Law and Anthropology

Sally Falk Moore

Biennial Review of Anthropology, Vol. 6. (1969), pp. 252-300.

Stable URL:
http://links.jstor.org/sici?sici=0067-8503%281969%291%3A6%3C252%3ALAA%3E2.0.CO%3B2-L

Biennial Review of Anthropology is currently published by Stanford University Press.

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at http://www.jstor.org/about/terms.html. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at http://www.jstor.org/journals/sup.html.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is an independent not-for-profit organization dedicated to and preserving a digital archive of scholarly journals. For more information regarding JSTOR, please contact support@jstor.org.

http://www.jstor.org
Fri Mar 16 07:37:49 2007

6

LAW AND ANTHROPOLOGY

Sally Falk Moore • *University of Southern California*

THE CLASSIFICATION OF LEGAL SYSTEMS

Since this is the first article on law to appear in the *Biennial Review,* it seems fitting to consider at some length the major themes that have preoccupied anthropologists working in the law field before presenting a summary of the literature of the last two years. The limitations of space make it impossible to write a comprehensive history. Rather than presenting a catalog of names, I have undertaken a more expanded discussion of the work of a few people whose books encompass the major themes of the field. Even in reviewing the current literature, I have chosen to omit most of the purely descriptive works in favor of those that raise analytic problems. I assume that others find it as difficult as I do to make sociological sense of lists of disembodied legal rules floating on their own, cut off from the social body of which they were once a part. Hence, though I shall mention some work of this kind, I shall pass over most of it. Comprehensiveness has been sacrificed in the interest of comprehensibility. The selected Bibliography at the end of this paper includes some of the significant works that could not be discussed in the body of the article.

Examining different approaches to the classification of legal systems may give us some idea of the magnitude of law as a subject, and of the ways in which anthropologists have perceived the field as a whole. No society is without law; *ergo,* there is no society outside the purview of the "legal anthropologist." It is not merely difficult but virtually impossible to control the full range of the available ethnographic information. Every good ethnographic description contains a great deal of legal material, whether or not it is explicitly called "law." (Nader

et al. 1966 have tried to sort the specialized works from the others in an annotated bibliography.) Not only does every society have law, but virtually all significant social institutions also have a legal aspect. This means that to master the whole legal system of one society, procedural and substantive, one must master the whole institutional system of that society—from citizenship and political place to property and enonomic relations, from birth to death, and from dispute to peaceful transaction.

One's approach to classifying legal systems may thus depend on whether one sees the problem in terms of the kinds of society in which law operates, or in terms of the distribution of specific procedures or concepts or rules. The first, the attention to social context, is very much the anthropologist's approach, the second very much more the approach of the scholar-lawyer who specializes in comparative law. There is some overlap, of course; but whatever is special about the anthropologist's point of view lies in his tendency to see the legal system as part of a wider social milieu. And since anthropologists have differing ideas of what makes up the mainspring of the social clockwork, they also differ in their approaches to classifying legal systems.

Because law pervades so much of social life, the major writers in the field have used a variety of approaches to the material, classifying it differently for different analytic purposes. There have been essentially three kinds of classification: (1) a dichotomy founded on the basic differences in social organization between technologically simple and technologically complex societies; (2) an evolutionary series focusing on legal concomitants of the development from decentralized to centralized political systems, e.g., enforcement procedures, courts, and codes; (3) a procedural dichotomy, which contrasts dispute settlements hammered out or bargained out between the disputants themselves (often with supporters and allies on each side) and dispute settlements made by a third party having authority over both disputants.

The first kind of classification mentioned above might be called the Maine-Durkheim-Gluckman tradition. These men cut the cake in half. They divide societies into two great types, and see the development of law as closely related to the differences between these types. For Maine (1861), the division is between kin-based and territorially based organization. Durkheim (1933) distinguishes societies on the

basis of their having either mechanical or organic social cohesion—a cohesion founded on a multiplicity of identical units as against one based on the integration of differentiated units. Gluckman (1955, 1965 b-c) sees a division between "tribal" societies and differentiated societies: tribal societies have a simple technology and a social system dominated by multiplex relations; differentiated societies have a complex technology and a social system in which single-interest relations are of predominant importance. Gluckman (1965b) has argued that differences in social context between the legal systems of tribal societies and those of differentiated societies not only have procedural consequences, but also are marked by certain differences in basic legal concepts.

Another tradition of classification is exemplified by Diamond and Hoebel, two writers very different from each other but having in common the fact that they both classify legal systems into a whole social series (Diamond 1935, 1951, 1965; Hoebel 1954). To Diamond, who is an orthodox Lewis Henry Morgan evolutionist, the series is either historical or quasi-historical. He attempts to identify what he considers to be the legal concomitants of each stage, from savagery through barbarism to civilization. Courts, for example, are said to appear at the first agricultural stage. As constricted as one may find the Diamond framework because of its adherence to the rigidities of an early evolutionism, and irritating as is its use of isolated traits taken from all over the library (the world), there is no doubt that many of the kinds of questions Diamond has raised have not yet been thoroughly investigated by other anthropologists. It is not yet possible to specify in detail in what kinds of social settings "courts" are found, or the conditions that produce hearing processes of various kinds. The careful comparisons that have been made for kinship institutions have never been made for legal institutions.

For Hoebel (1954), the social series is both morphological and historical, and consists of a sequence from simple to complex, from decentralized to centralized, from what he calls "private law" to "public law." As he sees it, the great historical change is from systems of self-help operating in the absence of government to systems of law enforcement by public officials in centralized polities. He emphasizes the development of the organs of government and their role in en-

forcement. Hoebel's series is orderly and consistent insofar as this criterion is used; but it is far less clear when he also tries to take into account the system of cultural values in each society he describes. On occasion Gluckman (1965c) has also looked on the field as a series, largely in terms of techniques for maintaining order in societies ranging from the stateless through chiefdoms and kingdoms. (For an attempt to sort out societies and legal systems on the basis of complexity, see Schwartz and Miller 1964.)

The third kind of classification again divides the field of inquiry into two types, but narrows the subject to "dispute settlement systems," rather than looking at the whole field of law. Gulliver (1963) calls his two polar types "political" and "judicial." In the political type of dispute settlement system, there is no judge; disputes are settled by a mutual testing of the two parties' social strength, and the outcome is not determined by norms to any significant degree. In the judicial type, there is a judge, who has the authority and obligation to hand down a decision settling the case on the basis of given norms. Gulliver postulates a series of gradations between the two polar types. Bohannan (1957, 1965, 1967) has made an analogous but somewhat wider division, which applies as much to disputes between groups as it does to those between individuals. He divides power systems into unicentric and multicentric types. In unicentric power systems, there is a central locus of legal authority, which settles disputes through the exercise of that authority. Bicentric or multicentric power systems, which include the law of stateless societies and international law, are characterized by the absence of any superordinate authority. All these typologies narrow the focus to certain differences in the settlement process, rather than treating the wider field considered by the classifications mentioned earlier. On this dispute settlement side of procedure (as opposed to the enforcement side), Gluckman (1956) has followed Llewellyn and Hoebel (1941) in placing the champion-at-law, the intermediary, the negotiator, the mediator, the conciliator, and the arbitrator on a scale of increasing authoritativeness—a series culminating in the judicial process itself.

Obviously, all of these various classifications are coping with a series, either by setting up a graduated progression from one pole to another or by characterizing the two poles themselves. It will also

readily be seen that the core of most of these systems of classification is legal procedure, perhaps because the relationship between political structure and procedure comes through clearly. The general classification of substantive rules and concepts is a much more complex task, and is much less frequently tackled by anthropologists, though Gluckman (1965b) attempted something of the sort when he sought to identify some of the legal concepts peculiar to tribal society from his Barotse material.

The underlying premise of all of this classification is that there is an intimate relation between law and society, that law is part of social life in general and must be treated analytically as such. Though the cruder contrasts between the legal arrangements in "simple" and "complex" societies have been known for at least a century, much remains to be worked out about the range of variations and combinations. But that is by no means the only task ahead.

Definitions of the Law

Besides examining the classification of types of legal system, we can get some idea of academic preoccupations in the field of law and anthropology by looking at the various ways in which the field has been defined at various times, considering not only formal definitions of law, but the kind of work people have actually done. This exercise is not intended to arrive at some better definition, nor to produce a critique of past ones, but rather to look through these definitions at the historical development of the subject, in order to see how it arrived at its present state.

Though some detailed descriptive works existed on the law of exotic peoples (e.g., Barton 1919 on the Ifugao and Gutmann 1926 on the Chagga), it was not until Malinowski's *Crime and Custom in Savage Society* (1926) that anything written on law by an anthropologist achieved a wide audience and raised serious theoretical questions. With a few bold strokes Malinowski told the world his idea of what law was, why people obeyed it when they did, and why, sometimes, they did not. Malinowski was indignant about theories of primitive law like Hartland's (1924), which asserted that primitive man automatically obeyed the customs of his tribe because he was absolutely bound by tradition. Malinowski was little concerned with

prohibitions and sanctions, but instead was struck by the positive inducements to conformity to be found in reciprocal obligations, complementary rights, and good reputation. He perceived the social and economic stake of the man who wished to remain in good standing among his fellows as the dynamic force behind the performance of obligations. But if the law is so much the stuff of ordinary social life that it is embodied in all binding obligations, then nothing but a full account of social relations in a society will adequately "explain" the content and workings of its law. In a way, this is quite true, and is continuously being rediscovered.

Malinowski was dealing with the aspect of social control that resides in the mutality and reciprocity of social obligations. There is more to social control than that, but Malinowski offered clear, new information, presented in a simple prose and illuminated with exotic Trobriand anecdotes. He burst on the world at a time when dullish debates were going on over whether there was such a thing as law at all in primitive societies. Lowie (1927) expended some print on that tiresome question, and others have since. The gist of Lowie's statement was a pleading argument that there were indeed such things as family law, property law, law of associations, and law of the state in preindustrial societies.

There are several paradoxes in the short-term effect of Malinowski's work. *Crime and Custom* excited enormous interest outside the field of anthropology—particularly among academically minded lawyers, whose outlook was broadened considerably. It was almost certainly owing to Malinowski's influence that virtually all subsequent works of jurisprudence came to include some introductory sections or remarks on primitive law. This attention to law as a phenomenon existing outside the traditional sphere of European-style legislatures, codes, courts, and police was something new and important. But even so, many recent works on jurisprudence (Paton 1951), which include such discussions, treat the law of technologically simple societies as the historical or typological precurser of modern law—as an early stage subsequently replaced by that supposed apogee of excellence, the Western European tradition, or perhaps still better, the Anglo-American tradition. The law of preindustrial society is not examined to see whether it operates on sociological principles that apply equally

well to some aspects of social control in industrial society. On the contrary, it is treated as a phenomenon that has been superseded, rendered obsolete by later improvements. In Dennis Lloyd's *Introduction to Jurisprudence* (1965) the work of Maine, Malinowski, Hoebel, and Gluckman appears in a section on "Custom and the Historical School," which deals largely with the relation between custom and law. Lloyd's treatment is far more sophisticated than Paton's (1951), but it is still far from extracting any general sociological significance from the study of societies quite different from our own.

Malinowski's work, then, persuaded people outside the anthropological field that there was such a thing as law in nonindustrial societies, and prepared the way for the reception of the work of Hoebel and Gluckman. But this knowledge was received only to be placed in a very narrow niche reserved essentially for exotica and historical background, rather than being understood as something that might have theoretical relevance to the present, either because of similarities or because of contrasts in systems. In a way, Malinowski's ideas suffered the common fate of many cultural innovations. When exported from anthropology and introduced into another discipline, jurisprudence, anthropological ideas were interpreted in ways that would disrupt preexisting jurisprudential schemes as little as possible; they were selectively incorporated, but not used very creatively.

Within anthropology, the conception of law that Malinowski propounded was so broad that it was virtually indistinguishable from a study of the obligatory aspect of all social relationships. It could almost be said that by its very breadth and blurriness of conception Malinowski's view made it difficult to separate out or define as law any special province of study. Law was not distinguished from social control in general. Schapera (1957) has reviewed all of Malinowski's "theories of law," by which he means Malinowski's definitions, and concludes that anthropologists in general have rejected Malinowski's way of defining the field. Schapera (1957: 153–54) lists some of the most famous definitions of other anthropologists as follows:

> Some of those working in societies with constituted judicial institutions restrict the term either to "any rule of conduct likely to be enforced by the courts" [Schapera 1938: 38] or to "the whole reservoir of rules . . . on which the judges draw for their decisions" [Gluckman 1955: 164]. Wider

definitions have been suggested by others, to include societies lacking courts or similar specialized agencies of enforcement. Radcliffe-Brown [1952: 208, 212] . . . adopting Pound's definition ("social control through the systematic application of the force of politically organized society"), speaks of sanctions as legal "when they are imposed by a constituted authority, political, military or ecclesiastic," and adds that "The obligations imposed on individuals in societies where there are no legal sanctions will be regarded as matters of custom or convention, but not of law." . . . Hoebel [1954: 28], again, says that "A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognized privilege of so acting."

Although differing in detail, the definitions just quoted all agree, in contrast with Malinowski, that the essential characteristic of "law" is socially approved use of force. . . . The implication is that Malinowski's definition, in *Crime and Custom*, is not on the whole acceptable to his colleagues.

For all the legal, anthropological, and academic attention that *Crime and Custom* received it staked out a wider field of inquiry than anthropologists were ready to consider as an undivided whole, and pointed to sociological problems that students of jurisprudence were not prepared to consider outside the exotic Trobriand setting.

More recent formal definitions of law are as much at variance with the legal conceptions of Malinowski as are those of Schapera, Gluckman, Hoebel, and Radcliffe-Brown. Bohannan (1965) sees law as "doubly institutionalized," as that "body of binding obligations . . . which has been reinstitutionalized within the legal institution." The legal institution is that body that settles disputes and counteracts flagrant abuses of social rules. For Bohannan, then, the difference between legal and other rules is that legal rules are given double legitimacy: they exist as rules in social institutions, but become law only when they are enforced by legal institutions. Pospisil (1958) defines law as "rules or modes of conduct made obligatory by some sanction which is imposed and enforced for their violation by a controlling authority." Bohannan, then, emphasizes legal institutions, Pospisil the potential sanctions emanating from a controlling authority. Not only do both authors obviously take into account the element of force, which Malinowski passed over lightly, but like some of their predecessors, they also stress an institutional context in which dispute settle-

ment and law enforcement take place. The curious result of Bohannan's definition is to focus on the institutions of enforcement and repair, and to divorce these from the rules, norms, and principles that are a part of ordinary social life. Pospisil's definition does not have this effect, but its stress on authority raises problems in the analysis of legal relationships between social units where there is no supervening authority.

Pospisil (1967) has gone further in describing the internal affairs of groups, and has spoken of a multiplicity of legal systems to which individuals are subject, each system being part of the apparatus of a particular group. M. G. Smith (1966) makes an analogous argument when he asserts that corporations are the framework of law. Some anthropologists have urged the use of H. L. A. Hart's definition (1961), which combines a rule approach to obligation with a rule approach to institutions (Kuper and Kuper 1965). Hart conceives of law as a combination of primary rules of obligation with secondary rules of recognition, change, and adjudication.

Definitions of law, then, have moved from the broad and somewhat vague Malinowskian definitions that speak of the mutual rights and obligations of individuals, and of the sanctions and incentives residing in ordinary social relationships, to relatively recent specialized definitions that emphasize not only force, but also the institutional and organizational contexts of legal obligation. This is an important change because it also reflects the direction in which a good deal of research work has gone. An even more recent definition is that of Michael Barkun, a political scientist, whose writing is strongly influenced by anthropological work. He says, "Law is that system of manipulable symbols that functions as a representation, as a model of social structure" (Barkun 1968: 98). To the extent that Barkun *restricts* law to a symbolic system, I find his definition too limited; but as an addition to previous definitions it has merit. Its principal deficiency is that it does not, by itself, give a place to the organizational and action contexts in which the symbols are used. It does not face the problem of specifying the special aspects of social structure with which the law deals. However, although the formal definitions of law in anthropology have not caught up with practice, recent writings in anthropology have often been preoccupied with the ideas in law and the way they are used

(Bohannan 1957, Gluckman 1965b, Moore 1958). Barkun's definition thus embodies in an extreme form one aspect of current work.

The Concept of Law Implicit in Empirical Studies

This brings us to the emphases in the actual work that has been done, as opposed to those in the formal definitions so far constructed. In *Crime and Custom,* Malinowski (1926) used his Trobriand data not so much to describe legal rules themselves, but to illustrate the process by which people were constrained to adhere to rules and customs; he was not concerned with reporting the rules for their own sake. More than a decade later, by contrast, one of the landmarks in the law-anthropology field was a careful and thorough report on legal rules, Schapera's *Handbook of Tswana Law and Custom* (1938). This book is significant on several scores. Not only did it set an unprecedented standard for the detailed reporting of rules, but it did so without the slightest nod in the direction of theoretical questions, simply proceeding in a businesslike manner to describe as succinctly as possible such rules of law as were enforced by the Tswana, as well as the social organization, constitution, and court system that implemented these rules. The book's format was guided by its purpose. It was not written primarily for anthropologists, but was undertaken at the request of the Administration of the Bechuanaland Protectorate, "to place on record, for the information and guidance of Government officials and of the Tswana themselves, the traditional and modern laws and related customs of the Tswana tribes" (p. XXV).

There have been many books like Schapera's since, particularly in the field of African law, but few match it in quality. For our present purposes it has twofold importance. First, it represents, at its best, one lawyer-like genre of description, a setting out of "customary" rules. Second, because it was conceived and executed for applied and practical purposes, it is a type of record that is still very much in demand, and one that continues to be made in areas where the indigenous law has not heretofore been recorded in writing. One could argue, with some professional vanity, that because Schapera's work was done by an anthropologist who had completed a field study of the peoples whose law he was recording, it is superior to many other attempts to do the same thing by nonanthropologists.

In 1943, Schapera published a monograph on tribal legislation among the Tswana, and this remains the only large work on legislation in an African tribe. The subject of this monograph, like that of the *Handbook,* is of considerable practical interest. Innovation by means of legislation is a major focus of the efforts of governments all over the world today, but not nearly enough is known about legislation from a sociological point of view. There are signs in the periodical literature that anthropologists are beginning to be more interested in the subject than they have been in the past (Caplan 1967, Colson 1966, Freedman 1968). It is significant in this regard that Schapera's monograph is about to be republished.

It was not until the publication of Llewellyn and Hoebel's *The Cheyenne Way* (1941) that anthropology produced a book focused on legal cases. The authors treated individual cases as emerging from problems that required solution, the basic general task being to maintain order. They report how violations of the rules were handled, and how particular disputes were sorted out. The case material and the description of the setting in which cases arose were elicited largely from elderly informants reminiscing about the past. The book strongly affected the development of legal anthropology by its use of cases and by its application of the case-law lawyer's point of view to exotic material. The book's preoccupation with cases continues as another major trend in the field, as does its concern with techniques of keeping order. What delighted Llewellyn in the Cheyenne accounts, since he himself was an eminent professor of law, was the practice of the lawyer's art, the craft skills of the profession. He greatly admired the ingenuity with which good rules could be worked out of troublesome and difficult situations—rules that would endure and be useful in other cases. He was a specialist in the law of sales and contracts, and hence was, in his own milieu, very much aware of the relationship between commercial practices and court decisions. For Llewellyn, the "trouble case" was an opportunity for displaying forensic skills, for making useful law out of what seemed the least promising materials. Llewellyn and Hoebel found this very skill in the Cheyenne's resolutions of dispute, and in their ways of dealing with rule breaking. They were also struck by the policing, order-keeping techniques that were reported to have been so effective in the tribe when it assembled as a whole each summer.

Hoebel's interest in the legitimate application of force was even more evident in 1954, when he brought out an introductory text book, *The Law of Primitive Man.* In this book, mentioned earlier, Hoebel sketched the society, culture, and law of a handful of peoples ranging in organizational complexity from the Eskimo to the Ashanti. Each description is partly cultural and partly organizational, but not systematically either. There is an occasional, but not regular, mention of cases. Each description is accompanied by a list of what Hoebel considers to be the basic jural postulates on which the legal system of each people is founded. These postulates are a rather unsystematic assortment. Hoebel does not indicate the criteria he used to decide what should be included; nor does he specifically cite his sources, though he indicates that he drew his postulates from an examination of cases. The book also includes several general essays on the nature and development of law, in which Hoebel asserts, as was indicated earlier, that the most significant change is the shift from what he considers private law (enforcement by kinsmen and associates) to public law (enforcement by government), from personal retaliation and recoupment to impersonal justice. Despite his interest in enforcement, Hoebel's treatment of law is very strongly cultural, and he emphasizes that he conceives of law as dealing with the enforceable side of a pattern of values. Very much in the Ruth Benedict vein, Hoebel assumes that each culture exemplifies a few out of the total range of possible values and styles. His treatment of law alternately emphasizes the values exemplified by enforceable rules and the nature of the agencies of enforcement; he does not integrate or reconcile the two.

In 1955 a new approach made its appearance when Gluckman published *The Judicial Process among the Barotse,* a detailed examination of the way in which the Barotse *kuta* handled cases. This was the first published book to describe the proceedings before a tribunal in a technologically simple society from the point of view of an anthropologist who had actually seen them. These were not cases recalled by informants, like those in *The Cheyenne Way* (Llewellyn and Hoebel 1941), but cases observed as they were argued over, thrashed out, and ruled on. The book was a study of the techniques of the judges in dealing with the disputes put before them, of the kinds of objectives they expressed, and of the explicit principles they sought to apply. Case after case is reported as it came up in court, some in considerable

detail. Gluckman has used his field knowledge of Barotse society to illumine cases, rather than the other way round. He describes the judicial use of general principles and rules as forming a kind of hierarchy—the most important principles being the most general and vague, and the least important rules the most specific. *The Judicial Process* is, more than anything else, Gluckman's analysis and interpretation of Barotse judicial explanation.

According to Gluckman, the Barotse judges apply the standard of the "Reasonable Man" in assessing the behavior of parties to cases. Gluckman's critics have fixed on the Reasonable Man as if he were some sort of Piltdown hoax made up of unsuitably joined parts, and usually imply that he is a construct of the observer. Gluckman (1965a) has replied by showing that the Reasonable Man is an explicit concept in Barotse jurisprudence (Epstein 1954 has confirmed the Reasonable Man's explicit existence elsewhere), and explains the standard of the Reasonable Man largely in terms of role expectations. He acknowledges, however, that the idea has other facets as well. As I see it, the Reasonable Man is best explained not as the critics take him—as a personification of some real, average member of the society—but as a concept enunciated by Barotse judges to encompass and cope with a whole variety of awkward judicial problems and standards. He is a device, a technical tool of the judiciary, rather than an actual, invariably clear model of proper role behavior. Doubtless Gluckman is right in asserting that standard role expectations were among the resources Barotse judges could invoke to explain decisions, and that they did so in the name of the Reasonable Man. But these role expectations could hardly have been specific for all situations. The *idea* that there is a standard of reasonable behavior fills the gap. It handles awkwardly uncertain standards by treating them as nominally definite and by lumping them conceptually with ordinary role expectations. Too much print has already been expended on this subject, but it is worth noting, not only because of its historical significance, but because the very confusion in the surrounding argument conceals an important issue that is only beginning to surface, the question of the relationship among judges' *statements*, the actual *bases* of judicial decision, and *norms and practices* in ordinary social life. The question is very complex, and the distinctions between these levels must be clearly made

(and have usually not been, as argument about the Reasonable Man shows) in order that analysis may go forward.

What one finds in *The Judicial Process* is an analysis of explicit Barotse judicial reasoning—what the judges said and did, the reasons they gave for what they did, and the cases that elicited these decisions. No wholly comparable study has been done since, although *The Judicial Process* itself has recently been reprinted with the addition of some retrospective comments by Gluckman.

In 1957, with the publication of Paul Bohannan's *Justice and Judgment among the Tiv,* anthropology acquired its first casebook of dispute settlement in an acephalous society. Tiv political structure was simply a lineage system, which contrasted dramatically with the structure of the centralized Barotse kingdom, and the whole legal process was very different. Moreover, Bohannan presents his ethnographic data in a form very different from Gluckman's. Bohannan distinguishes the Tiv view of their own law, "the folk system," from the anthropologist's analysis of it, which he calls "the analytic system." Bohannan's technique of unfolding the folk concepts of Tiv law is to take Tiv terms and explain them at the same time that he gets on with a description of court cases. He argues (1957: 20) that the Tiv have rules of conduct, but that these rules are not thought of by the Tiv as a "body of rules," as a *corpus juris.* Thus he says the Tiv have "laws" but not "law." Bohannan thus argues that the idea of a body of rules, the *corpus juris* Gluckman mentions in connection with the Barotse does not exist in the folk concepts of the Tiv. The Tiv, according to him, do not think either of laws or of customs as *organized* in a body, (though they have a word for "binding rules of conduct"), but rather conceive them merely one by one, as applied in the specific social situations in which they come up.

Bohannan's contrast of "folk" systems with "analytic" systems is by implication a critique of Gluckman's work; and since writing the Tiv book, he has put it increasingly clearly in that form. He evidently feels that what Gluckman presented in *The Judicial Process* was too much colored by Gluckman's analysis of the Barotse system; that it was not the Barotse view of their own system, or at any rate that the two were not sufficiently distinguished. Bohannan argues that to explain the Tiv system by using the terms (i.e., vocabulary) of our own system of law

does violence to Tiv ideas and folk systems. In other words, any analysis in terms other than those of the people studied imposes an alien form on the material.

There are a number of puzzling things about the emphatically terminological approach that Bohannan advocates. A fundamental question is whether certain words, per se, may indeed be taken to represent the basic categories of a people's thought. Is the semantic content of terms the best indication of mental classification? Are there not many mental ways of classifying ideas, only some of which are represented in the meanings of particular single words? Several words may be associated, for example. Further, one may be disposed to ask how the anthropologist chooses which words to expand on and which to disregard. There are also numerous questions about the manipulability of classifications in actual situations, and about the fact that general legal terms may encompass a variety of situations that are very tenuously related. Any anthropology student who would like to try his hand at legal analysis through the door of terminology should be assigned, as an introductory problem, the fact that in our society both marriage and the purchase of two dill pickles may be characterized as "contracts."

Another puzzling thing about the terminological approach is how, within it, one is to cope with those aspects of structure and order inherent in an indigenous system for which there may be no terms. For example, the grammar of a language is surely as much a part of the language and conceptual classification as its words. But among people who have not analyzed the grammar of their own language, there are commonly no terms for many grammatical categories. Most (all?) peoples distinguish between serious and trivial breaches of legal rules, but not all formalize these into named categories like "felony" and "misdemeanor." When the anthropologist perceives such "unconscious" or unexplicit order in behavior and reports it, is this part of the analytical system or inherent in the folk system? Is it imposed from the outside or merely perceived from the outside? When Gluckman tells us that Barotse judges regularly manipulate legal concepts in an ordered manner, is that order part of the Barotse folk system, the Gluckman analytic system, or both? It is interesting that when, in his conclusion, Bohannan ultimately presents the "analytic systems" he

has worked out of the Tiv materials, none of these are analyses of the Tiv substantive-terminological-legal concepts with which so much of the book is concerned. Instead, Bohannan's analytic system deals exclusively with Tiv procedural institutions.

The question of whether the study of indigenous terminology is the optimum route to the understanding of alien systems of law is distinct from the question of whether it is desirable to try as far as one can to distinguish between "raw data" and analysis in one's writings. It is possible to have doubts about the first, as I do, without having the slightest doubt about the second, about which I have none. In Bohannan's book, the two questions have become one because of his particular method of exposition. His book also blends these two questions with a third issue: are ideas and concepts fundamental parts of legal systems? Here again, I agree wholeheartedly that they are.

In 1965 Gluckman published *The Ideas in Barotse Jurisprudence,* a record of the Storrs lectures that Gluckman delivered at the Yale Law School. Although this book takes up the theme of legal ideas, it adopts a point of departure quite different from Bohannan's, perhaps in part because the lectures were addressed to an audience of lawyers. Gluckman outlines such specific and conventional legal topics as treason, succession and inheritance, rights in land, marriage and affiliation, injury and responsibility, debt and other quite concrete common social circumstances, and then proceeds to untie the relevant package of related Barotse concepts. Characteristically, he uses the dichotomous model of tribal as against more differentiated societies, and seeks to formulate generalizations about how the ideas in Barotse jurisprudence are related to the fact that the Barotse are a tribal society, operating within the limitations of a relatively simple technology. I find the dichotomous model less satisfactory than the more complex morphological series that Gluckman also uses on occasion. But the contribution of the book lies in the fact that Gluckman seeks to relate the recurrent ideas in Barotse substantive law to the circumstances of Barotse life. It is a bold attempt to relate law to society on a broad canvas, a scholarly speculation on a grand scale. He plucks parallel examples from other societies here and there. His objective is to formulate generalizations from the Barotse material that will hold in other places and other times, given similar fundamental social cir-

cumstances. The extended testing of the hypotheses suggested in *The Ideas in Barotse Jurisprudence,* the detailed comparison of the legal norms, ideas, and social processes of many other societies, remains to be done. I would guess that when these comparisons are made, the dichotomous model will give way to a much more complex typology. But the stimulus value of such a broad formulation of problems is inestimable. It is a vigorous attempt to relate substantive rules and ideas to the kinds of social relationships that exist in a particular sort of society. Many people have worked on one or another aspect of the relationship between legal procedures and their sociopolitical settings, but few have attempted anything of the kind with substantive law. Gluckman's is a pioneering effort.

Another important theme in law and anthropology has been the process of dispute settlement itself. In *Social Control in an African Society* (1963) P. H. Gulliver describes the indigenous ways of settling disputes among the Arusha, a Masai tribe living on Mount Meru in Tanzania. The Arusha were originally an acephalous people organized in patrilineages, age-grades, and localities. Their indigenous legal system did not have judges, though the government has introduced a system of courts. Gulliver's study deals principally with the settlement of disputes outside the courts. The parties customarily argue out their cases at public meetings, each party appearing with a flock of supporters and locally eminent spokesmen, who participate actively in the settlement of cases. Partisanship on one side or the other generally depends on previous social ties rather than on the merits of the case, and the outcome of a dispute has much to do with the quality and quantity of support a man can muster. Gulliver explains in detail the organizational basis of Arusha society on which the composition of these dispute palavers depended, and also describes a substantial number of the cases he heard. He asserts that norms are of negligible importance in the settlement of Arusha disputes, and that nowhere in Arusha proceedings did he find any sign of the "reasonable man." He does indicate that norms are continuously cited in argument in the settlement process, but he concludes that the relative "strength" of the parties, rather than the norms, determines the outcome.

Gulliver's conclusion contrasts the Arusha dispute settlement process with that of the Barotse. The Arusha had no judges, and settled

disputes on the basis of the relative social strength of the two parties, demonstrated through social action at the moots and assemblies. In contrast, the Barotse had judges, who were supposed to decide disputes on the basis of norms. From these two processes of dispute settlement, Gulliver constructs a typological continuum, with the Arusha type ("political") near one end, the Barotse type ("judicial") near the other, and most other peoples somewhere in between. Some of Gulliver's theoretical conclusions about the Arusha depend heavily on his inferences about the place of norms in those decision-making processes that take place in bargaining situations. My own feeling is that his model has simplified the place and nature of norms. Even the most "impartial" judicial action can be understood as a process of selection among norms to rationalize a decision made at least partly on other bases, rather than as a simple "application" of norms. The decision-making process is a complex one, and in bargaining processes it is doubly complex. Norms are sometimes thought of as a simple schedule of quite specific rules, without internal conflicts or alternative applications and Gulliver seems to treat them so; however, they lose all such appearance and are seen to function quite differently when one observes them invoked as counters in legal argument, or as explanations rather than determinants of judicial decision. These reservations notwithstanding, it must be said that not only has Gulliver considerably enlarged the range of ethnographic knowledge of legal processes with his Arusha book, but he has also, as can readily be seen, raised fundamental questions about the analysis of dispute settlements.

These writers—Malinowski, Schapera, Hoebel, Gluckman, Bohannan, and Gulliver—are by no means the only anthropologists who have written books on law. Some other substantial works of the last decades, though not commented on here, appear in the Bibliography. But I have discussed these six at length because of the importance of their work, and because their work encompasses the principal types of description, research, argument, and construction of hypotheses that have been produced. It is perhaps worth noting that although all six writers tend to deal with legal procedures in terms of their sociopolitical contexts, each approaches substantive law in a different way. Malinowski approaches it piecemeal as an aspect of social relations. Schapera treats it as a straightforward set of rules, enforced by courts.

Hoebel tries to abstract a pattern of values, embodying them in "jural postulates." Gluckman deals with the ideas in Barotse law as expressions of a preindustrial way of life, dominated by the need to maintain multiplex relations and certain status relations. Bohannan does not find any analogous overall pattern in Tiv substantive law, but instead seeks to identify its principal legal perceptual categories, which he assumes to be encapsulated in particular terms. Gulliver goes to the point of arguing that norms have almost no effect on the outcome of Arusha disputes, and he explicitly concentrates on procedure.

The varied approaches of these six authors testify to the grave difficulties attending any effort to characterize substantive rules in a comprehensive and systematic manner. There is, in fact, a serious question about whether substantive rules can be, or ever need be, assumed to form a single system of interrelated parts. For example, as I indicated earlier, Bohannan seems to think that Gluckman has presented Barotse law as if it were "organized" into a single system, and counters by saying that the Tiv have no such systematic notion, hence no "corpus juris," and hence no idea of "law," only that of "laws." As I see it, Gluckman was simply describing how Barotse judges used the whole body of legal rules and principles known to them as a resource for decision making. In doing so, they invoked principles of varying degrees of generality. That these levels may be ordered into hierarchy according to the criterion of generality does not, to me, suggest a rigid "organization" of all of Barotse substantive law, but instead makes explicit one regular aspect of the process of Barotse judicial explanation. In fact, none of these writers, neither Hoebel, nor Gluckman, nor Bohannan, has presented substantive law as a system. Instead, each has taken what he considers to be the most important consistent theme in culture and society, and has traced signs of that theme through some substantive rules. For Hoebel the unifying theme is one of values, for Bohannan one of perceptual categories, and for Gluckman the system of social relations in a technologically simple society.

Most of the scholarly literature of the past few years addresses itself to only limited aspects of these enormous problems. And although some shifts of emphasis may be discerned, the effect of this earlier work is everywhere evident—not surprisingly since all the above

writers except Malinowski are still professionally active. This very situation gives one a sense of how recently interest in law has developed within anthropology as a whole.

CURRENT LITERATURE

Some Techniques of Study

Cases. The argument that case study is the best field technique for the investigation of dispute settlement, legal rules, and legal concepts is presented by A. L. Epstein in "The Case Method and the Field of Law (1967). In this paper, Epstein identifies what he considers to be the universal characteristics of law and legal systems, i.e., what he considers to be the body of information accessible through law cases. He begins with rules, concepts, and categories, and discusses the merits of using cases rather than informants to discover what these are. He then considers the universality of dispute in human society, and by implication the concomitant universality of procedural means through which grievances can be legitimately aired and disputes properly conducted. Epstein divides the resolution of dispute into three phases: the *inquiry* into guilt or responsibility for a particular event; the process of *adjudication* between conflicting claims; and the modes of *redress* and enforcement available when a breach has been established or assumed. He ends by suggesting very briefly that the sequence of events called a case, although it may be isolated for certain analytical purposes, must be considered in its social matrix if one is to fully understand its place in the social process. Although Epstein touches on this last, he concentrates on the general anatomy of law and dispute settlement rather than on enumerating the vase potentialities for research that are opened by using the study of law cases as a standard field technique.

Epstein's concluding remarks clearly allude to a theme common in certain schools of social anthropology today. In his introduction to *The Craft of Social Anthropology* (1967) Gluckman hails the extended case method as a new tool in social anthropology. He says (p. XV): "This new kind of analysis treats each case as a stage in an on-going process of social relations between specific persons and groups in a social system and culture. Epstein's "Case Method" oscil-

lates between seeing law cases as one kind of case material to which the extended case method may be applied, and seeing law cases as one way to study the ideas, values, and basic premises of a society.

Comparisons. Since so many students of law vigorously and interminably contend that the field is riddled with terminological and conceptual ethnocentrism, it is refreshing to find van Velsen (1969: 137) arguing that most writers on African law, with or without legal training, "have an imperfect understanding of their own legal system, with which, explicitly or implicitly, they tend to compare African legal systems." His paper, "Procedural Informality, Reconciliation, and False Comparisons" (1969), describes what he regards as two prevalent pieces of mythology about African as compared with Anglo-European law: the notion that traditional African tribunals have a very informal procedure in which the taking of evidence is not restricted by the kind of limiting rules that apply in Anglo-American courts; and the notion that reconciliation is a more significant objective of African courts than the application of rules of law, and that the reverse is true in Anglo-American courts. Van Velsen contends that false comparisons are made between Anglo-American high courts and rural African tribunals rather than between the comparable English lay magistrates' courts or American small-claims courts and their African counterparts. Moreover, he argues that more attention should be given to European pre-trial reconciliation procedures, and to determining whether reconciliation is indeed as prominent a feature of African judicial process as it is supposed to be.

Van Velsen's is a brief paper, and more a number of suggestions than a fully supported argument; but it sounds a note that will doubtless be heard again in other forms. There is a paucity of sociological data on Anglo-American law (see Skolnick 1965), and anthropologists have barely begun to tackle the parts of the problem in industrial society that are amenable to their techniques of study. Tentative comparative generalizations are essential for the progress of legal anthropology, even though these generalizations are almost certain to be revised as more and more information becomes available. Knowing the extensive range of other social phenomena in nonindustrialized societies, we may expect that further research will eventually enable us to speak in terms of numerous types of legal systems, rather

than purely in terms of the gross contrasts that now seem to distinguish present urban-national Anglo-American-European systems from what Gluckman calls "tribal" systems.

In one useful comparative paper, M. G. Smith (1965b) has had a look at some of the variations in the legal theory of corporations. He has attempted to characterize the Muslim, French, and British traditions, and from the theories and ideologies embodied in them to come to some conclusions about the legal approach of the colonial powers to dealing with indigenous African corporate units. Since this is a swift and very general review of a very large subject, it touches on more subjects than it can cope with adequately; but Smith's argument for the importance of a historical analysis of legal institutions is persuasive, as is his stress on the significance of legal procedures.

Illuminating comparisons are also possible within a single system or region. Some of the complications inherent in the not uncommon situation of a multiplicity of tribunals are described in R. E. S. Tanner's "The Selective Use of Legal Systems in East Africa" (1966). Tanner speaks of three legal system operative in that area. The "paper system" includes the courts of the resident magistrates and above, in which the magistrate or judge has had legal training and deals with judicial matters in terms of statutes and a written record. The "impressionistic system" includes the courts instituted by government and presided over by magistrates who have had some legal training but are not members of the legal profession. These men apply both statutory law and customary law, but their reliance on written materials is more limited than that of the "paper system" judiciary. They make summaries of the evidence and reasoning rather than keeping full verbatim records. They are in touch with the paper system, and also with the third set of legal processes. Tanner describes this third system as having "no formal structure," but I doubt that he means this in a sociological sense. Rather, he seems to mean that the moots and meetings of family heads and of neighbors do not take place in a uniformly prescribed way, but adjust their procedure and membership according to the importance of the case or of the litigants. The article discusses, in general terms, the various conditions under which one system is used rather than another.

Tanner's choice of terms is not altogether a happy one, since, socio-

logically speaking, order and structure exist on all three levels. The important differences are not attributable either to the degree of reliance on written documents or to the rigidity or formality of certain procedures, but rather to the social context in which these tribunals operate, the social units or levels to which they are attached, the kinds of cases they handle, the social orientation of those who play judicial roles, and so on. But Tanner's description has raised an important point. Where varieties of techniques are available for the resolution of dispute (as there would seem to be in most societies), it is important to discover the how and why of alternative choices. There is room for a great deal more detailed research, and need for the assembling of adequate statistical data on this problem. It is very important both for the purposes of sociological analysis and for the practical information of legislators and administrators. Legal-anthropological-sociological research of this kind is as much needed in the highly industrialized countries of the world as it is in the young nations.

Rules. Goldschmidt (1965) has written a book on the law of the Sebei of Eastern Uganda, and introduces it with his characteristic candor by indicating that he considers it not merely a descriptive record, but a contribution to the general theory of jurisprudence. But he also indicates that he has not reviewed the literature on the theory of primitive law, nor does he attempt comparisons with any other societies. Moreover, he did not observe any legal action from beginning to end, nor was any case narrated to him in full detail. The core of the book consists of a statement of legal rules as abstracted by the author, interspersed with terse illustrative accounts of specific disputes and their outcome. Goldschmidt does not treat his task as a study of the sociological context of law; his immediate objective is rather the discovery of rules, illustrated by cases in which they were applied.

Goldschmidt's concluding chapters attempt to draw together all of the rules he has set forth, on the inference that they are governed by three basic principles. He calls the result "the metaphysical infrastructure of Sebei legal behavior." The three principles have to do with general Sebei attitudes toward kinship, property, and the transmutability of all social relations into pecuniary terms; the last joins the first two into a single system. Of course, Gluckman, following Sir

Henry Maine and E. E. Evans Pritchard, had said in *The Judicial Process* (1955) that things are links in institutionalized relationships between persons, an insight he further developed in *Barotse Jurisprudence* (1965b). Goldschmidt, without reviewing or citing the literature, is thus making at least one contribution to the general theory of jurisprudence that seems to have been made before. His comments on changes in Sebei legal rules that are unaccompanied by changes on what he calls the "ideational level" are more novel, and they present an interesting problem in simultaneous continuity and change. The descriptive core of the book—the rules illustrated by cases—is an addition to our ethnographic knowledge.

The Prevention and Settlement of Dispute

Legal institutions as alternatives to fighting. Bohannan's (1967) introduction to his recently published collection of readings on law and warfare takes the exposition of his theoretical position a step further. He speaks of societies racked by conflicts, and of others that have "solved" their conflicts and replaced them with the rule of law. He thus characterizes a difference between feuding societies and our own. Negotiation and bargaining seem to have no place in Bohannan's scheme. "There are basically two forms of conflict resolution: administered rules and fighting." The readings in the book are selected to illustrate this duality. Part I is devoted to a few definitions of law by Redfield, Pospisil, and Bohannan himself. Part II is entitled "The Ethnography of Law: The Judicial Process." And Part III considers "Feuds, Raids, and Wars." Bohannan feels that "the next great step in legal institutions *must* be in the field of international law and other bicentric power situations," and speaks of the world's need for a new "code of aggression" (Bohannan 1967: xii).

In this context Bohannan is treating law as a solution to social problems—essentially, as a means of peacefully resolving conflicts of interest and as a system for the maintenance of social peace and order. What is interesting about this, and about Bohannan's decision to reprint his own article on "The Differing Realms of the Law" (1965), is that it emphasizes a fundamental duality in his approach to the subject of law. On the one hand he defines law in terms of *institutions* that settle disputes and "counteract" gross abuses of norms; and on the other hand he emphasizes *perception*, cognition, "key concepts,"

and ideas as the fundamental basis of law (Cf. Bohannan 1957, 1965, 1967). This pull in two directions, drawing toward an institutional approach on one side and a cognitive approach on the other, is somewhat like the split one sees between Hoebel's attention to the development of "public centralized institutions of law enforcement" and his notion of "jural postulates" (Hoebel 1954). It is a duality that runs deep in American anthropology. By contrast, when Gluckman (1965b) talks about legal ideas, he is trying to show how particular concepts can be explained in terms of their institutional setting. He is not treating the ideas as if they were a system of cognitive categories or value-laden principles that in themselves may give fundamental shape to the social system; rather, he assumes that the legal ideas and categories are expressions of the social and historical settings in which they are found. He gives an analytic priority to institutions and connects them with ideas, whereas Hoebel and Bohannan do not make any similar attempt to fit together the framework of ideas and the framework of institutions.

A new book that seeks to reconcile these two frames of reference is Michael Barkun's *Law without Sanctions* (1968). The title will at once remind anthropologists of the anthology *Tribes without Rulers*, which Barkun has studied carefully. His argument, following that of Masters (1964), asserts that there are important parallels between order in stateless societies and international order. Barkun further contends that these parallels affect the definition and analysis of legal systems in general. He is a political scientist, but his argument draws heavily on anthropological data and ideas. Interpreting law as founded more on consensus than on force, he defines the consensus for "conflict management" as including not only shared procedures but shared perceptual categories. His definition of law as a system of manipulable symbols that functions as a model of social structure has already been mentioned.

For all Barkun's formal emphasis on law as a set of interrelated symbols, he ultimately concedes that "legal systems have *some* empirical referents" (1968: 151), and goes on to say that law is a means of both conceptualizing and *managing* the social environment. His discussion thus goes full circle—from social relationships to ideas about social relationships and back again to empirical referents and man-

agement, not just to "representations" of the social environment. A *déformation professionnel* of certain academics preoccupied with international affairs would seem to be the regular sifting out of a few optimistic conclusions from their convictions about the effectiveness of common concepts in the absence of common political organization. Optimism notwithstanding, Barkun's is a very up-to-the-minute account; and it is particularly stimulating in its repeated and creative use of the distinction between the symbolic manifestations of law and the behavioral referents of law. It is a book to be read—and argued with—but decidedly to be taken seriously.

Non-"legal" institutions as a means of airing legal controversy. Legal institutions as a vehicle for the expression of other interests. Aubert (1963) has argued that the legal process involves the transformation of dyadic relationships into triadic ones. Once a dispute is at a point where it is not going to be settled between the parties but is going to involve others, the question of which "others" may have important effects not only on procedure but on outcome; it also may affect the breadth of significance of the dispute. To the extent that recourse to a particular mode of settlement involves others, it may also involve the personal interests of those others, or the interests associated with their positions.

Primitive peoples often deal with erupting hostilities by translating them into sorcery or witchcraft terms, describing them and resolving them symbolically in terms of the spirit world. If this process involves assembling a group of people and carrying out a public investigation, explanation, and resolution, what takes place often resembles a legal hearing. Social events that get out of hand resemble manifestations of the spirit world in that techniques must be prescribed and applied to bring the untamed under control. Accordingly, Audrey Butt (1965–66) describes "The Shaman's Legal Role" among the Akawaio, a Carib-speaking people in the Guiana Highlands. The Akawaio live in autonomous villages and joint-family settlements, each recognizing a leader; but leadership is a matter of persuasion and influence, not coercion. The redress of grievances and the settlement of dispute are largely in the hands of the parties concerned, though gossip and scandal play their part in affecting the outcome. The only kind of public meeting over a dispute is a shamanistic seance to discover the cause

of sickness or death. Butt describes a series of cases to show how, in the course of these seances, the shaman attributes the cause of an illness to various forms of interpersonal hostility or incorrect behavior. The seance openly airs disputes of which all the persons present are aware, and adds public social pressure to other efforts to resolve disputes or limit "antisocial" behavior. The basic occasion for this action among the Akawaio is always a medical enquiry in form but a dispute in substance.

Disputes may also be transformed by absorbing confrontations between the individual members of competing political units into the general, long-term competition between the political entities. Feuding is the classic example, but there are others. Beidelman (1966–67) describes the use of locally run government courts in the Ukaguru chiefdoms of Tanzania, and shows how the judgments of these courts were used to further Kaguru political aims at the expense of four minority tribal groups living in the same area. Political and judicial roles were somewhat confused: a vigilante Kaguru group apprehended people and brought them to court, sometimes for violations of law, and sometimes for violations of its own regulations. Beidelman shows, through the description of 22 law cases involving non-Kaguru and Kaguru, that members of the minority tribes were regularly dealt with much more peremptorily and severely than Kaguru. In some cases, the vindictiveness of the Kaguru against the members of minority tribes was mitigated by the intervention of a Kaguru patron, or by special relationships between the defendant and the Kaguru headmen or court holders, but without this aid a non-Kaguru evidently did not stand a chance against a Kaguru in court. Beidelman cites the Kaguru situation to show the divergence between the declared aims of the government policy of indirect rule and the effect of that policy at the local level. However deplorable this use of the courts may be, it is difficult to imagine a practical policy that would have prevented Kaguru political dominance from asserting itself in some form, since there are 48,000 Kaguru and barely 6000 non-Kaguru.

The use of courts and other processes of dispute settlement in the struggle for political power is not unusual. Barnes (1961) discussed this use as it occurred among the Plateau Tonga and the Ngoni. Nader (1965a) attributes differences in dispute settlement procedures in part to differences in political structure. Gulliver (1963) has made

the political settlement one of his two basic types of dispute settlement. Law cases that involve political issues, and settlements that depend on political factors, are easy to find in industrialized societies, as well as agricultural ones.

Accepting bribes, of course, is another classic way for a judge to use his office for ends other than the simple settlement of disputes. Ottenberg (1967) examines the question of bribery and corruption in local government in southern Nigeria. He treats it as a social phenomenon, not as a moral matter. Using M. G. Smith's definition of corruption as "the use of public office or authority for private advantage and gain," Ottenberg develops the argument that corruption is the natural result of the interaction of two political systems in a society, the consequence of contact between two quite different political styles. He sees as inevitable in countries undergoing change a considerable discrepancy between what is legal and what is actually done in the way of political behavior. He emphasizes that in Nigeria bribery brings relations with strangers into line with traditional patterns of gift giving and reciprocity standard among kinsmen and familiars. He argues that bribery is thus in certain social circumstances the guarantor and regulator of secure relations between strangers. But having pursued that line of argument, Ottenberg asks whether corruption is not universal, exsiting in all societies but varying in form.

Some of the questions examined in Ottenberg's paper have to do with different social or cultural *views* of what is proper behavior, and some have to do with the *objective existence* of the phenomenon of the use of office for personal gain. It follows that if there are two distinct political styles in contact, persons committed to one will think that people committed to the other are behaving improperly. This is certainly likely. But the meaning of such culturally or socially determined moral judgments is distinct from the question of whether there is regular personal exploitation of political office or authority. These may be two very different matters. Had the distinction between cultural attitudes and objective behavioral phenomena been maintained throughout the paper, the discussion would have been clearer. As it is, Ottenberg does not always explain which he is discussing. He has, however, made some interesting comments on a practical problem that has considerable analytic significance.

Inheritance and the sorting of competing claims. There are certain

competing claims that regularly come to a head through an event that is not in itself part of a dispute. A redistribution of property, positions, or rights may be necessitated by events like a death, a marriage, the accession of a new officeholder, or the moving of settlers to new lands. Competing claims like these may be handled institutionally by a meeting of claimants and others to work out an allocation of rights. Unlike the procedures mentioned earlier, these meetings do not occur because of some existing dispute, but the claims they concern inherently involve the kind of competition that is likely to boil up into a confrontation and a fight. This kind of event has received a great deal of attention in anthropology. But it has seldom, if at all, been treated as a topic related to processes of dispute settlement and mechanisms of dispute prevention and control. It certainly merits this treatment.

A common social institution of this kind is the meeting of kin to arrange the distribution of a decedent's property. Some societies have an explicit set of rules governing how this is to be done, who are to be the primary recipients of property and prerogatives, and who are to be the contingent heirs. But in other societies the matter of distribution may be mostly left to the discretion of specific surviving kin. Shepardson and Hammond (1966) have examined Navaho inheritance patterns. Having been told by one informant that "every family does it differently," they tried to discover what variables affected the decision. The paper mentions a few cases, but does not report any figures on the patterns of distribution, so that the paper is essentially a description of the variables that may affect each case, and a discussion of those aspects of Navaho life that are assumed by the authors to militate against more rigidly formulated rules of inheritance. Shepardson and Hammond see the Navaho inheritance pattern as one that tends to disperse rather than preserve intact the assets of any decedent, and they relate this dispersal to other economic conditions. Their approach is to rationalize Navaho inheritance in terms of present Navaho social and economic organization, and then show how the two fit together.

If anyone ever doubted the intimate links between inheritance and social structure, Goody's *Death, Property, and the Ancestors* (1962) has surely removed this doubt. But to study the rules by which the

property and statuses of dead persons *should be* distributed in a particular society according to expressed local norms, and the even greater number of ways in which these holdings *are* actually distributed, may be more than an exercise demonstrating congruence between institutions. Analytically, the study of inheritance can include variation and change as often as stability.

Since inheritance is one way to maintain social continuities, inheritance practices in a changing society are likely to reflect the extent to which continuities are in fact perpetuated by this means, as well as the margin of change or variation accommodated. M. G. Smith (1965a) has raised these questions of interpretation in the very complex setting of Hausa society. He describes how indigenous Hausa rules, Maliki Moslem law, and colonial Nigerian statutes and ordinances have interwoven, so that the Hausa actually practice many modes of inheritance and succession at the same time. If one recognizes the elements that have produced these variations during the last century and a half, one is forced to consider Hausa inheritance practice as expressing the relation between continuity and change. Smith argues that Hausa society is in a state of moving equilibrium, and that its inheritance laws reflect that structural condition.

The contention that legal norms should be looked at in a historical perspective is extremely important for the understanding of legal institutions—and, by implication, important for the study of other norms and institutions. This kind of investigation is not possible everywhere; but even where it is not possible to reconstruct the past, an awareness of the past's importance is a safeguard against the most simplistic, causal explanations, which take simultaneity in time as certain evidence of "functional" or "causal" connection. Laws of inheritance that appear to be reproducing a social situation from generation to generation may in fact be accommodating changes that are not acknowledged as such. Declarations that there has been continuity of legal norms over the generations are not necessarily an indication that such as been historically the case. The past may be formally invoked to legitimize the present; yet actual practices may be only selectively perpetuated, and change may be accommodated under the cloak of ancestral custom.

Certain papers in the Derrett (1965) volume on inheritance and

succession in Nigeria—particularly those of Ottenberg on the Afikpo Ibo, Harris on the Mbembe, and P. C. Lloyd on the Yoruba—are solid descriptive essays on the way in which inheritance and succession reflect basic social relationships, and in some cases accommodate changing conditions. Ottenberg suggests a typology of systems of inheritance and succession based on the extent to which the two reflect prescribed full role-succession, and conversely on the extent to which succession and inheritance are separable and not "automatic." Harris describes how the Mbembe all express the wish that movable goods were inherited agnatically, but continue to pass them on matrilineally, as they do land, despite conditions of land shortage. Like Colson (1966), Harris describes the operating context of the rules, and gives statistical data on the ways in which men acquire land. Lloyd's paper is a brief description of the organizational background and rules relating to the Yoruba concept of family property. He has expanded on this subject elsewhere, and has also produced a very detailed and useful volume on Yoruba land law (P. C. Lloyd 1962). But the paper in the Derrett collection that attempts to draw together the largest theoretical implications of laws of inheritance and succession is that of M. G. Smith (1965a), whose emphasis on historical depth provides a dimension that complicates the facts but clarifies the analytical issues.

LEGAL NORMS AND SOCIAL CHANGE

Theoretical Questions

Classic discussions in jurisprudence and sociology sometimes oppose the Austinian imperative concept of law to one or another version of a consensus theory. The consensus theory suggests in some form that law resides essentially in the minds and practices of people in a society, rather than in the compulsion imposed by statutes and "commands of the sovereign." Since anthropologists have, on the whole, operated in societies where written law is minimal or nonexistent, they have not been troubled by any lack of congruence between statutes and practice, and are seldom concerned with law as the command of a sovereign. Pospisil (1958) is the only anthropologist who has strongly emphasized the authoritative element in law, and Schapera (1943) is the only one to have dealt at all extensively

with legislation. Anthropologists have coped with the difference between stated norms and observed practice by absorbing both into ideal-real or multiple-norm models.

Many lawyers and law professors view law as an instrument for controlling society and directing social change, but most anthropologists are concerned with law as a reflection of a particular social order. This difference in perspective has had considerable effect. An article that describes some of these classic dilemmas is Clifford-Vaughan and Scotford-Norton's "Legal Norms and Social Order: Petrazycki, Pareto, Durkheim" (1967). It is revealing, though a very general discussion, because it touches on all of these questions rather unselfconsciously. In particular, it describes Petrazycki's view that law is both a prescriptive and descriptive device, i.e., that norms both reflect and direct social organization.

As anthropology becomes more preoccupied with the insights that the study of society over time can give it, we may expect that law will be considered more often in this complex double image; and we may come to know more of the conditions that determine when law reflects and when it directs. We may expect not only extended case studies of the kind that Epstein (1967) calls for, but more studies of legal norms and rules in changing circumstances. One of the most important recent papers on law, I think, is written along these lines: Elizabeth Colson's "Land Law and Land Holdings among the Valley Tonga of Zambia" (1966). Colson confines herself to the evidence, and does not pursue the considerable theoretical implications of what she has described. She shows that even though three Valley Tonga villages experienced fundamental changes in the pattern of land tenure when they were moved from their traditional area to a new one because of the construction of the Kariba Dam, they did not recognize any change in their land law. Furthermore, at none of the times she studied the Tonga could the system of land tenure be regarded as a "stable equilibrium based on the functioning of the land rules." Rather, the land tenure system was always unstable, changing with land conditions, the extent of exhausted land, the amount of fallow, etc. Nevertheless, whether subjected to gradually changing land conditions or to the sudden changes caused by the dam, the Valley Tonga did not alter one whit the legal rules governing land tenure.

The legal rules of tenure in the Tonga situation had to do with the

acquisition and use of land. They bestowed different rights depending on the mode of acquisition—whether through kin (maternal or paternal), through use, as in the case of previously unoccupied bush land. As one might expect, when Colson examined figures for two years before and for five years after the population had been moved, she found that the proportion of land acquired from kin had shrunk dramatically from one period to the other, and that the land acquired by cultivating open bush had increased enormously. The system of "norms" could accommodate this change without itself changing. The story Colson does not tell at length, but alludes to briefly and tantalizingly, is that having to do with why the new lands after the move were treated as bush lands under the old rules, though headmen, chiefs, and administrators had argued that *they* should be permitted to distribute the land. The construction that the old legal rules relating to bush land should apply to new territory, rather than some scheme of distribution through officials, would seem to indicate that there were political implications in maintaining the traditional legal rules and not permitting innovation in modes of land allocation.

Whereas Colson's paper deals with a socioeconomic change from which certain legal rules emerged unchanged, Caplan (1967) has written a paper describing the socioeconomic changes that resulted from the alteration of legal rules. He traces the effects of government land legislation and other circumstances on the status of local headmen in the Limbuan region of Nepal. In the eighteenth century local headmen had granted land to immigrant settlers; in the nineteenth century the status of these lands was changed, so that they were held directly from the state and not through local headmen. At present, many headmen are no better off than their followers, and a group of Limbu, grown affluent through military service, have usurped most of the power and influence of the Limbu headmen by buying control over extensive lands through the purchase of mortgages.

Caplan's very modest conclusion is that factors outside the small-scale social arena normally studied by anthropologists must be taken into account to explain local circumstances. He is certainly right about this. The historical material in his paper, however, has other interesting implications. It touches on, but does not analyze, questions relating to the way in which legislation affects political control and

the extent to which the legislative power is used to this end in different kinds of polities. Caplan's material implies that local political power in the Limbuan region is closely connected with control of land. It would appear that there were at various periods two avenues to that control, one administrative, the other economic. Looking at the material as a problem in the social setting of law (though this was not Caplan's focus) opens many theoretical issues about the relationship between the respective rules of law relating to administrative and to economic control of property. Gluckman's (1965b, 1969) distinction between estates of administration and estates of production in land can be effectively extended and exploited in analyzing this kind of material. Questions about the circumstances under which effective political power relates to legal rules affecting one or the other might be very illuminating if answered in a comparative framework.

Questions of Policy

Land reform. Surely one of the most chewed-over questions of policy affecting the primarily agricultural parts of the world is that of the redistribution of land and changes in the land law. From the UN down, there has been a constant search for viable ways of improving present landholding systems to make them more productive—and in some places less politically explosive. Legislation is the most commonly considered technique for making these changes. There is an enormous literature on this subject, and more books and papers are constantly appearing. (Aktan 1966, Apthorpe 1964, Blok 1966, Feder 1967, Ruilliere 1966, Simpson 1967, Thambyahpillai 1966). Anthropologists may not have much of a hand in making the policy decisions that will determine political attempts to deal with the problem, but they will doubtless have many opportunities to study a subject they have somewhat neglected: the legislative introduction, and the consequences, of planned change. On the whole, applied anthropology has most committed itself to examining these matters; but the more academically and theoretically minded may well find research problems in it during the years to come, especially when there are more and more attempts to produce planned change among the very peoples that anthropologists have studied in the past.

Rosenberg's "Maori Land Tenure and Land Use" (1966) reviews the question of whether legislation originally designed to protect the indigenous Maori land-tenure systems from exploitation is now interfering with Maori economic development. Rosenberg argues that complete security of communal land tenure may not be the optimum arrangement for economic development, since it prevents the mortgaging of land and hence prevents Maori from gaining the capital needed for development. He examines the two alternatives of individualizing land tenure and incorporating the joint owners, and favors the second. For anthropologists interested in law, the attempts at handling such practical problems provide the closest thing to a laboratory experiment available in real social action. Rosenberg's article is not a before-and-after study like Colson's (1966), but rather a prelegislative recommendation for a particular policy.

Reform of family law. Freedman's "Chinese Family Law in Singapore: The Rout of Custom" (1968) touches on two fundamental matters: the complexities of law in plural societies and the uses of culturally and politically founded models of the family in judicial and legislative action. In the colonial period the Chinese in Singapore were not considered indigenes, and were hence considered to be subject to English law, modified to accommodate certain features of their institutional life. Freedman demonstrates the curious consequences of combining an English family model and an imprecisely known Chinese family model in deciding court cases. Judges recognized the structure of the Chinese family to some extent, but here and there they applied English law to it. The resulting mélange was neither English nor Chinese. Polygamy, for example, was recognized as one of the facts of Chinese life; but by some curious application of British ideas of equality, concubines and secondary wives had the same legal status as major wives. Freedman details the comic oddities that ensued from this vaguely defined attempt to apply the family law of England to the Chinese family.

Complicating new elements are added to an already knotty subject when Freedman explains that two years after Singapore became self-governing, it passed a piece of legislation called "The Women's Charter," which was supposed to give women instantaneous equality with men in all (legislatable) matters. The Charter proposed a sort of ideo-

logical redesigning of the family. Freedman reviews the provisions of the statute, and argues that it is essentially "English law justified by the principles of Asian socialism." He is understandably skeptical about whether this attempt to create a new form of the family by legislation will succeed, and indicates what is known of the Charter's effect since its passage.

Freedman's article is stimulating not only because of the peculiarities of the Singapore situation, but because that very situation suggests a research problem of wide current application: the study of the preconceived models of society on which judicial and legislative action are founded. Attempts to remold society through legislation presume ideas of what society is, how it works, how it can be changed, and what it should be. Although judicial innovation and legislation by no means always have the intended effects, the models on which they are based imply a way of looking at social life, and a "folk" sociology of change implicit in legislation, that may be a way of finding out more about the relationship of ideas to social action.

Buxbaum (1968b), like Freedman, has written on Chinese family law in a common-law setting, but he extends the comparison, discussing Chinese law in all of Malaysia. He has also edited a volume (Buxbaum 1968a) that includes this and several other papers, all presented at a 1964 conference on family law and customary law in Asia. Most of the papers are not sociological studies, but descriptions of legal rules; many describe statutory enactments that have sought to codify or change the customary law of the family. Some of these papers are interesting sociological documents in themselves. For example, S. Takdir Alisjabbana, writing on "Customary Law and Modernization in Indonesia," rejects customary law out of hand as archaic and backward, and looks to modernizing legislation to stimulate and guide social growth. This attitude toward legislation as an almost magical instrument of rapid reform is one characteristic sector of thought in many countries, developing and industrialized, and as indicated above, is itself a ready-made field for investigation.

The definition of group membership. In plural societies in which different customary laws apply to the affairs of different corporate groups or social categories, and in societies in which certain groups are singled out for preferential or discriminatory treatment, one must

define what constitutes membership in a group. This is a legal problem very closely tied to a sociological one. Galanter (1967) discusses it with relation to the "scheduled castes, tribes, and backward classes of Indian society." Indian legislation has authorized the government to bestow special benefits and preferences on persons belonging to these groups. Peck (1967) deals with Philippine legislation that restricts the privilege of conducting retail trade to citizens, thus discriminating against local Chinese merchants. Derrett (1968b) discusses the judicial difficulties in determining whether a person is or is not a Hindu for the purpose of applying a law. In the world of multitribal and other plural societies, group and category membership will frequently crop up as a legal problem with policy significance. Cases and legislation involving this issue cannot help but be loaded with information and insights into changing facets of social structure. Decisions in "conflict of laws" cases are always policy decisions at bottom.

The codification of customary law. In recent years there has been a running battle in some of the developing countries over the extent to which customary law should be reformed or rejected, or if preserved, by what means it should be recorded and standardized. A number of countries, having decided that customary law should be written down, have started official schemes for doing so. A great impetus has also come from academic quarters. In 1959 Professor A. N. Allott, at the School of Oriental and African Studies of the University of London, established the Restatement of African Law Project with support from the Nuffield Foundation. This project is still in full swing ten years later, pursuing the enormous task of trying to set down in writing the customary laws of African peoples. Allott himself is a veritable factory of papers on the project and its implications and on the future of customary laws in Africa (Allott 1966, 1967a–b). He clearly feels that the project is contributing to the acceleration of an evolutionary process: "The trend towards crystallization and abstraction of legal rules in Africa is merely part of a universal movement in legal history, which has equally affected European systems of law in the course of their evolution" (1967b: 13). With great charm and accuracy, he says that customary law appearing in quasi-statutory and precise form is "processed law," which "like processed cheese

. . . has got quite a different flavour and appearance from the original article" (1967b: 5). It remains to be seen whether this transformation of form will have the effect of changing more than the form. It might, for example, restrict the adaptability of customary law to rapidly changing social conditions. If so, it might have the effect, not of accelerating legal development, but of slowing it up. The Restatement program gathers its information on customary law by using such written materials as exist, and by assembling law panels where hypothetical cases are put to knowledgeable persons, who are asked what the governing rules are. Allott is well aware of the objections by anthropologists that law is incomprehensible outside of its social context, and hence that it cannot be fully investigated except by means of field work. But he replies that he is working on an applied problem with clear time limits; and that of the practical alternatives, the Restatement is the best course available. He rejects Bohannan's argument that one cannot give a satisfactory account of the customary law unless one uses indigenous terms, and seeks to set out the general requirements of a legal terminology—most of them quite pragmatic, such as precision, convenience, and conformity with prior usage. But he also acknowledges that on occasion there can be very difficult problems of translation.

CONFERENCES AND COLLECTIONS OF PAPERS

Books of papers given at interdisciplinary conferences are beginning to abound. Lawyers can be found talking about social contexts, and anthropologists about legal rules. Papers on wildly different kinds of society appear in the same volume, having in common only that they have to do with the law of the family, or that the peoples they concern are found on the same continent. They are not often linked by analytical problems, but rather by geographical areas or by topic (land, family, inheritance, etc.). I usually find it dizzying to read such books of papers through, and I wonder if it is some personal incapacity, or whether they were not meant to be read through, but rather to be sampled from time to time according to interest, which seems more sensible, whatever was intended. Some of them seem to have been assembled without any thought of possible readers.

Mixed assortments of papers, like boxes of filled chocolates, are bound to contain some one does not want. It does not take much practice to distinguish the caramels from the violet creams among conference papers. When the subject discussed is "What are the rules of law?" rather than "What is the relationship between those rules and their social milieu?" the writer (whether anthropologist or lawyer) has moved away from the central analytic concerns of social anthropology. Yet such rules are an essential part of any thorough ethnographic description. Is all law then anthropology? Surely all law is the raw material for anthropological analysis; but descriptions of laws as such, important, interesting, and numerous as they are, are not pieces of sociological analysis.

Some articles appearing in collections of papers have been mentioned in various parts of this review of recent literature, but it may be useful to describe a few of the collections themselves, since the subjects on which conferences are held and books organized are some indications of the locus of current activity.

Two groups of papers published earlier than the past two years should be noted: Nader's *Ethnography of Law* (1965b), and Kuper and Kuper's *African Law* (1965). Both contain more papers by anthropologists than most such assemblages of legal essays, and each has an introductory essay of theoretical interest. Nader's introduction is a brief general review of the literature in the law-anthropology field. The Kupers' introduction discusses general subjects of the papers in their volume: the diversity of indigenous legal systems in African societies, the complexities of law in colonial plural societies, and the problems inherent in the attempts of the new national governments of Africa to use law to unify and shape society. The inescapability of the very complex historical dimension, and the perpetual presence of change, is the most pervasive theme in the book.

A more recent book of papers, which displays a staggering amount of specialized erudition, is Anderson's *Family Law in Asia and Africa* (1968). The book contains fourteen lecture papers by members of the School of Oriental and African Studies and some guests. Their societal subjects are very diverse, and scarcely connected. All the papers deal with matters that would interest an anthropologist, but most are more legal than sociological in approach. I have already discussed Freedman's paper in this volume.

Another recent collection is Buxbaum's *Family Law and Customary Law in Asia* (1968). Unfortunately, its essays are even more removed from any sociological orientation than those in the Anderson volume. Buxbaum's introduction, however, discusses customary law in the developing countries in terms of Weber's classifications, pointing out some of the shortcomings of Weber's types but using them with modifications. Buxbaum pleads for the organic growth of law from traditional institutions toward modernization, and speaks against the wholesale importation of inappropriate alien legislation, however "modern." Buxbaum also edited an issue of the *Journal of Asian and African Studies* that has now appeared in book form (Buxbaum 1967a, 1967b). A number of papers in that volume have been mentioned here; with the exception of Ottenberg's (1967), most are not particularly sociological in approach. Buxbaum introduces them as dealing with various aspects of law in "modernizing" countries. In short, they are only tenuously linked with each other, dealing with such varied problems as the publicizing of legislation, bribery and corruption, mediation and conciliation procedures, and legally defined group membership.

Max Gluckman's *Ideas and Procedures in African Customary Law* (1969) is a really thoroughgoing editorial attempt to put out a book of legal conference papers and pull it together with a lengthy introduction that combines material from the conference discussions with material from the papers and tries to set them out in some meaningful relationship. The 78-page introduction by Allott, Epstein, and Gluckman discusses courts, procedures, and the problems of research, as well as some conceptions used in African substantive law. Its style suffers a bit from committee production, and somewhat from having combined small pieces of such a vast number of things. However uneven, it is a worthy attempt at a difficult task that too many conference editors avoid. Half the people at the Addis Ababa meeting (where the papers were originally presented) were lawyers; the remainder were predominantly anthropologists, and there were a few persons from other disciplines. The papers are mainly descriptions of legal rules and practices rather than sociological treatments. Since it is almost impossible to make generalizations about so vast and varied a geographical unit as Africa, the introductory discussion attempts to settle on some classifications of data and to define some general problems

into which the minutiae of the papers fit: the concept of legal personality in African law; the question of whether one can work out a fairly simple, comprehensive classification of modes of inheritance and succession; and the classification of rights in land, is particularly the different participants' views of Gluckman's ideas about the hierarchies of estates of administration that lie above a basic estate of production. There is also some discussion of marriage and divorce, liability and responsibility for injuries, and the indigenous African law of contract. As in all such collections, the papers are uneven in quality; but they are bound to be much more meaningful to any reader by having been presented in a general framework.

FUTURE DEVELOPMENTS

Future law studies in anthropology are likely to place more emphasis on the development of cases and on the development of legal rules and procedural practices through *time*. This is partly because of the analytic problems that are thrust upon anthropology by a rapidly changing world. It is also partly because it is the obvious next step after the kind of ethnographic work that has already been done. The foundation from which the field is proceeding consists essentially of two elements: abstracted models of systems of social relationships (called variously social structures or institutions), and the abstracted rules and ideas that are the framework of these models. In law, as in other fields, these abstractions or generalizations are now in the process of being broken down into their social action components. Generalizations about law, and about the rules, ideas and procedures of dispute settlement have often been abstracted from case materials in the past. These case materials as well as the kind of generalization they were used to generate are now likely to be reset in the social nexus from which they arose. Cases will be considered in greater detail, as microcosms of dynamic interaction, and also as a part of both short- and long-term processes of institutional continuity and change.

Although the dimension of time was by no means absent from the works of the six principal writers described in the Introduction to this review, they were mostly occupied with generalizing about the operation of a particular institutional system at a particular moment, the

period of field work. In 1967, Gluckman, speaking retrospectively in the new edition of his *Judicial Process among the Barotse,* said that in it he had approached each case as an isolated incident before a court; but that he now considered that the next step must be the intensive study of processes of social control in a limited area of social life viewed over a period of time. This emphasis on detailed, temporally extended case studies also implies a focus on processes of change. We are likely to see more historical investigations of institutional change over periods of varying length. In the past, with the notable exception of Schapera (1943), anthropologists gave little attention to legislation. The preoccupations of the developing world and of the current periodical literature indicate that this is not likely to continue. Legislation will not long be ignored in a field concentrating on change and having a geographical bias toward the newly independent countries. And once legislation comes firmly within the purview of the legal anthropologists, they are likely to open the vast legal avenues to the study of political systems, instead of confining themselves to dispute settlements, rules, and ideas.

Just as attention to the dimension of time is bound to increase the number of analytic problems perceived, just so are problems likely to be opened by the current attitude toward the collection of detailed quantitative data. For example, it is important to know not only what the rules are concerning the transfer of land, but also how often it is actually transferred. Legal rules must be understood outside the dispute situation in the setting of practices in ordinary life. The studies published in the past sometimes gave figures on the number of cases of particular kinds that came before the courts or other dispute-resolving bodies, but why some kinds of matters are more often in dispute than others has not been gone into at all deeply; nor do we know between what sorts of people and in what sorts of situations these disputes are likely to arise. The opposite situation is equally unexplored: what kinds of matters and social situations do not produce dispute? In some social contexts the incidence of dispute may indicate the points of serious tension in the social fabric. In others deep conflict may not come out in this form, and disputes may be no more than the occasional eruption in a legal forum of ordinary orderly competition. Much more needs to be known about these questions.

As for legal concepts, some discussions in the past have focused on deciding whether to look on them as cognitive categories that shape behavior, or whether to look on them as abstract reflections of social and technological conditions. Surely legal ideas can be both or either at the same time. But there is a third component that changes the significance of the first two: the way in which allusions to these legal ideas and legal norms are used and manipulated in particular social situations to legitimate or discredit behavior, to affect social relationships, and to communicate all manner of messages. Legal ideas, principles, and rules together are used in many ways in social life. They cannot be thought of simply as unambiguously defining, prescribed and proscribed behavior. An important use of these ideas, well recognized by lawyers in their daily work but mostly ignored by anthropologists, is the operation of legal concepts as a manipulable, value-laden language and conceptual framework within which behavior may be described or classified for any number of instrumental purposes. Not only case studies and institutional studies extended in time, but case studies and historical studies expanded in *conception* will increase our knowledge of the relationship between the institutional frameworks, the frameworks of discussion, argument, and conception, and the level of action.

To summarize: The classical task of legal anthropology has been to understand the relationship between law and society. The general goal in the past has been to identify the kinds of societies in which certain legal institutions appear, and to examine the kinds of legal procedures, norms, principles, rules, and concepts that are found under given social conditions. These interests continue. But a shift that is now under way in some quarters is partly a shift in method, partly a shift in problem. There is a new emphasis on sequences of events—on legal transactions, disputes, and rules seen in the dimension of time. Case studies of this kind bring the minutiae of social interaction into focus and thereby reveal certain general processes in detail, whereas historical studies illustrate large-scale continuities and changes. In this context legislation appears as one of a number of forms of structural innovation. In the future, law and legal institutions are likely to be analyzed simultaneously from a long-term historical perspective, and from the perspective of individual-centered, short-

term, choice-making, instrumental action and interaction. Cases already epitomize this duality and its concomitant unity. When both of these levels are given further attention, and when quantitative data are assembled, anthropologists may hope to understand more about the way in which legal institutions, rules, and ideas function as part of the framework within which ongoing social life is carried on, and how the processes of social life affect that very framework.

BIBLIOGRAPHY

Aktan, R. 1966. Problems of land reform in Turkey. *Middle East J.* 20 (3): 317–34.

Alisjabbana, S. Takdir. 1968. Customary law and modernisation in Indonesia. In Buxbaum 1968a.

Alliot, M. 1967. Problems of the unification of African laws (in French; English summary). *J. Afr. Law* 11 (2): 86–98.

Allott, A. N. 1966. The codification of the law of civil wrongs in common-law African countries (German summary). *Sociologus* N. F. 16 (2): 101–22.

——— 1967a. Law in the new Africa. *Afr. Aff.* 66 (262): 55–63.

——— 1967b. Law and social anthropology, with special reference to African laws (German summary). *Sociologus* N. F. 17 (1): 1–19.

Anderson, J. 1966. Family law in Asia and Africa. London: Allen and Unwin.

Apthorpe, R. O. 1964. Opium of the state—Some remarks on the law and society in Nigeria. *Nigerian J. Econ. and Soc. Stud.* 6: 139–53.

——— 1966. A survey of land settlement schemes and rural development in East Africa. *E. Afr. Inst. Soc. Res. Conf.*, Jan. 1966. E, 786–810.

Aubert, Vilhelm. 1963. Researches in the sociology of law. *Amer. Behav. Scientist* 18: 16–20.

Banton, Michael P. 1964. The policeman in the community. London: Tavistock.

Barkun, Michael. 1968. Law without sanctions. New Haven and London: Yale Univ. Press.

Barnes, J. A. 1961. Law as politically active: An anthropological view. In G. Sawer, ed., Studies in the sociology of law. Canberra: The Australian National University.

——— 1969. The politics of law. In Douglas and Kaberry, eds., Man in Africa. London: Tavistock.

Barton, R. F. 1919. Ifugao law. Berkeley: Univ. Calif. Press.

Beattie, J. 1957. Informal judicial activity in Bunyoro. *J. Afr. Admin.* 9: 188–96.

Beidelman, T. O. 1961. Kaguru justice and the concept of legal fictions. 5 (1): 5–20.

——— 1966–67. Intertribal tensions in some local government courts in colonial Tanganyika. *J. Afr. Law* 10: 2, 118–30 and 11: 1, 27–45.

Bibliography of African Law. Published annually in the spring edition of the *Journal of African Law*, official organ of the International African Law Association. London: Butterworth.

Blok, A. 1966. Land reform in a west Sicilian latifondo village: The persistence of a feudal structure. *Anthrop. Quart.* 39 (1): 1–16.

———, ed. 1967. Law and warfare: Studies in the anthropology of conflict. New York: Natural History Press.

——— 1965. The differing realms of the law. In Nader 1965: 33–42.

———, ed. 1967. Law and warfare: Studies in the anthropology of conflict. New York: Natural History Press.

Brown, D. 1966. The award of compensation in criminal cases in East Africa. *J. Afr. Law* 10 (1): 33–39.

Butt, A. 1965–66. The shaman's legal role among the Akawaio. *Rev. do Mus. Paulista* N.S. 16: 151–86.

Buxbaum, David C. 1967a. Introduction to a special issue on traditional and modern legal institutions in Asia and Africa. *J. Asian and Afr. Stud.* 2 (1–2): 1–8.

———, ed. 1967b. Traditional and modern legal institutions in Asia and Africa. Leiden: E. J. Brill. Reprinted as a book from *J. Asian and Afr. Stud.* 2 (1–2).

———, ed. 1968a. Family law and customary law in Asia. The Hague: Martinus Nijhoff.

——— 1968b. Chinese family law in a common-law setting: A note on the institutional environment and the substantive family law of the Chinese in Singapore and Malaysia. In Buxbaum 1968a.

Caplan, L. 1967. Some political consequences of state land policy in East Nepal. *Man* 1 (2): 185–90.

Carlston, K. S. 1968. Social theory and African tribal organization: The development of socio-legal theory. Urbana and London: Univ. Illinois Press.

Clifford-Vaughan, M., and M. Scotford-Norton. 1967. Legal norms and social order: Petrazycki, Pareto, Durkheim. *Brit. J. Sociol.* 18 (3): 269–77.

Colson, E. 1966. Land law and landholdings among the Valley Tonga of Zambia. *Sthwest. J. Anthrop.* 22 (1): 1–8.

Derrett, J. D. M. 1968a. A juridical fabrication of early British India: The Mahānirvāna-tantra. *Z. vergl. Rechtswiss.* 69 (2): 138–81.

——— 1968b. "Hindu": A definition wanted for the purpose of applying a personal law. *Z. vergl. Rechtswiss.* 70 (1): 110–28.

———, ed. 1965. Studies in the laws of succession in Nigeria. London: Oxford Univ. Press.

Diamond, A. S. 1935. Primitive law. London: Watts.

——— 1951. The evolution of law and order. London: Watts.

——— 1965. The comparative study of primitive law. London: Athlone Press.

Djamour, Judith. 1966. The Muslim matrimonial court in Singapore. London School of Economics Monographs on Social Anthropology, No. 31.

Durkheim, E. 1933. The division of labor in society (G. Simpson, trans.). Glencoe: Free Press.

Epstein, Arnold L. 1953. The administration of justice and the urban African. London: Her Majesty's Stationery Office.

——— 1954. Judicial techniques and the judicial process: A study in African customary law. Manchester, Eng.: Manchester Univ. Press.

——— 1967. The case method in the field of law. In A. L. Epstein, ed. The craft of social anthropology, pp. 205–30. London: Tavistock.

Fallers, L. A. 1962. Customary law and the new African states. *Law and Contemporary Problems* 27 (4): 605–31.

Feder, E. 1967. Land reform: A twentieth-century world issue. *Amer. latina* 10 (1): 96–135.

Freedman, Maurice. 1968. Chinese family law in Singapore: The rout of custom. In J. N. D. Anderson, ed. Family law in Asia and Africa, pp. 49–72. London: Allen and Unwin.

Galanter, M. 1967. Group membership and group preferences in India. In Buxbaum 1967b.

Gearing, F. 1967. Sovereignties and jural communities in political evolution. *Proc. Amer. Ethnol. Soc.*, 1967: 111–19.

Gibbs, James L. 1962. Poro values and courtroom procedures in a Kpelle chiefdom. *Sthwest. J. Anthrop.* 18: 341–49.

——— 1963. The Kpelle moot: A therapeutic model for the informal settlement of disputes. *Africa* 33: 1–11.

Gluckman, Max. 1955. The judicial process among the Barotse of Northern Rhodesia. Manchester, Eng.: Manchester Univ. Press. (2d edition, 1967.)

——— 1965a. Reasonableness and responsibility in the law of segmentary societies. In Kuper and Kuper 1965: 120–46.

——— 1965b. The ideas in Barotse jurisprudence. New Haven: Yale Univ. Press.

——— 1965c. Politics, law, and ritual in tribal society. Chicago, Aldine.

——— 1967. Introduction to A. L. Epstein, ed. The craft of social anthropology (pp. xi–xx). London: Tavistock.

———, ed. 1969. Ideas and procedures in African customary law. London: Oxford Univ. Press, for the International African Institute.
Goldschmidt, Walter. 1967. Sebei law. Berkeley and Los Angeles: Univ. Calif. Press.
Goody, Jack. 1962. Death, property, and the ancestors. Stanford: Stanford Univ. Press.
Gulliver, P. H. 1963. Social control in an African society. London: Routledge and Kegan Paul.
Gutmann, Bruno. 1926. Das Recht der Dschagga. Munich.
Harris, Rosemary. 1965. Intestate succession among the Mbembe of Southeastern Nigeria. In Derrett 1965: 91–138.
Hart, H. L. A. 1961. The concept of law. Oxford: Clarendon Press.
Hartland, Sidney. 1924. Primitive law. London: Methuen.
Hoebel, E. A. 1954. The law of primitive man. Cambridge, Mass.: Harvard Univ. Press.
——— 1968. The character of Keresan pueblo law. *Proc. Amer. Phil. Soc.* 112 (3).
Krader, L., ed. 1967. Anthropology and early law: Selected from the writings of Paul Vinogradoff, Frederic W. Maitland, Frederick Pollock, Maxim Kovalevsky, Rudolf Huebner, Frederic Seebohm. New York and London: Basic Books.
Kuper, Hilda, and Leo Kuper, eds. 1965. African law: Adaptation and development. Berkeley and Los Angeles: Univ. Calif. Press.
Liebesny, H. J. 1967. Stability and change in Islamic law. *Middle East J.* 21 (1): 16–34.
Llewellyn, K. N., and E. A. Hoebel. 1941. The Cheyenne way. Norman, Okla.: Univ. Okla. Press.
Lloyd, Dennis. 1965. Introduction to jurisprudence. London: Stevens.
Lloyd, P. C. 1962. Yoruba land law. London: Oxford Univ. Press, for the Nigerian Institute of Social and Economic Research.
——— 1965. Yoruba inheritance and succession. In Derrett 1965: 139–73.
Lowie, Robert H. 1927. Anthropology and law. In Ogburn and Goldenweiser, eds., The Social Sciences, pp. 50–57. Cambridge, Eng.: Cambridge Univ. Press.
Maine, H. S. 1861. Ancient law. London: Murray.
Malinowski, Bronislaw. 1926. Crime and custom in savage society. London: Kegan Paul, Trench, and Trubner.
Masters, Roger D. 1964. World politics as a primitive political system. *World Politics* 16: 595–619.
Moore, Sally F. 1958. Power and property in Inca Peru. New York: Columbia Univ. Press.
Nader, Laura. 1965a. Choices in legal procedure: Shia Moslem and Mexican Zapotec. *Amer. Anthrop.* 67 (2): 394–99.

———, ed. 1965b. The ethnography of law. Supplement to *Amer. Anthrop.* 67 (2).

Nader, Laura, K. F. Koch, and B. Cox. 1966. The ethnography of law: A bibliographical survey. *Current Anthrop.* June 1966, pp. 267–94.

Ottenberg, S. 1965. Inheritance and succession in Afikpo. In Derrett 1965: 33–90.

——— 1967. Local government and the law in southern Nigeria. *J. Asian and Afr. Stud.* 2 (1–2): 26–43.

Paton, G. W. 1951. Jurisprudence. London: Oxford Univ. Press.

Peck, C. J. 1967. Nationalism, "race," and developments in the Philippine law of citizenship. In Buxbaum 1967: 129–45.

Pospisil, Leopold. 1958. Kapauku Papuans and their law. Yale University Publications in Anthropology, No. 54. New Haven: Yale Univ. Press.

——— 1967. Legal levels and multiplicity of legal systems in human societies. *Conflict Resolution* 11 (1): 2–26.

Radcliffe-Brown, A. R. 1952. Structure and function in primitive society. London: Cohen and West.

Rosenberg, G. 1966. Maori land tenure and land use: A planner's point of view. *J. Polynes. Soc.* 75 (2): 210–22.

Rudolph, L. I., and S. H. Rudolph. 1965. Barristers and Brahmans in India: Legal cultures and social change. *Comp. Stud. Soc. and Hist.* 8 (1): 24–49.

Ruilliere, G. 1966. Land reform: The great challenge of the XX century (in French; English summary). *Civilizations* 16 (4): 442–59.

Schapera, I. 1938. A handbook of Tswana law and custom. London: Oxford Univ. Press, for the International African Institute. (2d ed. 1955.)

——— 1943. Tribal legislation among the Tswana of the Bechuanaland Protectorate. London: London School of Economics, Monographs in Social Anthropology, No. 9.

——— 1957. Malinowski's theories of law. In R. Firth, ed., Man and culture: An evaluation of the work of Bronislaw Malinowski. London: Routledge and Kegan Paul.

Schiller, A. A. 1965. Law. In R. A. Lystad, ed., The African world [a survey of social research]. London: Pall Mall Press.

Schubert, G. 1964. Judicial behavior: A reader in theory and research. Chicago: Rand-McNally.

Schwartz, Richard D., and James C. Miller. 1964. Legal evolution and societal complexity. *Amer. J. Soc.* 70: 159–69.

Shack, W. 1967. On Gurage judicial structure and African political theory. *J. Ethiop. Stud.* 5 (2): 89–101.

Shepardson, M., and B. Hammond. 1966. Navajo inheritance patterns: Random or regular? *Ethnology* 5 (1): 87–96.

Shiga, A. 1967. Some remarks on the judicial system in China: Historical development and characteristics. *J. Asian and Afr. Stud.* 2 (1–2): 44–53.

Simpson, R. 1967. New land law in Malawi. *J. Admin. Overseas.* 6 (4): 221–28.

Skolnick, Jerome H. 1965. The sociology of law in America: Overview and trends. *Law and Society* (a supplement to *Social Problems*, Summer 1965), pp. 4–39.

Smith, M. G. 1965a. Hausa inheritance and succession. In Derrett 1965: 230–81.

——— 1965b. The sociological framework of law. In Kuper and Kuper 1965.

——— 1966. A structural approach to comparative politics. In David Easton, ed., Varieties of political theory. Englewood Cliffs, N.J.: Prentice-Hall.

Tanner, R. E. S. 1966. The selective use of legal systems in East Africa. *E. Afr. Inst. Soc. Res. Conf.*, Jan., E: 966–77.

Thambyahpillai, G. 1966. The right to private property and problems of land reform [in Asia]. *Int. Soc. Sci. J.* 18 (1): 69–80.

van Velsen, J. 1969. Procedural informality, reconciliation, and false comparisons. In Gluckman, ed., 1969: 137–52.