the kind of course presently envisaged. Insofar as it presents an "interests" theory of remedies (pages 4-5, 55-82) the book would be of relevance. But the authors do not fully develop their theory, and seem to use the expression "interests" in more than one sense.[2] They rely heavily on Fuller and Perdue's distinguished article,[3] but do not systematically update it. For instance, though Professor Atiyah's work[4] is controversial, it is hard to justify the absence of any theoretical discussion of it in connection with the respective roles of expectation and reliance.

One occasionally encounters a different kind of Remedies course. This is a course in which the instructor takes responsibility for introducing students to substantial tracts of law with which the students are not previously familiar. It is hardly appropriate to have a full discussion of the advantages and disadvantages of such a course in this book review. It is evident, however, that if the course is to be comprehensive of the assessment of damages, consumer remedies and equitable remedies, it must be either relatively superficial or extremely large. It is also likely that the theoretical insights attainable in a course of the other kind will be wholly or partly lost.

Kercher and Noone's book seems to be designed for a course of this latter kind. Its primary shortcomings may ultimately be attributable to the deficiences of the course design.

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FOOTNOTES

1 See *e.g.*, pages 127, 128, 133, 136, 139, 142, 145, 151, 154.
2 *Cf.* page 4, where "interest" seems to be related to capacity and injury, with page 55.
3 L.L. Fuller and William R. Perdue, Jr., "The Reliance Interest in Contract Damages" (1936-37) 46 *Yale L.J.* 52.
4 See especially P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (1979) and *Promises, Morals and Law* (1981).

Law and Social Change in Papua New Guinea, edited by DAVID WEISBROT, B.A. (Hons), J.D., Senior Lecturer in Law, University of New South Wales, ABDUL PALIWALA, LL.B., Ph.D., Lecturer in Law, University of Warwick and AKILAGPA SAWYERR, LL.B., LL.M., J.S.D., Professor of Law, University of Papua New Guinea. (Butterworths Pty Limited, 1982), pp.i-xxix, 1-319, with Table of Cases, Table of Statutes, Bibliography and Index. Paperback recommended retail price $32.50 (ISBN 0 409 30918 4).

In July 1974, the year before Papua New Guinea's independence, John Kaputin, Minister for Justice in Somare's new government, rose to address 200 practising lawyers gathered from Australia, New Zealand and the Pacific Islands at the formal opening of the first Fiji Law Convention in Suva's Town Hall. The dark-suited

throng (which included myself) was struck by Kaputin's appearance in a yellow caftan, and somewhat taken aback by his calm assertion that the legal heritage which sustained our societies and provided our incomes was irrelevant for Papua New Guinea (P.N.G.). Western law was seen as an instrument of colonialism and a means whereby economic dominance was established. Also, many of P.N.G.'s new leaders felt the need to wipe the slate and "build a framework of laws and procedures that the people of P.N.G. can recognise as their own — not something imposed on them by outsiders" (page 4).

Law and Social Change in Papua New Guinea begins with a paper by Bernard Narokobi recording those heady days filled with "a new hope" for a society in which "structures and institutions were to be changed" and "the people were to be involved in the decision-making processes which affected their lives" (page 14). As a recently qualified lawyer, Narokobi returned from Sydney in 1972 to throw himself into policy-making and the work of the Constitutional Planning Committee (C.P.C.) and in 1975, was appointed Chairman of the Law Reform Commission, a body with critical responsibilities under the Constitution of the independent state. The C.P.C. developed a set of five National Goals and Directive Principles as the keystone of the Constitution. Narokobi then saw it as the Commission's task to work on a range of unresolved issues. Initially, the government enacted the Commission's draft Bills, particularly as to criminal law and procedure. However, gradually, the Government's attitude to reform proposals moved from delay tactics to disinterest and, as Narokobi puts it, from "disinterest to disregard" (page 20). He left the Commission in 1978 and later served for a period as a Judge of the Supreme Court. Despite his influence, it soon became clear that the most serious casualty of the politicians' determination to place "roads and bridges" above all other considerations was going to be P.N.G.'s failure to face up to and grapple with the issues involved in developing its "underlying law", derived, under the terms of the Constitution, from custom and English common law and equity. Narokobi regarded the revival of customary law as a liberating influence; lack of progress in this regard has been for him one in a chain of disappointments. Does this situation give credence to the suggestion made by Paliwala and Weisbrot in their Introduction (page 6) that such disappointment was "seemingly inevitable"?

I have mentioned this paper at the outset because P.N.G.'s history since the final hurried countdown to independence reflects not only idealism such as Narokobi's but also beliefs that law had an important, if not dominant, role to play in the shaping of the new society. Since Somare, Kaputin and their colleagues attacked coventional thinking about legal order, the eyes of the new Pacific states have been on P.N.G. Lawyers concerned with issues arising from the conflict of legal cultures wonder whether they are witnessing the turning of a page which will reveal new truths or whether the P.N.G. experience will prove to have been an overly ambitious experiment.

Narokobi's hopes and fears provide a necessary personal backdrop to this collection of important papers by eleven non-Papua New Guineans. Seven have worked directly in pre or post-independence policy-making processes. Indeed, the "participant observation" of some of the authors, while requiring allowances for subjectivity, provides helpful insight into attitudes, such as those of some legal

advisers and officials (including judges) whose conventional training and predilection sometimes frustrated the proper examination of new proposals and the implementation of innovative policies.

For those who have not read Peter Fitzpatrick's *Law and State in Papua New Guinea*,[1] his paper helpfully summarises his analysis of the "Political Economy of Law" in the post-colonial period. Through his insistence that capitalist interests, both rural and urban, are destined to dominate, he is led to conclude that the only reforms which are likely to succeed are those which further such interests. For example, he is concerned that, if traditional society is preserved, lip service will be paid to Narokobi's objectives while, through cheap labour, "the traditional mode of production continues to subsidise the operation of the capitalist mode" (page 52). Fitzpatrick also draws attention to the contrast between the *potent* appearance of laws relating to land administration, commercial regulation and foreign investment, and what he describes as their *ineffectual* operation.

David Weisbrot offers a thorough review of the recognition and application of customary law in legislation and the courts, with particular reference to the criminal law. His paper examines decided cases, the history and operation of the Inter-Group Fighting Act 1977 (P.N.G.) and reform proposals. Weisbrot concludes that it is time for the focus of inquiry to be shifted "from the integration of custom to the expansion of the role and jurisdiction of officially recognised customary dispute settlement agencies" (page 96). Experience I have gained in Polynesia leads me to believe that the key to the preservation of customary law does lie in official acceptance of customary processes, and avoidance of legalistic preoccupation with conflicting elements of substantive law. Western Samoa is a case in point. Despite the comparatively early penetration of European ideas and the attainment of independence 13 years before P.N.G., Western Samoa retains in its village council a vital customary dispute settlement system, supported by the fact that the formal courts are not integrated, but divided between customary and non-customary jurisdictions.

Papers by Don Chalmers and Abdul Paliwala deal with P.N.G.'s most noteworthy innovation in the formal court system, the village court. Through a combination of government records and first hand accounts, Chalmers gives us the history of the village court concept and the debate which surrounded it. Paliwala takes up the story from a different and broader perspective. Noting that the purpose of village courts was to restore power to the people, Paliwala reports on studies of the operation of courts from 1975 to 1978 which showed that the courts had often become authoritarian and offered little scope for community involvement and consensus between the parties. In terms of the power struggle between state and village, the picture in 1978 as described by Paliwala revealed conflicting trends. On the one hand, the village court system conferred significant authority on local leaders appointed as magistrates, to whom the state also supplied uniforms and other trappings of office, while on the other, the intended mediation role was largely ignored, the underlying causes of conflict were seldom addressed and "the hold of the courts on the population is fragile" (page 210).

For the lawyer who wishes to know how the Constitution has fared in the courts over nearly six years (September 1975 to early 1981), Peter Bayne looks at a number

of cases and judgments in some depth. His theme is the modes of interpretation employed by the judiciary in relation to the earlier expectations of the C.P.C. His fascinating account of the operation of the court's power to use, as aids in interpreting the Constitution, such materials as the C.P.C. Report, the related Assembly debates and the draft Constitution, raises questions about the Constitutional roles of judges generally which go beyond the apparent failure of the post-independent and largely expatriate bench to come to terms with P.N.G.'s circumstances. As one would have expected, Bayne's study was based on the judgments of the members of the court. However, it would have been interesting to know something of the arguments put forward in the cases which he discusses. For example, to what extent were counsels' arguments founded upon the National Goals and other interpretative material? Barbara Mitchell in her paper on the legal profession and delivery of legal services calculates that, although the number of P.N.G. nationals qualified in law is growing fast (from 0 to 100 in 15 years), as at 1980 only one-quarter (50) of all lawyers were in private practice and only one-fifth (10) of these were nationals. It is difficult from these papers to form any clear impression as to the extent to which the legal profession — or any section of it — takes an active interest in the issues and trends identified by Bayne.

Jim Fingleton's instructive paper on "Land Policy and Administration up to 1979" looks at the important work of the Commission of Inquiry into land matters. Heather McRae and Dianne Johnson have written on "Family Law" and "Equality for Women" respectively. The papers highlight the conflict between roles and relationships within the traditional extended family, and notions of individual rights, nuclear families and sexual equality. The new institutions have, it seems, failed to meet the objectives either of incorporating custom in the family law system or of providing adequate remedies for women seeking to establish their Constitutional rights.

Akilagpa Sawyerr's paper demonstrates, through his study of trade agreements, the change which has occurred in the fundamental character of the relationship between P.N.G. and Australia. The collection concludes with a plea by Hugh Norwood for wider recognition of the disadvantaged urban dweller. Urbanisation is one of the most difficult phenomena with which modern South Pacific governments have to deal. The author emphasises the need to involve urban communities, and particularly urban squatters, in administrative and judicial processes.

There is a shortage of publications about P.N.G. and the South Pacific which combine accurate information with analytical presentation. In the area of law and related processes, good materials are virtually non-existent. The arrival on the scene of *Law and Social Change in Papua New Guinea* has encouraged me to offer the subject "Pacific Comparative Law" to law students at Monash again this year.

My one regret is that, as the "successor" to *Fashion of Law in New Guinea*[2] this "son/daughter of *Fashion of Law*" fails to behave as critical progeny should in these days of the "generation gap". For those of us who have made good use of *Fashion of Law in New Guinea* over the years, it would have been helpful to have had some criticism of the views and predictions expressed by the "participant observers" who contributed to the earlier volume. It seems only a short time ago

that, for example, Peter Lawrence's "State Versus Stateless Societies"[3] was required reading; it is not mentioned in the "successor".

As I indicated, P.N.G. entered the international community with high expectations. Law was seen as having a vital part to play. While there has been much disappointment, it is to the credit of the authors of these papers that they have captured the spirit of those expectations and have treated their subjects constructively.

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FOOTNOTES

1 (1980).
2 B.J. Brown (ed.), (1969).
3 *Id.*, 15.

Sir John Did His Duty, by SIR GARFIELD BARWICK, former Chief Justice of the High Court of Australia, (Serendip Publications, Sydney, 1983) pp. i-xi, 1-129. Recommended retail price $7.50 (ISBN 0 949379 00 x).

Brushing aside[1] the copious quantities of printers' ink which, without too much wastage, has been spilt[2] on the events precipitated by the Senate's deferment on 16 October 1975 of Appropriation Bills (Numbers 1 and 2) 1975-1976[3], Sir Garfield Barwick[4] again[5] expounds his view of the constitutional powers, duties and obligations of the principal 1975 protagonists — the Senate, the Governor-General, the Prime Minister and the Chief Justice of the High Court of Australia. Written for "those who, though interested in the affairs of government, have no particular knowledge of the Constitution and of its operation,"[6] *Sir John Did His Duty*[7] adopts a lofty, at times condescending style. Filled with broad generalities but bereft of nuances, Barwick's exposition marches with absolute assuredness towards a seemingly foreordained conclusion: Sir John Kerr, in withdrawing the ministerial commission of Whitlam and commissioning John Malcolm Fraser, "did no more and no less than perform his duty".[8] By combining dogmatism, errors and misleading propositions, the opportunity to contribute a lucid, illuminating, informative and enduring exegesis[9] has been lost. Australian constitutional law, if not devalued, is the poorer.

Three central propositions constitute the substance of the Barwickian vindication of the Governor-General's actions. First, that "[t]he Senate had power to fail to pass the appropriation bills; and to do so in the manner which it adopted".[10] Secondly, "the express power given to the Governor-General to appoint persons to hold office during his pleasure inherently authorises him to terminate the appointment at any time".[11] Thirdly, the Governor-General "was in duty bound to exercise this constitutional power".[12] Elevation of this constitutional power, with