

BOOK REVIEW

Robin Luckham (ed.), Law and Social Enquiry: Case Studies of Research. Uppsala and New York: Scandinavian Institute of African Studies and International Center for Law in Development, 1981 (pp.289); soft cover: \$8 in Third World countries - \$16 elsewhere; hard cover: \$20 in Third World countries, \$25 elsewhere.

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This collection results from a promising idea, the execution of which almost matches the expectation. As the editor explains in his introduction, it aims to fill a gap between books dealing with method in the abstract and books on "law in context" where the research has been "cleaned up and rationalised ex post" (p.7). The professed aim is to recount instances of legal research as it was actually done, warts and all, to provide "a self-analysis" told "as honestly as possible" (p.7) which would yet address common issues of method and morality. Not the least of the fascinations of this volume is its failure to meet this impossible aim.

For a start, and with the dazzling exception of Santos' essay, the labyrinthine treacheries of the confessional and autobiographical modes seem to have been ignored. Most contributors tacitly assume that the injunction to tell it "as honestly as possible" is unproblematic and sufficient. Yet candour can be the best defense. To tell all is often to be forgiven all and the confession of past folly can comfortingly import the painful acquisition of a present wisdom. Social scientists should not be barred from subjective soul-searching but they could bring something distinctive to the genre if they called their methodologies and objective concerns in aid. For example, network analysis and insights gained from the sociology of knowledge might have prompted enquiry into the Law and Modernization Program at Yale Law School and into what is now called the International Center for Law in Development, both focal institutions that link many of the contributions. Related to this, the effect of funding on what research could, and could not, be done is hardly mentioned. Still related, and most important of all, knowledge is power, as Foucault needed to remind us. For what and for whom is power being generated in the academic creation of particular

knowledge? The issue is not confronted except partially and as a passing matter of "ethics" or of existential Angst in such concerns as whether knowledge possibly damaging to informants should be revealed. (Of course, it is still the researcher who decides on what is, or is not, possibly damaging and on whether it should be revealed.) Would that we had the gift - to distort Robbie Burns - to see ourselves as we see others. In terms of Santos' espousal of Kierkegaard's great exhortation: "... the majority of men are subjective towards themselves and objective toward all others, terribly objective at times - but the real task is to be objective toward oneself and subjective toward all others" (p.265). Which should at least provoke the reviewer to a greater empathy. To have to "tell all" in the space of a brief essay makes it at least difficult to pursue thoroughly particular lines of enquiry. The contribution of Baldwin and McConville contains the most effective of such pursuits but this is partly because it seeks to present a situated theme rather than comprehensively to "tell all". Many essays veer uncomfortably between science and literary confession. Is it this lack of an assured stance or a basic uncertainty in social science that inhibits here the expression of the joy and excitement of research and discovery? Several of these projects seem to have been a constant trial and tribulation.

The virtues of this collection tend to be the virtues of particular contributions and these virtues are considerable. Unlike other contributors, Twining deals with the research of others, although as a close and sympathetic interpreter. He describes the collaboration between Llewellyn and Hoebel and then acutely examines "the nature of the relevant intellectual and professional traditions" (of anthropology and law) in their effect on this particular joint endeavour and in their significance for the success or failure of collaboration in general. Missing is any account of the pleasures, pains, deep understandings and misunderstandings integral to any close collaboration in research and writing, or any account of how the act of collaboration itself engenders new knowledge not reducible to the individual contributions. This may well be a matter of what Twining's sources could provide and, in any case, his contribution is reprinted from a different setting; on both these counts it would not be fair to set this essay against the injunction to "tell all". Abel's courageous account of his work on "civil wrongs" and courts in Kenya is the most self-critical in the collection. He is hardly less harsh in his treatment of certain others. He continually relates his changing "phases in the conception of research questions about the legal system of Kenya" to his personal development and personal reactions to various situations in which he worked. It is full of shrewd insight and evidences a tremendous energy. Snyder's "natural history of a Senegalese case study" of "land law and

the transition to capitalism" is less intimate and more an intellectual account of great analytical coherence and precision. Particularly impressive is the meticulous and nothing less than monumental ordering of his data. There is much here that is quietly inspiring. Luckham's account of "the natural history of a research project" on "the Ghana legal profession" provides a vivid illustration of a remarkable shift that characterizes all the accounts here of research in the third world - the movement from initial, relatively conventional or "mainstream" academic stands to a radical concern with underdevelopment of a neo-marxist kind. It is a good story, one involving an heroic persistence and one well-told, if too casually. It also contains an actual instance of that horrifying folk-tale of the academic life, the loss of field notes and draft chapters at the airport.

A change from the third to the first world setting is marked by a dramatically different contribution, Baldwin and McConville's elegant case study of "the English legal profession and the politics of research". This is an exposé of devastating quietness and clarity of the illiberal, mean-spirited and self-serving nature of the professional organisations of English lawyers. It arises out of the authors' path-breaking and scrupulously conducted research on plea bargaining in criminal cases and out of the disreputable efforts of legal professional organisations to discredit the results of the research and to suppress their publication. Flood's Rabelaisian ramble on "researching barristers' clerks" is entertaining, and somewhat more. The little-researched, but significant, English barristers' clerk manages the more petty and more sordid aspects of the barrister's professional life, such aspects as appointments and money, and often becomes quite wealthy in the process. Flood became a very close "participant observer", although the intensity of participation could be at the expense of observation; thus, "although I have been unable to locate any research that discusses the problems of intoxication during research ..., I would strongly suspect the degree of intoxication must have some effect" (p.175). Yet it would seem that his subjects were prepared to tell more to a convivial companion and the apparent accuracy of his recall after several double whiskies is remarkable. As one would expect of a group that has to manage its social superiors, the barristers' clerk is highly conscious of status; so, a junior clerk was instructed by a senior clerk: "... when I call someone by their name, you call them Mr. So and So; when I call someone Mr. So and So, you call them Sir; when I call someone Sir, you don't speak to them" (p.184). There is more where that came from.

Van Maanen's "notes on the production of ethnographic data in an American police agency" are humane, very wise, very solid and sensitive to the ethical problems of fieldwork. They are also

full of exciting incident. Ietswaarts' account of her research on labour courts and the labour inspectorate in Allende's Chile is crisp, honest, insightful and told in a tone of relaxed intimacy that is apt for the genre. It is strongest on methodology and on the difficulties involved in doing research on state officials. Finally, there is Santos' concern with "science and politics" in "doing research in Rio's squatter settlements" mainly on community legality and community dispute settlement. He starts with a tour de force on the confessional and autobiographical modes of such exciting sweep that much of it is inevitably gratuitous when applied, via some drab metaphors, to his own research. This is the best blend of literature and science in the collection. It is intellectually varied yet connected, often moving, always involving.

In short, a stimulating and important collection, even if its significance is more diffuse than its editor seemed to expect. It is one of a valuable series which happily persists but, like some of its predecessors, it unhappily lacks an index.