ANTHROPOLOGY AND LAW

1. Purposes and Scope of the Paper

The relationship between anthropology and law is often viewed as problematic or tenuous. To examine this relationship more closely, this paper introduces some of the main themes in contemporary anthropological studies of law and dispute processes. In addition it offers a preliminary evaluation of the contributions and limitations of anthropological approaches in relation to legal studies and to the development of social theories of law. It is not possible here to present a full survey of the literature. This review concentrates primarily on selected writings in English and French by scholars in the United States, Britain and continental Europe; the footnotes give references to literature from other countries.

2. Anthropology and Academic Law

The influence of anthropological approaches on academic legal studies has so far been marked only in the United States, especially through its elite universities. In contrast to

\[1\] A comparison of the (American) Law and Society Review
with the British Journal of Law and Society is instructive in this respect. In addition, for over a decade anthropologists or scholars with strong interests in anthropological approaches have taught in major American law schools. In November 1971, the Yale Law School Program in Law and Modernization held a two-day conference on "The Relevance of Legal Anthropology to Comparative Social Research on Law"; most of the papers were presented by anthropologists, but more than half of the participants were academic lawyers. The anthropologist Laura Nader at Berkeley has

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recent trends in sociology and law, the establishment of the anthropology of law as a distinct field of study has rarely resulted in the creation of centres for interdisciplinary research. Anthropological students of law and social control, and legal scholars with similar interests, are bound instead by informal networks, loose professional organisations and a handful of specialist journals. Moreover, collaboration consistently maintained links with Boalt Hall (Berkeley) Law School; work on informal alternatives to courts has been carried out at Harvard Law School; and a major project on dispute processing is underway at Wisconsin Law School. Not all of these relations stem from anthropologists, of course; and the influence of such links outside the national law schools in the U.S. should not be overstated.

Among the exceptions is the Laboratoire d'Anthropologie Juridique, Université de Paris I, France. For an early discussion of its activities, see LeRoy, "Reflexions sur une interprétation anthropologique du droit africain: Le Laboratoire d'Anthropologie Juridique" (1972) 26 Revue Juridique et Politique, Indépendance et Coopération 427-448. The two major, long-term projects in legal anthropology, one by Max Gluckman and his colleagues and students at the Rhodes-Livingstone Institute and later at Manchester, the other by Laura Nader and her students in the Berkeley Village Law Project, have been based at centres for social science research (excluding lawyers) or at departments of anthropology (and sociology, in the case of Manchester during most of Gluckman's time there).

The major umbrella organisation today is the International Union of Anthropological and Ethnological Sciences Commission on Contemporary Folk Law, established in December 1978, which included 112 members from 34 countries as of 15 July 1981; see (1981) 5 Commission on Contemporary Folk Law Newsletter. In addition to individual members, the Commission includes the following regional working groups: Northwest Territories Folk Law Workshop (Canada); Working Group on Asian Indigenous Law; Customary Law Group of Australia; Kerukunan Peminat Studi Hukum Adat (Indonesia); Volksrechtskring (Netherlands). The Newsletters of the Commission describe other activities involving legal anthropologists and academic lawyers with similar interests. In the United States, the Association for Political and Legal Anthropology (APLA) was established in November 1976, now includes over 200 members and publishes a newsletter at least twice a year. The Laboratoire d'Anthropologie Juridique in Paris also publishes periodically a Bulletin de Liaison de l'Equipe de Recherche en Anthropologie Juridique; and the first issue of Droits et Cultures.
between anthropologists and academic lawyers has always been unusual. This is frequently ascribed to the technical nature of law as a discipline, but more convincing reasons lie partly in differences in the training and objectives of anthropologists and lawyers. In the past, most anthropological studies of law concentrated on small-scale communities in Africa, Asia or Latin America, which academic lawyers in North America and Europe generally considered to be of little relevance to their own domestic legal systems. Today many anthropologists, like some

(Cahiers du Centre de Recherche de l'U.E.R. de Sciences Juridiques, Université de Paris X, Nanterre), appeared in 1981. Anthropological articles on law and dispute processes are published in the major anthropological and sociological journals and also form the core of the Journal of Legal Pluralism, the successor to African Law Studies.


sociologists of law, reject Western jurisprudence as a source of analytic concepts or, more importantly, of guidelines for research. Furthermore, the ethnographic, descriptive orientation of many anthropologists, whose theories have usually been implicit or formulated at a very low level of abstraction, has inhibited their making a more significant contribution to social theories of law. In any case, anthropologists often accord a low priority to this theoretical project; many consider that dispute processes, for example, are a less ethnocentric, more cross-culturally valid subject of study than law. Any general impression that anthropological approaches to legal processes bear little relation to academic legal studies is misleading, however, in at least two respects. First, as will be shown later, anthropological approaches to law-related processes today are extremely diverse, and not all are encompassed within the anthropology of law. Some of the broader concerns of legal anthropologists have also preoccupied academic lawyers. Secondly, anthropological approaches to law and related processes raise certain fundamental questions concerning law and social science. These questions, of which some are posed more starkly by anthropological approaches than by other social sciences, have increasingly been debated by academic lawyers and theorists of law.

3. The Anthropology of Law

663-679.

8 Thus, Roberts has argued that legal anthropological studies fall into one of two distinct schools: those that draw their basic concepts from Western Jurisprudence and concentrate on law as the subject of study, and those that reject Western jurisprudence as a source of concepts and concentrate on social control, disputing or other social processes deemed to be universal. See Roberts, ibid; and S. Roberts, Order and Dispute: An Introduction to Legal Anthropology (1979), chapters 2 and 11.


The contrasting characteristics of the disciplines of law and anthropology and other institutional forces, including the development of sociology in different countries, have influenced the historical separation between anthropology and academic legal studies. Anthropological approaches to law differ from those in economics or psychology (but resemble those in sociology) in that they are usually considered to constitute an established academic field. The anthropology of law is widely recognised as a subdiscipline of anthropology.

The division of labour between sociology, concerned with Western societies, and anthropology, focussing on non-Western groups, is well-known, though out-dated and generally recognised to be increasingly irrelevant in contemporary studies; its intellectual foundations have always been shaky. Durkheim in France is the major, and exceptional, example of a sociologist whose work had a lasting influence on anthropological studies. See H. Lévy-Bruhl, "L'ethnologie juridique" in Ethnologie générale (ed. J. Poirier, 1968), p. 1119; S. Lukes, Emile Durkheim, His Life and Work: A Historical and Critical Study (1973), chap. 20; and D. Goddard, "Anthropology: the Limits of Functionalism" in Ideology and Social Science: Readings in Critical Social Theory (ed. R. Blackburn, 1972). Examples of recent work in other disciplines strongly influenced by anthropological research include M. Barkun, Law without Sanctions: Order in Primitive Societies and the World Community (1968) and D. Black, The Behaviour of Law (1976). Some anthropological research discussed later in this paper suggests the common concerns and partial convergence of anthropology and sociology.


Its origins have been traced to Montesquieu, but its foundations were laid by nineteenth century historical jurisprudence and cemented during the period of European imperialist expansion and colonialism. Though reflecting this legacy, its principal development is nonetheless relatively recent. This development has occurred primarily in the United States and secondarily on the European continent. For a variety of reasons, anthropological approaches to law have remained on the margins of both legal and anthropological scholarship in the United Kingdom, despite numerous important British contributions to the field. After the publication of Sir Henry Occasional Papers 1-14. These sources are useful indications of the general point but are nonetheless limited, Nader's survey to English-language literature and the last two papers to the United States and Canada.  

14 See Levy-Bruhl, op.cit supra n. 11, p.1116; and Abel, op.cit. supra n. 10, p.219.

15 The basic work was H.S. Maine, Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas (1861).

16 See e.g., Kuper, op.cit. supra n.6; and Gough, "Anthropology and Imperialism" (1968) 19 (11) Monthly Review 12-27. For recent discussions, see D. Hymes (ed.) Reinventing Anthropology (1969) and T. Asad (ed.), Anthropology and the Colonial Encounter (1975).

17 Thus, Twining recounts Hoebel's difficulty in finding an anthropologist to supervise his postgraduate research on Cheyenne law in the 1930s; see Twining, Karl Llewellyn and the Realist Movement (1973), pp. 154-155.

18 On anthropological research elsewhere, see the Newsletter of the IUAES Commission on Contemporary Folk Law.

19 See Campbell and Wiles, op cit. supra n.6; Gulliver, "Preface" Cross-Examinations: Essays in Memory of Max Gluckman (ed. P.H. Gulliver, (1978); Roberts, op.cit supra n.7.

20 A comprehensive list would include not only work discussed later in this paper but also A.R. Radcliffe-Brown, Structure and Function in Primitive Society (1952), especially chapter 11 ("Social Sanctions") and chapter 12 ("Primitive Law"); E.E. Evans-Pritchard, Witchcraft, Oracles and Magic among the Azande (1937) and The Nuer (1940); H. Cory, Sukuma Law and Custom (1953); I. Hogbin, Law and Order in Polynesia (1934);
Maine's Ancient Law in 1861, a small number of classic anthropological monographs provided the baseline for contemporary legal anthropology. Malinowski's Crime and Custom in Savage Society (1926) and Llewellyn and Hoebel's The Cheyenne Way (1941) had a fundamental effect on methods of research. Malinowski's short study, a small part of the published corpus of his research on the Trobriand Islands, was a radical innovation at the time in being based on extensive fieldwork, which since then has been considered a precondition of any valid anthropological study of law. In addition, Malinowski insisted on the necessity of emphasising function rather than form and of giving priority to the cultural or ideological categories of the actors themselves, thus partly escaping, as Roberts recently argued, and M. Douglas, Purity and Danger: An Analysis of the Concepts of Pollution and Taboo (1966).

The continued influence of Maine's work, until recently, was especially apparent in Max Gluckman's writings. See, e.g., his Politics, Law and Ritual in Tribunal Society (1965) and The Ideas in Barotse Jurisprudence (1965); of the latter, Gluckman wrote that "I am not sure but that 'Footnotes to Sir Henry Maine's Ancient Law' would be a more accurate title for this book" (p. xvi).

Llewellyn and Hoebel's book was sub-titled Conflict and Case Law in Primitive Jurisprudence.

Other well-known works include Argonauts of the Western Pacific (1922) and Coral Gardens and Their Magic (1935). Malinowski's work is discussed in Man and Culture: An Evaluation of the Work of Bronislaw Malinowski (ed. R. Firth, 1957).

And indeed in any valid anthropological study. For discussions of Malinowski's contribution to anthropological methods, see Kaberry, "Malinowski's Contribution to Field-work Methods and the Writing of Ethnography" and Leach, "The Epistemological Background to Malinowski's Empiricism" in Firth, ed., op.cit. Supra n. 23, pp. 71-91 and 119-137, respectively.

Thus, in Coral Gardens and Their Magic, Malinowski argued that "the final goal, of which the Ethnographer should never lose sight... is, briefly, to grasp the native's point of view, his relation to life, to realise his vision of his world" (p.25, E.P. Dutton edition, 1961). See also Malinowski, "A New Instrument for the Interpretation of Law - Especially Primitive" (1942) 51 Yale Law Journal 1237-1254 and his "Introduction" to Hogbin, op.cit. supra n. 20. For criticisms and a discussion of changes in Malinowski's conception of law, see Richards, "The
the ethnocentric misuse of Western legal ideas and institutions in analysing social relations elsewhere. The Cheyenne Way, for which Llewellyn, an American legal realist, and Hoebel, a cultural anthropologist, elicited oral accounts of nineteenth century disputes, stands as the prime example to date of interdisciplinary cooperation in the anthropology of law. It was the first systematic anthropological attempt to study law by a careful analysis of "trouble-cases", which has become a standard method of research.

Among other studies published before the mid-1960s, the most significant in the development of the subject in English-speaking countries have been those by Schapera, Hoebel, Gluckman, Bohannan, Pospisil and Gulliver. Schapera's A Handbook of Tswana Law and Custom (1938), prepared at the request of the then Bechuanaland Administration, was a clear, precise recording of 'customary' rules based not only on idealised accounts by informants but also on actual disputes.

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Hoebel's The Law of Primitive Man (1954) sought to arrange various groups in an evolutionary sequence embracing social organisation, culture and law and to elucidate the basic jural postulates underlying the law of each group. The Judicial Concept of Culture in Malinowski's Work" and Schapera, "Malinowski's Theories of Law" in Firth, ed., op.cit. supra n. 23, pp. 15-31 and 139-155, respectively.
Process among the Barotse (1955) by Max Gluckman was the first published anthropological analysis, based on observed cases, of judicial reasoning in a non-Western social group, here the remnant of the Lozi state in the Barotse kingdom in Zambia.³⁰ Analyzing dispute cases and concepts of jural processes in an acephalous social group in Nigeria, Bohannan's Justice and Judgement among the Tiv (1957) argued persuasively that it was often difficult, if not possible, to understand other societies in terms of Western conceptions of law.³¹ In Kapauku Papuans and Their Law (1958) and other writings, Pospisil elaborated the notion that every society comprised a multiplicity of legal systems, often hierarchically arranged and always dependent on the number of functioning subgroups in the society.³² Gulliver's Social Control in an African Society (1963) compared forms of out-of-court dispute settlement among the Arusha of Tanzania, emphasizing the importance of viewing disputes as part of more general social processes.³³ Many of these studies, however diverse in other respects, shared certain characteristics. They were mainly ahistorical, ethnographic descriptions, based on inductive empiricism and using some form of the case method. All concerned a single ethnic group that was deemed to be relatively homogenous and capable of being isolated, as a "society", for purposes of analysis. Most


³² See also his Anthropology of Law: A Comparative Theory (1971); The Ethnology of Law (1972; Addison-Wesley Modular Publications, 12, pp. 1-40); and "Legally Induced Culture Change in New Guinea" in The Imposition of Law (eds. S. Burman and B. Harrell-Bond, 1979).

³³ See also his Neighbours and Networks: The Idiom of Kinship in Social Action among the Ndendeuli of Tanzania (1971); his recent works are mentioned later.
relied, explicitly or implicitly, on Western conceptions of law, and they considered disputes as the main index of law or its primary locus. Though conducted during the colonial period, they abstracted, by and large, from the processes of colonial domination and from the profound economic and social changes occurring during that period. They were generally functionalist in orientation and concerned with the maintenance of social order.\textsuperscript{34} Except for the Studies by Malinowski and Gulliver, they considered law primarily as a framework rather than as a process.\textsuperscript{35} These monographs established standards of research method, ethnographic description and limited theoretical generalisation that have profoundly affected contemporary anthropological approaches. Until recently, however, with the exception of Malinowski's book and several other studies, they had relatively little influence on the European continent.\textsuperscript{36} Research in the Netherlands, for example, concentrated mainly on practical and theoretical issues raised by colonial policies in Indonesia. It encompassed an immense literature on legal

\textsuperscript{34} The maintenance of social order has been a continuing theme in legal anthropology. See, e.g., M. Gluckman, Custom and Conflict in Africa (1956) and Roberts, Order and Dispute, op.cit.supra n.8. Goddard, op.cit. supra n. 11 is among the many criticisms of this focus.

\textsuperscript{35} Nader and Yngvesson, "On Studying the Ethnography of Law and Its Consequences" in Handbook of Social and Cultural Anthropology (ed. J.J. Honigman, 1973), pp. 884-892. The distinction between framework and process, deriving from Durkheim and Malinowski, has been partly reformulated in terms of a distinction between rights and interests. For different criticisms of these dichotomies, see Hamnett, "Introduction" in Social Anthropology and Law (ed. I Hamnett, 1977), pp. 8-10; LeRoy, op.cit. supra n. 30; and Comaroff and Roberts, op.cit. supra n. 27.

\textsuperscript{36} Especially influential were those by Radcliffe-Brown, Evans-Pritchard and Douglas, op.cit supra n.20. An indication of the general situation, however, the converse of Anglo-American neglect of continental research, is Lévy-Bruhl's assertion, written about 1963, that "l'ethnographie juridique est restée relativement peu développée dans les pays de langue anglaise"; see Lèvy-Bruhl, op.cit supra n. 11, p.1118. The proofs of that paper were corrected shortly before his death in 1964; see Poirier, "Preface" in Ethnologie générale, op.cit. supra n. 11, p. xv. In contrast, the bibliography prepared by R. Verdier for a course on legal anthropology at the University of Paris in 1969 included numerous references to recent work in Anglo-American anthropology of law.
pluralism and adat law, including the work by Van Vollenhoven in Leiden.\textsuperscript{37} In France, anthropological approaches to law were heavily influenced by Durkheimian sociology and Lucien Lévy-Bruhl's theory of primitive mentality,\textsuperscript{38} though their more immediate forebearers are Marcel Mauss, Durkheim's nephew and student,\textsuperscript{39} and Henri Lévy-Bruhl, Lucien Lévy-Bruhl, son.\textsuperscript{40} French research and teaching on anthropology of law dates at least from the 1930s; but it was Henri Levy-Bruhl's achievement to establish the sociology of law in the Paris law faculty, which led subsequently to systematic courses in African law, including


\textsuperscript{38} See Lèvy-Bruhl, op.cit. supra n. 11, pp. 1119-1120. The particular contribution of Lucien Lèvy-Bruhl lay in his specific theories but in posing the question as to the universal validity of Western categories and emphasising the conceptual and symbolic aspects of human thought, according to R. Verdier, "Anthropologie juridique: Sa position dans les Sciences anthropologique. (3) Anthropologie sociale", Cours d'ethnologie juridique, Université de Paris, 1969, p.4.


legal anthropology. These (and other) different continental traditions and Anglo-American approaches have begun to converge only in the last decade or so.

Using several earlier reviews of the literature and other partial syntheses one may roughly distinguish three separate,


yet overlapping periods in the development of the field: the
publication of the major empirical monographs, mainly in
English, before the early 1960s; a shift, especially in the
United States after 1965, towards the study of dispute
settlement and of law as a process; and, since the mid-1970s,
the gradual elaboration of a plurality of approaches, all marked
by more explicit concern with theory and greater attention to
the role of the state. In each period, of course, diverse
strands and traditions co-existed, and scholars drew selectively
on earlier work, often including their own, for elaboration and
special emphasis. This crude periodisation gives perhaps too
much emphasis to literature in English; but it also suggests,
rightly, that Anglo-American approaches have been the main
beneficiary of recent trends towards the internationalisation of
the subject. The first period has already been sketched
briefly; the most recent one is treated later. The next part of
the paper discusses dispute processes, which have been a
central, continuing interest of legal anthropologists for almost
two decades.

THE STUDY OF DISPUTE PROCESSES

1. A Central Theme

In an important article in 1965, Laura Nader summarised
previous research and proposed new directions. Building
especially on earlier studies by Malinowski, Gulliver, Colson,
Turner and Bailey, she suggested that anthropologists should
place legal processes more squarely in their social context and
aim at empirical and explanatory generalisations. As a basis
for achieving these objectives, she proposed the following
assumptions:

1) there is a limited scope of disputes for any particular
society..., 2) a limited number of formal procedures are used in
human societies in the prevention of and/or settlement of
disputes ...; 3) there will be a choice in the number and modes

Bibliographical Survey", (1966) 7 Current Anthropology
267-294.

43 Nader, op.cit. supra n.13.

44 Especially Colson, "Social Control and Vengeance in

45 V.W. Turner, Schism and Continuity in an African

46 F.G. Bailey, Caste and the Economic Frontier (1958) and
Tribe, Caste and Nation (1960). In these books, Bailey
presented ideas that he has subsequently developed in
a number of works.

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of settlement ...

These assumptions reflected changes then occurring elsewhere in anthropology, especially by a greater emphasis on processes, transactions and individual choices; but they formed the basis of a substantially new approach in legal anthropology. They underlay a large number of later studies, especially (but not only) those undertaken by Nader's students in the Berkeley Village Law Project between 1965 and 1975.

This approach takes dispute settlement or dispute processes as its central theme; the latter term denotes clearly that the outcome of disputes is not necessarily a firm resolution of the issues ostensibly at stake. Disputing displaces law as the subject of study. Accordingly, dispute, not law, is a major theoretical concept. Gulliver's 1969 definition of a dispute as the public assertion, usually through some standard procedures, of an initially dyadic disagreement has become widely accepted. Within this framework, definitions of law are often

47 Nader, op.cit. supra n. 13, p.23.


49 See Nader, "Preface" and Nader and Todd, "Introduction; The Disputing Process" in Nader and Todd (eds.), op.cit. supra n. 42. Under Nader's direction, fourteen graduate students completed doctoral dissertations on legal anthropology during this decade; essays by ten of them are included in Nader and Todd (eds.), op.cit. supra n.42. See also K.F. Koch, War and Peace in Jalémo: The Management of Conflict in Highland New Guinea (1974); J Starr, Dispute and Settlement in Rural Turkey: An Ethnography of Law (1978); and C. Witty, Mediation and Society: Conflict Management in Lebanon (1980).

50 Though then retaining the expression "dispute settlement", Gulliver was among the first to make this point clearly in his "Case Studies of Law in Non-Western Societies: Introduction" in Nader (ed.), op.cit. supra n. 32, pp. 14-15.

51 Ibid., p.14. Some of the problems inherent in this
considered to be unnecessary, not only because such definitions are frequently thought to be inevitably ethnocentric but also because this definitional exercise itself is deemed theoretically pointless and sterile.\textsuperscript{52} Similarly, the study of substantive concepts and rules is of secondary importance,\textsuperscript{53} subordinated to the analysis of procedures, strategies and processes, which obviously are not limited to bureaucratic institutions such as courts.

By analysing disputes as social processes through an extended case method or situational analysis,\textsuperscript{54} this approach shifts the

\begin{itemize}
\item definition, especially concerning the requirement that a conflict reach the public arena in order to qualify as a "dispute", are discussed in Epstein, "Introduction" in Epstein (ed.), op.cit. supra n. 42, p.9 and in Starr, "A Pre-Law Stage in Rural Turkish Disputes Negotiations" in Gulliver (ed.), op.cit. supra n.30.
\end{itemize}

\textsuperscript{52} See, e.g, Gulliver, op.cit. supra n.50, pp. 12-13; Koch, "The Anthropology of Law: Notes on Interdisciplinary Research", op.cit. supra n. 42, p. 12; Abel, op.cit. supra n.10, pp. 221-224; Roberts, op.cit. supra n. 8, chapter 2.

\textsuperscript{53} See, e.g., Abel, "Law and Anthropology" (Review of I. Hamnett, ed., Social Anthropology and Law, (1980) 28 American Journal of Comparative Law 128-135 at p. 131. This was primarily an Anglo-American phenomenon; in that literature, the sole major exception prior to 1975 was L.A. Fallers, Law Without Precedent: Legal Ideas in Action in the Courts of Colonial Busoga (1969).

\textsuperscript{54} The case method is often viewed as the standard research method in legal anthropology; but anthropologists' conceptions of this method differ substantially from those of lawyers and, in addition, the former are various, have changed substantially since the early 1960s and have recently been attacked on the grounds, inter alia, that the study of cases, however defined, is inadequate for some purposes and always needs to be supplemented by other research methods. For discussions of these issues, and especially the important shift in since the late 1960s, in British Social Sociological Review 1- Ritual in Tribunal 235-242; van Velsen, "The Case Method in the Social Anthropology, "Customary Law of Wrongs in Method", (1969) 17 American 573-626; Gluckman, Method in the Study of Tribal "Limitations of the Case-Law", (1973) 7 Law and
main enquiry from social organisation to processes and also from
groups to networks of individuals. It emphasises the actions of
parties in disputes just as much as those of negotiators or
adjudicators, hence aims to map the perceptions of individual
disputants and gives special attention to the cultural meanings
and rationalisations of social action. Thus, for example,
Collier's study of Mexican Indians concentrated on "defining the
range of options open to litigants and ... analyzing the
constraints and incentives that channel the choices they
make", 55 while Starr's research in Turkey showed how, in
disputing, rural villagers formulated strategies to maintain
honour or compete for scarce resources. 56 Especially in the
context of underdeveloped countries, this perspective has
increasingly emphasised the role of political brokers in
channelling individual choices, mediating between cultures and
maintaining or eroding legal pluralism. 57

Studies by anthropologists using these and similar approaches
to dispute processes are not limited to Africa, Latin America or
Asia. Though not concentrating on cases, Spradley used
participant observation, formal interviewing and ethnosemantic
methods to analyse marginalised urban nomads' perceptions of and
relations to courts in Seattle, Washington. 58 More recently,
Mather briefly reviewed ethnographic studies of American trial

Society Review 611-641; Holleman, "Trouble-Cases and
Trouble-less Cases in the Study of Customary Law
Legal Reform", op.cit. supra n. 37; Abel, "Reply to
Max Gluckman", (1973) 8 Law and Society Review 157-159;
Nader and Yngvesson, op.cit. supra n. 35, pp. 892-902;
Hooker, op.cit. supra n. 35; van Binsbergen, "Law
in the Context of Nkoya Society" in Law and the Family
in Africa, op.cit. supra n. 6; and Nader and Todd,
op.cit. supra n. 49. Other, complementary methods
are discussed in Snyder, "The Use of Oral Data in Legal
Anthropology: A Senegalese Example", (1973) 17 Journal
of African Law 196-215; B.E. Harrell-Bond, Modern

56 J. Starr, op.cit. supra n.49.
Freeman, "Conflict, Law and Lawyers in Chiapas, Mexico"
in Koch (ed.), op.cit. supra n. 42.
court; she suggested that the utility of an ethnographic approach lay in raising and answering questions about different groups' knowledge and perceptions of law, about informal social norms and about the relationships between courts and other dispute processes. 59 Within the past decade, studies of dispute processes and informal alternatives to courts have proliferated, especially in the United States but also in Europe; some of these studies are mentioned later.

While unified by a concern with dispute processes and an emphasis on individual actions and perceptions, this approach has in fact tended to be theoretically eclectic, 60 though some writers have tried to place it squarely within an empirical interactionist tradition. 61 It is therefore not surprising that recent developments in the study of dispute processes have accentuated previously implicit differences between various theoretical positions and also given rise to new distinctions. Partly reflecting current changes in the political and economic context of scholarship, these developments have fragmented what often appeared in the past to be a fairly uniform approach to dispute processes. In doing so, they have clarified the theoretical and political assumptions that underlay earlier work and, sometimes, resulted in greater theoretical sophistication. It is necessary to mention briefly some of these trends.

2. Disputes: Processes and Processing

Despite an emphasis on conflict and disputing as universal processes, anthropological work on dispute processes has, until very recently, been mainly concerned with micro-level studies of the management of conflict and the maintenance of order; 62 the generally conservative implications of this framework is consistent with many studies of law. Although some legal

60 See Nader and Todd, op.cit, supra n.49, p.3.
anthropologists have contributed to the analysis of sources of social conflict,\footnote{Collier, op.cit. supra n.42 discusses some studies; see also LeVine, "Anthropology and the Study of Conflict: An Introduction", (1961) 5 Journal of Conflict Resolution 3-15; and A. R. Beals and B.J. Siegel, Divisiveness and Social Conflict: An Anthropological Approach (1966).} most have concentrated instead on the characteristics of disputes as processes and/or of the procedural forms by which disputes are handled.

For clarity, I refer to the study of procedural forms as the analysis of dispute processing, a term first used in this sense by Felstiner in 1974.\footnote{Felstiner, "Influences of Social Organisation on Dispute Processing", (1974) 9 Law and Society Review 63-94.} Procedural forms are, of course, often analysed by anthropologists as processes themselves, and the course of a dispute and the means by which an outcome is reached are often intimately connected; but the distinction between dispute processes and dispute processing is nonetheless useful here. The expressions identify two different aspects of ethnographic and theoretical work in legal anthropology: one concerned with social relationships in processes of conflict, and the other with the more or less standardised procedures for reaching an outcome. Both these strands are discussed in this section. The contrast between the dynamic and bureaucratic connotations of the terms "processes" and "processing", respectively, suggests another important point, which raises numerous issues concerning the relationship between scholarship and politics.\footnote{Some of these issues are discussed in papers in Luckham (ed.), op.cit. supra n. 54.} Though addressed to an increasing variety of issues in anthropological and sociological theory, processual studies still remain primarily academic in orientation; even anthropological studies of the processes by which disputing parties reach outcomes are usually ethnographic or theoretical in purpose and addressed to a social science audience. In contrast, research on dispute processing has increasingly tended to be instrumentalist, often devoted to extension of state control and the implementation of practical, procedural reforms. These studies frequently abstract politics and social relations from the analysis of procedures,\footnote{See also Abel, "Informal Alternatives to Courts as a Mode of Legalizing Conflict", presented at the Symposium of the IUAES Commission on Contemporary Folk Law, Bellagio, Italy, September 1981; and Abel, "Conservative Conflict and the Reproduction of Capitalism: The Role of Informal Justice" (1981) 9 International Journal of the Sociology of Law 245-267.} and partly for this reason
they have, compared to processual studies, been generally (if unfortunately) of more interest to academic lawyers. The next section of the paper considers this literature on informal alternatives to courts.

Anthropologists' definitions, as already noted, frequently postulated that a conflict became a dispute when placed in the public arena. This definition facilitated research on individual decision-making and strategies; but within a processual framework it has raised questions concerning the effects of prior, pre-dispute relations between parties on the subsequent public confrontation. In order to explore some of these questions, the Berkeley Village Project distinguished three phases in the life history of disputes: the preconflict or grievance stage, the conflict stage and the dispute stage. Though most studies concern the dispute stage, some writers have tried earlier to analyse the earlier phases. Yngvesson's study of a Swedish fishing village contrasted social processes in conflicts involving community members with those involving people defined as outsiders. Emphasising the element of time, she showed that the former were marked by a "nonaction" or "cooling" period during which the circumstances, relations between the parties and others and the consequences of formal reactions were considered. Later, she argued that such periods of "bracketed structural time" formed part of dispute processes elsewhere, including an American court. Starr's work on rural Turkish disputing elicited many cases of dyadic negotiation, in which grievances were often not brought to a public arena. Analysing the correlations between social rank and forms of settlement, she suggested that in rural Turkey "[p]ublic confrontation ... is the true forum of the powerless". Some other work, also emphasising the litigant's perspective, has tried to relate individual choice-making to broader social changes. Thus, Nader has suggested that, in countries such as the United States, individuals often elaborate extra-judicial dispute processes in direct response to the changing functions and increasing bureaucratisation of state law


70 Starr, op.cit. supra n. 51, p.131
Abel's work, drawing on research in both Kenya and the United States, represents the major attempt to develop macro-sociological theory incorporating litigant behaviour as a variable. Using ideal-typical constructs of tribal society and modern society, he offers a number of hypotheses concerning litigant behaviour and argues that the interaction of social structure institutional structure produces patterns of litigation. Forms of dispute processing have been the subject of a great deal of research and controversy. This interest formed a natural part of studies of dispute processes, was consistent with the concern with courts and administrative agencies among Anglo-American academic Lawyers and has recently been fuelled by governments' preoccupations with informal alternatives to courts. Much of the theoretical work by anthropologists has been stimulated by sociological theories; Gulliver's (1963) conception of the political and judicial modes as two ideal, polar types of processes; Bohannan's (1967) distinction between law and warfare as two basic forms of conflict resolution; and Abel's partial synthesis of the literature. Any typology that distinguishes simply between judicial and political forms of processing is now widely deemed inadequate, as most scholars recognise that both norms and power are pervasive elements in all dispute processes everywhere.

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72 Abel, "Theories of Litigation in Society: 'Modern' Dispute Institutions in 'Tribal' Society and 'Tribal' Institutions in 'Modern' Society as Alternative Legal Forms" in Alternative Rechtsformen und Alternativen zum Recht (eds. E. Blankenburg, E. Klausa and H. Rottleuthner, 1979) (6 Jahrbuch für Rechtssoziologie und Rechtstheorie) 165-191; and Abel, "Western Courts in Non-Western Settings: Patterns of Court Use in Colonial and Neo-Colonial Africa" in Burman and Harrell-Bond (eds.), op.cit supra n. 32.


75 Bohannan, "Introduction" in Bohannan(ed.). op.cit supra n. 42.

76 Abel. op.cit. supra n.10.

77 The debates concerning this typology may be traced in:
Several typologies, using different criteria and often elaborated for different purposes, have recently been proposed. Only a few can be mentioned here.

In 1969 Nader advocated the comparison of procedural styles based on clusters of contrasting features, but most scholars have preferred typologies based on fewer, more precise and more institutionally derived criteria. Reconsidering Bohannan's conception, Roberts recently suggested a distinction between fighting and settlement-directed talking as two basic forms, the latter comprising several different types. Danet, who was especially interested in the use of language in disputing, rearranged Roberts' categories into seven different types. She classified physical violence, appeals to the supernatural and the use of magical procedures and avoidance or ostracism as relatively nonverbal modes of processing disputes; shaming, reconciliation rituals, verbal contests and settlement-directed, fact-oriented talking were relatively verbal modes. Using different criteria, Koch distinguished six types of procedure based on, first, the presence or absence of a third party and the mode of its intervention and, secondly, the nature of the outcome; avoidance, negotiation and coercion were dyadic procedures, while arbitration and adjudication were triadic. Gulliver himself, while recognizing the existence of other settlement forms, has concentrated primarily on elaborating a distinction between negotiation and adjudication as the two most common modes. Viewing the presence (as in adjudication) or the absence (as in negotiation) of a third-party decision-maker as the crucial, distinguishing feature, he has presented, in detail, two complementary theoretical models of negotiation as a process.

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Nader, "Styles of Court Procedure: To Make the Balance" in Nader (ed.), op. cit. supra n. 31.

Roberts, op. cit. supra n. 8, chapter 9.


Koch, op. cit. supra n. 49, pp. 27-31; see also Koch, "The Anthropology of Law and Order", op. cit n. 42, pp. 307-311; and Koch, Sodergren and Campbell, op. cit. supra n. 62.

Gulliver, op. cit. supra n. 67; see also Gulliver, op. cit. supra n. 50; Gulliver, "Negotiations as a Mode of Dispute Settlement: Towards a General Model", (1973) 7 Law and Society Review 667-691; and Gulliver, "On
"intervenor", was the conceptual focus of Abel's attempt to construct a theory of dispute institutions in society, which proposed a number of hypotheses concerning the effects of increasing functional specialisation, social differentiation and bureaucratisation on dispute processing.\textsuperscript{83}

3. Access to Justice and Informal Alternatives to Courts

Especially since the mid-1970s, anthropological work on dispute processing has increasingly been incorporated into, yet by no means entirely absorbed by, ideologically heterogeneous movements concerned with access to justice and informal alternatives to courts. Most legal anthropologists have apparently remained sceptical or simply continued to pursue other, more traditional interests.\textsuperscript{84} For many anthropologists and others, however, these movements represented an important, general trend.

Anthropological participation in this trend was influenced by numerous factors, of which two were especially decisive. The first was the fiscal and legitimation crises of the state in advanced capitalist countries, especially the United States, in the late 1960s and early 1970s. The second was the loss of anthropology's protected status in newly independent former colonies and its apparent irrelevance to the demands of emerging post-colonial and neo-colonial states. The former directly affected the amount orientation of research funds, led to numerous proposals to reform costly, inefficient and often inaccessible court systems and stimulated a growing interest in grassroots movements and popular justice.\textsuperscript{85} In conjunction with

\textsuperscript{83} Abel, op.cit. supra n.10. Collier, op.cit. supra n.42, p. 134 notes the absence of systematic studies in legal anthropology of the influence on dispute processing of the relationships between the third party and the disputants. M.P. Baumgartner and D. Black are preparing a book on this subject, tentatively entitled "The Theory of the Third Party"; see (1981)4 IUAES Commission on Contemporary Folk Law Newsletter 20.

\textsuperscript{84} See, e.g., Whitney and Kobryn, op.cit supra n.13; Greenhouse, op.cit. supra n.13; and the Newsletter of the IUAES Commission on Contemporary Folk Law. Recent French legal anthropological writing suggests the limited impact of these topics on French research. In his survey of socio-legal research in the German Federal Republic, Wilson mentions only a few anthropological studies on this topic; see G.P. Wilson, Socio-Legal Research in Germany: An Account of Work in the Socio-Legal Field in the Federal Republic (1980), p.88.

\textsuperscript{85} In the early 1960s, academic lawyers in the United
decreasing funds, the latter signalled a decline in opportunities for anthropological research in underdeveloped countries; and in a period of widespread criticism of traditional anthropological and other social science work, it led to calls for "studying up" and for more research on contemporary problems in the United States and Europe. Particularly in the United States, where most legal anthropologists are employed in any event, anthropological research on dispute processing in other countries seemed relevant, though not necessarily directly transferable, to domestic concerns. To many academic lawyers and other social scientists, the ethnography of disputing was one of the elements that suggested the utility of preserving or creating informal alternatives to courts and of fostering non-adjudicatory, yet non-political means of handling conflict. The acceptance of this view, which was encouraged by powerful political forces, was facilitated by the largely ahistorical character of anthropological work, its frequent romanticisation


86 See the writings cited in n.16, supra, and Snyder, op.cit. supra n.42 pp. 725-734.

87 See Nader, "Up the Anthropologist - Perspectives Gained from Studying Up" in Hymes (ed.), op.cit. supra n.16.


89 See, e.g., Cappelletti, "Forward" in Koch (ed.), op.cit. supra n.42.

90 For discussions of this point, see e.g., Moore, "Archaic Law and Modern Times on the Zambezi: Some Thoughts on Max Gluckman's interpretation of Barotse Law" in Gulliver (ed.), op.cit supra n.30; Swartz, "History and Science in Anthropology" (1958) 21 Philosophy of Science 59-70, reprinted in Manners and Kaplan (eds.),
of "tribal" societies,\textsuperscript{91} its relative lack of general theory and its neglect of legal form.\textsuperscript{92}

The origins, composition, ideology and consequences of the movements for access to justice and informal alternatives to courts have been extensively described and criticised elsewhere.\textsuperscript{93} By 1980, three pilot Neighbourhood Justice Centres

\begin{footnotesize}

\textsuperscript{92} See, e.g., Cox and Drever, op.cit. supra n.42; Abel, op.cit. supra n.53; and Quinney, "Comment" on Lowy, "Modernizing the American Legal System: An Example of the Peaceful Use of Anthropology", (1973) 32 Human Organisation 213-214.

\end{footnotesize}
and other experiments in more than 100 cities had begun in the United States alone; several studies of alternatives to adjudication in continental Europe were published under the aegis of Cappelletti's large-scale Access to Justice project; and related research was underway at the Oxford Centre for Socio-Legal Studies and elsewhere. In the elaboration of reforms, anthropologists have, with some exceptions, been far less important than other, more powerful, more bureaucratically oriented professionals such as lawyers and administrators. This is due partly to the technical nature of administrative programmes; partly to the different concerns of anthropologists, especially in Europe, and their reluctance to conduct mainly prospective or evaluative research; and also, and most importantly, to the complex web of existing interests, linked to dominant classes and the state, that are at stake in the creation and control of such reforms. Instead, the main contributions of anthropologists have been to outline different forms of dispute processing, provide ethnographic data (usually from other countries) and propose limited generalisations.

Though it is impossible to delimit these contributions precisely, one important strand clearly concerns the influences of social organisation on dispute processing, including informal alternatives to courts. While most of this work has concerned countries outside Europe and America, Felstiner's 1974 paper contrasted forms of dispute processing in two ideal types of society. Criticising a proposal by Richard Danzig of Stanford Law School to establish urban American community moots patterned on rural Liberian institutions, Felstiner indicated the


94 See Abel, op.cit supra n. 65 and sources cited there.


97 Danzig, "Toward the Creation of a Complementary, Decentralized System of Criminal Justice", (1973) 26 Stanford Law Review 1-54. Danzig's model was the Kpelle
difficulty of finding mediators who shared the same experiences as disputants and argued that, in any case, the widespread use of avoidance was a much cheaper, easier way of ending disputes in countries such as the United States. Another influential article was Galanter's discussion of why the 'haves' come out ahead. In addition to drawing a distinction between regular and sporadic users of courts, it outlined various alternatives to the official court system, including inaction or "lumping it", self-help or "exit" (avoidance), recourse to private settlement systems and the use of processes appended to courts. Both these discussions provided points of reference for advocates of informal alternatives. In addition, anthropologists have occasionally evaluated or cooperated in studying American or European institutional alternatives to adjudication. At least


one anthropological project, however, has suggested the extreme difficulty of conducting research on less institutionalised forms of dispute processing in England.\footnote{101}

A second strand in anthropological work has concentrated on individual perceptions of justice and the means of expressing complaints. Reviewing studies by the Berkeley Law Project, Nader suggested in 1973 that access to justice was a key concept if one took seriously the litigant's perspective. She argued that, in evaluating or ascribing a meaning to this notion, one had necessarily to take account of people's feelings and perceptions.\footnote{102} Contrary to the conclusions of some other anthropologists,\footnote{103} she stated that the view that people in all non-Western societies have access to public forums for resolving grievances "is a romantic one, nothing more".\footnote{104} Since 1973, under the aegis of Ralph Nader's Center for the Study of Responsive Law,\footnote{105} she has directed a large-scale study of the management of complaints among individuals and between individuals and a variety of organisations. The results of this study, which complement the earlier comparative work of the Berkeley Project,\footnote{106} have recently been published.\footnote{107}

\footnote{101}See A. Smith, J. Bryant and D. Bond, A Pilot Study of Dispute Treatment in Leamington: A Report (Project Director: B.E. Harrell-Bond)(n.d.[1979]).


\footnote{105}A recent paper that indicates the common interests of Laura and Ralph Nader is Ralph Nader, "Consumerism and Legal Services: The Merging of Movements", (1976) 11 Law and Society Review 247-256.

\footnote{106}Nader and Todd (eds.), op.cit.supra n.42.

Early critics of the movements for access and informal alternatives, and therefore of anthropological work directed towards furthering their diffuse objectives, made essentially two points. First, access meant, in effect, the increasing incorporation of political struggles within the orbit of the state, at least in underdeveloped countries, and their displacement to terrain chosen in the last instance by dominant classes. Secondly, the extension of informal mechanisms would merely permit a further, if decentralised, form of state control. These and other related points are elaborated, and their implications examined, in recent writing that draws on anthropological research but places it in a more general, Marxist theoretical framework. In a review of delegalisation movements, Abel showed that delegalisation assumed rough quality between social actors, a high degree of normative consensus and the existence of adequate informal controls. He concluded that in capitalist societies, where these assumptions did not hold, delegalisation tended to be detrimental to the already underprivileged and powerless. More recently, suggesting that political strategies are more appropriate for dominated classes in capitalist countries, he has argued that informal alternatives to court (like formal courts) are a means of legalising conflict, a process that extends state control but that is obscured in the movement for informal alternatives by the emphasis on process. Making a similar, though more abstract argument, Santos suggests that "state sponsored community organisation will be the specific form of disorganisation [of oppressed classes] in late capitalism"; but he warns against viewing these reforms as mere manipulation since an autonomous political movement of dominated classes may be able to take advantage of their popular, potentially liberating elements.

**SOME IMPORTANT RECENT TRENDS**

1. **General Developments**

   For over a decade, as the preceding discussion suggests,

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109 This point was made in 1973 by Richard Quinney, op.cit. supra n.92.

110 Abel, "Delegalization...", op.cit.supra n.91.

111 Abel, op.cit. supra n.66.

anthropological studies of legal processes by Anglo-American scholars have focused mainly, though not exclusively, on a set of research questions arising from previous work but first articulated clearly in the late 1950's and early 1960s. The central concern has been to elaborate— in different ways and in a changing economic and social context— the ethnographic, theoretical and (sometimes) political implications of the premises on which these questions were initially based. At the same time, however, anthropological approaches to legal processes have developed and been modified; different themes have also emerged. A sketch of several general developments in anthropological approaches provides a useful background for a discussion of some important recent trends.

First, as already noted, anthropologists today are more concerned than were their predecessors with the study of legal processes in advanced capitalist societies. They have concentrated not only on dispute processes and dispute processing but also on such issues as the creation of urban citizens' groups in contraposition to legal bodies that monopolise information concerning energy decisions in the U.S. and the use of anthropological evidence and similar expertise in American and Canadian Indian litigation. 113 Both anthropologists and lawyers are involved in the work of the Aboriginal Sites Protection Authority in Australia. 114

Secondly, reflecting the fact that the small communities which were their traditional concerns now often constitute marginalised social groups, anthropological approaches have increasingly sought to place legal processes in their broader national and even international context. This is especially


apparent in recent studies of brokers,\textsuperscript{115} the impact of state law,\textsuperscript{116} legal pluralism\textsuperscript{117} and the political economy of law.\textsuperscript{118} Almost all of these themes require more attention to the role of capitalist and neo-colonial states and to the processes of national and international capitalist transformation than was given to such questions in most earlier anthropological research.\textsuperscript{119}

Thirdly, closely related to this emphasis on the broader context of small-scale legal processes, and particularly on the state, is the renewed concern with law (in addition to disputes) as a subject of study. This represents a partial shift of interest, even though most anthropologists today, as before, would deny the state's claim to be the sole source of law and hesitate to accept any necessary correlation between the state and all forms of law. During the 1960s and early 1970s, many writers seeking to delimit dispute processes as the primary

\textsuperscript{115} See the sources cited in n. 57, supra.


\textsuperscript{117} Hooker, op.cit. supra n. 42 discusses legal literature and provides an extensive bibliography on writing on this topic up to 1975.

\textsuperscript{118} See Snyder, op.cit. supra n. 42, pp. 775-779.

\textsuperscript{119} My survey of the literature on underdevelopment and dependency theory in relation to law gave special emphasis to studies of state and classes and of capitalism and peasants (see Ibid., pp. 761-780).
anthropological terrain showed a marked disinterest in and even neglect of legal forms.\textsuperscript{120} While consistent with general anthropological trends, this was also partly a reaction to ethnocentric 19th century assumptions of the university of Western law\textsuperscript{121} and the later misuse by anthropologists of definitions of law derived from Western jurisprudence.\textsuperscript{122} Sharing these concerns, recent anthropological studies concerned with law as a theoretical object have generally not followed earlier writers who proposed definitions of law intended to apply across cultures and in all historical periods.\textsuperscript{123} They have concentrated instead on elaborating the implications of specific definitions or conceptions of law within different theoretical frameworks\textsuperscript{124} and on analysing norms, concepts and processes of social control in specific historical and cultural contexts.\textsuperscript{125}

These changes have usually not led to a basic modification of the scale of anthropological research. Though processual or network studies sometimes embody a redefinition of the unit of analysis, anthropologists still tend to concentrate on small groups or groupings amenable to study by individual methods,

\begin{itemize}
    \item \textsuperscript{120} In 1965, Nader, op.cit. supra n.13, p.6 discerned a shift away from general definitions of law and towards the question, "How is law best conceived of for research purposes?" but compare the sources cited supra n.52.
    \item \textsuperscript{121} See, e.g. Nader, ibid., pp. 4-8.
    \item \textsuperscript{122} These are criticised in Roberts, op.cit. supra n.8, especially chapters. 2 and 11; see also F.G. Snyder, Capitalism and Legal Change: An African Transformation (1981).
    \item \textsuperscript{123} See especially the works by Pospisil, op.cit. supra n.32.
    \item \textsuperscript{124} See, e.g., P. Fitzpatrick, Law and State in Papua New Guinea (1980); Snyder, op.cit. supra n.122; LeRoy, op.cit.supra n.41; Starr, op.cit.supra n.61; Fallers,op.cit.
    \item \textsuperscript{125} See, e.g., Snyder, op.cit. supra n. 121; LeRoy, "Justice africaine et juridique: Une réinterprétation de l'organisation judiciaire 'traditionnelle' à la lumière d'une théorie générale du droit oral d'Afrique Noire", (1974) 36 (B) Bulletin de l'Institut Fondamental d'Afrique Noire 559-591; R. Verdier, Terre et Femme dans la Pensée Juridique Nègroatifrique (1968); Wane, "La succession d'états au Fouta Toro", paper presented at the Second Meeting of the Africanist Network, UNESCO Project on the Transfer of Legal Knowledge, Malta, November 1980.
\end{itemize}
especially participant observation. These other developments have contributed, however, to a fourth important change, namely a gradual movement towards the explicit use of macrosociological theory as a source of research questions, working hypotheses and potential explanations. In conjunction with the increasing concentration on specific issues instead of general ethnography, anthropologists within the past decade have drawn explicity on the works of major theorists such as Weber\(^{126}\) and Marx\(^{127}\) in order to learn from and to contribute to the elaboration of social theories of law. This movement is especially significant as an indication of the partial convergence of anthropology and sociology, but its novelty and strength should not be exaggerated: the work of many legal anthropologists has been influenced, at least indirectly, by Durkheim, and most anthropological research uses general theory more implicitly than explicitly and thus differs from much recent sociology of law.

While these general features are noticeable in some contemporary writing on dispute processes, they are characteristic especially of anthropological studies concerning several other recent themes. These themes stem partly from previous work, but they also draw substantially on new interests and on developments in related disciplines and other approaches, such as historical materialism. Three of the most important recent themes are rules and processes, legal pluralism and the political economy of law. Although thus far each topic has been treated from several perspectives, each raises somewhat different analytical problems and theoretical issues; and contrasting theoretical strands in legal anthropology are likely to coalesce around these three different themes in the future.

2. Rules and Processes

At least since Gulliver's Social Control in an African Society,\(^{128}\) anthropological studies have continually raised questions concerning the role of norms in dispute processes. A distinction between norms and power was the basis of an early (now rejected) typology of dispute processing, and Hamnett recently proposed the concept of executive law to encompass a particular ethnographic conjunction of political and judicial elements.\(^{129}\) The general issue of freedom versus determinism is of

\(^{126}\) See especially Fallers, op.cit. supra n.53 and his "Administration and the Supremacy of Law in Colonial Busoga" in Hamnett (ed.), op.cit. supra n.42.

\(^{127}\) See especially Fitzpatrick, op.cit. supra n.124 and Snyder op.cit. n.122.


\(^{129}\) I. Hamnett, Chieftainship and Legitimacy: An Anthropological Study of Executive Law in Lesotho
course fundamental to the social sciences; and the specifically anthropological concern with similar issues, though often couched in professional jargon and using apparently exotic examples, closely resembles discussions in both sociology and law of the relationship between freedom and contraint, consent and coercion or substantive and formal justice.\textsuperscript{130} In the 1960s and early 1970s, anthropological work concentrated primarily on the processual aspect of disputing, stressing that power was central in all forms of dispute processing including adjudication. Recent studies of rules and processes, however, have examined and thus re-emphasised the importance of norms, whether in triadic processes (e.g., adjudication) or in dyadic ones (e.g., negotiation). In doing so, they have shown that norms do not automatically determine the outcome of a dispute and in fact serve a number of different functions in dispute processes and other social relations.

Legal anthropology has treated the role of norms in several different ways. Two related perspectives represent logical developments of earlier research. One concerns the relationships among concepts, rules and actual behaviour and emphasises the processual nature of all systems of rules. Thus, Sally Falk Moore has analysed the ways in which general concepts are adjusted to specific social circumstances and argued that legal systems are, necessarily, partially indeterminant orders; the same social processes, such as competition, that prevent total regulation of social life by rules also shape and transform attempts at partial regulation.\textsuperscript{131} The second perspective, elaborated especially by Gulliver in work on negotiation, is the conception that norms themselves are a form of power, manipulated and used selectively by parties (and third


parties) in disputes. Other writers have treated norms as cultural codes, sometimes drawing on Bernstein's work to elucidate the role of brokers in mediating relationships, and sometimes emphasising the ways in which people use norms in re-negotiating the bases of inter-personal and wider social order. Another strand has concentrated on the use of norms in argument. Thus, Comaroff and Roberts consider whether any systematic pattern underlies the invocation, manipulation and application of norms in Tswana dispute processes. They argue that, in the instance they discuss, "express invocation of norms...is associated with efforts to assert control over the paradigm of argument"; and they advocate greater attention to factors intrinsic to the process of argument as distinct from extrinsic factors such as political organisation or institutional structure.

These concerns form part of the increased emphasis in legal (and general) anthropology on the ways in which people conceive, create and sustain definitions of situations, especially through the use of language. While previous anthropological work stressed the phases of disputes and the transformation of social relations and of the issues at stake as a dispute moved from a private context to the public arena, recent research has paid special attention to the role of language in these processes of situational transformation. Danet recently provided a

132 See especially Gulliver, op.cit. supra n.67, pp. 190-194; see also Roberts, op.cit. supra n.8, p.182.
133 Perry, "Law Codes and Brokerage in a Lesotho Village" in Hamnett (ed.), op.cit. supra n.42.
135 Comaroff and Roberts, "The Invocation of Norms in Dispute Settlement: The Tswana Case" in Hamnett (ed.), op.cit. supra n.42; the quotation is from p.106.
relatively comprehensive review of studies of the use of language in dispute processes. Some writers have also tried to analyse the role of language in disputing within the context of wider social relations. Thus, LeRoy discussed legal reasoning by members of rural councils in dispute processes in Senegal. Santos analyses the use of legal reasoning, argumentative discourse and rhetoric in the construction and reproduction of legality in a Brazilian squatter settlement. He advances the hypothesis that "the verbal content of Pasargada law reflects the CMP [capital mode of production] and capitalist legality but actually operates to organise autonomous social action by the working class against the conditions of reproduction imposed by capitalism", Seeking to transcend the dichotomy between rule-centred and processual approaches, Comaroff and Roberts emphasise the dialectical relationship between the sociocultural system and individual action. They show how, in Tswana chiefdoms, the former constitutes a set of normative terms within which disputing occurs and has meaning, while, in turn, disputing and other social processes affect and potentially transform the sociocultural framework.

earlier studies of the use of language, either those that merely describe linguistic expressions of cultural concepts or those that aim at more formal ethnosemantic analyses of terms and expressions. See, e.g., P.J. Bohannan, Justice and Judgement among the Tiv (1957, reprinted with a new Preface in 1968); S.A. Schlegel, Tiruray Justice: Traditional Tiruray Law and Morality (1970); Verdier, "Ontology of the Judicial Thought of the Kabrè of Northern Togo" in supra n.31; Black and Metzger, "Ethnographic Description and the Study of Law" in Nader (ed.), op.cit. supra n.13, reprinted in Cognitive Anthropology (ed. S.A. Tyler, 1969); and Frake, "Struck by Speech: The Yakan Concept of Litigation" in Nader (ed.), op.cit. supra n.31.

Danet, op.cit. supra n.80, pp.490-546.


See Comaroff and Roberts, op.cit. supra n.27.
While giving more attention to the role of norms in disputing and other social processes, some anthropologists have also suggested that the treatment of norms as a code draws basically into question jural models of social relationships. This assertion has two related aspects that should be distinguished. One aspect recognises the limitations or inaefquacies of Western jurisprudence in analysing dispute processes and the forms of social order or domination elsewhere. This argument usually rests either on cultural grounds, hence refers generally to all non-Western 'societies', or on economic/historical grounds, hence refers specifically to precapitalist social formations. Many, if not most, contemporary legal anthropologists would accept at least one of the two quite different versions of this general point. The other aspect is the rejection of anthropological or other approaches that view relatively unambiguous rules as the basic constitutive elements in social relationships. It encompasses both legal rules, whether derived from Western Jurisprudence or not, and non-legal rules, such as those generally given analytic priority in normative approaches in social science. The second position does not negate a discussion of norms, for they form part of the repertoire used by individuals in social interaction; it simply views the world primarily as a negotiated order in which the relationship between rules and processes is always inherently problematic. Taken to its logical conclusion, this view implies a type of anthropological analysis that gives primary, if not exclusive emphasis to the ways in which individuals construct and manage social relations, including not only relationships among individuals but also those underlying broader social processes. This suggests the close affinity of these recent anthropological approaches to legal processes with the interactionist and phenomenological schools in sociology. It also distinguishes them - in some cases, very sharply - from

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142 See, e.g., Roberts, op.cit. supra n.8.

143 See, e.g., Snyder, op.cit supra n.122.

144 See, e.g., Comaroff, op.cit supra n. 141; Comaroff and Roberts, op.cit. supra n.27; and Comaroff, "Rules and Rulers: Political Processes in a Tswana Chiefdom", (1978) N.S. 13 Man 1-20.

Error! Unknown switch argument.
approaches such as historical materialism that are often concerned with individual actions and conceptions but emphasise in addition the great extent to which these are shaped, limited or determined by fundamental, supra-individual economic laws or forces.

3. Legal Pluralism

The view that any society or social group contains a plurality of legal orders or fragments of legal systems is well-known in jurisprudence and sociology of law. It was re-asserted by Llewellyn and Hoebel in The Cheyenne Way and has increasingly been elaborated by legal anthropologists. As Griffiths has shown, legal pluralism starts from the rejection of the notion of legal centralism - that law necessarily is the law of the state, is uniform and exclusive and is administered by state institutions. Since Furnivall's early work, three writers have proposed different conceptions of legal pluralism: Pospisil elaborated the idea of a multiplicity of legal systems and the existence of legal levels in a single society; Smith proposed a structural conception of pluralism based on corporate groups; and Moore has advanced a conception of semi-autonomous social fields based on processual characteristics.

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145 See the discussion of von Gierke, Ehrlich and Weber in Pospisil, The Anthropology of Law..., op.cit. supra n.32 pp.102-104.


147 See Griffiths, "What is Legal Pluralism", unpublished paper (n.d.)

148 J.S. Furnivall, Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India (1948).


151 See Moore, "Law and Social Change: The Semi-autonomous Social Field as an Appropriate Subject of Study", (1973) 7 Law and Society Review 719-746, reprinted in
There is, to date, no satisfactory theory of legal pluralism; but Griffiths is concerned to elaborate a descriptive theory of legal pluralism within a positivist sociological framework, while Fitzpatrick has sought to use Moore's notion of semi-autonomous social fields to develop a materialist/structuralist conception of pluralism in underdeveloped countries. Less explicitly theoretical research on this general topic has taken several directions. Roberts distinguishes between two lines of research, one concentrating on the litigant's perspective and especially the choice between one among several potential dispute-handling institutions, and the other focussing on dispute agencies themselves, including both institutional characteristics and the behaviour of third parties. Members of the Berkeley Law Project have been concerned with both strands. Thus, Ruffini, Starr and Witty emphasise primarily litigants' decisions to handle disputes in village institutions rather than going to state courts. Canter and Parnell concentrate mainly on competition between state and local institutions. Both Canter, on the one hand, and Hunt and Hunt, on the other, analyse the ways in which the hierarchy of dispute agencies operates to maintain ethnic stratification and social

Moore, Law as Process, op.cit. supra n. 131, chapter 2. See also Moore, "Individual Interests and Organisational Structures: Dispute Settlements as 'Events of Articulation'" in Hamnett (ed.), op.cit. supra n.42.


155 Canter, "Family Dispute Settlement and the Zambian Judiciary" in Roberts (ed.), op.cit. supra n.6; Canter, "Dispute Settlement and Dispute Processing in Zambia: Individual Choices versus Societal Constraints" and Parnell, "Village or State? Competitive Legal Systems in a Mexican Judicial District" in Nader and Todd (eds.), op.cit. supra n.42.
In a number of publications, Van Rouveroy has considered similar questions in the Togolese context; the Stratherns and others have examined the relationships between state and non-state institutions elsewhere.

In addition to emphasising competition between dispute institutions for cases and other resources, anthropologists have stressed the ways in which brokers mediate between rural communities and state agencies. Collier argued in 1975 that brokers primarily accounted for the persistence of rural conciliatory procedures as well as for changes in the substance of rural Zinacanteño (Mexican) settlements towards conformity with state norms. Examining the role of brokers in Zinacantan more recently, Freeman argued that a clear distinction between different legal modes had disappeared in favour of a single, composite system; he concluded that Mexican state officials were seeking to undermine the influence of brokers and establish direct links between individuals and the state. In contrast, Werbner's analysis of centre-periphery relations during an attempted centralisation of villages in Botswana suggested that citizens were not necessarily powerless even in the absence of

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157 E.A.B. van Rouveroy van Nieuwaal, A la recherche de la justice: Quelques aspects du droit matrimonial et de la justice de Paix et du Chef Supérieur des Anufom à Mango dans le Nord du Togo (1976); "Unité du droit ou diversité du droit: Bases juridiques du droit coutumier au Togo", (1979) 12 Verfassung und Recht in Übersee 143-158; "Chieftaincy in Northern Togo", (1980) 13 Verfassung und Recht in Übersee 115-121. All give references to van Rouveroy's other writings. Van Rouveroy has also made six films concerning dispute processes and social organisations in Northern Togo; the most recent, giving a list of other films, is "In Search of Justice: Different Levels of Dispute Settlement among the Anufóm in North Togo" (1981).


159 Collier, op.cit. supra n.57.

160 Freeman, op.cit. supra n.57.
brokers and were able to use state institutions for their own ends in political power struggles.\footnote{\textsuperscript{161}}

Many of these writers have emphasised the continued survival, in both peripheral and central capitalist countries, of dispute-processing institutions relatively independent of the state.\footnote{\textsuperscript{162}} Others have discussed the frequently profound disparity between the concepts embodied in state law and those held in many cases by the majority of a country's population.\footnote{\textsuperscript{163}} Anglo-American anthropologists have tended to focus on institutional pluralism, while French research has frequently concentrated mainly on concepts. Some of the recent work has drawn on a fundamental, early debate in legal anthropology, of which the most well-known protagonists were Bohannan and Gluckman, that was couched in terms of a discussion of the methodology of description and analysis but in fact concerned the general purposes of research.\footnote{\textsuperscript{164}} Consistent with Bohannan's emphasis but drawing mainly on earlier French research, much of the work carried out under the aegis of the Laboratoire d'Anthropologie Juridique in Paris has concentrated on elucidating 'folk' concepts concerning law and social control. For more than a decade and until very recently, its principal focus has been a careful linguistic and


\footnote{\textsuperscript{162}} See, e.g., Roberts, "The Survival of the Traditional Tswana Courts in the National Legal System of Botswana", (1972) 16 Journal of African Law 103-129. This theme is treated by most anthropologists writing on legal pluralism and, as shown later, by scholars interested in the political economy of law.

\footnote{\textsuperscript{163}} See Niang, "Place du droit islamique dans la vie juridique sénégalaise contemporaine: Confrontation des modèles (autochtone, occidental et musulman)", presented at the Second Meeting of the Africanist Network, UNESCO Project on the Transfer of Legal Knowledge, Malta, November 1980; and the papers in (1975) 1 Kroniek van Afrika [now African Perspectives] on "The Disparity between Law and Social Reality in Africa" (eds. B.E. Harrell-Bond and E.A.B. van Rouveroy van Nieuwaal). See also my review of the latter in (1976) 1 African Law Studies 162-168.

\footnote{\textsuperscript{164}} A summary of and references concerning this debate are given in Moore, "Comparative Studies: Introduction", Gluckman, "Concepts in the Comparative Study of Tribal Law", and Bohannan, "Ethnography and Comparisons in Legal Anthropology" in Nader (ed.), op.cit.supra n.31.
semantic analysis of rural African ideas, including, in some instances, comparisons with state legal concepts.\textsuperscript{165}

The best such work often reveals the profound ethnocentrism inherent in many anthropological studies of legal pluralism that begin from Western capitalist conceptions of law, but the aim of much recent research on this topic is not merely academic. Some work on legal pluralism by anthropologists falls into an immediately pragmatic, state-oriented tradition. It accepts the ideology and political practice of legal centralism and seeks either to reformulate 'customary laws' to render them amenable for use in state institutions or to argue that they reflect such basic differences in social organisation and values that the groups to which they ostensibly pertain should be accorded a special legal status by the state. Other research which emphasises the continued vitality of concepts, norms and institutions hidden from and often antagonistic to the state apparatus often aims to contribute (if usually indirectly) to popular political struggles.\textsuperscript{166} This latter strand encompasses primarily, though not exclusively, research on the political economy of law.

4. The Political Economy of Law

Since the mid-1970s, anthropologists reviewing past work and studying legal processes themselves have placed greater emphasis on economic factors, social inequality and forms of domination.\textsuperscript{167} Especially in research on brokerage, pluralism and

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\textsuperscript{166} See the IAUES Commission on Contemporary Folk Law Newsletters and the papers presented at its symposium in Bellagio, Italy, September 1981.

\textsuperscript{167} Aspects of Gluckman's work are re-evaluated in Moore,
legal change, they have also recognised that the village is generally not an appropriate unit of study; Murray, for example, points out that "piece-meal ethnography can only make sense within its full political, economic and social context". In order to define the salient features of this context in relation to legal processes, some anthropologists have sought to use Marxism as a source of research questions, theoretical concepts and possible explanations.

This work has been stimulated by the general elaboration of Marxist theory since the mid-1960s. Consistent with the general interests of anthropologists, it has drawn particularly on the attempts to elaborate and utilise Marxism in French economic anthropology, British writing on precapitalist modes of production, peasant studies and dependency and underdeveloped theory; I recently gave a survey of this literature. In


Snyder op.cit. supra n.42. 723-804. See also Fitzpatrick, "Law, Modernization, and Mystification" and Greenberg, "Law and Development in Light of Dependency Theory" in 3 Research in Law and Sociology (ed. S. Spitzer 1980).
contrast to sociologists studying central capitalist formations, scholars using anthropological approaches to legal processes have not, with some exceptions, made extensive use so far of recent Marxist theories of law. Nor have they been entirely persuaded by earlier and (in their view) overly optimistic calls for the dissolution of anthropology and its annexation by historical materialism; these often amounted ultimately to the absorption of Marxist theory as one among many explanatory models within general anthropology. Instead, though seeking to contribute to Marxist theories of law, scholars using broadly anthropological approaches have been somewhat more cautious, and concerned to explore the implications of different Marxist theories and concepts for the study of legal processes. In contrast to previous research and much contemporary work, however, they tend to be more interested in general theory and to emphasise the economic bases of political and legal institutions, the relationship of law to class formation and the connections between changes in legal processes and the development of capitalism as a distinct historical form.

A central, continuing theme in Marxist approaches is the relationship between the development of capitalism and processes of legal change. Two different strands have thus far emerged, each using a different concept of mode of production. Drawing partly on Banaji's notion of mode of production as an historical/economic category, I discuss the ways in which the subsumption of African peasants within capitalist relations of


171 See, e.g., Worsley, op.cit. supra n.90; and Copans and Seddon, "Marxism and Anthropology: A Preliminary Survey" and other papers in Relations of Production: Marxist Approaches to Economic Anthropology (ed D. Seddon, trans. H. Lackner, 1978).


production influenced legal ideas within a formerly precapitalist social formation. I employ Marx's distinction between simple and concrete concepts in arguing that the apparent continuity of simple legal concepts hides the profound transformation of concrete legal forms; thus, for example, the change in the social form of labour power during the colonial period in Senegal resulted in the transformation of a precapitalist conception of "childwealth" into a material and symbolic equivalent of urban labour power as a commodity. This emphasis on the historical specificity of legal concepts is exemplified in my analysis of the relatively recent development of 'customary' law as an ideology of colonial domination and a distinct legal form.

In another article, I propose four general theses concerning the changes in rural African legal forms during the 20th century. In contrast, Fitzpatrick employs theories of the articulation of modes of production to argue that, in contemporary underdeveloped countries, one of the functions of law is to conserve the traditional mode of production despite economic forces tending towards its dissolution. He emphasises the ways in which state law is used to restrict the formation of indigenous classes and seeks to show how precapitalist law constitutes, and is constituted by, precapitalist modes of production. He considers the often explicit use of rules as a distinctly legal element in precapitalist social formations.


179 See Fitzpatrick, "'Really Rather Like Slavery': Law and
Such analyses necessarily give special attention to the role of the state; and anthropological approaches have especially emphasised the connections between the state and legal processes in rural and urban communities. Both Fitzpatrick and Paliwala have demonstrated that, despite official pronouncements, the establishment of village courts in Papua New Guinea effectively extended the state apparatus of social control into rural villages and enhanced the formation of class alliances. Fitzpatrick and Blaxter jointly examine the effects of licensing laws on small-scale entrepreneurs and class formation. Discussing Senegalese rural administrative reforms, LeRoy argues that an original form of law, local law, is emerging in certain African countries as a new form of state penetration into rural communities. He discusses the preconditions for the development of local law and proposes that its emergence is related to the intensification of commodity relations and the penetration of transnational capital.

Though sharing with other scholars an interest in legal pluralism, these writers have been especially concerned with the implications of legal pluralism for class formation and the possibility of political action by dominated groups and classes. These questions are considered in articles mentioned in the preceding paragraph; and in a case study I show how the

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181 Fitzpatrick and Blaxter, "Imposed Law in the Containment of Papua New Guinea Economic Ventures" in The Imposition of Law, op.cit. supra n.32.

expansion of a rural association with dispute-processing functions was inhibited by consequences of the capitalist, export-oriented economic strategy of the Senegalese state.\textsuperscript{183} A recent symposium on African land systems, in which several legal anthropologists participated, discussed the relationships between small-scale legal processes and independent political action.\textsuperscript{184} As already noted, Santos considers these issues in his important study on Brazil, several papers on Portugal and a recent theoretical article.\textsuperscript{185} Such work takes as a major theme the possibilities and limitations of autonomous political movements within central and peripheral capitalist formations; and it demonstrates the close similarity of concerns between Marxist approaches in legal anthropology and in sociology of law.

CONCLUSION

This review aimed to introduce some of the major themes in anthropological approaches to law and legal processes, especially since the early 1960s. It briefly sketched the major early monographs but, without seeking to minimise the continuing importance of those writers, concentrated mainly on more recent research. Written primarily for an English-speaking audience, it gave special attention to the literature available in English, while also discussing some significant research in France and other countries. In addition, the paper delineated several of the important and continuing debates in the field; but its purposes and scope meant that other, deeper controversies could merely be suggested or were not pursued. Within these limitations, the discussion sought to outline the major recent developments and the principal, if sometimes...
incipient, theoretical strands. It emphasised particularly the
greater attention now paid by anthropologists to Western
capitalist societies and the increasing tendency of recent
writers to make explicit use of social theory or to situate
their work within its terms. The review also indicated the
existence of many potentially overlapping interests between
proponents of anthropological approaches and either academic
lawyers or sociologists of law, though obviously any effective
collaboration between people in these groups depends ultimately
on factors such as the recognition of common objectives. This
conclusion suggests several of the contributions and limitations
of anthropological approaches in relation to the study of law
and legal processes.

A Preliminary caveat is in order, for such an exercise, like
any review of the literature, not only reflects personal values
and predilections: if it to go beyond simply recognising the
merits and demerits of specific studies or the advantages and
disadvantages of particular theoretical positions, it also
depends on, and should therefore entail, the isolation of
specifically anthropological characteristics of the work being
discussed. I would suggest, however, that this is an impossible
task. The historical legacy of the initial concern of
anthropology (in contrast to sociology) with non-Western social
groups or marginalised groups in central capitalist countries
remains, of course, important. But if one takes a broad view of
anthropological approaches to law and dispute processes, one
must recognise that little, if anything, distinguishes this work
from the similar and equally diverse theoretical strands in
sociology. Virtually all of the studies discussed here could be
classified within sociology, though the paper concentrated
primarily on work by anthropologists. While perhaps a useful
institutional myth, in intellectual terms the separation between
anthropology and sociology is an essentially arbitrary
distinction that hinders rather than helps collaboration between
academic lawyers and other social scientists.

It is possible to accept this general point yet identify some
common features of the studies discussed above which, for our
purposes, we may consider as exemplifying contemporary
anthropological approaches to the study of law and dispute
processes. These features are shared with much sociological
research, but they distinguish this work from many academic
legal studies; and they indicate some potential contributions

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186 This and related points are discussed in Hymes. "The
Use of Anthropology: Critical, Political, Personal" in
Hymes (ed.), op.cit. supra n.16. Compare the statement
by Kuper, op.cit. supra n.6, p. 238, that "Whichever
theoretical model is used, the distinctive
anthropological perspective...is to begin by assuming
that the actors' models are part of the data, not
useful analyses of the systems being studied".

187 At least if one accepts the useful stereotypes of "the
of anthropological approaches to academic studies of law. Previous writers have suggested that the special contributions of anthropology to academic legal studies lie, first, in research methods and, secondly, in an emphasis on certain aspects of our legal system that academic lawyers sometimes overlook; the latter include the existence of numerous modes of dispute settlement in addition to courts, the critical importance of the litigant's perspective and the general social context of law. This paper showed that both anthropologists and lawyers have recently been concerned with these themes in studies of dispute processing, people's perceptions of access to justice and informal alternatives to courts. From the methodological standpoint, many of the approaches discussed here share an emphasis on micro-analysis and the use of an extended-case method. Though as yet rarely used by academic lawyers, the study of extended-cases has proved useful, especially when combined with other research methods, in showing the actual uses and functions of norms and procedures in continuing social processes, ranging from the maintenance of order to the mobilisation of classes. Another contribution of some recent anthropological approaches is to demonstrate the difficulties and limitations inherent in using the 'society' or 'social formation' as a unit of analysis. Studies that focus especially on disputing or deny the systematic character of law often stress processes which are not necessarily or usually bounded by such social units; and they demonstrate the worth of a processual approach in analysing norms and institutions in the framework of social fields or arenas. To a limited extent, therefore, they overlap with recent Marxist debates on the appropriateness of the social totality as a unit of analysis.

While studies and debates in legal anthropology continue, as before, to be heavily influenced by the predominant legal traditions in different countries, contemporary work has increasingly recognised the disadvantages of accepting these traditions as a source of analytic concepts or of guidelines for social research. As a consequence, most research in legal anthropology is likely to interest sociologists of law more than academic lawyers. The special contributions to sociology of law of anthropological approaches discussed here lie not only in empirical studies but also, and increasingly, in theoretical treatments of such topics as ideologies or cultural conceptions (folk systems), legal pluralism and processes of legal change. Recent anthropological research has concerned the relationships between processes of small-scale social ordering and the role of the state, and the ways in which people construct and maintain local norms and institutions in countries characterised by a plurality of cultures and different forms of class relations.

Similarly, some anthropological studies of legal change have moved beyond the evolutionary theories, dichotomous distinctions and conceptions of procedural sequences used in earlier work. Among the significant recent trends are the emphasis on the importance of individual strategies in particular social and cultural contexts and attempts to use historical materialist conceptions of fundamental economic transformations to analyse changes in legal ideas and processes. Some of these studies converge with contemporary sociological work on the state, law and society.

One way in which previous anthropological work has been selectively incorporated into academic legal studies (and state political practice) is exemplified by recent studies of dispute processing. Both lawyers and administrators have drawn on earlier anthropological research on this topic, but they have generally ignored anthropologists' emphasis on the limitations posed by different economic and cultural contexts on the creation of institutions. Nor have they taken account of a central point being made by contemporary anthropologists who have moved from this theme to concentrate on the study of rules and processes. These anthropologists consider that the social meaning of normative doctrines and the operation of institutions arises from the connections between the sociocultural order and individual experience. Law as such is not the object of their study, and they frequently view their work as lying outside the scope of a strictly defined anthropology of law. Despite a greater emphasis on context, few academic legal studies go as far as recent anthropological work in defining precisely the features of this context, whether in terms of continuing social processes, the historical specificity of legal ideas or the relationships between modes of production and a plurality of normative forms. This recent work has helped replace debates on universal definitions of law by a greater emphasis on the historical relativity of legal forms; and the anthropological emphasis on process has placed the formulation and use of legal doctrine and the role of legal institutions in continuing political and economic processes instead of viewing law in isolation.

The assumptions underlying mainstream social science approaches to law have been increasingly challenged in the past several decades, raising a number of basic issues concerning the study of legal processes by academic lawyers and social theorists. Anthropological approaches have not been exempt from this challenge and also pose some of these questions more

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190 This is commonly viewed by lawyers as the major contribution of anthropology to legal studies; see Hooker, op.cit. supra n.42, esp. pp. 14, 54
starkly than do other social sciences. The following may be mentioned briefly. Is the role of the social sciences in relation to legal studies best conceived as that of "under-labourer" or of "master-scientist" or, in other words, by whom and how is the subject of study to be defined? How might micro-level studies, such as those common in anthropology, best be integrated with macro-sociological theories of law? To what extent, if at all, are anthropologists' conclusions concerning law or dispute processes in apparently exotic settings applicable to social relations in central capitalist countries? To what extent is the cultural relativism of many anthropologists compatible with social theories of law, including Marxist ones, that claim to be universally valid, though sometimes historically specific? In what ways does a theoretical position that considers virtually all conceptions of law as ethnocentric, or defining law as a sterile exercise, disable a scholar from making a significant contribution to social theories of law? Does the frequent insistence by anthropologists on cultural specificity extend not only to Western jurisprudential ideas but also to Western conceptions of scientific explanation, including explanations of the origin and role of legal forms?

The view of many anthropologists that law and legal processes are not necessarily a monopoly of the state, even in American and European countries, controverts the statist conception of law commonly held by sociologists of law and usually taught by academic lawyers. The latter in particular are likely to regard the pluralist conception of law not only as a central feature but also as a major weakness of many anthropological approaches. Anthropologists, however, would contend that such a perspective raises many important questions, especially concerning intragroup regulation and the relationships of powerful groups to the state, that often are not even asked within the terms of academic legal studies. Moreover, despite an increasing interest in western capitalist legal systems, most anthropological work remains concentrated on small-scale legal processes in other countries. This research is especially pertinent to sociologists of law concerned with underdeveloped countries; but academic lawyers are likely to be deterred by detailed ethnographic data and thus fail to recognise the usefulness of anthropological methods of description and

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translation\textsuperscript{192} in studying their own domestic legal systems. A more fundamental weakness of anthropological approaches concerns the relative absence of comparative research. Anthropologists have often proclaimed their discipline to be inherently comparative. Except in the very limited sense of concentrating on groups or societies other than one's own, however, very few anthropological studies are genuinely comparative, and therefore they offer only implicit contrasts with our own state and its law. Furthermore, many positivist or interactionist anthropological studies tend to concentrate on observable behaviour and the explanations of social actors themselves. These empiricist and idealist approaches often ignore the fundamental economic laws or forces that are emphasised in many recent Marxist contributions to the sociology of law.\textsuperscript{193}

Though increasingly concerned with general social theory, legal anthropologists have so far made relatively few contributions to social theories of law. From the standpoint of both academic lawyers and sociologists of law (and indeed of anthropologists interested in law as an object of study), a particular weakness of many recent anthropological approaches is the tendency to reduce law to dispute settlement and to view legal and social processes as not simply inseparable but identical. In 1965 Nader lamented the lack of attention paid by anthropologists to the social context of law;\textsuperscript{194} but since then many legal anthropological studies have been concerned with the ethnography of disputes to such an extent that they have either not wanted or been unable to conceptualise law as a theoretical object.\textsuperscript{195} This approach has proved valuable in analysing social processes, including the role of norms, and in avoiding or minimising the use of Western legal ideas in studies of non-Western or precapitalist social formations. But it has

\textsuperscript{192} Koch, "Law and Anthropology ...", op.cit. supra n.42, pp. 15-16 emphasises the translation of cognitive categories as an especially important part of legal anthropological studies. See also the sources cited supra n.31 and n.164.

\textsuperscript{193} These anthropological studies, like some currents in American political studies today, thus differ fundamentally from Marxist conceptions of the method of political economy; see Snyder, op.cit. supra n.42, p. 742-743.

\textsuperscript{194} Nader, op.cit. supra n.13, p.17.

\textsuperscript{195} For a similar criticism of anthropological studies as part of contemporary social science, see Thomson, "Law and the Social Sciences - The Demise of Legal Autonomy", presented at the Conference on Critical Legal Scholarship, University of Kent, Canterbury, March 1981.
unfortunately meant that anthropologists concerned with the colonial period or with contemporary Western countries have often neglected state law. Though some anthropologists have disclaimed an interest in law as a subject of study, anthropologists generally have given almost no attention to such questions as, for example, the apparent autonomy of law in capitalist societies. Partly as a consequence of its relative unconcern for law and its emphasis on disputes and process, much recent legal anthropological writing would appear incapable of arriving at a theoretical view of the apparent autonomy of law, or of considering abstractly the relationships between plural legal forms, including those of the state, in different countries. Processual ethnographies sometimes illuminate these issues at the level of individual experience, but they do not provide or suggest more abstract theoretical answers to such questions.

From the standpoint of a genuinely comparative sociology of law, a final limitation of many anthropological studies lies in the ethnocentrism that often appears to be inherent in anthropology, as in other social sciences. Like sociology and economics, the discipline of anthropology is based on Western conceptions of science and developed as a consequence of particular economic and political processes in European and American history. Although the practitioners of anthropology have often claimed it to be the universal science of humankind, they have frequently been unable to envisage social processes or legal forms in ways other than those based ultimately on their own historical and cultural experience. This experience has, of course, become more immediately pertinent to people everywhere with the development of capitalism as a mode of production; but its continuing legacy has been to hinder the elaboration of a more adequate theoretical study of law and related processes, either within mainstream anthropology or within neo-Marxism and historical materialism. The anthropology of law is a myth if conceived as the search for a historical and cross-culturally valid features of law, or, alternatively, as the reduction of historically and culturally specific normative forms to ethnographic descriptions of individual behaviour. The reformulation of legal anthropology as the study of social order merely displaces these problems of theoretical perspectives and in turn raises others, including the difficulty of accounting for the pervasive importance and distinct role of state law. The future development of legal anthropology lies, therefore, not only in elucidating the relationships between social action and cultural ideologies, but also in grasping the extent to which these relationships and the wider social processes of which they form a part are the product of specific historical and economic conditions. In this respect, anthropological approaches, while perhaps offering little to academic lawyers, may contribute to and converge with sociology of law.
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