

by Professor Bob Hughes

## **Ideology in the Language of Judges**

**by Susan U. Philips,**

**Oxford University Press, New York 1998**

**ISBN 0-19-511341-1**

**pp: 201 ex index**

This is a book authored by a linguistic anthropologist who sets out to develop the thesis that the behaviour, and particularly the language practices, of United States trial judges is ideological in nature. It purports to show that despite the claim, frequently advanced both by judges themselves and by members of the legal profession, that they are free of political influence, the language practices in which they engage in performing very basic court room tasks indicates that this claim is false.

The focus of the book is an interesting one. It concentrates on the activities of trial court judges where the claim that judges simply and neutrally apply the written law made elsewhere has some greater plausibility to it than might be the case where such a claim is made by an appellate court. In the latter case, particularly in respect of the United States appellate court, this might amount to a declaration of the obvious. Appellate court judges have frequently overtly declared that they make law and policy. But the book seeks to show that even the trial judge's activities reinforced with a rigid adherence to the principle of rule of law can be understood as ideological.

'Ideology' is a term which has many different senses. It is a term which is common enough in political science, but even here it is sometimes difficult to come to grips with. Very often it is employed with negative connotations. Some writers claim to have genuine theory or science whilst they accuse others, less pure, of having limited, belief-ridden, ideology. It is used sometimes to describe a belief system or, perhaps, a way of looking at the world; a *Weltanschauung*. At other times, it involves some set of ideas which promote programmatic political and social change. In the case of some Neo-Marxist writers it has come to mean a hegemonic system (a system of dominance and subordination) which supports the ruling State and, at the same time and through diverse and complex means, serves to subordinate the interests of those who are subject to control by the State.

The last sense derives much from the Italian writer Antonio Gramsci. Susan Philips draws somewhat on this sense, but seeks to address its shortcomings with insights drawn from linguistic anthropology. The advantage in doing so, she argues, is that linguistic anthropologists have been able to ground the so-called relations of domination and subordination which Marxists and others put forward, in actual discourse practices. From this theoretical base she proceeds to analyse the actual discourse practices of trial court judges.

In the end she suggests, "it is a mistake and a misinterpretation to think of trial court judges as mere implementers of law made by others." (p. 123) The mistake is encouraged, she claims, by the suggestion

that judges are merely neutral interpreters of written laws. The fact that the law, in a culture which is ostensibly literate, is written law is an integral part of what lawyers mean by the rule of law. Perhaps this is a limited sense of the rule of law but no doubt it is a factor in the approach to mainstream judicial interpretation.

The book is well written and the argument very well sustained throughout. It certainly adds another valuable perspective to the general tendency to debunk the claims of the judiciary to eschew political values in the courtroom decision-making process.

Professor Bob Hughes  
School of Law  
USP  
14/2/2000

© University of the South Pacific 1998-2006