

Shaun Larcom

Legal Dissonance. The Interaction of Criminal Law and Customary Law in Papua New Guinea. New York and Oxford: Berghahn, 2015, x + 178 pp. ISBN 9781782386483
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The premise of this book is that the interaction of state criminal law and customary law in Papua New Guinea (PNG) is such that each undermines the other. The criminal code in state law derives from colonial rule, and draws primarily from criminal law in the Australian state of Queensland. The author concedes that customary law is intangible and eludes clear definition, but asserts that its existence is undeniable. He characterizes it as being based on 'kinship, self-help, group liability, strict liability and an acknowledgement of the supernatural' (p. 37). In contrast, state law is based on principles including 'equal and consistent treatment of wrongdoers, the use of the state to prosecute and punish wrongdoers and an intolerance of vigilante activity, individual responsibility, a focus on intention, and dismissal of supernatural causes of events' (p. 37). The sanctions of customary law include violent retribution ('payback'), demands for compensation, group liability for individual wrongs, and 'strict liability', whereby even accidents can be punished with retribution. These are frequently at odds with the principles of state law, and vice versa. The author's trope 'legal dissonance', then, refers to a situation where 'an activity can be simultaneously advanced by one legal order and punished by the other' (p. 4).

While Larcom refers to legal pluralism as an analytic tool to apply to PNG's legal dissonance, he also advocates 'law and economics' as the best way to analyze the phenomenon and find policy prescriptions to address it, and in this way to ameliorate the 'law and order' problem that he regards as debilitating the country. He sees the eighteenth/nineteenth century jurist and social reformist Jeremy Bentham as the father of law and economics, especially given Bentham's discussion of the transplantation of laws. Bentham cautioned that a clear assignable net benefit should be demonstrated if local customary law were to be changed and that strategies such as education would be more productive than coercive or legal means. In Larcom's view the utility of legal orders can be assessed under an economic model, resonating with Bentham's consideration of subsistence, abundance, equality, and security (including life, person, reputation, property, and status) as goals (p. 18).

The author believes the state has failed to deal adequately with customary law in PNG by relying on criminal law to try and achieve social change. That is, he sees the state's attempt to appropriate the sanctions of customary law and prosecute them—an incorporation of customary law which he cate-

gorizes as state legal pluralism—as having largely failed. He suggests that the state should change its policy to a more passive recognition of customary law. In practice this would involve a recognition of substantial customary compensation payments as valid substitutes for its own sanctions, particularly those involving imprisonment and the death penalty. The state would only prosecute an offender when a customary settlement fails. The author's arguments and proposals are informed by research incorporating survey questionnaires and interviews in the New Britain and Bougainville regions in the latter part of 2010. The book seems to be aimed at legalist readers, and the history and discussion of the state legal order is sound and informative for that purpose. Legal scholars unfamiliar with PNG's legal history will certainly be interested in the discussion of state criminal law and the transitions through late colonialism and the post-colonial period.

Readers from other disciplines such as the social sciences or humanities, especially those with extensive experience of PNG, will be less satisfied. Despite the author having conducted some fieldwork in the country, the book displays little cultural insight and—for an academic work—there are a number of incautious sociocultural generalizations. Appropriate specialists are sometimes unaccountably ignored in favor of more equivocal sources: for example he cites a lawyer on the subject of prehistoric migration into the New Guinea region, a political scientist on the ethno-linguistic diversity in PNG, and another political scientist on the likely number of ethnic groups in the country. More rigorous research might have avoided some cultural oversimplifications, including the book's reductive representation of the so-called *wantok* system, the networks of socio-economic dependency among people who see themselves as having some ethno-linguistic commonality. The author conflates this complex phenomenon with kinship in some passages. Anthropological research has made it clear, however, that while *wantokism* shares some superficial characteristics with the more acute bonds of kinship, it is not the same thing.

Moreover, despite the prominence of 'customary law' in the book's argument, the author appears to have considered very little of the extensive anthropological literature addressing the topic along with conflict and disputing generally in Melanesia. The corpus stretches back to the early colonial period and has evolved to a discourse that no longer accommodates this book's antithetical schema of state law and customary law. Malinowski's discussion in *Crime and Custom in Savage Society* (Malinowski 1926), for example, preceded wide debate on whether 'primitive' or 'customary' law existed in the region, and on the conceptual and analytic problems of understanding the cultural contexts and procedural complexities of disputes and their management. Among

Melanesianist anthropologists I know who specialize in these subjects, none would subscribe to the author's typification of customary law, or use the concept without scare-quotes or a raft of caveats. The author concedes at several points that customary law is changeable, and acknowledges that a number of 'legal orders' coexist with state law—a state of affairs that is a *sine qua non* in contemporary discussions of legal pluralism. Nevertheless, he pursues a reductive dualism at the cost of furthering contemporary analysis.

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Reference

Malinowski, Bronislaw (1926) *Crime and Custom in Savage Society*. London: Kegan Paul, Trench, Trubner.