

## THE COURTS IN A DEVELOPING NATION

R.W. James and F.M. Kassam (eds) *Law and its Administration in a One Party State* (Dar es Salaam, 1973).

Fundamentally, all revolutions are about overthrowing some system of justice and installing a new framework in its place. The anti-colonial revolutions which followed World War II were no exception. They sought to displace British, French or Dutch administrative dominance, under which colonies and colonial peoples had been turned into instruments for the material well-being of the metropolitan countries, and substitute a new order in which the ex-colonies governed themselves, for themselves. The new system rejected exploitation of their resources by and subordination of their people to Western powers; they insisted on self-determination and the assertion of the dignity of people in their own cultures.

Political scientists and other social scientists generally focused their studies on the articulative aspects of colonial structures. That is, they were concerned mainly with public opinion formation, pressure groups, political parties, and legislatures in colonial society. Their studies pointed to the fact that indigenous articulative institutions were suppressed, and they described the often violent process by which indigenous institutions finally came into existence.

Giving most of their attention to the formation of policies and laws in the colonial polity, the social scientists neglected the administrative and judicial structures, through which the goods and benefits of post-colonial liberation are to be delivered. In recent years, however, political scientists in particular have been turning their attention to the bureaucracy, to see whether, in fact, what was demanded by the people filtered back to them through the administrative instruments ostensibly designed to serve them. There is now a flourishing literature focused on post-colonial bureaucracies, showing their tendency to be co-opted by the local bourgeoisie, who use the administration to maintain neo-colonial control of their own people.

But, the judicial system has continued to be all but ignored by social scientists. Passing comments and unsystematic studies are the norm. This is strikingly puzzling since the judiciary would seem to be at the heart of the new mode

of justice which the anti-colonial revolutions promised.

*Law and Its Administration in a One Party State* attempts, in a modest way, to assist in filling this breach. The book is a collection of statements by a judge who is extremely sensitive to the judiciary's potential role as a major instrument in the transformation of unjust colonial practices and institutions into something resembling the aspirations of a free people. Justice Telford Georges, a Trinidadian, who served for a number of years as the Chief Justice of Tanzania, recognized that the law had been an instrument of colonial oppression, and that if the new post-colonial institutions were to have any legitimacy, they must be anchored in the will and traditions of the people.

Converting colonial-bound laws, courts, and legal practitioners committed to the status quo into a dynamic force to serve the interests of the people is no mean task. What makes it more worrisome is the challenge of orienting this judicial system (imported lock, stock, and barrel from the imperial country) to the requirements of a new social order committed to socialism and a one-party system. Tanzania undertook this task and hired Justice Georges as a major person to execute the job. James and Kassam have assembled some of the seminal speeches of Justice Georges as he struggled with the task of administering socialist justice, using essentially a British legal framework as its code of direction. The problems of rendering the Anglo-centric laws into an easily understandable code of behaviour, consonant with the people's sense of and TANU's vision of justice, entailed a monumental task of legal adaptation. It also and most significantly, meant that the courts had to be involved in politics and yet be independent enough to draw the line where crude political ambitions sought to use the law as an instrument of political convenience and corruption.

This book is a very welcome contribution to the continuing task of restructuring colonial institutions to indigenous needs. What is even more symbolically gratifying is that Justice Georges is a product of the third world. I think it would have been very helpful if the authors had included in their volume a comparative or analytical essay on the role of the judiciary in the developmental process as a whole. To Papua New Guineans, especially to students in the social sciences and law, this book should be useful as a guide to the questions that must be raised and a preview of some of the problems that must be faced as Papua New Guinea moves to confront the task of establishing a just social order.

- Ralph R. Premdas