

BOOK REVIEW

S. Burman and B.E. Harrell-Bond (eds.). The Imposition of Law. New York and London: Academic Press, 1979 (324 pp.).

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Easy notions about what constitutes "imposed law" will be dispelled by this volume. Sensing a need for rethinking fundamental assumptions, Sandra Burman and Barbara Harrell-Bond organised an international conference on the topic "the social consequences of imposed law", which was held at the University of Warwick in Coventry, England in 1978. This book, The Imposition of Law, published a year and a half later, contains fifteen papers and a theoretical concluding essay. Imposed law is not considered a stage in evolutionary development, and few papers develop this relationship, yet evolutionary thinking is implicit in most of the papers, usually as an inarticulated theme. This gives the book a subterranean quality, as if a deep underground roar were being ignored.

Reading the book, we discover that imposed law can occur through class domination, through conquest, and by transplanting legal systems. Its most characteristic form, and its basic occurrence, however, is in the colonial situation. But it also inheres in the relationship between American Indian reservations and the United States Government, in the regulation of farmers' co-operatives in Hungary, in the head-tax system of rural political organisation in Niger; in the legal restrictions imposed on trade unions in Britain by the British Munitions of War Acts, 1915-1917; in the consequences of the legislation concerning poaching in Britain, in the attempts to abolish the death penalty in the United States during the 1960s; and in the licensing procedures of the newly-constituted state of Papua New Guinea. When I left for the Conference I knew what imposed law was. When I returned I didn't. Now, having read the book, some clarity of focus has been restored. The volume provides both the excitement and the uneasiness of conceptualization that an

interdisciplinary ménage à six discipline provides. Taken as a whole, the papers clearly move the discussion of how law changes further than it had been previously. Taken as a whole, the book presents such an overwhelmingly complicated perspective of the complexity of socio-legal change, that it clearly demonstrates that simple unilinear models of change ought to be abandoned forevermore. And, finally, certain papers and particularly Kidder's penetrating analysis, clarify that imposed law is a dynamic process. It is not useful to see it only as a top-down, static phenomenon, but instead, as a changing, interactional situation. Or rather, it is many interactional situations between and among individuals and groups, between interest groups and the courts, between interest groups and elites. It involves courts, legislative bodies, and ultimately street mobs, although historical analysis of legal change through social movements, such as Piven and Cloward (1979) documented, or Joel Handler analysed (1978), are noticeably lacking. Under ordinary circumstances social movements for legal change would be a discrete category, but given the potpourri above, why exclude these?

Burman and Harrell-Bond lay out the theoretical dimensions of the book in their introduction: imposed law is an elusive concept (p.2) for at one extreme in western philosophical thought, human beings "most fully (realise their) ... potential in a society ordered for the common good and in which there is general consensus on the laws" (p.3). A contrasting position suggests that man is an "atomized individual pursuing his own selfish goals, on whom any social control is an imposition" (p.3). A major theme of the book is "the way in which the legal system reaches far beyond its own apparent sphere of influence to interact constantly with social attitudes, processes and structures" (p.6). Furthermore, the case studies in the book demonstrate that the governed usually have ways of subverting the law, and thus the term "imposed law" masks the dynamic aspects of the two-way process, even in colonial situations (p.6).

Sally Lloyd Bostock considers the problem - how can we distinguish imposed from other kinds of law? (p.9). Findings, concepts and theories from social psychology suggest that we really cannot distinguish imposed law from other kinds, because moral norms can "be applied quite flexibly to justify contrary responses to the same situation", and because a "lack of correspondence with moral norms does not ... provide a clear criterion for distinguishing more extreme cases of imposed law" (p.23).

Vilhelm Aubert remarks that "the most important and drastic situations of imposition have relatively little to do with law"

(p.29). Pointing to war and economic penetration, he states these "may expose populations to forces, against which they cannot effectively protect their interests when they conflict with those of the imposer" (p.29). Thus, instead of concentrating on imposed law per se, Aubert is interested in the impact of law. How ought we study it, measure it, conceptualize it? This is a topic of particular interest to me also (Starr 1978; Starr and Pool 1974; Starr and Meadow n.d.). One way is to study compliance with the law. Such study is also known as deterrence theory. But the general theory of deterrence has not progressed very far since Bentham's ideas, Aubert remarks (p.38). Secondly, to understand the social impact of legislation we need to become concerned with frequencies: thus, for example, we need to know how many motorists drive in a drunken condition. Thirdly, we need to consider controls and sanctions. But, he cautions, "legal sanctions are often accompanied by other social sanctions, and ... the latter in many instances may be the more powerful ones" (pp.40-1). Yet, certain areas of law (contract law and corporate law) have shown a great deal of continuity. In general, these have evolved gradually through piecemeal change, largely through the efforts of lawyers (p.41). And, within the framework of a relatively stable set of legal rules which limit the freedom of contract, new types of contractual forms and corporate structures have arisen (p.41-2).

In the new nation of Papua New Guinea, licensing is a form of imposed law, according to Fitzpatrick and Blaxter. They point to contradictions in governmental policies: there is a perceivable need to involve poor people and small entrepreneurs in capitalistic enterprises, and yet the interests of the governing elites led them to restrict and then inhibit small economic ventures (p.116-7). Two dozen economic activities were subject to licensing. Even mobile food vendors, small bars, small-scale peddlers, and mobile water vendors were restricted because "the finance committee considered that they could unfairly undercut business operating from stores" (p.118). Other enterprises such as co-operatives, long hailed by development planners as possible solutions for the poor sectors of society are shown to be subdued, controlled, and eventually suppressed by state regulation (p.124).

Okoth-Ogendo argues that English property law, imposed on indigenous Kenyan society during the colonial period, provided security for English settlers and also promoted laissez-faire capitalism (p.156). But English land law in Kenya was really an attempt to restructure society as a whole and three phases can be discerned. In Phase Two twenty-four indigenous land "reserves" were named, and it was here that Africans were to live and own land (p.152). From 1939, which marked the end of Phase Two, non-Africans were not permitted to obtain permanent

land rights in any part of the reserves, and "no African was permitted to reside in any reserve other than that to which his ethnic group was specifically assigned". This idea of "territorial fixity" had further consequences: first, it disturbed the dynamic relationship which previously held between patterns of land use and land availability, by making it "impossible to acquire permanent rights of access elsewhere" (p.157); and second, the reserve system became pressured by population growth, and thus competition for scarce land was increased among lineages, clans and even families (p.157). This in turn increased litigation over land in Western and central Kenya where land was the scarcest (p.157). The article ends with the paradox: despite the numerous problems created by English land law in Kenya and elsewhere, administrative elites in most of Africa continue to believe that western models of law can operate for "the integration of national legal systems and the maintenance of order in African societies" (p.165).

The westernization of primary courts in Kenya is considered an example of imposed law by Richard Abel. He tests a number of hypotheses to suggest a theory of social and legal change:

Two major trends in litigation are discernible as social and institutional variables are changed. First, tribal social structures and modern courts are incompatible; the introduction of the latter into the former leads to a decline in tribal litigation. Second, ... modern social structure and modern courts are compatible; the rate of modern litigation will rise in modern courts in urban areas, and only there (p.196).

But, cautions Abel, "the advantages of modern litigation under liberal capitalism are short-lived, no more than a brief, transitional way station on the road towards patterns of litigation that offend against all the values of the rule of law". Three deviations from the ideal type of modern litigation are already visible in contemporary Africa: first, there is a decline in the accessibility of the courts to individual litigants; second, growing dominance of the court by criminal prosecution and especially by administrative offences; and third, "adjudication in modern courts ... becomes increasingly superficial - a rubber-stamping of decisions reached elsewhere" (p.197).

In the concluding essay, which aims toward an integrated theory of imposed law, Robert Kidder argues against the command model of imposition and suggests the feasibility of an interactional model in which "law is an arena for the promotion of interests" (p.291). First he demonstrates that we cannot assume subjugation and exploitation as inevitable consequences (p.292). While subjugating Ireland, the British developed an extensive

legal system to support the Raj in India. And Indians took to the courts with great enthusiasm; many even became masters at judicial manipulation. Thus, British-Indian law, "though frequently oppressive and though having widespread effects, was not thoroughly imposed because of the complex response of a complex social system" (p.292).

Kidder works with several interesting propositions, for example that anything that increases the power of external legal actors to offer alternative increases the vulnerability of the internal system. And, "the more external alternatives there are (in the sense of numbers of layers of organisational involvement), the more vulnerable the internal system" (p.297). Kidder calls attention to the need to observe the details of the struggle between different levels of authority: "I agree that we must look to the development of other centralised institutions - especially economic - in order to understand the sources of power that affect the development of external law, and I concur that the development of more centralised legal forms threatens parochial authority systems" (p.299). Modernization of the courts is "the reflection of the coalescing interests of three new forms of domination: the multinational corporation, the bureaucratic bourgeoisie, and a comprador class of local business" (p.301).

Kidder points to two errors in the discussions over imposition: the first is that of equating the external - internal distinction with a cultural dichotomy between exogenous and indigenous law. The second error is to attribute to imposed law all those effects which come from other social processes, especially political and economic subjugation and from simple cultural contact. The problem is not that the US Government developed the Bureau of Indian Affairs. "The sheer presence of millions of non-Native Americans in the same area as Native Americans would have been disruptive to indigenous cultures." (p.302)

Like the sea on a cold day, this is a hard book to plunge into, and once there, a hard book to ignore. Socio-legal scholars will pick stones and gems from its many glistening wisdoms during the next decade.

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