

M. B. HOOKER

Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws.

Oxford, Clarendon Press, 1975, Pp. XXII + 601.

Hooker presents us a learned, detailed and interesting book about legal pluralism in the contemporary world. On the whole, the author's hope that this book may go "some way toward describing the elements of legal pluralism so as to contribute a comparative perspective within which the variety of issues involved can be made plain" (p. 479) seems justified.

After discussing legal pluralism and the ethnography of law, Hooker considers in successive chapters, British colonial laws, French colonial laws, Dutch colonial laws, English law in the United States, South Africa, New Zealand and Australia, the voluntary adoption of Western European laws in Turkey, Thailand, Ethiopia, the laws of U.S.S.R. and China. This book in short covers a wide variety of legal systems, excluding the Belgian and Portuguese colonial systems.

I have found this book instructive and useful and have very little to criticise. However, there are a few points which deserve to be mentioned. In explaining the series of codifications which were made in Europe, the author adopts an idealistic point of view which is very rare these days in books on comparative law: "However, from the late eighteenth century onwards the temper of the times favoured national unification of diverse local laws and this could be accomplished only by codification" (p. 191). Surely, the drive towards codification was not dictated by any "temper of the times" but by the requirements of the expanding capitalist system which considered the various local laws as irritating hindrances standing in the way of rationalization of commerce and the concentration of capital. Hooker himself, some hundreds of pages later, refers to "western legal systems constructed in the period when the liberal and expansive phase of capitalism was in the ascendant. This period, from the eighteenth to the early twentieth century, also coincided with the colonial expansion of western imperialism." (p. 444). Codification, colonialism and imperialism are not simply the manifestation of any tempers of the time but responses to definite requirements of particular socio-economic systems.

It is not surprising, after what has been said above, to find that Hooker mentions ideology only in connection with the discussion on legal pluralism in the U.S.S.R. Indeed, the chapter is entitled, "Law and Political Ideology: Legal Pluralism in the U.S.S.R.". Are we to understand that the other legal systems which Hooker has discussed have no underlying ideology? Or do they have an ideology of a different kind, perhaps unstated or not daring to reveal its real nature? For a book dealing with the coexistence of different legal systems this is a point worth clarifying otherwise one is lost as to the functions of legal systems in different societies. Hooker states in an appendix on the laws of China in the twentieth century that the Communist Party "has introduced political ideology into the law" (p. 453). One would like to know whether there was no ideology in the law before it was "introduced" there by the Communist Party.

It may not be insignificant that it is only when Hooker comes to discuss law in the U.S.S.R. that he feels he must expressly disassociate himself from what he is discussing: "The present writer is, as a non-Marxist, an outsider and is looking at a theory of society to which he is not committed" (p. 416). The reader of the

book under review may have assumed all along that Hooker is not committed to either of the contending ideologies. Does his express repudiation of one ideology mean his commitment to the other? Surely, a scholar is under no obligation to disassociate himself from a theory he may be discussing otherwise this will place an unnecessary burden on all those who discuss ideas. Of course, every one is at liberty to proclaim loudly his own standpoint.

When Hooker discusses Marxism, he relies mainly on secondary literature. It may have been preferable, if instead of relying on Schlesinger, David and Brierly, Moore etc. the author consulted Marx, Engels and Lenin, whose works, I assume, have by now been translated into English. Some of the quotations from Marx are presented in a misleading way or are taken from imperfect translations. It seems to me that scholars should exercise a little more care when they discuss theories they expressly disapprove.

Some of Hooker's statements on comparative law and conflicts of law will not win the approval of most scholars. For example: "Comparative law, conflicts of law, and colonial law consist of bodies of principle and rule by means of which decisions are made as to the primacy of one or other of a number of possible laws applicable in a defined instance" (p. 454). I doubt whether it is right to consider comparative law as consisting of rules by means of which decisions are made. Most of us would rather follow the more usual view of comparative law as the application of the comparative method to the study of law. To take only an example, a comparative study of English and German law of torts does not involve any decision as to the primacy of either law.

Hooker again states that "Comparative and conflicts law share a structure of rules whose function is to choose between a variety of systems in situations where choice is incumbent upon the organs of one system" (Ibid.). Once it is accepted that "comparative law" is merely a short way of saying the "comparative study of law", it becomes clear that it does not share any structure of rules with conflict of laws.

These few remarks of disagreement should not be construed as intended to diminish the importance of Hooker' achievement. One is indeed surprised that such a book on legal pluralism had not been written before.

Kwame Opoku

MILNE RATNAM

Malaysia — New States in a New Nation

Political Development of Sarawak and Sabah in Malaysia

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Mit der Bezeichnung „Neue Staaten“, „Neue Nation“ werden in der Sprache der politischen Wissenschaft wie auch im Bereich des internationalen öffentlichen Rechts und der Verfassungsvergleichung souveräne Staaten charakterisiert, die sich in der jüngsten Vergangenheit in die Gemeinschaft der „Freien“, „Unabhängigen“, „Selbstbestimmenden“ usw. emanzipiert haben. Meist stehen diese Begriffe vor dem Hintergrund von Krieg, Revolution, politischer Befreiung ebenso wie Unterdrückung und Verfolgung, ökonomischer Anlehnung oder nicht selten aus westlicher Perspektive naiv anmutenden Nationalbewußtsein im Profil singulärer Führerpersönlichkeiten. Die eigentlichen Probleme bei der Gründung eines neuen