disarmament proposal instead of choosing the weapons of future wars permitted on earth and in space.

While these conclusions under-estimate the importance of the work of the United Nations and its specialised agencies in relation to space activities, Professor Matte substantially achieves the hope he expressed in his Introduction of providing a valuable background for solving the problems arising from man's exploitation and use of space.

H. W. POULTON*

Fashion of Law in New Guinea, edited by B. J. BROWN, LL.B. (Leeds), LL.M. (Singapore), Fellow in Papua-New Guinea Law, Australian National University. (Butterworth and Company (Australia) Ltd., 1969), pp. 1-254, P/B $8.25, Cloth $10.00.

Speaking before the seminar on "The Rule of Law in a Developing Country", organized by the International Commission of Jurists in Port Moresby in 1965, a senior public servant indicated what the Rule of Law meant to a "lowly administrator" in Papua and New Guinea:

> To me it is a clear indication that the Rule of Law has taken root, *when* a bitterly and closely contested election is fought cleanly, and without lawlessness, and the electors abide by the results, *when* a Hanuabadan magistrate, having passed out a stiff sentence to a Kerema in the morning, can sit unmolested amongst a crowd of Keremas at a football match in the afternoon, *when* an unescorted surveyor can measure up a parcel of village land which is to be compulsorily acquired for a public purpose without interference from the disgruntled land owners . . .[1]

Recent violence on Bougainville and in the Gazelle Peninsula suggests that little progress has been made towards these goals since 1965; indeed, the indications are that these upheavals are only a preview of things to come. With the stepping up of the rate of economic development and the spread of education, Australia must expect increasing dissatisfaction with all aspects of its rule in the Territory. For this reason alone, the appearance of *Fashion of Law in New Guinea* is extremely timely. The book is to be welcomed for an additional reason: it is the first monograph devoted exclusively to legal issues in the Territory. It consists of ten papers delivered at a symposium held at the Australian National University in 1966, brought up to date, and edited by the then research fellow in Papua-New Guinea law at the University, B. J. Brown. They range over the whole spectrum of the legal situation in the Territory, including the problems of reception of western law and legal education. Although all the contributors except one are lawyers, the laity will find the book intelligible and stimulating.

---

* O.B.E., B.A., LL.M. (Melb.); J.S.D. (Yale), Barrister and Solicitor (Vic.).

[1] D. Fenbury, "Kot Bilong Mipela" (1965-1966) 4 *New Guinea* 61.

As is practically inevitable with a collection of papers by authors with diverse backgrounds and experience, the standard of the contributions varies. "The State Versus Stateless Societies in Papua and New Guinea", by Peter Lawrence, Professor of Anthropology and Sociology at the University of Queensland, provides a solid introduction, by juxtaposing the models of social control in stateless and western-type societies. Professor Lawrence's argument may be a truism, but it is a truism well worth remembering. The concepts associated with western legal institutions—such as that of the "citizen isolate" or of equality before the law—are the products of centuries of development and cannot be exported *in toto* into the New Guinea environment. For example, there is little room in traditional New Guinea for our concept of *fiat justicia, ruat coelum*: the sky must be kept up, the aim of settlement of disputes is to keep the social order intact. The second introductory paper, on "Aspects of Political and Constitutional Development and Allied Topics", by C. J. Lynch, the Legislative Draftsman, touches on all aspects of Australian rule—the legislature, the executive, the public service, local government, the court structure, and so on. Although he does not explicitly recommend the retention of the system of administrative justice now in vogue, Mr. Lynch sees many advantages in the present role of the district officer: the system is cheap, administratively convenient, makes for speedy enforcement of judicial decisions and is accepted and understood by the people. Most importantly, a good district officer can get close to the people and thus make decisions, judicial or otherwise, based on an appreciation of the real issues involved.

These two introductory papers are followed by five contributions grouped together under the heading "Time of Experience". They discuss the following topics: the court system, criminal law and punishment, law of evidence, the application of the concept of "reasonable man" to New Guinea, and land law and registration. The paper on the courts system by J. R. Mattes, Principal of the Australian School of Pacific Administration, is almost entirely descriptive, and so is the paper on evidence by Mr. Justice Minogue. The contribution by J. H. Johnson, the Crown Solicitor, highlights the problems of confession, provocation and interpretation in criminal court proceedings in a country where even the *lingua franca,* Pidgin, is not spoken by about four-fifths of the population, where feelings of shame, vanity and pride are strong and not easily controlled and where scapegoats, put up by the community, often "confess" to crimes they did not commit. Some of the issues raised in Mr. Johnson's paper are taken up by J. F. Hookey, Senior Lecturer in Law at the University of Papua and New Guinea, in "The 'Clapham Omnibus' in Papua and New Guinea". Mr. Hookey asks if the concept of the "reasonable man" can be applied to the Territory and, after an analysis of recent judgments, concludes that it is more useful to speak of "reasonable men" rather than the "reasonable man"—in other words, the cultural diversity of the Territory

makes it impossible, even if it were desirable, to apply one standard of reasonability. Finally, in "Land Law and Registration", W. A. Lalor, the Public Solicitor, surveys the legal aspects of acquisition of native land by Europeans, and in particular the statutory basis of title. The paper is largely historical in orientation and does not deal with registration of native land which is of recent origin.

The next three papers, brought together under the heading "Time of Experiment", address themselves to the future. "The Local Court Magistrate and the Settlement of Disputes", by T. E. Barnett, then Lecturer in Law at the Administrative College, is a plea for the revamping of the local courts system to effectively handle village disputes. Noting the wide range of disputes which are unofficially settled either by traditional leaders or by new men of influence, Mr. Barnett suggests that the courts should be effectively supervised by the Supreme Court, that they be granted the power of enforcing their decisions, and that their jurisdiction be narrowed down (at present there are few matters, except indictable offences, with which they cannot deal). The reforms suggested by B. J. Brown in "Justice and the Edge of Law: Towards a 'People's' Court" are more radical. He envisages a local court presided over by a magistrate whose sole task would be to advise the court upon law and procedure and assist in taking evidence; decision-making on fact would be relegated to village "lawmen" selected for expertise in local custom. He also proposes that defendants should retain the present option of trial by the district court. This right was likely to be exercised by most Europeans and the local court would thus become, in practice, a court of native matters. Mr. Brown also proposes a reclassification of all wrongs, both civil and criminal. The distinction between the two types of wrongs should be abolished, being both arbitrary and perplexing in village context. All wrongs should be divided into "small" and "big". The former would include all civil matters and a specified list of criminal matters; the latter would include the residue. Finally, he envisages the creation of a class of village court-followers or "kanaka-lawyers" to give substance to existing provisions of the Local Courts Ordinance enabling an "inarticulate" party to be "represented by leave".

The book concludes with a paper on "Problems of Legal Education in Papua and New Guinea" by Gerard Nash, the Foundation Professor of Law at the University of Papua and New Guinea. The issues raised in the paper are, of course, central to the problems discussed in the book. It is therefore somewhat disquieting to read that "it will be the purpose of the law course in one respect to divorce the students from the community" (page 226). One of the stated reasons for the early establishment of a university in the territory, when it would have been more economical to send students to Australia, was to try to preserve the link between the emerging elite and the village. Estrangement of the legal profession from the people may give it a vested

interest in the perpetuation of a legal system which is basically foreign, and ultimately harm, rather than help to bring about, the Rule of Law in the Territory. Perhaps cultural alienation of the elite is largely inevitable, but surely it should not be consciously fostered!

The two points which emerge clearly from the symposium are, firstly, that the problems ahead are enormous indeed, and secondly, that there is little agreement among the experts as to how to tackle them. A further point which struck this reviewer is that some contributors had failed to grasp the difference between the construction of legal models and the problem of running them—in a country like New Guinea legal issues are primarily sociological issues, and such mundane matters as finance and trained manpower assume considerable importance. Another point calling for comment is the nature of the assumptions underlying several papers. "Undoubtedly disputes are settled and always have been [by the people themselves]", argues one contributor, "but the principles on which settlement is based, and indeed very often the aims of settlement themselves are so different from those of English law that any attempt at extension of those principles would produce catastrophic results" (page 79). The argument not only begs the question; it also implies that white man's law is not only technically but also morally superior to that of the native. More research is obviously needed, on this and many other issues. For instance, is the concept of a neutral judiciary comprehensible to an average New Guinean? Is it desirable in the first place? Are prison sentences a deterrent or are they, as some would have it, pleasant holidays, or courses in leadership? Is it "better" for ten guilty New Guineans to go free than for one innocent tribesman to be convicted? To be effective, the law must be comprehensible to those to whom it is administered, and this simply is not the case in New Guinea today.

There are one or two factual mistakes in the book, possibly due to misprint. Thus, German New Guinea was not annexed in 1888 (page 41) but in 1885; the non-native population of multi-racial local government councils could not have been 1,084,000 in 1967 (page 53). The inclusion of an index would have added to the book's value. Several papers touch upon the same or similar issues, and the reader is forced to jump back and forth in an attempt to bring together information on a variety of topics. The time lag between the delivery of the papers and their publication is also something of a defect. Admittedly, some papers have been brought up to date by the inclusion of "further material", but others have been reproduced in much the same form in which they were originally delivered. A bibliography of relevant articles which appeared since the symposium would have done much to compensate for this minor blemish.

PETER BISKUP*

* Dr. Juris (Bratislava), M.A. (W.A.), A.L.A.A., Law Librarian, Australian National University, formerly Senior Lecturer in History, Administrative College of Papua and New Guinea.