

BOOK REVIEW

Yash Ghai, Robin Luckham, Francis Snyder (eds.),
*THE POLITICAL ECONOMY OF LAW: A THIRD WORLD
READER*. Delhi: Oxford University Press, 1987. xvi + 821 pp.

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This book is intended primarily as a teaching aid in courses concerned with law and society in the third world. I used with benefit a pre-publication draft in a postgraduate course on Law in Development at the University of Warwick, where two of the editors have worked.

It aims at a reorientation of its users. The editors have found that those who have obtained their initial legal education in third world institutions have generally, like the majority of English law graduates, developed the capacity for rigorous doctrinal analysis, and a formalist, idealised view of the content of a legal system. They also have some aspirations, unsupported by much relevant knowledge of social science or political economy, to see law used as an instrument of development. This book aims to provide them with the elements of a theoretical framework which will enable them to "analyse law in terms of its relationship to the economy, class, political conflict, the state and international relations" in the third world, from radical and marxist perspectives.

The editors consequently see it as necessary to provide readings from basic theoretical literature: extracts from Marx, Engels, Weber, Pashukanis, Gramsci, Poulantzas, Lukacs, Mao Zedong, and E.P. Thompson are given as much space as major writers on third world societies, such as Furnivall, Alavi, Saul, Leys, Seidman, and Myrdal, and Ghai, Luckham and Snyder. They acknowledge that many of the readers they have in mind will find this material difficult.

Readings on general theory, developed mostly from studies of the capitalist west, cannot provide lessons which are directly applicable

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to third world societies. Therefore in each Part the selection of general readings is followed by case-studies from third world societies. The object is not to suggest that the specific conclusions of these case-studies can be applied to other cases, but through analogy to stimulate case-studies within the same theoretical frame elsewhere. Each Part begins with an editorial introduction which expounds the common theme and explains the relevance to it of the individual extracts on theory and case-study.

Part I, containing the most basic, introductory readings, is entitled "The historical foundation of law in colonialism and capitalism". This title gives a significant indication of the degree to which the editors' theoretical position restricts the scope of inquiry and the variety of explanatory theories which are open for consideration. This criticism will be developed below. Part II is on "State, law and ideology". The case-studies in it focus on the special and controversial nature of the state in the third world, and the limits of its power. Part III, on "Law and the internationalization of capital", turns to the other dimension of the study, relationships between rich and poor countries in the world economy: or rather, the functions of law in these relationships in the third world. In this part and the next, "Law, state and economy", the case-studies on attempts by third-world states to control the activities of international capital point unanimously to pessimistic conclusions. There is another viewpoint, recognised by the editors in their Introduction to Part IV, which sees some possibilities of states exercising control. It might profitably have been represented by one of the recent studies of the techniques of negotiation with foreign investors.

The next two Parts provide an introduction to the sociological study of legal systems and legal professions in the third world. They include discussions which place general and particular findings on lawyers' conduct in historical contexts. They should be sufficient to persuade readers to pass beyond the superficial reaction of moral condemnation, which seems often to terminate discussion of judges' political servility or practitioners' rapacity.

The final Part VII, on "Law and social transformation", treats of the instrumental efficacy of law, focusing on the sub-field of the transition to socialism. The case-studies here are all studies of the Chilean experience of the Allende presidency. Together they provide a relatively full view of this episode, except that there is no direct account of the forms of struggle by the bourgeoisie against that ill-fated government's socialist programme.

This is an admirable selection of readings, excellently introduced and ordered. Despite its length, it is obvious that the editors must have been forced to make difficult decisions in their selection of material. The issues relating to women in the third world are touched upon in just three extracts. That was perhaps the best compromise. It would have been impossible to provide an adequate introduction to the analysis of these issues without doubling the size of the book, but it would have been regrettable to ignore it altogether. It is perhaps less certain that a satisfactory solution was found for the issues concerning Islam. In including only one extract on this, the editors could not have hoped that the book would be representative or even indicative of this wide set of issues. The problem here may be that, between the divinely ordained tenets of a religion, and the materialist analysis of history adopted by the editors, there is little common ground for rational dispute, and much room for hostility. Even the extract chosen, which discusses the compatibility of Islamic institutions and values with capitalism, could be seen as demanding from readers an irreligious approach to the issues. If debate is not yet possible, perhaps this should be expressly admitted?

Any critic could make suggestions for further inclusions. Within the editors' frame of discussion, I would have liked to see Samir Amin, Frank, Mandel and Wallerstein represented. More importantly, some areas are neglected. There is only one extract on Indonesia, on which there is a wealth of relevant Dutch studies in English. There is only one on Papua New Guinea, and one other on a Pacific area. It would have been useful to add to the part on the Apparatus of Justice one of the many studies of village courts in PNG. On the other hand I would have excluded, as contributing relatively little, the extracts from Maine, Schachter and Rahim Said, and the editors' summary of the "changing of the Grundnorm" cases.

Finally, a fundamental question may be put as to the scope of the work. It may be seen as a determined attempt to encourage progress (hitherto painfully slow) in the study of law in third world societies. Three main approaches to the study of law can be distinguished. First, the path of formal doctrinal analysis of state law has been trodden since the emergence of modern legal professions, and still absorbs much labour. It will continue, for it is related to an ideology exposed in the Reader as serving certain dominant interests. Secondly, the path of anthropology of law, involving the study of non-state laws, has been followed steadily since its emergence early in this century. Despite the enthusiastic efforts of some scholars rather little has been achieved in relating its insights to our developing understanding of the state and its law.

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This book follows the third path, which is perhaps rather a terrain with a number of paths, some of which may lead nowhere. The area might be entitled "Is there life after Law and Development?" Since the fall of the Law and Development movement of the 1960s several approaches have been proposed to fill the resultant void. Seidman has determinedly pursued his quest for the means to defeat poverty in Africa through law. Unfortunately few find it possible to participate, as his optimism about the prospects of success is not widely shared. The right to development has been studied. There is a drive to explore the possibilities of development through local participation or initiative. Then again, attempting to avoid perpetual debates over the theoretical issues of law and development, some students propose to pass them by and move on to more specific issues, such as the accountability of those producing development. Since the theoretical difficulties are inherent in the notion of a role for law in development, it is doubtful whether the specific questions can be usefully formulated until tenable solutions have been found to the theoretical problems: and quite likely that these will reveal some of the particular questions to be meaningless.

The most substantial activity in this third area has taken the related theories of underdevelopment and dependency, and the methodology of marxist study as starting points for the exploration of the place of law in the social changes occurring in the third world (or Law *in* Development). This book displays some of the most interesting and useful fruits of this. It encourages its users to undertake this sort of analysis in respect of their own countries. Is this the most promising path for the future?

Marxist theory is still deeply marked with its origins in the analysis of the western capitalist state. The basic texts must be studied if the methodology of marxism is to be employed. The student who would follow this course is presented with arguments in which the nation-state is commonly the field of investigation, and which look to the governmental institutions of states for significant activities in the course of history, at least when it has reached the period of dominance of the capitalist mode of production. The editors have reinforced this emphasis by their own arguments and by their selection of material.

The editors' arguments are shaped by their conception of what constitutes law. They contend in the General Introduction that a definition of law must not be broad or imprecise, nor "cast in universal, idealist and ahistorical terms. In order to be most useful

it should emphasize law's distinctive, historically specific character." From this they conclude that law must be viewed as being most fully developed within the capitalist mode of production. Thus law, properly understood, is indissolubly part of the capitalist state. Here I can only remark that I find the reasoning in this passage difficult to detect and quite unconvincing. Pashukanis presented the case more fully, but he, while effectively showing that the law of the capitalist mode of production has a distinctive character, likewise gave no strong ground for limiting the concept to that particular case. Especially in the study of third world societies, such a premise is likely to exclude some valuable investigations.

The editors' selection of material reflects their incessant, near-obsessive concern with the modern state and its law. Even when due recognition is given to the dispute over the significance of the state in the third world, this is presented in the context of a view which regards the state, whether large and effective or small and soft, as vital to all law and the character of nearly all social change. Nevertheless, some extracts inevitably throw doubt on this basic premise by focusing attention on fields much smaller than states and examining "law" in fields not subject to capitalist production. One is compelled to wonder whether the appropriate field for analysis may not be frequently much smaller than the state, whether it be called a form of production, a social formation, a semi-autonomous social field, or something else. This field, while often affected by activities and relations outside itself, and not infrequently outside its continent, may not always be much affected by the state.

In this view there is a continuing need for a theoretical argument which addresses itself to the broad sweep of history, but which does not assume that the state always has preeminent importance. There is also an urgent need for empirical studies of the very many specific forms of production involving the labour of relatively minute numbers which abound in the third world. (An example, with an impeccably marxist theoretical base, is Vercrujssse 1984.) Frequently such work will find it necessary to use methods refined by anthropology. In general, study of the political economy of law needs to turn towards the path of legal anthropology. (The book includes extracts from the outstanding anthropological research of Snyder. Yet as an editor Snyder was, I suspect, primarily responsible for framing the argument in the General Introduction for the restrictive conception of law. I can only record, not explain this paradox.)

None of the foregoing comments and criticisms are intended to detract from a high overall assessment of this work. In my opinion it

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should be not merely recommended but prescribed reading for every course, anywhere in the world, on law and society in third world countries. And however that may be, it certainly merits to be read by readers of the *JLP*.

REFERENCE

VERCRUIJSSE, Emile

1984 *The Penetration of Capitalism: A West African Case Study*. London: Zed Books.