

## BOOK REVIEW

C. J. Dias, R. Luckham, D. O. Lynch, and J. C. N. Paul, eds. Lawyers in the Third World: Comparative and Developmental Perspectives. Uppsala and New York: Scandanavian Institute of African Studies and International Center for Law in Development, 1981, pp. 400.

Dennis O. Lynch, Legal Roles in Colombia. Uppsala and New York: Scandanavian Institute of African Studies and International Center for Law in Development, 1981, pp. 124..

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These innovative and valuable works deal with the legal profession in the third world. Their relevance extends beyond the legal profession in that wider theoretical stances on law in the third world are integral to several contributions. Their relevance extends also beyond the third world in the theoretical and comparative perspectives they offer on the legal profession generally, although there is little incorporation of work on legal professions outside of the third world.

It would be almost unfair to criticise the coverage of the essay collection on any ground; given the geographical and academic (including ideological) spread of contributors and concerns, as well as the substantial dimensions of most of the projects involved, it is a remarkable achievement and a matter for congratulation that the essays were put together at all. Sufficient unity in diversity emerges to justify focusing on the increasingly difficult category of "the third world." The categories "lawyers" and "legal profession" are, however, nowhere more than cursorily treated as problematic. Apart from Houghton's chapter specifically dealing with women lawyers in Ghana, the part of women in legal professions is not considered.

The essays are divided into national case studies and more general "perspectives." The case studies will be considered first. (Page numbers will refer to the essay collection unless otherwise indicated.)

Lynch's essay on "legal roles in Colombia" in the collection is somewhat expanded on in his book of this title and both will be reviewed together. His study is based on a sociological survey of people who graduated from "the six principal law faculties" in the capital. This survey is put nicely into context in an historical introduction to law and lawyers in Colombia. This

provides a basis for a penetrating analysis of "the way changes in the profession reflect the relationship between legal roles on the one hand and the class structure, the allocation of economic power and the political system on the other" (p. 37). Lynch is his own most perceptive critic. He recognizes the limits of surveying people in the upper reaches of the profession. In particular (and this is common throughout the case studies) there is no concern with the provision of legal services that are not officially recognized, or are officially prohibited. But it is interesting that even with his sample "a sizeable percentage of private practitioners often have workers and small farmers as clients" and "the sample probably [almost certainly?] underestimates the actual percentage of the Bogota profession serving these lower-middle and lower class groups because it is biased toward the elite schools and the more prestigious occupations" (p. 49). Given an idealistic concern in several essays with "access" of "the poor" to legal services, it is perhaps surprising that nowhere are such lines of enquiry followed up. On the other hand Lynch shows (and this message is the same where the issue is addressed in other case studies) that lawyers are rarely concerned to serve the poor. They are concerned to serve and be of the rich. Those lawyers serving the poor are distinctly of a low status. Although Lynch finds that "access to lawyers among low income groups is greater than anticipated" (p. 89 of his book), this access is oriented to reconciling these groups with existent structures of domination and not to transforming these structures. In short, more than sufficient emerges from Lynch's case study and from most other studies to puncture the prescriptions of theorists of "law and development" casting lawyers as agents of progressive and profound change. Another, and related, pretention destroyed by Lynch and several other contributors is that of the lawyer as chief originator and grand implementer of development policies--the lawyer as the omniscient policy scientist. Lawyers in government are shown to be and as having to be narrowly legalistic and unadventurous. It is common for work in government to be seen by lawyers as a steppingstone to private practice. Government lawyers will not want to antagonize possible future clients and contacts. Formalism and legal conservatism are ways which help avoid such antagonism. Finally, legal developmentalists often see legal education as a way of inducing change. Lynch's account of legal education provides no support for this illusion either.

Perdomo's study of "jurists in Venezuelan history" does not claim to be anything more than brief and indicative. It is nonetheless neat and stimulating. He sees private legal practice as emerging with capitalism. Lawyers are viewed as enduringly "engaged in integrating and solidifying the forms of domination"

(p. 88). He does, however, note the "relatively recent growth" of a "professional 'proletariat'" of lawyers operating beyond the pale of professional respectability. Here, as elsewhere in the essay collection, this theme is sadly underdeveloped. This lack is perhaps particularly unfortunate for Latin America where, for good or ill, there seems to be now a significant number of lawyers whose constituents are the poor and those engaged in politics of opposition.

Luckham's case study is concerned with "the Ghana legal profession" in the setting of "imperialism, law and structural dependence." It is a compact and protean presentation. In his analysis lawyers in Ghana occupy a complex of contradictory positions. They served as intermediaries between colonial governments and their subjects, yet they were in the forefront of the nationalist movement. Lawyers also served and serve the causes of both external capital and local economic interests in which they are integrally involved. These positions are subjected to a penetrating and richly illustrated analysis in elaborating a series of "contradictions of legality." In summary, law legitimizes domination through the state superstructure yet articulates contradictions of that superstructure; property law serves the penetration of external capital yet it serves indigenous elements which try to control and take advantage of that penetration; equality before the law contrasts with law's part in institutionalizing social inequality; a professional ethos protective of legality can sit uncomfortably with professionalism as a base for the economic interest of lawyers; finally, the influence of transnational legal culture can conflict with indigenous cultural contributions to the legal system.

Houghton's is a more tightly focused concern with "women lawyers in Ghana" and particularly with disadvantages that affect them relative to their male colleagues. It is a fine and thorough piece of work which indicates a large gap in the general national case studies. It is part of a wider project investigating "whether traditionally independent West African women are being pushed into the second class status in society usually associated with Western women as the modern sector of the Ghanaian economy expands" (p. 123):

The reason for studying women lawyers is to see to what extent women have been able to move into a profession which is part of the modern sector and to secure a place for themselves in it; or conversely to what extent they were prevented from doing so and assigned to an inferior status within that profession (p. 123).

A survey exploring this question revealed a complex of restraints on women's entry to and advance within the legal profession, restraints made familiar through comparable studies in social formations of the first world. Nonetheless the survey also showed that "women lawyers in Ghana are in an advantageous position relative to both their counterparts in the West and their sisters in other occupational groups in Ghana" (pp. 140-141).

Ghai explores "some political economy considerations" of "law and lawyers in Kenya and Tanzania." For him "the role of lawyers can only be understood in the context of the organisation of the economy brought about by colonialism" (p. 144). More particularly, this role, and its narrowness in contrast to the role of lawyers in other "market economies," is located in the articulation between "settler" and "peasant" modes of production. Here he is concerned to provide a theoretical frame leaving detailed consideration of the operation of legal professions in these social formations to other contributors. The frame is, however, presented with a wealth of telling observation. As well, the theory of the articulation of modes of production is applied in ways that are acute and revealing. Such a theory does have inherent limits. It does not accommodate an independent dynamic nor, as a general theory, can it provoke specific and comprehensive answers. It is reliant on the modes of production it articulates and Ghai is understandably unable to treat them in sufficient detail in the space he has available here. In particular there is insufficient account of the operation of modes of production in Kenya and Tanzania and of the connection between this and the great differences between the legal professions in these two places. This is not to deny that in historically specific terms and in terms of state action Ghai does account for differences; it is just that this account does not always fit within the theory and its elaboration. Nonetheless, this is a study that is path-breaking both in terms of theory and in terms of the study of law in these social formations.

The two following chapters provide some more detail on the Kenyan and Tanzanian experience. Odenyo's is a solid sociological account of the Kenyan legal profession and one rendered more sensitive than sociological accounts usually are by the use of historical illustration. Rwelamira's illuminating portrayal of the Tanzanian legal profession is basically historical with some sociological support, the whole being informed by his concern with "underdevelopment and class conflict."

Salman most aptly characterizes his account of the legal profession in the Sudan in terms of "legal and professional pluralism." Here also the basic approach is historical and a

rich and complex history is admirably condensed. As the Sudanese situation amply justifies, predominant emphasis is placed on the effects of ethnic plurality, on legal dualism, and on the interactions between the legal profession and the volatile politics of the national level.

A similar concern with ethnic plurality also pervades the essay on the Malaysian legal profession by Machado and Said. They are, as well, much concerned with "access" to legal services but this is not allowed to fudge or restrict what is a revealing and broad-based sociological enquiry. This is one of the few chapters where a widespread lack of access to formally organized legal services prompts consideration, even if only in a few sentences, of the informal provision of legal services.

In the last four essays the collection moves to a more general concern with "comparative, historical and other social perspectives." This section starts with Reginald Herbold Green's lapidary "reflections of a political economist" on "professions, professionalism and the law." As this description suggests, these reflections are pitched at a very general level. They are brief and compact, more a matter of pithy insights than of a structured frame. He is concerned with shortcomings in the ways political economists may look at law but with the ways these shortcomings neatly reflect political economists' particular strengths:

in tackling areas not central to, or not very satisfactorily analyzed in, legal writing on law or in much of the other social sciences' study of law. These include the critical functions of legally trained personnel in roles other than court combat; the characteristics of professions and clusters of high level manpower in technologically advanced capitalist and socialist modes of production; the necessity of relating study of the law and legal system to the underlying economic relationships (p. 285).

Luckham reappears, moving "toward a framework for comparison" in "the political economy of legal professions." This is a massive interrogatory addressed at the subject of legal professions --something along the lines of everything you ever wanted to ask about legal professions but were too afraid to know. Among all the questions there are extremely valuable synoptic accounts of the links between different state formations and different legal systems and legal professions, of the links between different production systems and "the use of legal intermediaries," of

"the political functions of law and lawyers," and of "the economic base of legal roles." All this is most impressive and is something that anyone working on law or lawyers in the third world will have to take close account of. It also provides a valuable basis for broadening the range of social formations used to ground generalizations about the legal profession, generalizations that are usually far too narrowly conceived both in historical and geographical terms. A possible criticism is that the integral connecting of various types of legal operatives with dominant modes of production or with state formations may obscure distinctive connections between legal operatives and subordinate elements in society, elements that could assume revolutionary significance. Also, little account is taken of personal and social relations and the varying parts which lawyers play in these.

The last two chapters by Dias and Paul present some "observations on lawyers in development and underdevelopment" and some account of "lawyers, legal resources and alternative approaches to development." They also provide an initial chapter on "lawyers, legal professions, modernization and development." From these titles it is difficult to extract what is distinctive about each chapter and indeed they are all much of a piece and will be dealt with together here. Initially they find approaches to development and to law and development wanting because of the "repeated discoveries of persisting and widening social gaps" and because these approaches are focused on effecting change from the top downwards. They advocate instead "alternative development strategies designed to close the gaps" and "an access approach" which is to shape legal professions "from the perspective of the victims of the social gaps." They do recognize, however, with a tentativeness justified only by their wanting to find space for an alternative scenario, that from the case studies "the general conclusion suggested is that existing patterns of professionalization help to maintain--if not create--social structures which contribute to the continuing impoverishment of vast numbers of rural people" (p. 337). Whilst at the same time intimating a brighter day tomorrow they recognize that "the legal system is yet to be seen as a means for people to advance claims against government, and lawyers and judges are yet to be widely identified as defenders of human rights against government" (p. 343). They also recognize, if not quite as bluntly as it is put here, that the poor can rarely meet the costs of legal services and where they can they would usually have been better off if they could not have. Regardless, they prescribe or conjure up legal assistance for the poor in their battles with dominant elements, especially the state. Thus will the poor achieve greater "access" to state benefits and greater "participation" in such realms. All this is to be effected through the figment of lawyers based in

communities of the rural poor. So, their account can, as they say, only be "suggestive," "inchoate," concerned with "what may happen," "an aspirational agenda for law and lawyers in development." Their aspirations are only patchily operationalized. The state must somehow become part of the solution rather than part of the problem. They assert with a characteristic mix of certitude and supposing that "government intervention seems clearly necessary if an economic base for these services is to be created" (p. 356). There is also to be, somehow, a necessary strengthening of community pressures from below. All of which is seen as avoiding "Western (or alien socialist) structures" and as conforming to various, well-known "alternative approaches to development" such as development from the "bottom-up" rather than the "top-down," development as the satisfaction of "basic needs," and as the provision of "access" to state benefits. They refer to two supporting case studies of successful community efforts to use law, although lawyers do not seem to have had anything to do with these efforts and the legal element in one case is peripheral.

It sometimes seems that in the academic industries of "development" and of "law and development" the proliferation of anodyne populisms and prescriptive panaceas knows no bounds. The above account of the contributions of Dias and Paul is an attempt at a fair summary yet the mere summary serves adequately as criticism. Nevertheless, it must also be said that to a significant extent, and to an extent hardly recognized by Dias and Paul, there are assertive popular groupings in the third world, these are sometimes supported by the state, and they are assisted by low-paid and dedicated lawyers. But to make groups and law a basis for "alternative approaches to development" is to ignore the part groups and law may play in the wider political economy--to borrow a term favoured in more rigorous contributions. As is now trite, groups and law much more often than not serve to integrate people in structures of political control and containment and structures of economic domination. To give an uncritical priority in "development" to groups and law is, at least implicitly, to support such structures even if thereby certain institutional ends may be served and fashions followed. Thus an analysis seeking to relate groups and law to these structures will find it necessary to confront the latest orthodoxy, which is seen by Dias and Paul as a "growing international interest in studying endogenous, human-needs-centered groups--particularly by working with them" (p. 380; their emphasis).

In the essay collection there is a helpful appendix of references to "selected reading" but there is no index, a particularly unfortunate failing in a work of this kind. Even more inexcusably, there is no index in Lynch's book. But it is apt,

given the virtues of these works, to end on a positive note. An increasingly common complaint ending reviews these days is the cost of the work reviewed; but although no details are given as to price, these volumes are reputed to be exceptionally inexpensive.