

BOOK BRIEFS

THIRD WORLD LEGAL STUDIES-1982: LAW IN ALTERNATIVE STRATEGIES OF RURAL DEVELOPMENT. New York: 1982. International Third World Legal Studies Association. Pp. i, 313. \$15.00.

Law in Alternative Strategies of Rural Development is the first full-length published work sponsored by the International Third World Legal Studies Association (hereinafter referred to as INTWORLSA). It is a collection of seventeen case studies and essays which attempt to illustrate "how law can be used in strikingly different ways to structure programs in rural development."

Twelve renowned international legal scholars produced this compendium, coming from a variety of institutional backgrounds and experiences, including academia, government and international public and private organizations. Several of the authors have garnered considerable experience, within the countries about which they have written about, by doing extensive work with international organizations and national and regional governmental agencies charged with rural development responsibilities in both African and Asian countries, as well as in Oceania.

The American practitioner, particularly the minority lawyer familiar with the *Black Law Journal*, might well ask why this book is being reviewed in the *Journal* and, in fact, why this reviewer is recommending it. There are two strong reasons which instantly come to mind that address that query: First, the minority legal community in the United States has a duty to be informed, at least in general, about economic development, politics and the decolonization process in the developing world primarily because many of us have our ethnic origins in these areas of the world. As trained professionals, we have a moral duty to share our talents and resources with our fellows in the less developed portions of the world who are participating in the struggle for human and economic rights. Their struggle which is remarkably similar to the continuing American civil rights movement. (Such sharing may be as close to home as providing a positive learning experience for an exchange student from the Third World who is invited to dinner, or as far flung as spending a year abroad with the Peace Corps using one's education and professional training in a positive and practical fashion.) The second reason for reviewing this book is that there are lessons to be learned about economic and human development within any cross-cultural study, which can provide simile and parallel. This is useful for our own development as a people, especially because we live in a pluralistic society and enjoy a disproportionately low share of the economic benefits to be derived from full participation therein.

The paradigm of agrarian land reform, which serves as a rallying cry throughout the underdeveloped world, shares many facets in terms of potential solutions with our, perhaps not so unique, phenomenon of diminishing agrarian land holdings by minority farmers throughout these United States, especially in the southeastern states. This type of parallel should provide

more than enough incentive for the American minority practitioner or academic to become at least minimally informed about these issues.

There are several trends which are apparent in a number of the articles and case studies included in this publication that are worth noting, even in a brief review. First, the functioning governmental bureaucracies in most of the developing world appear far more efficient in planning and organizing the urban-industrialized population centers than they do in the planning and organizing of the redevelopment of the rural-agrarian population centers, such as villages. While numerous reasons may be offered to demonstrate the historical trends of rural-to-urban migration patterns and the steady, if somewhat delayed, erosion of managerial talent at the village level in most areas of the world, this migration nevertheless remains a serious problem. The centralized control idealized in modern administrative science, and in many cases inherited from previous colonial administrations that have recently been replaced by indigenous national governments, has created a cadre of academically trained professionals measurably more capable at drafting a city building code than they are at establishing a village-level cooperative fish farm designed to supplement an otherwise low protein diet for the local inhabitants. The professional education system, worldwide, seems to have evolved into a selection process for the advanced training of individuals from the relatively more affluent urban areas who tend to remain in these areas once they have completed their training. This, in turn, simultaneously reinforces the existing talent pool within the urban areas and reduces the relative percentage of rural origin people receiving professional or para-professional training, who would otherwise, by matriculation, rise within the society to become decision makers in political, financial, and social-policy making institutions.

Second, a number of the case studies particularly noted the propensity of rural development planners to exclude rural populations from the planning and decision making processes. This is, as any astute reader will observe, not a very surprising observation since few of the government officials charged with development planning responsibilities, have their roots in or their futures tied to, the people for whom they are developing plans and programs. Planners seem steeped in a tradition of planning for and not with the people. Even the language of modern planners reflects professional bias and appears to be written for other planners whose criticisms will be academic at best. As one of the authors observed, the ordinary village people are the objects and not the subjects of the development programs. Perhaps this point is best expressed by Tanzania's President Julius K. Nyerere, who stated that "(i)f the people are to develop, they must have power. They must be able to control their own activities within the framework of their . . . communities. . . . At present the best intentioned governments—my own included—too readily move from a conviction of the need for rural development into acting as if the people had no ideas of their own. This is quite wrong—people do know what their needs are . . . if they have sufficient freedom they can be relied upon to determine their own priorities of development."¹

Third, more than one author clearly illustrates the problem lawyers en-

1. Opening address to the World Council on Agrarian Reform delivered in 1979.

counter as legislative draftsmen or policy implementors when they are presented with cultural transference situations. For example, the interaction between a group of people and a particular institution designed to resolve their problems will not be predictable and orderly where that institution did not evolve from the groups' common tradition, rules or expectations. When prescriptive regulations emanate from a central governmental, executive or legislative authority, which has not fully taken into account the traditional values and mores of those subject to such regulation, friction within the institution is bound to result and, eventually, a culturally unique solution may systematically develop that voids the formal institutional process altogether. Such problems occur more frequently in countries whose populations are comprised of diverse ethnic groups lacking the historic bonds of common language, tradition, culture, or, where such groups bear an historic and deeply rooted animosity based upon competition for land or resources. It is perhaps one of the most difficult tasks for a developing country, while building its governing institutions, to overcome the geopolitical vestiges of a prior colonial administration. In addition to solving the immense problems of developing a resource poor and densely populated nation, there is the difficulty of resolving long standing conflicts, which resulted from an artificial collection of subjugated people during an earlier colonial period. When I look at these combined problems in much of the developing world—of regional self-determination, decolonization, urbanization and rural development — I shudder at the prospects for success from such a quagmire. The national level administrator who must deal with the morass of a political confederation within a multi-ethnic national-state has a difficult job indeed.

All of these points, and perhaps some of greater import, are amply illustrated in the numerous situations described throughout the work. For the reader with an historical bent, it is perhaps noteworthy that ample opportunity is given to draw comparisons between the administrative problems within the western industrial states, which for the most part are "part and parcel" of European nation-state development of the late middle ages and the non-western modern states. The plight of the rural poor in the developing world should concern us all. Political stability in the Third World is directly linked to how quickly and how well their problems are solved. *Law in Alternative Strategies of Rural Development* is a worthy attempt to express how the rule of law can be applied to resolve some of those problems. The book is worthwhile reading, if a bit tedious, and provides a wealth of useful information heretofore unavailable in a single volume. I trust future projects undertaken by INTWORLSA will be equal in quality.

J. HOLMES ARMSTEAD, JR.*

* Professor of Law at Ventura College of Law. Ph.D., Pacific Western University 1981. J.D., DePaul University 1975.

THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE. Edited by David Kairys. New York: Pantheon Books. 1982. Pp. v., 321. \$9.95 (paperback).

Almost every person who comes into contact with the American legal system criticizes it. Both from within and outside the legal profession, the slow processes and the workings of justice are met with complaints. In spite of its battered reputation, the law receives an almost universal acceptance.

In the introduction to *The Politics of Law: A Progressive Critique*, editor David Kairys stated the book's purpose to be a progressive critical analysis of law in American society. The views of many legal scholars and practitioners are voiced in this compilation of short essays. A unifying theme throughout all of the essays is that there is no distinctly legal mode of reasoning. Legal analysis is not an independent manner of thought; it is a product of the socioeconomic and political structure. In other words, the law is the functionary of established political choices and the perpetuator of elitist values.

The tone of the book is disapproving at some points and optimistic at others. As expected, no author comes out entirely in favor of the existing legal system. However, none of the authors have a vision of how to adequately rework the system to achieve an ideal one.

The factor most in favor of the present legal system is its neutral, unbiased appearance. Its supposed indifference to power struggles legitimizes the mystique of justice in a democracy where most people are only marginal participants in important decisions. The legal system's greatest duty is to avoid looking political and at the same time to reinforce and rationalize the existing values of our society.

The popular image of the law of this nation is cloaked in the natural law tenets which imply that all civilized nations and their citizens require the same things; and that the law provides these things without showing favoritism or the involvement of any group's special interests.

The ideology and the functional reality of democratic justice are shown to be partners who claim to be at odds with each other while being necessary for mutual survival. Neither the ideology nor the practice are self-supporting. They work together to give credence to the phrase "justice for all" by making the court and political avenues open to all while remaining predictably partial to a few. Together they can use *stare decisis* to maintain the status quo. In this way, the legal system perpetuates the racism, sexism and elitism that are part of the American heritage. The authors try to convince us that pre-existing rights and status form the legal base, rather than vice versa.

The essays in this book are divided into three sections. The first section considers the idealized model of impersonal justice with respect to legal reasoning, jurisprudence and legal education. The second part consists of ten chapters focusing on substantive issues and selected fields of law and their roles in the operation of the law. The final section discusses a variety of progressive approaches to the law.

The essays are easy to follow and not so limited in outlook that a person outside the legal field would not find them of interest. The similarity of tone provides continuity despite the diverse topics. Some authors are more biting

in their critiques, while others are perhaps less convinced of alternatives. Many of the thought provoking essays are the ones that leave the reader with the feeling that the author is not sure of what he would do if given the chance to be a 'realist' reformer. We are left with the attitude that it is all very well to point out the problems in particular areas or even the broader picture, but once we leave the natural law premise, where do we go?

The appearance of consistency in our legal system is a good feature. It would be unsatisfying to lose this for the sake of avowing that legal thought should be in accord with public sentiments of the contemporary era. Yet there is a need for flexibility in policy oriented decisionmaking. The big uncertainty is where to draw the line between unwavering generalities and ad hoc unprincipled case-by-case adjudication.

The Politics of Law: A Progressive Critique provides a provocative insight into America's legal institution. It is worthwhile whether one has time to read the whole collection or prefers to get a quick dose of a certain subject. This book provides an alternative analysis of legal thinking than the one generally put forth by major law firms. After reading it, we do not wonder why most people prefer to stay at arm's length from the law; but we will wonder why a system of reasoning that is supposedly unintelligible to a lay person can be the foundation for justice.

MEREDITH L. CALIMAN

BOOKS RECEIVED

- ABOLITION AND CAPITAL PUNISHMENT: THE UNITED STATES' JUDICIAL, POLITICAL, AND MORAL BAROMETER.** By Roger E. Schwed. New York: AMS Press. 1983. Pp. v, 182. \$27.50.
- BLACKS AND WHITE TV: AFRO AMERICANS IN TELEVISION SINCE 1948.** By J. Fred MacDonald. Chicago: Nelson-Hall. 1983. Pp. iii, 288. \$23.95 (cloth), \$11.95 (paperback).
- BLACKS IN THE LAW: PHILADELPHIA AND THE NATION.** FOREWORD BY A. LEON HIGGINBOTHAM, JR. By Geraldine R. Segal. Philadelphia: University of Pennsylvania Press. Pp. x, 313. \$ — .
- COMMUNICATION STRATEGIES FOR TRIAL ATTORNEYS.** By K. Phillip Taylor, Raymond W. Buchanan and David U. Strawn. Glenview, Illinois: Scott, Foreman and Company. 1984. Pp. viii, 116. \$7.95 (paperback).
- CONNECTING LAW AND SOCIETY: AN INTRODUCTION TO RESEARCH AND THEORY.** By Robert L. Kidder. Englewood Cliffs, N.J.: Prentice-Hall. 1983. Pp. xv, 286. \$21.95.
- THE DEATH PENALTY IN AMERICA.** 3rd ed. Edited by Hugo Adam Bedau. New York: Oxford University Press. 1982. Pp. viii, 424. \$29.95 (cloth), \$9.95 (paperback).
- DEMOCRACY IN THE MAKING: AMERICAN GOVERNMENT AND POLITICS.** By Walter Dean Burnham. Englewood Cliffs, N.J.: Prentice-Hall. 1983. Pp. xvii, 654. \$22.95.
- ENTERTAINMENT LAW: LEGAL CONCEPTS AND BUSINESS PRACTICES.** Vols. 1-3. By Thomas D. Selz and Melvin Simensky. Colorado Springs, Colorado: Shepard's/McGraw-Hill. 1983. \$150.00.
- EQUALITY UNDER THE CONSTITUTION: RECLAIMING THE FOURTEENTH AMENDMENT.** By Judith A. Baer. Ithaca, N.Y.: Cornell University Press. 1983. Pp. x, 308. \$37.50 (cloth), \$17.50 (paperback).
- HANDLING HEALTH PRACTITIONER CASES.** By Henry B. Rothblatt. Rochester, N.Y.: Lawyers Co-Operative Publishing Co.. 1983. Pp. xxix, 473. \$ — .
- LAW, COURTS, AND POLICY.** By Mitchell S. G. Klein. Englewood Cliffs, N.J.: Prentice-Hall. 1984. Pp. viii, 327. \$15.95 (paperback).
- THE LAW OF PROBATION AND PAROLE.** By Neil P. Cohen and James J. Gobert. Colorado Springs, Colorado: Shepard's/McGraw-Hill. 1983. Pp. xvi, 837. \$75.00.
- NEW PERSPECTIVES ON PRISONS AND IMPROVEMENT.** By James B. Jacobs. Ithaca, N.Y.: Cornell University Press. 1983. Pp. x, 241. \$29.50 (cloth), \$10.95 (paperback).
- A PRACTICAL GUIDE TO PREVENTING LEGAL MALPRACTICE.** By Duke Nordinger Stern and JoAnn Felix-Retzke. Colorado Springs, Colorado: Shepard's/McGraw-Hill. 1983. Pp. x, 425. \$70.00.
- PROLETARIANIZATION AND CLASS STRUGGLE IN AFRICA.** Edited by Bernard Magubane and Nzongola-Ntalaja. San Francisco: Synthesis Publications. 1983. Pp. 184. \$8.95 (paperback).
- SUPREME COURT ECONOMIC REVIEW: 1980 TERM.** Vol. 1. Edited by Peter H. Aranson. Law and Economics Center at Emory University. New York: Macmillan Publishers. 1983. Pp. 247. \$29.95.
- THOMAS SZASZ: PRIMARY VALUES AND MAJOR CONTENTIONS.** Edited by

Richard E. Vatz and Lee S. Weinberg. New York: Prometheus Books. 1983. Pp. ix, 232. \$18.95 (cloth), \$9.95 (paperback).

