be amazing to discover very many poor and uneducated people in either place who understand what it is all about.

Therefore, Mr. Somare's call for more simple laws in harmony with Papua New Guinean beliefs can only be applauded.

With more understandable laws, and more effort to follow the lead of the law students in providing legal education for the populace, it may be possible to deal more effectively with the problems raised concerning social control.

Mr. Somare's paper is a guide to the goals he seeks with law reform to develop laws that "make sense" to Papua New Guineans; to develop courts that are neither slow nor mysterious, but are able to provide for rapid and comprehensible settlement of disputes; and to retain the capacity to change the law as customs change. However, many of the problems that arise in trying to reach these goals appear in the other papers. Papua New Guinea is a heterogenous society. Customs not only vary from district to district, but sometimes from village to village. Customs within one group may change over time. People within the same group may develop different habits of life, and evendifferent customs, because of differences in education, religion, employment, urban migration, and similar factors.

How, then, is the law to reflect custom? Is it possible to develop a single national standard in some areas of the law, which is familiar or at least explicable to most people in Papua New Guinea? Or, perhaps, a flexible system can be created to give as much recognition as possible to local customs in enforcing the law, and to allow for rapid change in the enforcement of the law as customs change. In any event, the creation of a uniform national legal system will be difficult, in view of the heterogeneity and diverse traditions of the population.

Bernard Narokobi presents a two-prong solution for some of these problems. First, Mr. Narokobi looks at the underlying *values* expressed in traditional life, rather than at the rules. For example, he emphasizes the importance of interdependence, cooperation, mutual faith, participation, and hard work, as the core of communal village life. Even though Papua New Guinea may be changing, adherence to these values in national life will provide a link to the entire population. However, Mr. Narokobi promotes the inclusion of one value that may not emanate from traditional life: non-violence. Thus, Mr. Narokobi suggests the reinforcement of traditional positive values, and inclusion of new values, to provide for social change in the society. National policy is kept in tune with traditional values. Mr Narokobi goes on to propose a radical model programme of decentralization, so that each village or *wanples* can govern itself insofar as possible.

Mr. Somare and Mr. Narokobi discuss the development of the national legal system, but the first section does not

provide a full discussion of the problems and possibilities--a task that has been left to the Law Reform Commission. It is more difficult to design a comprehensive legal system than to analyze areas in need of reform--the task undertaken by most of the rest of the authors. However, the rest of the papers highlight the problems that will have to be dealt with by a reformed legal system.

Most of the papers focus on particular kinds of conflicts that can grow into violent confrontations if not resolved. There appears to be a general belief that both the people and the government of Papua New Guinea favour the elimination of such traditional activities as warfare, although Bill Standish notes that participants in tribal wars in the Highlands view warfare with pride, excitement, and enjoyment--or at least the victors do. People may not be completely satisfied with football as a substitute for warfare, but the government is clear that warfare, payback killings, infanticide, and similar traditional activities have been and will be forbidden.

With the position of the government in mind, let us look at some of the problems and proposals offered. In 1973-74, there was considerable controvery over the then proposed village courts scheme, which has now been enacted into law. The proponents argued that village level disputes could be settled more quickly, more flexibly, with more understanding and less anxiety, by a magistrate in the village than by a Local Court magistrate. The village courts are seen as a means of preserving order and dispensing justice at the lowest possible level of the social system. This section is weakened, however, by the absence of a contribution by the opponents of village courts. Peter Bayne summarizes the objections to the courts, and Francis Iramu, Marilyn Strathern, and N.D. Oram, all supporters of the movement, cite arguments that have been raised and then proceed to demolish them. However, there is no voice speaking for the opponents. Mr. Quinliven's paper does not provide opposition to the scheme, but only seeks to correct some misconception about the position of lawyers and the previous efforts to set up village level courts. The village court system is favoured by its supporters in that it both decentralizes the court system (in line with Mr. Narokobi's model program for decentralized government), and it allows for the reliance on and enforcement of custom (a goal which Mr. Somare favours). It is not enough by itself, however. There will still be problems of dealing with inter-tribal disputes, criminal cases beyond the jurisdiction of the village courts, commercial cases, and similar disputes that must involve a nation-wide approach.

Throughout this volume, we find recurring suggestions for increasing responsibility at the village level. Mr. Narokobi suggests virtual village autonomy, with village-like residential centres in the cities and several authors favour village courts. Bill Standish in "Warfare, Leadership, and the Law" attributes much of the tension and tribal fighting in the Chimbu to the impact of changes in government institutions. Mr Standish suggests, among other things, that there should be "an increase in the degree of local control over district government". It is interesting to note that Professor Strathern's paper reveals that participation of two traditionally hostile tribes in one Council area provided opportunities for new disputes (e.g. over the Presidency of the Council), but also contributed to pressures for a settlement of a compensation dispute. In evaluating the efforts to increase village responsibilities, it must be borne in mind that the area, district, provincial, and national levels are also important in maintaining social order between groups.

John Gawi has urged that the application of custom should be more extensive in the cases heard in courts above the village court level, and that specifically, custom should be considered in determining guilt for crime as well as in sentencing. Gawi touches on the problems of modifying the Criminal Code in line with the custom, and proposes a more immediate, limited solution: allowing "the defendant to raise as a complete or qualified defence, the beliefs and customs which have induced him to commit the offence".

Fr. Liebert, Director of Boys Town, Wewak, contends that only massive reform of the law related to juveniles can help to remedy the problems of delinquency. Fr. Liebert is concerned about the rights of juveniles and their parents as well as about the control of crime. He suggests a juvenile code dealing solely with delinquency, which specifically sets out procedures to apply to all juveniles, and distinctions that should be made on the basis of age; the use of village and clans to deal with minor offenders; and rehabilitation of young offenders within the community. There have been many voices advocating increased police action against juvenile crime. Fr. Liebert recognizes the need for community protection, but he is also sensitive to the rights and needs of young offenders and their parents, since the aim is rehabilitation and not simply punishment.

In the section on compensation Nicholas O'Neil ("Liability Without Fault in Papua New Guinea") and Madeline Campbell ("Compensation for Personal Injuries in Papua New Guinea") discuss no-fault proposals, particularly with respect

to injuries and deaths from motor vehicle accidents. It is argued that the no-fault principle allows all persons in the covered category to recover damages, without having to prove negligence in court; it provides more rapid compensation than the tort liability system; it relieves pressure on overburdened courts and lawyers; and it may prevent pay-back killings. Three authors describe the operation of compensation customs in different parts of Papua New Guinea: Kopi Kepore, Sao Gabi, and Andrew Strathern. These authors demonstrate that customary practice is essentially a "no-fault" system, in which compensation is paid without regard to such considerations as negligence.

Like the village courts scheme, the motor vehicle accident compensation scheme has already been enacted into law. This section, however, provides a useful comparison between the practical problems encountered in P.N.G. and the innovative planning that must go into resolving these problems.

We have already looked at several problems in the society, and the proposals for changes in the laws and institutions to remedy these problems. Now, we look at the problems within the institutions themselves. Jeffrey FitzGerald, in "Legal Services for Poor and Minority Peoples", deals with the legal aid situation in Chicago--apparently, a far distant situation with little relevance to Papua New Guinea. However, FitzGerald does an excellent job of pinpointing, with a specific case, the way that a seemingly neutral system can protect and enhance the opportunities of the wealthy to oppress the poor. Judges and lawyers, through unimaginative, unsympathetic, and narrow interpretations of the law, can enshrine rather than remedy injustice. FitzGerald recommends that the reformed legal system be designed from the outset to protect the poor rather than the rich, and that judges and lawyers should be as sensitive and responsive as possible in dealing with social injustice.

In one of the most provocative papers in the volume, Michael Adams ("Law Versus Order") discusses the disregard of the police force for the established procedures and laws relating to their work. He cites examples of police holding accused persons incommunicado; assaulting suspects and accused persons, causing at least one death and cases of serious injury; and disobeying magistrates' orders with respect to the custody of accused individuals. In light of the government attempt to dissuade Papua New Guineans from violence, it is questionable whether the effort will meet with success if members of the police force themselves practise illegal and indiscriminate acts of violence, as Michael Adam alleges.

After reading the paper by Adams, it is something of a surprise to then read Maev O'Collins' paper "Social Welfare and the Law", which describes the various roles of social welfare workers in the areas of preventing crime and providing service at the trial, imprisonment, parole, and probation stages. It is striking that she suggests a public relations programme as a means of reducing community hostility to the police, without discussing in any detail the reasons for the community's negative view of the police. Dr. O'Collins mentions such factors as segragated housing arrangements for police, interethnic hostilities between the policeman and the suspect, and the possibility of "unpopular procedures" as causes for hostility. In discussing protection, she considers only the protection of the community from crime, and not the protection of suspected wrongdoers from illegal arrest, trial and confinement. If the police are, as Adams suggests, regularly using excessive force, holding accused persons incommunicado, or assaulting suspects, can the community's hostility be overcome by a good P.R. program, with police speeches at church meetings? Dr. O'Collins' emphasis is upon changing the *community's* attitudes, so people will be not merely sympathetic to police but will be actively participating in reducing crime. These are desirable goals, but it would be useful for the author to analyze the causes for the poor community-police relationship before proposing a remedy such as a public relationships programme.

Peter Sam, Benjamin Passingan, and Wep Kanawi have attacked the problem in another way in "Bringing the Law to the People". They suggest that to alleviate the sense of alienation of the people from the police and the courts, it is necessary to provide legal education for the people, so that they know their rights, and to provide representation in Local and District Courts for those without lawyers. They suggest that one way to prevent the conviction of innocent, poor and frightened defendants is for people to know their rights and to have a person with training in the law to defend them in court. The law students at the University of Papua New Guinea are now involved in providing representation and education to those who seek their aid. This paper provides a persuasive argument for the extension of these services outside Port Moresby.

It is not possible to note the many suggestions put forth by the various authors. Two of the sections focus on former controversies--the village courts and the compensation scheme--which have now been settled to a certain extent by the passage of the legislation proposed. Some authors have focussed so narrowly on their own area of concern that they have failed to consider how their proposals--so appropriate for the area

they have studied--will be translated into national law, which must serve people from other districts as well. Overall, the book is well worth the time spent in reading it, and, as a whole, it is a stimulating and provocative work.

- Anne Jayne.