8-1-1986

Law and Order in the New Guinea Highlands by Robert J. Gordon and Mervyn J. Meggit

Eve Spangler

previously 'sacred' pillars of society. One thinks particularly of the legal profession. The Government has made extensive use of legislation to achieve social change. Much of it has been designed to be used by those in the private sector, such as the labor legislation by employers and non-striking workers against unions. The effect of this has been to politicize the judiciary, at least in the eyes of those who are bearing the brunt of the legislation. This was most clearly seen during the miners' strike in 1984. And the legal profession itself, the Bar, has recently used the legal system against the Lord Chancellor, one of its own members, to seek an annulment of an administrative decision not to increase legal aid fees by more than 5 percent. Such willingness to litigate as a means of challenging government would recently have been considered unimaginable.

The second omission of note is any analysis of the Thatcher Government's uneasy relationship with its partners in Europe. This relationship has recently been strained further by the unique and uncritical support of Mrs. Thatcher for American policy towards the Soviet Union and Libya and by her willingness to encourage a stronger presence for American multinational corporations in Britain at the expense of their European competitors. At issue is Britain's role in the international community. Her international effectiveness and future economic success is directly tied to that of the European Community: it is vitally important that responsibilities to that Community be fulfilled.

In conclusion, these two books provide a useful and readable introduction to the economic aspects of Margaret Thatcher's first term of office. They are by no means comprehensive and, by large scale omission, they fail to reflect the more painful impact of Thatcherism.

EVE SPANGLER*

LAW AND ORDER IN THE NEW GUINEA HIGHLANDS. By ROBERT J. GORDON AND MERVYN J. MEGGIT. University Press of New England, 1985, 283 pp., appendix, bibliography, index, $35.00.

Law and Order in the New Guinea Highlands[1] by Robert J. Gordon and Mervyn J. Meggitt is a study of a tribal society — the Enga — where the public peace is threatened not by the random stranger-to-stranger violence familiar to western urbanites, but by the ravages of inter-tribal and inter-clan warfare. In the authors' words: "A climate of suspicion and distrust appears to be a common

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*Associate Professor of Sociology, Boston College.
[1] ROBERT J. GORDON AND MERVYN J. MEGGITT, LAW AND ORDER IN THE NEW GUINEA HIGHLANDS (1985).

characteristic of loosely structured or acephalous societies, which like the Enga espouse a fiercely egalitarian even libertarian ideology."[2] In this peculiarly tainted atmosphere long known to anthropologists,[3] an ideology that stresses the good sense of peaceful dispute management co-exists with the reality of recurring, and according to Gordon and Meggitt and New Guinean popular opinion, accelerating raids and warfare and the absence of any centralized authority capable of imposing a lasting peace.

It was not always thus. When New Guinea was a colony its Australian masters were able to impose from above the suspension of tribal warfare, principally through the *kiap*, an agent of the colonial administration. Early expatriate (i.e. Australian) *kiaps* served simultaneously as constables patrolling the countryside, as magistrates hearing and resolving disputes, as census-takers and representatives on behalf of the metropole, as agricultural and forestry extension service workers offering valued goods, advice and tools such as salt and steel axes,[4] as labor recruiters, and in almost any other capacity the situation required. Gordon and Meggitt trace the decline of the *kiaps'* effectiveness to the development of a more formalized and elaborate colonial administration and to the transition to New Guinean independence. In effect, their case study illustrates the process of occupational modernization as reflected in the administration of justice.

The first development toward bureaucratic elaboration, termed "bureaucratic entropy" by the authors,[5] stripped the *kiap* of many of his functions. Agricultural work, for example, became the responsibility of agronomists and other experts. Most significantly, the *kiaps'* patrolling and magisterial functions were separated. The newly appointed magistrates introduced many of the tensions familiar to westerners into the relationship between court and *kiap*, insisting on the procedural rights and safeguards characteristic of the western legal tradition. In particular, magistrates prohibited the families or property of warriors from being seized to prevent warfare or to serve as a bond against the payment of fines;[6] they also demanded that charges be proven before punishment was meted out.[7] These procedural changes had enormous political and substantive consequences. Politically, "the requirement that a hearing be presided over by an outside arbiter implies that a *kiap* can be wrong and an Enga warrior right; it suggests that the warrior can ignore the orders of a *kiap* or policeman or challenge his veracity and get away with it."[8] Substantively, the new rules that

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[2] *Id.* at 147.

[3] *See* R. BENEDICT, PATTERNS OF CULTURE (1934); T. Schwartz, *The Cargo Cult: A Melanesia-type Response to Change*, in RESPONSE TO CHANGE, (G. Devos ed. 1976).

[4] GORDON AND MEGGITT, *supra* note 1, at 163.

[5] The authors define bureaucratic entropy with this rule: "As the scale of organization increases, the amount of waste or non-usable energy increases exponentially." *Id.* at 66.

[6] *Id.* at 89.

[7] *Id.* at 57.

[8] *Id.* at 56.

accorded due process rights to the indigenes sharply curtailed the imposition of peace through the exercise of police power. In less than a decade, the proportion of acquittals on charges relating to tribal warfare increased from 1 percent to 59 percent, the number of not-guilty pleas increased from 12 to 53 percent, and the number of convictions after not-guilty pleas decreased from 23 to 1 percent.[9] In this context the *kiaps* argued that their peace-keeping functions were undermined. The development of law thus proceeded at the expense of order and the re-establishment of order would have required the suspension of law.

Australian preparation for New Guinean independence accelerated the general erosion of *kiap* authority cited not only by the authors but also by numerous indigenous sources. Pursuant to a new policy, native *kiaps* replaced Australian *kiaps*. In practice, however, the indigenous *kiaps* were less able to act authoritatively than their Australian predecessors. Accusations of *wantokism* (loosely, nepotism) bedeviled the work of even the most even-handed and "professionalized" native *kiaps*.[10] The authors conclude that "the obvious Enga preference for expatriate officials is not to be taken as an apologia for earlier Australian colonial policy. Rather, it should be understood for what it is: a sensitive popular perception of and a dependence on the role of outsiders in dispute management in Enga."[11]

I.   WE ARE WHAT WE DO

In discussing the administration of justice as it is produced by the shifting occupational agendas of *kiaps*, magistrates, policemen and local elected officials, the sociology of work and occupations would have provided Gordon and Meggitt with a better framework for "relating the part to the whole"[12] than they find in the study of deviance and social change.

The study of occupations as one branch of sociology shares in the central question of the larger discipline: "How is social order, particularly the modern social order, possible?" In comparing modern, that is, industrial, capitalist, largely urbanized, societies to non-modern ones, all the major classical theorists of the discipline — Marx, Weber, Durkheim[13] — have noted the key role

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[9] *Id.* at 25.

[10] *Id.* at 176.

[11] *Id.* at 185.

[12] *Id.* at 41.

[13] Marxists see the growing number of occupational specialties as arising from the redesign of jobs initiated by owners and intended to de-skill craftsmen. *See, e.g.,* H. BRAVERMAN, LABOR AND MONOPOLY CAPITAL (1974); D. NOBEL, AMERICA BY DESIGN (1977).

Max Weber focused largely on the unrecognized costs of ordering social relations by "rational" and "scientific" standards. He described the rise of bureaucracies (which he termed "the iron cage") as the master trend of modern society. Bureaucratization, in turn, gave rise to increasing occupational

occupational specialization plays in creating both the material and moral basis of modern society.

From this central insight, three schools of thought derive. The functionalists, and most notably Talcott Parsons, speculated about the contributions of various occupations to the maintenance of social order.[14] According to this school, occupations in the justice system were thought to create non-violent means for dispute management and to facilitate the rationalization of relationships among strangers, rendering them orderly, coherent and predictable.[15] Later, more sophisticated functionalists recognized that existing institutional arrangements could be dysfunctional as well as functional. They began to notice the more repressive features of legal institutions thereby retrieving an insight central to Weber's sociology of law[16] and to realize that dispute-resolving mechanisms, once in existence, can also be used to prolong or exacerbate disputes.[17]

A second school of sociologists, centered in Chicago under the leadership of Everett Hughes, conducted field studies that recorded a world of work significantly at variance with the idealistic picture presented by the Parsonian functionalists.[18] The Chicago-school ethnographers found a world of sensitive morgue attendants[19] and cynical priests,[20] of knowledgeable janitors[21] and ignorant doctors,[22] of cooperative psychiatric patients [23] and manipulative teachers.[24] In short, Hughes and those influenced by his perspective were able to show that there are striking similarities as well as differences among occupations and that

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specialization. *See, e.g.,* M. Weber, *Politics as a Vocation* and *Bureaucracy* in FROM MAX WEBER (H. Gerth and C.W. Mills eds. 1958).

Emile Durkheim regarded occupational specialization as a source of both the increasing personal freedom and the social disorganization (anomie) characteristic of modern society. He looked to syndicalism — the political organization of occupational groups — as a tool for reintegrating society. *See, e.g.,* E. DURKHEIM, THE DIVISION OF LABOR IN SOCIETY (1933).

[14] *See* T. Parsons, *A Sociologist Looks at the Legal Profession,* in T. PARSONS, ESSAYS IN SOCIOLOGICAL THEORY (1949).

[15] P. Freund, *The Legal Profession,* 92 DAEDALUS 689–700 (1963).

[16] M. Weber, *supra* note 13. For a more recent discussion of the repressive character of legal institutions, *see, e.g.,* E. BITTNER, THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY (1970).

[17] For a general discussion of the concept of dysfunction, see R. Merton, *Manifest and Latent Functions,* in R. MERTON, ON THEORETICAL SOCIOLOGY (1949).

[18] E. HUGHES, THE SOCIOLOGICAL EYE (Vols. 1 & 2, 1971).

[19] D. SUDNOW, PASSING ON: THE SOCIAL ORGANIZATION OF DYING (1967).

[20] F. Goldner, R. Ritti, T. Ference, *The Production of Cynical Knowledge in Organizations* 42 A. SOC. REV. 539–51 (1977).

[21] R. Gold, *In the Basement — the Apartment Building Janitor,* in THE HUMAN SHAPE OF WORK (P. Berger ed. 1964).

[22] There are numerous well-known accounts of physicians' ignorance both of medicine and of each other's behavior (which they are mandated to scrutinize); *see* E. FREIDSON, DOCTORING TOGETHER (1975). Even those processes that doctors have established to minimize errors serve more to excuse than to prevent mistakes; *see* C. BOSK, FORGIVE AND REMEMBER (1979); M. MILLMAN, THE UNKINDEST CUT (1977).

[23] E. GOFFMAN, ASYLUMS (1961).

[24] H. Becker, *Educational Organizations and Experiences,* in H. BECKER, SOCIOLOGICAL WORK (1970).

persons in all occupations have both specialized knowledge and self-serving ideologies. This vision has a significant levelling effect. It calls to our attention the fact that perhaps occupations differ more in their public image than in their actual substance.[25] On a policy level, this insight questions the stigma we attach to persons, like the police for example, who do our dirty work,[26] or the prestige and privilege we grant to those occupations, called professions, that we allow to be self-regulating.[27]

It is the third school, consisting of Marxist and "power" sociologists, that seeks to explain why occupations that have much in common differ greatly in power, income, and status; why doctors for example, hold near god-like positions while garbage collectors, whose work probably contributes more to the suppression of infectious disease, are generally disparaged.

Central to this school is a vision of wage labor as an inherently conflict-ridden relationship between workers and owners, a contested terrain in which each party seeks to assert authority over the other.[28] Owners try to control workers by a variety of technical and social means, and workers, in turn, resist such control. Out of this adversarial process emerge forces that account for occupational change. For example, employers both value and fear a high level of skill in their labor force. They value it for the obvious reason that it contributes to productivity, and they fear it to the degree that it contributes to worker intransigence.[29] In some instances employers resolve this dilemma through "de-skilling" — a process in which complex skills are broken down into their component parts and each part is assigned to a narrowly specialized worker. This strategy produces a class of wage laborers who have less skill and therefore less power than the craftsmen they replace. But, if this process curbs craftsmen, it also creates relatively privileged positions for those who plan, coordinate and supervise the work of others. Thus, if it succeeds, de-skilling establishes a new class of managerial employees whose loyalties must be secured and if it fails it reduces the labor process to an uncoordinated shambles.

Much of Gordon and Meggitt's account of occupational development in the New Guinean justice system would have benefitted from this labor process analysis, despite the fact that this theory evolved from an attempt to explain private rather than public sector behavior. Gordon and Meggitt reject studies

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[25] Corinne Gilb has documented the role of professional organizations in negotiating occupational status in HIDDEN HIERARCHIES (1966).

[26] E. Hughes, *Good People and Dirty Work* in HUGHES, *supra* note 18, at 87–97.

[27] It is clear, for example, that the medical community's demand for self-regulation preceded any claims to therapeutic efficacy it could legitimately make. *See* P. STARR, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE (1982); E. BRECHER, LICIT AND ILLICIT DRUGS (1972); M. ROTH WALSH, DOCTORS WANTED: NO WOMEN NEED APPLY (1977).

[28] *See* R. EDWARDS, CONTESTED TERRAIN (1979).

[29] C. DERBER, PROFESSIONALS AS WORKERS (1982).

that "focus on the characteristics of a segment of society *in vacuo*."[30] Instead they wish to present an analysis that provides the reader with "an analytic means to relate the part to the whole."[31] This study fails to relate the part to the whole. We are shown how the *kiap* was rendered increasingly ineffective and how the more elaborate occupational system of police, magistrates, agronomists, and others that replaced him proved unable to maintain the public peace, yet we have no sense of the larger political and economic forces that impinged on the New Guinean justice system. As it stands, this monograph simply relates a series of events in a remote society instead of documenting the de-skilling of the *kiap* and subsequent failure to integrate the many specialized occupations of the justice system. It is an account that, at best, provides further illustration for what we already know: that bureaucracies are cumbersome, rigid and inefficient; that they enshrine procedures at the expense of substance; that greater specialization, if uncoordinated, does not improve the quality of services rendered to individual clients or to the community as a whole. At worst, the ethnography in this study is peculiarly lifeless, drawing on government commission reports and other documents, rather than fieldnotes and interviews.

II. THE POLITICS OF INFORMAL JUSTICE[32]

Perhaps the most interesting contribution Gordon and Meggitt make is their account of the growing discussion of the politics of informal justice in the highlands. Even so remote a place as New Guinea is not immune to trends in intellectual fashion as evidenced by the recent favor found for various forms of what western scholars call informal justice and New Guineans call the "customary law option." Among the Enga the perceived crisis in law and order gradually has led to a criticism of the formal, bureaucratic justice machinery, and to a call for a return to "customary law." Here the authors are able to show clearly what a peculiar hybrid the "customary law option" actually is. It draws much of its legitimacy from the informal justice proponents' preference for "substantive and procedural norms that are vague, unwritten, commonsensical, flexible, ad hoc, and particularistic."[33] Yet it proposes to take precisely such a set of informal norms, to record and codify them, and then to use them in the formal justice institutions of the New Guinea courts.

Emerging criticism of the informal justice movement by western scholars asserts that institutions ostensibly designed to curb the power of the state and to move dispute management closer to the community's sense of justice, in fact

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[30] GORDON AND MEGGITT, *supra* note 1, at 41.

[31] *Id.*

[32] The term derives from the work of R. ABEL, THE POLITICS OF INFORMAL JUSTICE (1982).

[33] *Id.*, vol. 1, at 2.

accomplish exactly the opposite. State power is expanded when dispute resolving institutions scrutinize conflicts, like the problems of barking dogs and spite fences too minor to be treated by the more bureaucratic state agencies. The proof of expanding state power lies in the fact, noted by one scholar, that "informal institutions virtually never dismiss a case."[34] Further, as the case proceeds all past behaviors of the plaintiff as well as the defendant are subject to scrutiny. This renders inoperative the safeguards implicit in the notion of irrelevant or inadmissable evidence and increases the intrusiveness of coercive institutions. Thus, government sponsored "informal" justice adds the weight of state sanction to such community control mechanisms as gossip and ostracism. Finally, once entrenched, powerful forces seem to be at work in informal institutions causing them to become ever more bureaucratic, professional and formalized.[35]

To this emerging criticism in the west of informal justice experiments Gordon and Meggitt's study adds two specific insights, both supporting the conclusion that the differences between western and indigenous law have often been exaggerated. First, the authors argue, it is misleading to compare village dispute resolutions to court proceedings in the west.[36] A more appropriate comparison between village litigation and the work of lay magistrates would reveal that at these lower levels both western and non-western legal processes have many informal elements. Second, the authors show, contrary to public perception, that even in village disputes customary law often resolves controversies by clearly designating winners and losers rather than by reconciling neighbors.[37] Thus

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[34] *Id.* at 271.

[35] At one time, the growth of professions and bureaucracies were thought to be antithetical. This hypothesis was rooted in an interpretation of Weber's work that held that the charisma on which professions depended was threatened by the routinization that is characteristic of bureaucracies. For a discussion of this point, *see* R. Dingwall, Introduction, in THE SOCIOLOGY OF THE PROFESSIONS (R. Dingwall & P. Lewis eds. 1983). More recently there has come to be a growing recognition of the compatibility of professions and bureaucracies. In this vein, Magali Larson writes: "Both professions and bureaucracy belong to the same historical matrix: they consolidate in the early twentieth century as distinct but nevertheless complementary modes of work organization." M. LARSON, THE RISE OF PROFESSIONALISM, at 199 (1977). Similiarly, Eliot Friedson writes: "For at least a century we have been treated to the use of the word 'bureaucracy' as an epithet ... in contrast to the negative word 'bureaucracy' we have the word 'profession'. This word is almost always positive in its connotation, and is frequently used to represent a superior alternative to bureaucracy .... It seems to be assumed that technical expertise is ... so self-evidently true as to automatically produce cooperation or obedience in others as well as the efficient attainment of ends .... But ... the authority of expertise is in fact problematic, requiring in its pure ... form the time-consuming and not always successful effort of persuading others that its 'orders' are appropriate. As a special kind of occupation, professions have attempted to solve the problem of persuasion by obtaining institutional powers and prerogatives that at the very least set limits on the freedom of their prospective clients and that on occasion coerce their clients into compliance." E. FREIDSON, PROFESSIONAL DOMINANCE, 129–30 (1970).

[36] GORDON AND MEGGITT, *supra* note 1, at 197–98.

[37] *Id.* at 199.

our propensity to overestimate the formality of western justice is matched by our tendency to underestimate the formality of customary law. In the end this study suggests that the "customary law option" in non-western societies is no more likely than the informal justice movement in western ones to be a liberating movement that curbs the power of the central authority.

III. CONCLUSION

Gordon and Meggitt have conducted a study of dispute management among the Enga of New Guinea which illustrates the intersection of occupational politics with a crisis in law and order. The authors recommend the rapid development of a village court system that, they hope, will provide at a decentralized and accessible level a hybrid of local accountability with the full safeguards of a more formal justice system. Their argument parallels the recognition arising from the work of E.P. Thompson[38] and Richard Abel[39] that the safeguards of a formal justice system, however clumsily and intermittently used by the poor, nevertheless represent a resource that the subordinate classes of western societies and the indigenes of non-western ones should be reluctant to forego for the questionable benefits of customary and informal law. The authors' argument is persuasive to the extent that their discussion echoes other scholarship that is only perfunctorily cited. The authors' stated objective — to provide a rich ethnographic account of Enga dispute resolution in order to illuminate the conflicting Marxist and non-Marxist theories of deviant behavior in developing societies — fails almost entirely; they do provide, however, an exhaustive account, drawn from documentary sources, of the precarious development of western justice institutions in Papua-New Guinea.

[38] E.P. THOMPSON, WHIGS AND HUNTERS (1975).
[39] Abel, *supra* note 32.