The Ethnography of Law: A Bibliographical Survey
by Laura Nader, Klaus F. Koch, and Bruce Cox

INTRODUCTION
This bibliography, a selected sample of the world's literature on law, has been prepared to encourage and facilitate contemporary social science research in law. Although a major portion of this bibliography has been annotated, we have included items that have not been available for annotation. Since this bibliography makes no pretense of being exhaustive or final, corrections and additions will be appreciated.

FACTORS THAT INFLUENCED THE SELECTION
Work by a variety of professionals is represented: (a) empirical field work on law by professional anthropologists; (b) studies by missionaries and administrators in societies where either no other material is available or the material is particularly good (e.g., sources on African peoples such as Hoffman on Sotho law, 1934, or Howell on Nuer law, 1954); (c) works by lawyers (e.g., S. Y. Seymour on South Africa, and T. O. Elias on West Africa) and judges (e.g., N. Smith on the Maori); (d) reports by travelers and lay observers (e.g., G. Feifer on Russian law, 1964); and (e) studies by a few philologists (see the German literature in particular).

We have been primarily interested in reports by first-hand observers. However, some studies based on historical records have been included (e.g., Trimborn's analysis of the Royal Records documenting native life in the New World). Works dealing solely with written laws or with codes have generally been omitted. Works dealing with conflict resolution in societies without court systems have been selectively included.

Although English and German literature is surveyed most thoroughly, a few references in French, Dutch, Portuguese, and Spanish are included (see below—Supplementary Aids). Within our language limitations we intend a world coverage of law in preliterate societies and of customary law in rural literate societies. A few classic ethnographic studies made by professional and nonprofessional observers of the Western legal scene have also been incorporated. We have not attempted to include empirical work of specific interest to sociologists such as, for example, studies of the legal profession, delinquency, drug addiction, analysis of prisons and Western legal institutions. We have consciously excluded purely theoretical treatises as being for the most part non-ethnographic.

ORGANIZATION OF THE BIBLIOGRAPHY
Since the interest in legal ethnography has been oriented to general coverage rather than "problem" or "topic," we have arbitrarily chosen to classify the items in seven broad geographic areas: Africa (excluding North Africa); Asia (including India, Japan, China, Ceylon, Burma, Asiatic Russia, Mongolia, and Formosa); Europe; The Middle East (including North Africa, the Arab states, Turkey, Iran, Afghanistan, and Pakistan); North and Central America; South America; and Oceania (including Australia, Melanesia, Polynesia, Micronesia, Indonesia, and the Philippines). We believe that it would be premature to organize this bibliography in terms of topical interest such as judicial decision making, problems of substantive law, procedure, analyses of court institutions, legal pluralism and/or contact problems. We have, however, included a brief section on cross-cultural and comparative studies.

COMMENTS ON SUPPLEMENTARY BIBLIOGRAPHIC AIDS
A. THE DUTCH SOURCES. Bibliographic references to Adatrecht (Indonesian native customary law) are compiled in:
1. Literatuurlijst voor het adatrecht van Indonesië


For good review articles see L. Adam (1948), and B. Ter Haar (1939).

B. THE GERMAN SOURCES. References to general works in German pertaining to the ethnography of law and comparative jurisprudence (theoretical, methodological, encyclopaedic) and to historical-descriptive studies in legal folklore, early codified law (including Biblical, Talmudic, and Islamic law) are compiled in:


2. *Zeitschrift für Vergleichende Rechtswissenschaft* (1878 to date).

It did not seem worthwhile to provide annotations to the hundreds of articles in this periodical that deal with primitive, Chinese, Indian, early European (Celtic, Germanic, Greek, Roman), Hebrew, and Islamic law, with legal folklore, and with a variety of topical matters. Ethnological contributions suffer from inadequate methodology, first evolutionary (Kohler et al.), later "cultural-historic" (Trimborn et al.) and from serious theoretical faults. Although only a few articles contain information that can be used in anthropological research on legal behavior, the series constitutes a valuable source for bibliographic purposes. Very few treatises concerning comparative law, written during the first quarter of this century and earlier, have escaped the notice of the editors, and many articles (particularly those by Kohler) are brief summaries and reviews of such publications. The series is thus a good source for tracing both the development of comparative jurisprudence and the ethnography of law. Extensive indexes were prepared for volumes 1 to 20 and 21 to 40; they will aid anyone interested in using *ZFVR* for purposes such as are outlined here.


More recent studies published in *ZFVR* are distinguished from earlier contributions by a more thorough and critical method. (Cf. the series of essays dealing with "early history of property," next ten references.)

Wolfgang Bauer 1961 Asia
Joseph Henninger 1959 Middle East
Irene Hilgers-Hesse 1961 Oceania
Heinz Kelm 1962 Oceania
Gerhard Koch 1959 Oceania
Irm Lang 1963 South America
Rüdiger Schott 1957 Oceania
Rüdiger Schott 1957 North America
Rüdiger Schott 1959 Africa
Waldemar Stöhr 1963 North America

C. THE AFRICAN SOURCES. Extensive bibliographies of works in African customary law, as well as the Administration’s law, can be found in The Future of Customary Law in Africa, Leiden, 1956; Afrika Instituut-Studiecentrum-Leiden (in collaboration with the Royal Tropical Institute, Amsterdam).

This volume contains papers presented at an international symposium held at Amsterdam in April 1955. The problem of adapting native customary law to changing sociopolitical conditions was emphasized. The bibliographic lists cover the Belgian Congo, the British Territories, French Territories, Portuguese Territories, the Union of South Africa, as well as Indonesian customary law. The lists include references to other bibliographies, for example, p. 291, G. H. Bousquet (1952), "Pour l’étude des droits berbères," in *Hesperis*.

See also C. K. Meek (1948), Colonial Law: A Bibliography. Oxford University Press for Nuffield College. This is particularly concerned with indigenous African systems of law and land tenure. It is arranged by area and topic. Titles are listed under topics, such as comparative law, primitive and ancient law, Hindu, and Mohammedan.

We have made no attempt to include the mass of recent publications on developing African law such as published by Sweet and Maxwell and African Universities Press in the Development of the Law in Africa series.

[D. A BELGIAN SOURCE. A beginning has been made on a projected six-volume, loose-leaf series entitled *Bibliographical Introduction to Legal History and Ethnology*, edited by John Gilissen of the University of Brussels. "... conceived with a view to providing legal historians, historians, jurists, ethnologists and sociologists with recent bibliographical information on the various aspects of the evolution of law throughout the world. An important place has been reserved for juridical ethnology. Sections are also devoted to the bibliography of colonial law,"] [GVDS*]
**SELECTED BIBLIOGRAPHY**

### Africa


**ALLOTT, A. N. 1958.** Marriage and Inheritance (e.g. wills, rules of succession) in Western Regions, Nigeria. *Journal of African Law* 2:146–139.


**BREITMAN, T. E. 1961.** The Batwa: A People in the Western Igbo Region. *Washington, D.C., Department of the Interior, Bureau of Indian Affairs.*

**BRYCE, W. 1868.** "The changing law in a society of south-eastern Ivory Coast. Includes genealogical tables.


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... the author presents a lawyer's analysis of the indigenous tribal land laws that have treated only legalists. The approach then adopted is to give a full account of the development of this law by decisions of the Courts, and of its modification by statute. It follows that the author provides a detailed study of the extent to which concepts from other legal systems, notably English, have been received and incorporated into the present Ghanaian system.


By anthropologist. Studies native courts and lineage councils in Nigeria, 1949-1952. Presents 73 cases and 9 moos in some detail. Material on procedure illustrates variety of crimes and torts. Maintains Tiv system best understood in Tiv terms, not in terms of Western legal systems. One of best ethnographic legal studies to date.


Articles on Tiv, Busonga, Gisu, Bunyoro, Karirondo, Juoro, and Alur. Cases presented for each tribe. "Homicide is a social relationship...to be understood, the social relationship between killer and victim must be seen in its institutional setting."


Brief general historical survey of preceding half-century. By British administrator of former African colonies. Divided into 3 periods: (1) parallel jurisdiction of Native British Courts; (2) 1936-1946, increased linkage with British Courts; (3) post-1946, developed interest in national systems of law in each colony.


By former Supreme Court Judge of Nigeria. Reprints "Conclusions and Recommendations" from author's survey, 1951-1953.


By Native Commissioner of South Rhodesia. Pamphlet expanded and published as The Mathona (1928).


Brief note on poizon ordeal administered with great ceremony in southern Kenya. Most concern husband-wife relationship. Chapters 5 through 11 (pp. 95-354) each devoted to topic such as husband and wife, breaking of marriage bond, and violation of a marriage. By an anthropologist.


Administrator considers customs of Ngoni, Awamba, and others. Political organization, land tenure, marriage, and deviance customs noted.


Considers change from "animistic" to Islamic rules of inheritance and succession. Detailed treatment tells what the law is.


Based on inquest files of 1,000 deaths, 1939-1953. Intensive analysis of motives.


A careful, systematic statement of both substantive rules and procedures governing marriage. Organized topically under such categories as, capacity to contract marriage, impediments to marriage, betrothal of a bachelor, betrothal of a married man, dissolution of marriage. The Ronga pay bride price (loboho) in cattle to bride's family.


By Solicitor, Supreme Court of Nigeria. "This book is primarily intended for members of the legal profession" (p. xi). Based on published cases.


Anthropologist's account of Northern Rhodesean society. There are no obvious political institutions concerned in the maintenance of order and where "control rests essentially on...a resort to vengeance" by non-corporate matrilineages (p. 199).


Contains twelve excellent family law cases. Most concern husband-wife relationship. Chapters 5 through 11 (pp. 95-354) each devoted to topic such as husband and wife, breaking of marriage bond, and violation of a marriage. By and anthropoligist.


Administrator considers customs of Ngoni, Awamba, and others. Political organization, land tenure, marriage, and deviance customs noted.

ishments (chs. 14, 17–23).


Discusses survey of non-Bantu pastoralists. On lobolo, land tenure, witchcraft.


Brief, superficial discussions of substantive rules of land inheritance and ownership, dowry, marriage, homicide, feud, vergerd. Touches none of complexity of these subjects.


Largely surveys pre-contact situation among the WaKamba, Kikuyu, and Tharaka. Considers problem of European laws in contact with African laws. European courts give new rights traditionally not upheld in indigenous system. Includes tables showing customary compensation for certain injuries. Looks at law as evolving through time by trial and error and sanctioned by custom.


Based on personal experience with the WaKamba, Kikuyu, Tharaka, Digo (of Kenya) and Seguha, Wapare, and Chaggg (of Tanganyika). Interest in revealing common features in laws of several tribes. Aims to discover principles common to entire people as whole. Claims divergent characteristics of African and European law are patent. Voluntary means of redress through arbitration, induced by expediency. Versus inextricable link of law administered by judges. Considers problem of native witnesses with regard to truthfulness and language.


Shaming party as technique for resolving marital conflict. Two firsthand descriptions of such events. Discussion of marital relations. Sources of conflicts. Sanc tions. By anthropologists.


By the Attorney-General. Based on statutes and published court decisions.


Discusses limitations of phrase—"any native law or custom not being repugnant to natural justice, equity, or good conscience.


Formerly published as "The Groundwork of Nigerian Law." Contains section on history (chs. 3–11). Attempts primarily "to present a systematic account of Nigerian Law in the form of a textbook" (p. vii). Largely based on Nigerian Law Reports.


Synthesizes existing evidence supplemented by author’s own attempts primarily "to present a systematic account of Nigerian Law in the form of a textbook." (p. vii). Largely based on Nigerian Law Reports.


[Discusses two aspects of conflict of law: (1) where there is a clash because litigants are of different tribal origins are appealing to two sets of different legal rules; and (2) where African legal notions clash with those of English law administered in the superior courts.]


One of series of publications based on author’s study of urban courts in Northern Rhodesia. Presents three divorce cases from culturally pluralistic region. States divorce law is of recent development and primarily handled by tribal courts. [Explores meaning to be given in customary law to the expression "grounds of divorce."]


Two fully-reported divorce cases show: "The approach of the African court differs markedly from its English counterpart.... The African court is more concerned with the wider implications of the relationships which link husband and wife, son-in-law and parents-in-law.


One of series of publications based on author’s study of urban courts in Northern Rhodesia. Presents three divorce cases from culturally pluralistic region. States divorce law is of recent development and primarily handled by tribal courts. [Explores meaning to be given in customary law to the expression "grounds of divorce."]


Shows present condition of customary law in an area suffering from cultural fragmentation and welter of indigenous bodies of law. Studied Busoga District, Eastern Province, Uganda, when still a British protectorate. Anthropologist describes day in court and the one case presented. Concludes system of courts has deep roots in traditional society now modified by colonial administration. Courts show flexibility but remain "efficient instrument for adjudication of disputes, particularly in spheres such as landholding and marriage which are most closely bound up with the village social order.


Brief discussion based on published sources of relationship between habitat, economy, law, and religion. Economically independent social unit, "the chem," is also most inclusive juridical unit. Its legal relations described as "a kind of either-"economic-communist-religious". Religious and legal rules, although constituting parallel bodies of norms, have same contents and influence each other.


An analysis of land rights of clans, of chiefs and of individuals, and legal aspects of land transfers, prepared by a governmental barrister who was provincial courts native officer in the province in which the Soga live. Excellent. [WGR]


Legate Kaviron (Waiga), Tallensi and Nuer by editors. Articles discussed in preface by Radcliffe-Brown. Editors and most contributors are anthropologists.


An analysis of land rights in relation to the clan system with emphasis on native practices but concern with modern usage.

Detailed and systematic analysis of a few selected cases "to establish a relation-Advancement of Science 75:439–454. An excellent and stimulating article. Surveys the process of adjudication (rather than of procedure by which, in African tribes with courts, judges take and assess the evidence, examine what they regard as the facts, and come to a decision in favour of one party rather than the other." Discusses comparison vs. cultural uniqueness approach to procedure, native ideas of jurisprudence, and general study of social control in context of societal relations.


---. 1965. The Ideas in Barotse Juris-Prudence. New Haven and London: Yale University Press. Draws more comparisons between Barotse and other tribes. Considers such topics as Barotse constitution, status and rights in land, contemporary obligation and debt. Specific cases not given. Refers and elucidates cases cited in 1955a and many articles on Barotse. Written more incisively and with more theoretical orientation.


Surveys role of law, ritual, and division in tribal societies.


GOODY, JACK. 1957. Fields of Social Control among the Lo Dagaba. Journal of the Royal Anthropological Institute of Great Britain and Ireland 87:75–104. Ethnographic account of a society of Ghana. In avoiding inter-locally conflict: "decent groups as well as local ritual congregations are important. But it is upon the ritual areas that most emphasis is laid in maintenance of social control" (p. 103).


---. 1956b. The Reasonable Man in Ba-rote Law: (I) The Case of the Elop-ing Wife. Journal of African Administration 7:127–131. 'This last case suggests that the Barotse have a picture not only of legal and customary rights of behaviour, but also a picture of the reasonable wrong-doer,... By this paradox, I sum up the fact that wrong-doers in any society also behave according to customary ways' (p. 130).


---. 1956b. The Reasonable Man in Ba-rote Law: (IV) The Case of the Dis-respectful Councillor. Journal of African Administration 8:151–156. How laws are applied to changing conditions, using the concept of reasonable compliance. This case and 5 cited above illustrate in which concept of the man used in Barotse courts.


By a former chief justice of Western Nigeria and professor of law. Outlines Nigerian criminal law (excluding Northern Nigeria) and based on criminal code of 1916 and cases.


Anthropologist reviews books by Howell (1954), Bohnmann (1957), and Gluckman (1955a). Good summaries and discussion.


Very good presentation of rules of customary law in Sotho language with German translation. Contains also rudimentary case material.


Based on Southern Rhodesian field work, 1945–1948. "Among the Bantu it is not only a question of right and wrong between the parties, but the conflict inevitably affects the community with which it is associated, and so the adjudication body, are identified in a closer unity than we conceive in our society" (p. 32).


"... attempts to catch the spirit of the law of the land, as well as an outline of its basic principles and practice, by a detailed description of a single case." Followed by an analysis.


... since the merits of the tribal system have been sufficiently deduced, especially by those who have never amended a tribal process, ... it might be useful if I gave you an idea of some of its principal characteristics.


By an African Land Tenure Officer for Kenya. Discusses problems of succession where "all immovable property ... was owned communally and not by the individual." (p. 131).


Social control in a stateless society. By an administrator, trained in anthropology. Such features as distribution of wealth illustrated by genealogical diagrams. Many points illustrated by summarized cases.


By a colonial administrator. History of introduction of jury and assessor system.


Extended comments on (above) Howman 1949a.


The oath becomes an effective means of self-defense in the hands of one who swears it. Tribes and ancestors are called as witnesses of one's grievances and as protectors of one's rights against usurpation, unjust detention, or ill-treatment. ... One party challenges the other's right by provoking the judgment and sanction of the supernatural agent" (p. 48). Based on field work, 1951–1957.


Quasi-codification of available data on property (claim, kind, acquisition, expropriation, penalties) among Masai nomads. Native application of Western legal terminology. Extensive bibliography on the Massai.


Legal status related to the actual position of Sara woman in terms of emancipation in wealth, housework.


—. 1952. Samoic Suicide or Suicide of Revenge among Africans. African Studies 11:110–140. [RS63]


Both Dr. Howell's point of view [see Howell 1954] and that of Prof. Evans-Pritchard that the Nuer had no law is correct. A largely semantic argument over whether law can precede the state.


Based on sixteen years' study of Ibo. Careful, systematic explanation of substantive rules governing land ownership, inheritance and transfer. Shows Ibo land tenure can properly be described only in relation to the social structure, and neither can be understood unless they are seen as continuous processes adapting themselves to changes in population density, to varying types of soil, and to other social and ecological conditions" (305).


Brief descriptions of Nigerian court systems in Western Nigeria. Some statistics of large number of cases decided by customary courts. Of these cases 70 percent pertain to family law and majority concern divorce. Author studied administration of justice in Western Nigeria from May to August 1961. (Previously, to prepare for civil service career, he studied law of Burako, Northern Sumatra.)


Paper pleading for "African law as the general law for all members of the African community" and "codified law for the time being only for 'modern' projects".


Brief first-hand descriptions of some of principal oaths recently or still in use in tribal courts. By an anthropologist.


Based on field work. By an anthropologist. Describes neighborhood women's council or moot. Most hears cases, evaluates, evidence, levies fine. One case discussed.


By Administrative Officer, Kenya. Native courts have assumed divorce jurisdiction contrary to traditional practice. Based on survey of 100 divorce petitions.


WERSTEN, G. 1958. Das Eigentum bei den...


This and following work (1943) discuss Lovedu judicial arrangements. Stresses reconciliation and compromise, interpretation of legal procedure. Describes khoru (i.e. court) proceedings and indicates lack of applicability of our concepts. Lovedu khoru is court-like, but not a court in our sense of term. Their law is law-like, not equivalent of our law. Few cases cited in any detail.


Based on eight years' residency. Data on social structure, economy, religion. Enumerates rules of customary law. Indicates corresponding laws of the administration.


Summary in field notes on legal concepts of the natives of the Cameroons, collected mainly by missionaries.


Discusses legal procedure oaths.


"Yoruba customary law has in fact been able to cope with modern problems without recourse to English law... by the continual reinterpretation of the basic laws in present-day circumstance" (p. 12).

For a contrary view see Coker (1958).


Letters and notes of missionaries and government officers of British Kaffraria, some dating 1846. Much sound observation.- "The laws of Kafir tribes are but a collection of precedents, consisting of the decisions of the chiefs and councils of bygone days" (p. 35). Careful descriptions of ritual, social relations, inheritance, family law, crime, and injury.


By a missionary. Four types of marriage distinguished according to mode of acquiring a wife (i.e. payment, inheritance, trial, free love). Describes their relationship to divorce. Brief paragraph on legal consequences of a marriage to spirits.


Calls for more studies of native custom like "A Handbook of Tswana Law and Customs" (see Schaper, 1938).


An argument for trying some native cases in colonial Africa under British Common Law.


A pamphlet (24 pp.).


An anthology, with "some articles written primarily for the lawyer and others written mainly for the layman" (p. vi).

NEW YORK: Oxford University Press.


For a former anthropologist of a British Colonial Government. Study of pre-contact social control among a non-Moslem people of Nigeria. Self-help, offenses, and role of age-sets.


A study of the Ibo, Southeastern Nigeria, emphasizing social and political structure (pp. 88-164). Chapters on "The Law of Marriage" (11) and "Death and Inheritance" (13). Chapter on procedure, "Law and its Administration" (10). Few cases presented.


Very general survey. 15 page sketches on Tanganyika, Nyasaland, Northern Rhodesia, Uganda, Nigeria, Ghana, Sierra Leone, and Asian colonies.


MERRICK, M. 1902. Rechtsverhältnisse und Sitze der Wadibagga. (Ergänzungsheft No. 138 zu Petermanns Mitteilungen.)


MILLER, P. 1824. Rechtsverhältnisse und Sitzen der Wadibagga. (Ergänzungsheft No. 138 zu Petermanns Mitteilungen.)


Anthropologist "recounts a number of proverb collected during court hearings, places them within their cultural and juridical contexts, and assesses their use as rhetorical devices affecting the court of justice in Anag tribal assembly" (p. 64).


A collection of six essays on political functions of segmentary lineages. Articles on Lugbara, Konkomba, Mandari, Dinka, Bwamba, and Tiv.


"To an anthropologist, though, they are rather thin as an account of what Yoruba practice actually was; they show that Dr. Coker, who is a Yoruba, is a lawyer, not a sociologist." (See Coker, 1938).


By an anthropologist. Chapter X "Government in Modern Nupe" has interesting account of law as concern of political officials also extra-political law (e.g. procedures for dealing with
religious offenses and kinship offenses).


Data from published sources. Collected by the author as Senior Political Officer, 1942. Patrons of landownership among the Agafo and Coptic Christians. English texts described in socio-ceremonial context. Much information on litigation procedure and adjudication techniques.


Discusses present and future position of Nuba law, stressing uniqueness of law and customs. Political institutions not restricted to organized government with courts. Law is what is enforced. Custom is what is not enforced.


Stimulating review article. Critical of problems relating to law studied by anthropologists. Uses works of Howell on Nuer, Ngong on Barote, and Anderson on Islamic law as illustrations.


The patterns of Africanist justice (ch. 7 especially). Thesis is justice is not impartially administered in South Africa. Account does not pretend to impartiality.


Jury's account of English and customary law. Also between customary and English law. (p. 160.)


Contains field studies of anthropologists on various African peoples, viz. M. Gesain (Comisiai), M. Dupire (People nomades du Niger), A. Laurentin (Nzaka), E. M. Albert (Urundi), S. Falade (Duka), and a general paper by A. M. D. Lebeuf.


Of little use to ethnographers.


Publishes for African Institute, pp. 173-327.

Comprehensive study by lawyer. Surveys legal and administrative aspects of marriage and divorce among Mohammedan, Christian, and tribal Africans.


By former Native Courts Advisor, Kenya. "African customary law, closely related as it is to the conditions of tribal society, is unsuitable for adoption as a territorial law." However, there may continue to be a place for customary law, confined to the sphere of family law, succession, and property held under customary tenure (p. 159).


A lawyer gives examples of contradictions between native and European courts. Discusses role for British-trained lawyers.


By Assistant Commissioner of Lands, Gold Coast. Argument for codification.


Systematic catalog of published data on African ethnography which is ordered in a crude scheme of socio-legal evolution. Index useful for finding references to early descriptions of African law. For author's theoretical outlook see 1894-1895, Grundzüge der Ethnologischen Jurisprudenz. 2 vols. (Oldenburg und Leipzig: Schlesische Hof-Buchhandlung und Hof-Buchdruckerei.)


Based on field work, 1952, among Hausa-speaking people. "Conflict develops between customary law recognizing communal ownership of land, and present law's conception of absolute ownership of land by an individual!" (p. 559).


A short pamphlet (30 pp.).


History and constitution of certain territorial divisions and other matters. By lawyer. Summarized by Hoebel (1954, ch. 9).


"Production of a uniform system of law is therefore a twofold problem: the filling of gaps in native law, including its uncertainties; and the resolution of conflicts between English law and native law" (p. 70).


RUSSELL, F. F. 1959. Eritrean Customary Law. Journal of African Law 3:59-104. Former Governor-General. This article explains complex legal situation. "Moslems are governed by Islamic Law as to family and succession, and Coptic Christians are similarly governed by their local customary laws. ...All Eritreans (including visitors) are governed by the law of the locality as to torts and rights in land" (p. 100).

SCHACHNER, ISAAC. 1938/55. A Handbook of Tsuwa Law and Custom. London, New York, Cape Town: Oxford University Press for the International African Institute. Anthropoligical study of pre-contact social control. Preface describes changes created by the special types of contact between Black and White in Bechuanaland. "Book emphasizes family (chs. 7-9) and property law (chs. 11-13). Also discusses procedure (ch. 16). No cases presented.


1956. African Women and the law in South Africa. The Listener 53 (1410): 626-627, 644. Three systems of law (customary, native, and European) pertain to native women. No system accords her status which she in fact has due to her influence, her economic independenee, and her social and political dynamism.


TANNER, R. E. S. 1955. Law Enforcement by Communal Action in Sukumaland, Tanganyika Territory. Journal of African Administration 7:159-165. Reviews social structure of the society. No distinction between civil and criminal law. Distinction between private and public delicts. Private delict defined by aggrieved individual between the parties. No recognized judicial authority in defense of his own interest, with a view of obtaining a ruling. Public delicts bring reaction from Whole Community. Most cases show actions taken by community unanimously are only against real dangers to its corporate entity.


TUFFER, SIR LEWIS. 1907. Customary and Other Law in the East African Protectorate. Journal of Comparative Legislation 7:172-184. Compilation of protective appeals cases in 1907. Mentions the Kikuyu, Waboni, Wareri, Massai, Wastana, etc. . . . The evidence goes to confirm the opinion of
Maine, that the penal law of ancient communities is not the law of crimes but of wrongs or torts—the injury being conceived as done to the individual, not to the state" (p. 175). Nothing on procedure.


[kz ]


[VERDIER, R. 1959. Essai de socio-economie des communautés is not the law of crimes but of wrongs or torts—the injury being conceived as done to the individual, not to the state" (p. 175). Nothing on procedure.


Not useful.


Asia


Based on field work in a prisoner-of-war camp in Romania, 1918. Ritual kinship and customs concerning loans and securities


Cases collected, 1826–1843, by a civil servant with East India Company. Also notes based on field work (see 1936).


Compiled by a Professor of Law at University of Madras "for the foreign lawyer who wants to study Indian law generally or specialize in a particular branch of it." Part A gives general structure of Indian legal system. Part B lists publications under such categories as personal law (Hindu, Mohammedan), civil law, commercial law, criminal law, etc.


Extended review of "The Evolution of Ancient Indian Law (see Sen Gupta 1953). "The growth of ancient Hindu law was not a linear development from one original source, the Vedas, by a process of logical reasoning and analysis" (p. 205). Discusses legal fiction, culture contact, and effects of changing customs.


Of little use.}
Hoshakaigaku (Sociology of Law) 4: 154-166.


Sociology, Lucknow University. Attempts to analyze social and economic factors of crime in India. Data derive from field work and reveals the ongoing theme is need for reform of legal code, penal institutions, and criminal tribes and castes (i.e. those in which crime is hereditary occupation). Contains chapter on operation of village council as a court.


By an anthropologist. Shows how particular religious concept, called a hoylu, is related to social control and social structure of a caste-stratified village in South India. How expression of this belief changes as other aspects of culture change.


See Adam (1950) for background of author.


Anthropologist presents cases to show mechanisms of legal change in Pakistan. Illustrates relation between religious values of society and legal reasoning of high-court decision makers. Cases do not refer to statutes or codes. Cases based on Koran or related hadith. Observes that high court seeks to "identify basic postulates of Islam and to relate them to contemporary needs through Formal National Law."


Humar. Discussion of legal records of Chinese customary law focusing on sociological context of economic relationships and legally relevant aspects of cosmic forces. Comparisons with Western ideas of justice. See also Kroker's "The Gesetz im Altertum Chinas unter Besonderer Berücksichtigung des Shang-Kün-sha," an
historical introduction to early Chinese jurisprudence (3rd century B.C.).

---. n.d. Sachenrechtliche Gewohnheiten in der Provinz Feng-t'ien (China) [Customary property law in the province of Feng-t'ien, China]. Zeitschrift für Vergleichende Rechts-Wissenschaft 62 (60): 1-84.


LINGAT, ROBERT. 1936. La Responsabilité Ord Calendar Century B.C. (French and English translation: ``Human law and the laws of Nature in India and the West'' (ch. 18).


By two anthropologists. Examines legal and political systems in two rural villages. Discusses elements in traditional systems which affect or impede panchayati raj (village tribunals) — an institution designed to make villages politically and legally autonomous...of more distant authority" (p. 1).


MCLEOD, ALAN, AND WILLIAM S. 1963. A Historical Consideration of the Family Rights Law in Ancient Japan. (In preparation)

By member of the Malayan Civil Service. Compares English and Chinese law as pertains to marriage, matrimonial property, legitimacy and adoption of children, and inheritance when the spouse is (or was) Chinese and the other is English.


Briefly describes arrangement of a Chinese court, hearing murder case in 1807. Descriptions used upon painting portray first trial at which Europeans were permitted to be present.

MUKHERJEE, B. N. 1955. Family structure and laws of residence, succession and inheritance in British India. By two anthropologists. Examines legal and political systems in two rural villages. Discusses elements in traditional systems which affect or impede panchayati raj (village tribunals) — an institution designed to make villages politically and legally autonomous...of more distant authority" (p. 1).


Based on field work, 1937. Last of a series of articles on people of Northeast Himalayan frontier of Assam, India. How village councils deal with theft, adultery, and rape.


Field work in 1937. A brief useful note on panchayat (village council) consisting of headman, assistant, and male elders of a Santal Pargana village (pop. 137) Bihar State.


Translated and revised from earlier works. Mostly describes recent codes, except for sections on social organization, state structure, punishment, family, and private property (ch. 4).


Briefly reviews Chinese substantive law and punishments. Examines similar laws, and punishments in Mongolia. Discusses differences between Mongolian law in theory and in practice. Asserts that three centuries of Chinese rule caused Mongolian law to assimilate aspects of Chi-
nese legal thought.


SCHURMANN, H. F. 1956. Traditional Property Concepts in China. Far Eastern Quarterly Journal of Asian Studies 15 (4):507–516. By an economist historian. “Two basic characteristics of property relations in totalitarian societies are: (1) maximal alienability of property, and (2) identification of property with the individual.” See Boorstin 1941 (ch. 9) on “The sacred and inviolable rights of private property” in England, which states “These inviolable rights, which would have permitted the rise of a capitalist organization for the whole society, were lacking in China” (p. 502).


Water oracles and use of cross-examination by judges are described.


“Practically all cases except cases of homicide are handled by the Panchayat. Many acts such as black magic, breaches and annulment of marriage engagements are not given serious cognizance by the Indian Law Courts, but are considered as serious offences by the tribal people.”


Concerns customary law of Lapland. Discusses system of primitive law ofAPP.


Social History of the Early Codes. Discusses in detail of "The Legal Aspect of Villageaim" (chs. 1-5, part 1) and "The Manor Courts" (ch. 4, part 2).


Attempts to show that "legal facts and ideas can be studied from a point of view which discloses new vistas for the student of language, of folklore, or religion (p. 1). Chapters on "Custom and Law," "Rights of Appropriations," "property rights. Examples from medieval and modern perspective.


Highly readable Ecary by a Professor of Jurisprudence. "Judges settled disputes and rulers issued statutes in accordance with their professional training, their political insight, and their sense of justice, but all of these operations... had to conform in one way or another to the customs of the time" (p. 319). Examples from all parts of Europe.


Considers various attributes of Muslim law. Its comprehensiveness, its synthesis of the sacred and secular, its variety within orthodoxy. Discusses modern developments—especially new family law codes in Syria, Libya, Egypt, and Turkey—problems arising from such reforms.


1964. A History of Islamic Law. Edinburgh: Edinburgh University Press. Discusses origins of Shari'a Law. Legal doctrine and practice in medieval Islam. Islamic Law in modern times. Concluding section discusses religious law and social progress in contemporary Islam. This and Schacht's (1964) are the most authoritative discussions of Islamic Law currently available in English.

to rural property, away from the Coast and beyond the 'sphere of influence' of their urban society, everywhere poorly defined" (p. 413).


Contains clear, precise statement of laws governing marriage, divorce, legitimacy (pp. 133–143). Discusses problem of unenforced code in Muslim state. Summarizes various opinions.


Studies 1:131-147. (pp. 133-143). Discusses problem of equal protection to private property and Contract in Muslim Law.

Defined "(p. 413)."

An Egyptian attorney considers such questions as: "Does Muslim law extend equal protection to private property and other rights of foreigners?... To what extent do the Muslim concepts of private property, right, and contract differ from their counterparts in modern Western systems of law?" (p. 450).


Although there is a substantial body of historical literature on formal Islamic law (the Sharia) Kenneth's Bedouin Justice stands alone as a book on law at the village or tribal level in the Middle East.


Edited by a political scientist-jurist team. Articles by Fyzeen (see also Fyzeen 1994), the editors, and others. See especially Schacht on "Pre-Islamic Background and Early Development" (also see Schacht 1950). Includes a glossary of legal terms.


Conflict between ideal and practice in past and present. A chapter on jurisprudence.


Lebanese attorney considers "the reasons for the backwardness suffered by Muslims, and the ways and means of rectification.


Discusses interpretations of religious law of two opposite schools of thought. One predicts contracts and conditions that are not authorized by a text from the law giver. Other permits all those that have not been explicitly forbidden.


Compares procedures for settling conflicts in two villages, one Mexican, the other Lebanese. Asks what factors affect choice of settling disputes by court or other means? Interested in relation between legal procedure and types of social grouping. Data suggest villages with dual organization incompatible with village court or custom system of settling conflict. Also suggest that wherever village court systems develop, secondary groupings which cross-link citizens will be found.


Quotes several law cases from a Shia Moslem village in Lebanon to illustrate how village settlement procedures serve to link rural and urban peoples.


By a legal historian, specializing in Islamic law. An earlier version of the second part of Schacht (1964).


"The evidence of legal traditions carries us back to about the year 100 A.H. only;... Islamic legal thought started from late Umayyad administrative and popular practice, which is still reflected in a number of traditions" (p. 5).


An earlier version of the historical section of Schacht (1964).


First part outlines present knowledge of history and systematic thought underlying Islamic law. Restricted to Islamic law within Sunni community. Second part systematically describes Hanafi law concerning marriage, family, inheritance, penal law, procedure. Partial bibliography (pp. 215–285). (Compare Coulson 1964.)


By an Egyptianist. Discusses record of a lawsuit. From oldest Egyptian legal document, dated to the VI dynasty.


Treats formal and informal system of social control. Based on fieldwork in two villages near Bursa and Kayseri. Discusses landholding where new laws of land tenure and inheritance are roughly consistent with informal rules, and acceptable to villagers. New marriage laws widely different from informal rules and therefore largely ignored. Concludes "when the law sets out to alter a whole body of related rules in the informal system, the more it is used as an initiating instrument of social reform, the less efficient it is bound to be as an instrument of social control, and the less it in fact achieve its aim of reform" (p. 32).

One of best papers on importation of foreign law available.

To what extent do the Muslim concepts of private property, right, and contract differ from their counterparts in modern Western systems of law?" (p. 450).

By a former missionary to Iraq. Concerns honor, vengeance, and curses.


Ritual and contractual restrictions on vengeance described by an anthropologist, e.g., "49 male members of his kindred can clear an accused homicide by swearing to his innocence" (p. 367).

North America


Fascinating study by a sociologist: "Method used in this study was to secure life histories of Indian chiefs, and thus to get at their personalities, methods, and techniques [of leadership]." Largely based on early accounts by Parkman, Henry Schoolcraft, Catlin, and others.


By two anthropologists concerned with field techniques. Describes information available through refined eliciting procedures. Presents data on ethnography of law in United States, in classification of lawyers, and in Mexico, in general statements about Iszlal Indian law. Data demonstrate advantages of sophisticated interview techniques.


By an historian. Based on law codes, newspapers, and legislative reports.


By a sociologist. Discusses gambling and its place in American culture.


[COHEN, JULIUS, REGINALD A. H. ROBINSON, and ALAN BATES]. 1958. Parental Author-
Forschungen der Sektion für Volkerkunde und Deutsche Völkskunde, 1. Berlin: Akademie Verlag.

Published source material and fieldwork collected by Julius and E. Lips among the Montagnais-Naskapi of Lake St. John, Canada. Abhandlungen und Be- richte des Sächsischen Museums für Völ­ kerkunde zu Dresden. 1947. Ethnographic monograph emphasizing economy of a harvesting people. Slight information on law, illustrating maxim "law is whatever is for the right." [ELR]


"Within what territorial limits does authority create some measure of solidarity? What is the nature of the authority encountered?" (p. 1).


Paper presented at Hamburg University on property, law and enforcement in military societies of the prairie Indians. Pertains to no specific era.

MACLACHLAN, BRUCE B. 1963. On "Indian Justice": Plains Anthropologist 8 (22):256–261. Discusses one case in detail. Based on newspaper accounts. In 1908 a Mescalero Apache who had killed a white man was tracked down and killed by another Mescalero, and shot with precept taken by Indian leaders to prevent development of inter-community feud.


NADE, LAURA, and DUANE METZGER. 1963. Conflict Resolution in Two Mexican Communities. American Anthropologist 65:584–592. Compares settlement of husband-wife conflict in two Mexican Indian villages. Patterns of authority central to an understanding of distribution of conflict resolution in settlements. In one village material conflicts are predominantly settled by a town council while other by family members. Based on fieldwork by two anthropologists.


NOON, JOHN A. 1949. Law and Government of the Grand River Iroquois. Viking Fund Publication in Anthropology, No. 12. Based largely on minutes of Iroquois Grand Council, 1546–1676, collected by ethnographic fieldwork in Ontario. chiefs adapted traditional counseling procedures of Confederacy to serve judicial purposes. Council considered "numerous" types of situations which, "are not" while patterns of reservation life were still to a large degree unformulated" (p. 6).


Critique of Patten Sorcery (Whiting 1950). "Sorcery became more important only after an external system of super­ ordinate punishment had been imposed on the pre-European system of justice"

PRITCHETT, H. R. 1957. The Underlying Sanctions of Plains Indian Culture, in *Social Anthropology of North American Tribes*, F. Eggan (ed.). Chicago: University of Chicago Press. Surveys published data on Assiniboine, Blackfoot, Crow, Dakota, and Omaha. Emphasizes role of Plains Police or military societies in maintaining order. (Also see Lowie 1943.)


---. 1954b. *Zuni Law: A Field of Values*. With an Appendix by Stanley Newman. Cambridge, Mass.: Peabody Museum Papers 43 (1). "The bulk of this report... consists of abstracts of particular cases involving acts by individuals that have led to controversy either between other individuals or with the tribal entity itself, and that have been resolved by various judicial or quasi-judicial processes" (p. 8). 97 cases before Tribal Councilor or Bow Priest, 1880-1952. Fieldwork by two anthropologists, one of whom is also lawyer. Zuni values demonstrated through analysis of case material.

STEWART, J. 1931. Basin Plateau Aboriginal Sociopolitical Groups. *Bureau of American Ethnology*, Bulletin 120. Anthropologist hypothesizes that unilineal bands of patrilinial, patricetal type develop where ecology prevents group size from exceeding 50 to 100 members and where emphasis upon hunting or other factors tend toward male dominance. Suggests theoretical counterpart is eoxogamous, localized, matrilinear band which probably developed among some primitive horticulturalists (p. 259).


MOORE, SALLY FALK. 1958. *Power and Property in Inca Peru*. New York: Columbia University Press. Excellent utilization of sources for precise information on law and government. "To inquire into land law is to start at the base of power structure and see who has a right to what. In the taxation system, the government is seen hard at work keeping itself going" (p. 12). Critical examination of early and current theories (e.g., Trimborn) and scrutinization of


---. 1955. Proposal for putting Indian lands directly under control and protection of government.

---. 1959. El derecho penal en el Iakari [Penal law among the Inca. *Civilizations 8 (18-19): 162-177*]. Based on early chronicles. Trial by combat, deportation, question of composition (i.e., whether payment to an injured party permitted, or only punishment used).


---. 1958. *Power and Property in Inca Peru*. New York: Columbia University Press. Excellent utilization of sources for precise information on law and government. "To inquire into land law is to start at the base of power structure and see who has a right to what. In the taxation system, the government is seen hard at work keeping itself going" (p. 12). Critical examination of early and current theories (e.g., Trimborn) and scrutinization of law.
available records lead to a modification of traditional views of Inca State. Appendix: "Forbidden Acts and their Penalties." By an anthropologist and lawyer.


Rich body of data presented in 104 cases collected in field, Mountain Province, Northern Luzon, Philipines. Intelligently analyzed with reference to sociological background. Dispute settlement through mediator who has power to enforce decisions. Good description of formal training of mediators. Frequent comparisons with Ifugao (Barton 1919) make this book particularly useful.

By an anthropologist. Brief summary of research later reported in Excess and Restraint (1952). "Control mechanisms operative within one district to achieve regulation, conformity, and solidarity against outsiders, support the continuation of opposition and conflict between the districts which make up this zone" (p. 106).


Fieldwork among Kamano, Unurufa, Juna, and Fore-speaking groups in Eastern Highlands of New Guinea, (1951-1953). Largely descriptive. Cases, which take up substantial part of volume, limited to incidents involving sexual aggression (see index of cases). Part 5 "Judicial Procedure" contains some good observations and acceptable interpretation. Overall coverage is questionable.


Law and Order in Aboriginal Australia in Aboriginal Man in Australia: Essays in Honour of Eumundi Professor A. P. Elkin (ed. by Ronald M. Berndt and Catherine H. Berndt). Sydney: Angus and Robertson Ltd., pp. 167-200. Briefly surveys first-hand descriptions of Australian systems of social control. Assesses two main elements in aboriginal society are (1) maintaining status quo, and (2) articulation of all social relationships in kin terms. Discusses moocs, councils, elders, courts (pp. 177-183). Notes that "principle of reciprocity" significant in all cases where attempt is made to resolve a difficulty which has arisen in ordinary course of living. Other methods of resolving disputes (pp. 186-190, 199-201). Collective action (p. 190). Some cases.


Transmission linguist (CAMA) in Balem Valley. Case material “from texts collected for language analysis and from memory.” Legal levels recognized, basic postulates formulated, and a statement of legal principles with religious notions (totem) asserted. Based on four years’ residence. Twenty illustrative trouble cases presented.


By an anthropologist. Sketchy analysis of change in political system induced by Australian Administration of the Chimbu, Papua New Guinea. “Tribal leadership changed in a generation from the absence of any fixed authority (‘anarchy’) to a system giving officials opportunity to dominate (‘satrapy’).” Implications for anthropology, political science, and native leadership outlined. Supplementary data from Melanesia and Africa. Based on fieldwork and government reports.


Studies the Chimbu of New Guinea Highlands. Relation between hostility and marriage in exogamous groups. Fighting and peacekeeping (pp. 348–352).


Disputing between law and political authority based on system of economic equivalence. Political management of shifting household alliances make settlement of personal grievances possible only if these are of political importance. Fieldwork in Madang District, north coast of New Guinea.


A most interesting article on the function of litigation. “Litigation … cannot be fully understood if we regard it only as a means of maintaining social control.”


Detailed description of institutionalized system of revenge and redress which periodically restructures alliances between groups, preventing formation of powerful factions. Anthropologist’s account of legal and political principles of such a formal institution, and of social control within local membership groups, making centralized authority unnecessary. How revenge and redress promote social order, in the Highlands, Southern Highlands, T.P., New Guinea. (See also author’s “The Huli Desert System, A Preliminary Account,” Oceania 29 (3):172–186.)


Describes types of marriage contracts. Factor of relative age is major determinant of unilateral cross-cousin marriage in first marriages for worth. Wide variation in secondary marriages for women does not affect preferred marriage pattern until second generation.


Interesting data from society where grievances “are discussed in open assemblies at ‘Adat Law’ sessions, and the whole village community is present.” Proceedings well described and illustrated by three cases. Legal principles isolated. Changes in legal system through government influence. Fieldwork in New Ireland, 1931–1933.


Three volumes of writing on various legal problems by leading adat law scholar.


Systematic study of customary law in the Solomon Islands. Uses Malinowskian approach. Focus on institutional interdependency between kinship system, organization of groups, belief in spirits, and ceremonies within legal system described. Compared with data from Tonga, Samos, and Haida.


Sorcery on Wogeo Island, New Guinea compared. Fieldwork on Solomon Islands. Sorcery “creates and maintains proper respect for the law and at the same time permits angry individuals to secure redress for their wrongs—at least to their own satisfaction—without causing inconvenience or general disruption in the community.” Recommendations for administrative policy added.


Report on cases of adultery and theft observed during fieldwork on Wogeo Island, 1934. Data support Malinowski’s suggestion that “the reaction to crime is not in any sense a unanimous rising in support of accepted moral principles” (Durkheim), but depends on kinship, rank, and personal factors of people involved. Demonstrates importance of social and spatial distance among litigants for conflict. (For elaboration of other case see Hoebel 1946. See also Hoebel 1955, Native Culture of Wogeo.” Oceania 5 (3):308–337.)


Detailed account of complicated inheritance dispute. Some verbam opinions recorded. (See also Hoebel 1936, Journal of the Royal Anthropological Institute, Vol. 68.)


Data from Erapo, and how fear of negative public opinion operates as effective psychological sanction in preventing conflict. How it retards formation of leadership necessary under changed social, religious, and economic conditions.

HOLLEMAN, FREDERICK DAVID. 1923. Het adat-rechtsrecht van Ambon en de Oeloa.

Nader, Koch, and Cox: ETHNOGRAPHY OF LAW
---. 1927. Het Adavrecht van de afdeeling
Tribuoeleng. Leiden: Buigzerd &
Nierrans.
---. 1930. Verlag van een onderzoek in-
schadeadgoddezoonacht. In Manneuva.
Zicht op de adverkelijke be-
steurszaken der Buitengewesten van het
Departement van binnenlandsch bestuur.
Serie A (11).
By a Dutch jurist. Studies land law in
Sulawesi. Based on residency.
JOSSELIN DE JONG, P. E. 1960. Islam versus
KEDI, KOCH, GERD. 1957. Das Eigentum auf
Niermans.
---. 1958. "Pospil's primitive legislator... did not change the
law only its application" (p. 1097).
LEEDEN, A. C. VAN DER. 1955. Inheemse
arbitrage in het binnenland van
Sambo. Bijdragen tot de Taal-
---. 2007. "Introduction", in Law and
Crime in New Zealand. Journal of the Polynesian Society
64 (1):5-15.
University of California Publications in
American Archaeology and Ethnology 15
(3):207-342.
---. 1944. "Wild Man" Behavior in a
New Guinea Highlands Community. American Anthropologist
Good first-hand description of one case
of running amuck. Relates concept of
good first-hand description of one case
of running amuck. Relates concept of
legal responsibility. By an anthropologist.
PETRANIO, ROGER. 1959. Animal Teeth and
Oath-Taking Among the Bisaya. Sarawak
Ritual objects formerly used by British-
recognized headmen in trying cases. By
an anthropologist.
PILLING, ARNOLD REMINGTON. Law and
Feast in an Aboriginal Society of North
Yale University. New Haven, Con-
nnecticut, 1956.
---. 1958a. Kapsau Pauusau and Their
Law. Yale University Publications in An-
thropology, No. 54.
By an anthropologist. "The purpose of
the monograph is to describe of
the Papuan data to the effec-
tiveness of a theory of law formulated
on the basis of a comparative study of
thirty-two cultures and a survey of an
additional sixty-three" (the author's un-
published MA. thesis, University of
Oregon). Case material presented and
analyzed in relation to "legally relevant
aspects of religion, politics, economy and
customs in general belief system of society
as a whole and its subgroups." Law char-
acterized by four coexisting attributes:
authority, intention of universal applica-
tion, obligation, and sanctions.
---. 1959. Das Eigentum auf den Gesell-
schafts-Inseln. Zeitschrift für Verglei-
chte Rechtswissenschaft 64:
131-230.
---. 1961. Nederlandse Strafrecht-
spredracht (Redaction van Wijsemeren.
(Centraal Neder-
lands-Nieuw-Guinea). Bijdragen tot
de Taaal-, Land- en Volkenkunde,
117, part I:25-40.
Report on criminal cases from central
New Guinea are used as basis for a
consideration of the task of the judge,
representing a foreign authority in an
archaic society. Formulation of guiding
principles and of the inherent dilemma.
Pages 40-50 contain Netherlands an-
thropologists' comments on the article
and the author's reply.]
KITCHING, H. S. 1961. Observations of
Customs Associated with Kadiatia Prac-
tices in Central Australia. Oceania 31
(3):210-214.
Excavations by sorcery following breaches
of tribal law in pre-context and modern
times.
KLEIWEG DE ZWAAN, J. P. 1913. Vorstel-
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deutschen Archipels. 1913.
---. 1914. Landschapsoorzaak der Buitengewesten van het
Departement van binnenlandsch bestuur.
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Report on criminal cases from central
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aspects of religion, politics, economy and
customs in general belief system of society
as a whole and its subgroups." Law char-
acterized by four coexisting attributes:
authority, intention of universal applica-
tion, obligation, and sanctions.


"Traditionally, the law of a primitive society has been described as containing a well-integrated local legal system with few, if any, discrepancies in its content and application. Such a simplified concept of legal structure failed to be substantiated by the data gathered among the Kapauku. The society cannot be regarded as a ‘monolithic’ in the legal sense; its subunits have to be treated as semi-autonomous or fully autonomous groupings under authorities of different personalities and experiences." (p. 19).


By an anthropologist. Based on fifteen months’ fieldwork. Briefly discusses situations and cases of suicide (pp. 202–203). Two examples of brothers-in-law disputing over pig-stealing (p. 204). Discusses conflict between local groups (pp. 24–36).


Contains translations of legal documents from Magindanao district of Mindanao Island. Consists of tarisla (genealogical and historical records), lawasen codes, and sulu codes. Carefully edited and explained.


Survey authorized by resolution of Reichstag in 1907. Meant to be a “sourcebook of ethnological research in law. Contains carefully edited answers to an enlarged version of Kohler’s questionnaire (see J. Kohler in ZVFR 12, 1897). Contributions differ in quality. Useful article, Thornwald (1930). General, an unfortunate and unattractive presentation of the reported material is attempted. Limited methodological basis and lack of adequate theory evident.

SMITH, NORMAN. 1956. Maori Land Law. Wellington: A. H. & A. W. Reed. Indicates concise form what Maori law “law appears to be, and… where it can be found.” To aid lawyers and students. Written by judge of Maori Land Court, New Zealand. Based on laws and published court cases. Contains history of court, statutory provisions. Laws and cases relating to marriage, adoption, wills, and succession and disposal, ownership, partition, and alienation, etc. Regulations and rules. Altogether a good book with Commentary.

derly man recognized as local authorities on land law and custom.


Compilation of sundry legal rules and general ethnographic data.


---. 1936. Refrains of wrongs in Southwest New Britain. Occ. 6 (4):401-440. Descriptive material from a society with no law, and from a central body of law, authority to enforce it. Notes on conflict-preventing ceremonial combat between opposed villages, settlement of debts. Importance and limit of rank, sanction of shame, legal aspects of secret society material.


Compiled writings of the first Dutchman to encourage systematic examination of adat law.


Comparative Studies


In a sample of 48 nonliterate societies, frequency of theft and personal crime were separately correlated with a number of variables which were suspected to be causal factors in the development of crime.


Straightforward exposition of anthropologist's view of nature of anthropological study of law. With Eskimo and African examples of various institutions and the characteristics of breaches of law taken from ethnographic literature.


Cross-cultural comparison of 65 societies. By an anthropologist. Presents an elaboration of initiation ceremonies which is an alternative to that of Whiting and his students. Focuses on demands imposed on individuals in adapting to articulating principles of his culture. Independent variables are legal systems and highly particularized kinship relationships. Dependent variables are certain kinds of experiences in course of growing up.


Survey by pioneer sociologist. Repressive law ought to have as much more preponderance over co-operative law as social similarities are more extensive, and the division of labor more rudimentary . . . . (p. xvi).


By a very influential and early functionalist. Only Maine ranks higher in 19th century studies of law. Treats differences between classical and later forms of jurisprudence. Contrasts early Teutons, who owned harvest but not land with Greeks, who held land as private property. First to indicate range of variation in legal institutions. Influenced Morgan's treatment of clan. Insists institutions must be understood in the context of the law, rather than not be understood apart from religion.


"We have now to inquire how far it is actually possible to establish any correlations between social and political institutions on the one hand and stages of economic culture on the other." (p. 7). Includes "Tables Indicating Methods of Maintaining Order and Redressing Wrongs in the Simpler Societies of Each Economic Grade" (e.g. Lower Hunters, Higher Hunters).


By an anthropologist. Good 30-page summary of law among Eskimo (Boas 1888, Hoelbel 1941), Iguaio (Bartov 1919, 1930, 1935), Trobriand (Malinowski 1926), and Ashanti (Rattray 1929). Shorter summaries of Cheyenne (Llewellyn and Hoebel 1940), Kiowa (Richardson 1940), and others. Develops "postulational" approach to law. Includes unclassified, unannotated 300-title bibliography.


ethnography and social psychology of conflict. Societies discussed: Arusha (East Africa), South Indian peasants, Portuguese peasants, Morocco, Mossi (West Africa), Suku (Congo), Urban Zulu (South Africa), and Truk (Micronesia). General discussion by Le Vene, and discussion of cross-cultural research ortho­
nocentrism by Donald T. Campbell and Le Vene.}

[BC]


Asserts that people with classless societies have clearly defined both law and effective enforcement mechanisms. Examples from Australia (hunters and gatherers), Eskimo (arctic hunters), Ojibwa (harvesting peoples), and prairie Indians. Of little use to ethnolo-


Contains more than forty important legal documents from pre-Christian times to recent past. Contains Assyry, Babylon, India, Japan, Egypt, Arabia, Israel, Greece, and Rome.


"In this article an attempt is made to present a theory of law with cross-cultural applicability, formulated on the basis of a comparative study of 32 cultures." (p. 747). (See section on "Oceania" for author's substantive works.)


[RS*J


Redfield, Reuel, and Alvin M. Hymes. 1959. "In the Light of Primitive Society," Western Political Quarterly 3:571–589. Quotes Hoebel saying Minc’s Ancient Law is still important. Man’s rights and obligations were once understood by familiar relations in which he found himself. They have come to depend upon his freed and contractual understandings.

Nader, Koch, and Cox: ETHNOGRAPHY OF LAW

Roberts, John M. Oaths, Autonomic Or­
tells, and Power. American Anthropo-
logist, Special Issue: The Ethnography of Law (in press).

By an anthropologist. Cross-cultural test of hypothesis concerning occurrence and distribution of oaths and ordeals. Uses psychological and structural variables. Oaths and ordeals related to outcome of disputes and to application of power in primitive law. Concludes that oaths and ordeals are patterns associated with com-
plex culture. They function to maintain law and order in presence of weak authority and power deficits.

Schapera, Isaac. 1969. The Sin of Cain. Journal of the Royal Anthropological In-
itute 55:33–43.

Schladow, K. et al. 1958. Zwei Morallei-
chenfunde aus dem Domlandmoor. Prac.

Presents prediscurs evidence of legal,sanctions. Makes inferences concerning prehistoric practices on basis of text-
recorded data on law. Contains extensive bibliographies.

Schmidt, Wilhelmi. 1937–1942. Das Eigentum auf den ältesten Stufen der Menschheit. 3 volumes. Munster in Westfalen: Aschendorffsche Verlags-
buchhandlung.


er), 159–203.]


Comparative cross-cultural data suggest legal characteristics occur in standard sequential order. Mediation, police, and counsel are scaled in a sample of fifty-one societies. Their occurrence bears systematic relationship to other characteristics of the folk-urban continuum. Theoretical implications include relationship between damages and mediation. Suggests some factors affecting rise of specialized counsel.


Material collected on basis of questionnaire from seventeen groups. Questionnaire included.

[---. 1928. Ethnologische Studien zur er­
en Entwicklungen der Strafe. Gronin-
gen.]

Thurnwald, Richard. 1934. Völkerrecht, Wandel und Gestaltung des Rechts im Lichte der Völkerforschung. (Die menschliche Gesellschaft in ihren ethno-sozio-

One of better studies on law in German anthropology. Topically arranged. Examines cross-cultural correlations between society, and legal order, from functional and historical viewpoint.

Trimborn, Hermann. 1928. Die Methode der ethnologischen Rechtsforschung. Zeitschrift für vergleichende Rechtswi-
enschaft 43:416ff.

[---. 1951. Äussere Formen der
OUR READERS WRITE

(Continued from page 266)

appoint or chair a Board, or simply choose and train his successor directly. On the positive side, Associates argued that the present Editor’s experience gives extra weight to his choice or, conversely, “the election of an Editor by inexperienced people can be disastrous” (Australia) and “I would oppose election of the Editor by a popularity poll of all Associates.”

One noticeable trend that has implications for the question of institutionalizing CA is the fact that of 47 Associates who favored the creation of some sort of CA Board, 27 mentioned it only as a means of nominating or electing a future Editor. Several explicitly recommended that such a Board be ad hoc, as well (“Any formal committee is a bad precedent for CA,” U.S.A.). Of the other 20 (of whom 15 do not specify a function), only five felt that there should be a standing Board to advise the Editor on matters in which there was no clear consensus among Associates, to receive and investigate Associates’ complaints, or simply to guard viewpoints different from the Editor’s own. One U.S.A. Associate couched his general plea in terms well-calculated to appeal to other anthropologists.

At this point, perhaps, a Board need have no administrative or editorial duties. But should it be constituted in such a way that it is cut off from larger participation, if and when the needs arise? Let’s be anthropological enough to accept that culture changes! Continuity, yes! ... but also change.

On the general questions of institutionalization and routinization of CA, there were considerable differences of opinion among Associates. In many cases Associates argued from the same premise to almost exactly opposite conclusions. That is, of 26 Associates who commented on this topic, all favored the continuation of the open-textured CA philosophy, but they saw the means to this in very different lights. Hence, on the one side, an English Associate wrote:

Sometimes anthropologists who are already part of an accepted and relatively numerous community—for example, in Western Europe and North America—do not realize the full value of CA to those who for one reason or another are cut off from the mainstream. I would oppose any change that altered its spirit and made it more like an ordinary journal. Consequently, I would support: (1) institutionalization of regular decision-making routines; and (2) continuing appeal to Associates’ opinions, with some safeguards against a preponderance of Associates in any one country who may tend to slant CA policies towards those accepted in that country.

On the other side, a U.S.A. Associate wrote:

Keep CA a flexible means of communication among anthropologists; write no set rules for editorial policy. After all, the journal should be—as it now is—the journal of all Associates. Since CA is a community of individual scholars joined together because they have knowledge to interchange, there seems to be no need for a formal organization or charter. The bond that keeps together a group of scientists should be the free interchange of ideas, and this should not become a power struggle among nations or discipline.

However, although there is a substantive disagreement between these and other Associates, they are one in the spirit in which their comments are written. The Associates who favor some structuring of CA—usually stressing routines such as multiple refereeing of manuscripts and discussions of policy in the letter to Associates, rather than the writing of a charter or the establishment of a governing committee—are, nevertheless, very cautious about the matter. There is, then, a continuum from those who approve a few structural elements to those who prefer none at all—as witness comments like the following:

(1) I think that formal organization is necessary for a group as large as the body of Associates. However, defining that formal organization in such a way as to satisfy all Associates and still function will probably prove difficult (U.S.A.); (2) I think that CA should have the least amount of “organization” possible (Yugoslavia); (3) Minimal elements of institutionalizing certainly need attention, but let’s not overdo it (U.S.A.); (4) I would suggest that the present modal operation be kept intact so far as possible, for it would seem the only way to ensure the continuation of an international community of scholars (France); (5) Most of the Associates would agree, I feel, that the less the degree of organization to carry on, the better (U.S.A.); (6) CA is often more interesting for its open-minded outlook than for its actual content. This could easily be destroyed by unnecessary “institutionalization” (Sudan); (7) I’m delighted with CA’s unique lack of organization and suspect that much of its enervous value may lie in just this peculiar strength (U.S.A.).

As already noted, Associates seemed particularly wary of the establishment of a professional society or association; although there were exceptions to this attitude. On the other hand, 21 Associates commented favorably on one or another of the editorial decision-making routines that are currently in practice, or approved the idea of carefully developed routines in general (characterized briefly on the inside front cover of CA). Opposed to these were three Associates who felt that the present system for electing new Associates does not solve the seemingly ever-present problems of political or personal “blackballing” and the need for clearer criteria of candidates’ qualifications.