

BOOK REVIEW

Peter Fitzpatrick. Law and State in Papua New Guinea. London: Academic Press, 1980, pp. xiv+290. £12.60/\$29. ISBN 122478805.

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In this interesting and stimulating book, Fitzpatrick presents a Marxist perspective on law and state in the third world. Chapters one and two, dealing respectively with theories of development/underdevelopment, and law and state in the third world, establish the ground for an analysis of the functions of the law in Papua New Guinea. Fitzpatrick's basic thesis is that the law and state "have a role that is more structurally central and enduring in the third world" than in the West. The law is constitutive of the colonial social formation; the state precedes society; and the selective penetration of the traditional mode of production by the capitalist mode, and the relations between the two modes, are determined and regulated by the law. When two or more modes of production coexist, as in many third world countries, the overall coherence of the social formation is provided by the law. The law facilitates the development of the capitalist mode by establishing its preconditions--e.g., appropriating land from customary tenures, creating labour supply through systems of indenture and taxation--although with passage of time, the economic system reproduces itself, as shortage of land and the necessity of cash incomes force people into employment. In this new phase, a major preoccupation of the law becomes the conservation of the traditional mode of production from the ravages of capitalist penetration. Indeed, the "conservation of the traditional mode of production" is the leitmotif of the book. Fitzpatrick argues that neither the incoming colonial power (or its successors on independence) nor the capitalists want to see the destruction of the traditional modes. For one, the traditional mode subsidises the capitalist mode, especially by depressing salaries in the latter (for income in the traditional sector helps in the reproduction of labour). For another, the maintenance of the traditional mode contains the emerging working class, by emphasizing ethnic solidarities and by the circulation of labour. The colonial authority is, as well, relatively weak, and is able to cope with the consequences of only limited capitalist penetration. It is this deliberate balance between the pre-colonial and the capitalist modes of production

that Fitzpatrick finds the distinguishing characteristic of the law and state in the third world. Even though with the emergence of classes within the colony or ex-colony, the law has to mediate between them, and particularly between the indigenous bourgeoisie and the metropolitan bourgeoisie, central to this mediation remains the conservation of the traditional mode.

In common with general Marxist legal theory, Fitzpatrick argues that the law discharges its function typically through coercion and persuasion (or ideology), although ideology, as bourgeois legality, is the key to the mediation of the interests of the different layers of the bourgeoisie. However, this ideology is constantly threatened by the grants of wide discretionary power under legislation, to promote the development of the bourgeoisie, and to contain the crisis imminent in the unstable political situation due to weak class hegemony. Fitzpatrick applies his theory by relating it to the growth of different classes in Papua New Guinea--the peasantry, working class, and the bourgeoisie--to each of whom he devotes a separate chapter. Although he finds it difficult to divide the population neatly in these categories, he believes in the primacy of class divisions, and considers that with some qualifications, the categories are serviceable. Out of the "undifferentiated mass of people" emerged different classes due to the penetration of capitalist relations or the decolonisation strategies of the imperial power (promoting an indigenous bourgeoisie). The role of law has been examined in large measure by reference to the development of these classes and their containment. Adopting Poulantzas' distinction between a ruling class and a governing class, Fitzpatrick finds the local bourgeoisie as the agents of the metropolitan bourgeoisie. It is the metropolitan bourgeoisie which is the dominant class, and to whose interests "law and state continue to be particularly and predominantly responsive." It is this class which ultimately determines policy in the new state, and which wishes to conserve the traditional mode of production, as that tends to limit the challenge to its control of the political and economic apparatus.

The reviewer finds himself in general agreement with this framework and analysis. There is little doubt about the centrality of the state and of the superstructure in many third world countries. The law has played a key mediating role between the different modes of production. The importance of class analysis is undeniable, as is the relationship between the new state and external forces. Moreover, the author illuminates the framework richly with a close and historical analysis of developments and struggles in Papua New Guinea. He brings to his analysis a holistic approach, informed by wide reading, and sensitivity and reflection. In the first detailed study of its kind, he has

illuminated the role of law and state in a third world periphery within the context of theories of underdevelopment, and added fresh dimensions to the Marxist theory of law. He has made a major contribution to studies of "law in development," and exposed the weaknesses of the "law and modernisation" approach, which held sway under recently (and still does in so many third world universities and governments).

There are, however, several points of detail on which the reviewer would take issue with the author. The theme of the importance of the conservation of the traditional mode is surely overdone. In the early days of colonial rule, the balance between the modes of production is a matter of policy, although the conservation of the traditional is not, contra Fitzpatrick, a function of the weakness of capitalism (indeed at another place he recognises that unless the traditional was protected from the capitalist, it would be demolished); it had more to do with the politics of control by the administering authority. It is doubtful how far one can talk of the traditional mode in the contemporary situation, as Fitzpatrick continues to do. The 'traditional' mode has changed beyond recognition, not only in terms of production (the aspect the author concentrates on) but also in terms of exchange. It is also difficult to accept the author's claim that the maintenance of the traditional mode is necessary to the hegemony of the metropolitan bourgeoisie--as is illustrated by the example of numerous third world countries. It is perhaps more meaningful to talk of the distinction between rural and urban areas, and of the mechanisms of appropriation of the surplus from the countryside. Nor is the traditional mode necessary for the maintenance of ethnic consciousness, and therefore divisiveness. Modern competitive politics have given a new lease of life to ethnic consciousness.

I also find it difficult to accept Fitzpatrick's views on the role of bourgeois legality in the post-colonial state, particularly its function in promoting metropolitan interests. Few large foreign investments are made in a third world country without ad hoc negotiations, which define a special regime of each investment, and nowhere is this more clearly illustrated than the mining enterprises in Papua New Guinea where special legislation entrenches the special regimes. In fact one could argue that bourgeois legality with its universalism, openness, and submission to national jurisdiction is dysfunctional to modern investments and control over the economy, whatever the lipservice paid to it by the government and the investors. I also think that the author has exaggerated the importance of law, and ascribed an efficacy to it which is unwarranted. Although he has ably sketched in the economic and political context, he has failed,

except in one or two instances, to examine the reproducing dynamics of social forces, which may sometimes reinforce law but at other times divert or nullify its impact. Partly as a result, he occasionally fails to distinguish the consequences of a law from its intentions, and ascribes total rationality and prescience to the ruling class. The study thus has a uni-directional quality, in which all laws and executive action are made, in the design of a grand conspiracy, to fit the framework. Major changes of strategy are outlined, but little indication is given of the ebb and flow of daily struggles, compromises, concessions, uncertain intentions, and faltering policies.

It is in the chapter on the contemporary scene that some of these defects are most obvious. The difficulties of using his class categories are evident. While Papua New Guinea may be moving towards a class society, it is doubtful if there is any class consciousness. Ideologies and consciousness nurtured during colonial rule have a significant impact on policy. People who live in towns have deep roots in the countryside; the "bureaucratic bourgeoisie" is not separate from its rural or societal antecedents; and no particular place is found by the author for the active group of politicians. The recommendations of the Constitutional Planning Committee and the Law Reform Commission are not dissembling exercises; their support for "custom" and "Papua New Guinea ways" is not a strategy of conservation of the traditional mode in favour of foreign capitalists. It is in fact a struggle against foreign and indigenous capitalism, a search for authenticity and autonomy. It is altogether another matter that both their analysis and prescription may be wrong. By ascribing single-minded class motivations to the PNG "bourgeoisie," Fitzpatrick has underplayed the variety of intentions, progressive initiatives, and conflicts that have marked the period since shortly before independence. There is also a certain degree of unreality about his discussion of the metropolitan bourgeoisie. Who exactly are they? Rio Tinto Zinc and/or an expatriate owner of a gas station? Are they seeking to protect the same interests? How do they bring their dominance to bear (surely not only through joint ventures)? It detracts from the book's considerable value that this dominant class remains so shadowy and aggregated. Again, no real sense of the struggle between the local bourgeoisie and the foreigners is given. It is true that the PNG bourgeoisie is particularly weak (even by third world standards), and limited to visions set by the standards of the "periphery colony," but they do control important parts of the state mechanism, and their horizons are bound to broaden to encompass the possibilities of commerce, industry, and agriculture. Their relationship will not be a simple one of subservience to the metropolitan bourgeoisie. In my view Fitzpatrick has failed to delineate sufficiently clearly the interests of the different

groups; and does not always indicate clearly who has organised the enactment and the mobilisation of the law. There is thus some tendency towards reification of "the law and state."

These criticisms notwithstanding, Fitzpatrick has produced an original and enlightening study. It is a valuable contribution to our understanding of Papua New Guinea, but more importantly, it opens new paths to the study of law in colonial and post-colonial contexts. It has redefined the parameters of the study of law in social change. It goes a long way to validating law's claim to social science.