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Some Anthropological Considerations Concerning Natural Law

Margaret Mead

SOME ANTHROPOLOGICAL CONSIDERATIONS CONCERNING NATURAL LAW

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AMONG THE VARIETY of contributions which anthropology, as the comparative study of cultures with particular emphasis upon the study of living societies without a written tradition, may make to the study of natural law, I propose to deal here with three: (1) what anthropology can say about the universality, as evidenced by all known cultures, of the recognitions peculiar to natural law; (2) what case studies of primitive or exotic societies, which have come newly in contact with our elaborated system of Western law, can contribute; and (3) what the attempt to distill the essence of something as culturally embedded as our own legal system can contribute to the process of diffusion of historical systems of law.

I

In asking what conceptions of human rights are universal to all known cultures, it is, of course, necessary to recognize that we can only ask this question about that assemblage of societies that have been observed and recorded. Inevitably, our universe excludes all cultures that have vanished without leaving any record, and the steadily shrinking number of existing cultures that exist in the present but have not yet been studied. The culturally regulated relationship among persons within a given environment is characterized both by certain persistent regularities, due to the species-specific characteristics of human beings, and a wide variety of forms having historical uniqueness. It is only those areas of human life which are most closely based in our common biological heritage in which we may not expect still to find, among existing cultures, instances which alter existing generalizations.[1]

1. As an example of the borderline between present possibilities of extrapolation from known instances, we may take the question of kinship forms, all of which involve descent of offspring from parents of two sexes. In 1931 it was possible to catalogue the known forms of emphasis upon descent from father to son, from mother to daughter, from father to children of both sexes, from mother to children of both sexes, and to construct the possible but not yet recorded type of a society in which descent was patterned as father to daughter to daughter's son, to daughter's son's daughter, a form which had not been recorded and which, while possible, seemed inherently unstable. Several variations on this form have since been found, all unstable as predicted. Where such constant features as sex and descent are absent, the possibility that human invention has transcended our present powers of extrapolation is very high.

Nevertheless, the systematic observations of constancies among all known cultures make it highly probable that the kinds of cultural behavior found in all of them have been an integral part of their survival system up to the present time. Among such constancies we may note the distinction between the sacredness of human life within and without the group, or the existence of a category of murder — a type of killing that is different from all other killings, falling in specified ways within the circle of protected persons.[2] The distinctions vary from one group to another; a newborn infant may be excluded, or an adulterer caught *in flagrante delicto;* expected revenge may even take the form of a man's obligation to kill the foster father, who once killed his father, married his mother, and reared him from childhood. But the categories of justified versus unjustified killing remain for all known societies. As human beings, to survive, must live in aggregations of more than one biological family, this distinction can be regarded as a vital one for the development of a viable society. The extension of the category of those whose killing constitutes murder, in contradistinction to legitimate vengeance, or conventional head hunting or warfare, has been a conspicuous marker of the evolution of civilizations in spite of its carrying with it the inescapable corollary of increasing the number of those who become at one stroke — as with a declaration of war — legitimate victims.

With the same universality we find incest rules governing the three primary incest relationships — mother-son, father-daughter, and brother-sister — occurring in all known societies. Although in special cases they may be occasionally waived, as in royal marriages between brother and sister, or in cases of small in-marrying groups in which there are no possible mates, such exceptions are treated as exceptions, marking royalty off from commoners or signaling a desperate population emergency. The circumstance that the taboo is frequently broken — especially in the father-daughter form — under conditions of cultural breakdown, only serves to demonstrate that its maintenance is socio-cultural rather than instinctive. Clinical and anthropological evidence suggests that the attraction and repulsion of members of a biological family are such that social regulation has been necessary. The function of the incest taboo may be seen as preventing competition among members of the same sex within the family group during the long period when human young are not mature enough to fend for themselves, and as providing forms in which the search for mates outside the immediate family strengthens ties within families.[3]

2. Edward Westermarck, The Origin and Development of the Moral Ideas. 2 vols. (London: Macmillan, Vol. I, 1906; Vol. II, 1908).
3. Robert H. Lowie, Primitive Society (New York: Boni & Liveright, 1920); George

It is in those instances where incest rules have been elaborated to include large numbers of persons, all members of one clan, all members of one village or district, etc., that the compensatory need for religio-legal devices for breaking a rule that has become too onerous is found, and the complementary right to find a mate is brought into relief. Again those instances in which marriage is denied require strong cultural elaborations or religious and ethical sanctions, in which individuals become completely dedicated to a religious life.

Finally, in spite of the widespread notions of primitive communism, there is no known culture without some institution of private property. The forms in which this is expressed may appear bizarre — the right to a name, or the right to certain forms of privacy such as the right to sleep without being awakened, or to eat without being spoken to — but the association of social identity with rights against the invasion of others is universal.[4] Practices such as the destruction or interment of an individual's personal possessions, weapons, tools, dress and adornment, etc., combined with ownership of camping sites and hunting territories by larger corporate groups, have misled some observers into thinking that no property was held by individuals. Experience with attempts to impose modern ideas of state capitalism or collective ideologies upon "communistic" primitive people very rapidly exposes the error of this assumption.

Effective use of case studies from primitive cultures requires a recognition that no matter how primitive the people under discussion are, rules concerning the sacredness of life (under some circumstances), rules concerning the prohibition of incest in the primary familial relationships in most circumstances, and rules governing an individual's rights over some differentiated physical or cultural items will be found. That such recognitions have been universal in the past does not, however, argue conclusively for their necessary continuance in the future. But they appear to have provided a minimal culturally transmitted ethical code without which human societies were not viable. The English geneticist C. H. Waddington has argued persuasively,[5] on purely naturalistic grounds, that the capacity to accept a division of be-

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PETER MURDOCK, SOCIAL STRUCTURE (New York: Macmillan, 1949); Reo F. Fortune, *Incest*, in 7 THE ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 620 (1932); Maurice J. Barry, Jr. & Adelaide M. Johnson, *The Incest Barrier*, 27 THE PSYCHOANALYTIC QUARTERLY 485 (1958); MARGARET MEAD, MALE AND FEMALE (New York: Morrow, 1949; London: Victor Gollancz, 1950; New York: The New American Library — a Mentor Book — 1955).

4. Lawrence K. Frank, *The Concept of Inviolability in Culture*, in SOCIETY AS THE PATIENT 143-150 (New Brunswick: Rutgers U. Press, 1948).

5. C. H. WADDINGTON, THE ETHICAL ANIMAL (London: George Allen & Unwin, 1960). See also THOMAS H. & JULIAN HUXLEY, EVOLUTION AND ETHICS, 1893-1943 (London: The Pilot Press, 1947). American edition, TOUCHSTONE FOR ETHICS, 1893-1943 (New York: Harper, 1947).

havior into that which is right and that which is wrong, is a distinctively human species-specific type of behavior which has played an essential part in the evolution of culture.

"Natural law" might thus be defined as those rules of behavior which had developed from a species-specific capacity to ethicalize as a feature of those examples of such ethicalizing that appear in all known societies.[6]

II

Case studies from primitive cultures cannot be made until there is some degree of contact with the social system from which the observers come. Such contact may involve a confrontation with new and more efficient weapons, such as a rifle, or the internal discipline of an exploration party, or even, in some cases, the type of questions which an investigator asks, as for example, "What happens if a man picks fruit from another man's fruit tree?" This may be a question that has never arisen before; fruit trees may never have been owned. The single question, whether asked by a member of a neighboring tribe, by a sailor put ashore from a whaling vessel, by a government official attempting to extend the boundaries of control, or by an anthropologist, however well disciplined in avoiding ethnocentricity, creates the possibility that a new legal idea may come into consciousness, and so into the potential range of regulation of behavior possible for that primitive group at that moment. In fact, most of the classical studies of primitive law have been conducted under the vivid stimulation of contrast between the demands of the expanding system of British, or American, or Dutch law, and the customary law which may be found among the particular native group in question. Reconstructions of the state of precontact systems are always to this extent somewhat contaminated.[7]

6. To argue this position fully it is necessary to circumscribe the definition of a viable human society by including survival over a generation span, which excludes both the nonviable Nazi experiment in mass murder, which lacked ethical sanctions, and such bizarre experiments as religious cults like the Oneida Community or experimental cult communities in which all sex relations are forbidden. See ALLAN ESTLAKE, THE ONEIDA COMMUNITY: A RECORD OF AN ATTEMPT TO CARRY OUT THE PRINCIPLES OF CHRISTIAN UNSELFISHNESS AND SCIENTIFIC RACE IMPROVEMENT (London: G. Redway, 1900); ROBERT A. PARKER, A YANKEE SAINT: JOHN HUMPHREY NOYES AND THE ONEIDA COMMUNITY (New York: Putnam, 1935); EDWARD D. ANDREWS, THE PEOPLE CALLED SHAKERS: A SEARCH FOR THE PERFECT SOCIETY (New York: Oxford U. Press, 1953); MRS. MARGUERITE (FELLOWS) MELCHER, THE SHAKER ADVENTURE (Princeton: Princeton U. Press, 1941 & London: H. Milford, Oxford U. Press, 1941). See also RAY (MRS. RACHEL) STRACHEY, GROUP MOVEMENTS OF THE PAST AND EXPERIMENTS IN GUIDANCE (London: Faber and Faber, 1934).

7. R. F. Barton, *Ifuago Law*, in 15 UNIVERSITY OF CALIFORNIA PUBLICATIONS IN AMERICAN ARCHEOLOGY AND ETHNOLOGY, No. 1 (1922); KARL N. LLEWELLYN & E. ADAMSON HOEBEL, THE CHEYENNE WAY, CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE (Norman: U. of Oklahoma Press, 1941); E. ADAMSON HOEBEL, THE LAW OF PRIMITIVE MAN (Cambridge: Harvard U. Press, 1954); MAX GLUCKMAN, ESSAYS ON

In addition to attempts to reconstruct the system of rules and sanctions which existed prior to contact with a more developed legal system, of which Malinowski's *Crime and Custom in Savage Society*[8] is a classic example, it is possible to use the situation of culture contact itself to illuminate the primitive system by a study of the attempts made by members of both societies to interpret each set of rules and premises in terms of each other.[9]

Such an example of culture contact may be found in New Guinea, especially since World War I and the conquest and assumption of responsibility by Australia, first as a Mandated Territory under the League of Nations and later, after World War II, as a Trust Territory under the United Nations.[10] Earlier culture contact had been with Imperial Germany, in which the German colonial governors had introduced a rule of superior force which confronted the natives with no more serious intellectual dilemma than that which had confronted a weaker primitive group vis-à-vis a stronger primitive group. The type reminiscence of the "time belong German" is that of a native head hunting expedition meeting a German punitive expedition and each cheering the other on their violent and destructive way.

With the establishment of the Mandate, however, two new elements were introduced: British law, as it was interpreted by Australians, and standards of behavior set by an international body concerning the responsibility of the Mandate power for the well-being of the native peoples. The native peoples of New Guinea and the Bismarck Archipelago had a characteristic lack of political structure or sanctions capable of maintaining groups of more than a few hundred persons within a steadily cooperating unit. They lacked any idea of hierarchy or superordinate power, even of the sort in which a council of old men presided over the small communities. Both intragroup and intergroup relationships were maintained by the exercise of symmetrical sanctions — I won't help you if you don't help me; I won't exchange with you if you fail to exchange with me; I won't trade with you if you fail to trade with me; if you attack us, we will attack you, etc. — in which individual "big men," or two moieties within a tribe, or villages of two different linguistic groups maintained a wavering uneasy peace punc-

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Lozi Land and Royal Property (Livingstone: Rhodes-Livingstone Institute, 1943); Max Gluckman, Custom and Conflict in Africa (Glencoe, Illinois: The Free Press, 1955); Max Gluckman, The Judicial Process Among the Barotse of Northern Rhodesia (Manchester: Manchester U. Press, 1955 — published on behalf of Rhodes-Livingstone Institute, Northern Rhodesia).

8. Bronislaw Malinowski, Crime and Custom in Savage Society (London: Kegan Paul, Trench, Trubner & Co., 1926).

9. *The Tiv of Nigeria,* in Cultural Patterns and Technological Change, Margaret Mead, ed. (Paris: Unesco, 1953 & New York: New American Library — a Mentor Book — 1955, pp. 96-126).

10. S. W. Reed, The Making of Modern New Guinea (Philadelphia: American Philosophical Society, 1943).

tuated by sorcery within the smallest group, violence between individuals who were members of different segments of the same group of a village, and shifting alliances and surprise attacks between groups. In a few instances, as among the Manus of the Admiralty Islands, supernatural sanctions for ethical behavior had developed; yet even here the guardian ghosts of each household chastised their own members for wrongdoing — sending illness and misfortune — but acted as symmetrical threatening and nonmoral sanctions against the members of other households, who had defaulted on contracts, or otherwise had angered the members of their ward households.

There were, it is true, bodies of recognized custom, the breach of which justified anger and violence, but there was a striking lack of methods of enforcement of controls on individuals who breached the system, by displaying inappropriate anger. Counter anger, counter threats, counter sorcery, or counterattack with spear or club might still be the recourse. When such conflicts broke out within a village, the weaker or defeated individual or group simply moved away, further fragmenting the society. It was an area comprising hundreds of linguistic groups, some of them numbering only a few hundred speakers, scattered on small and large islands, differing conspicuously from each other in the details of their way of life, and markedly deficient in any of the social forms which could make possible the organization of stable social units with power to enforce social sanctions against the violent and the intractable. Boundaries between linguistic groups were vague and permeable by runaway women or by men seeking temporary sanctuary from attack, and even relationships between hereditary trade friends resembled a very temporary truce.

Into this situation moved a sparse Australian governing group, first as part of a military occupation displacing the Germans, and later as a set of civil servants under the Mandate power. As labor recruiters, prospectors, and missionaries pushed out from the points of settlement, the government officials attempted to bring the penetrated areas "under control." In an area under control, fighting between groups, once classified as "warfare," and killings between groups, once customary head hunting, were now classified as "homicide" or "murder" and interdicted. Natives who failed to observe the prohibitions were treated as offenders against civil or criminal law — the law of the state of Queensland except as specifically altered by particular New Guinea statutes — and were to be tried with all due process of law. During the period between World War I and World War II the judiciary, supervising a set of young patrol officers who acted as junior magistrates, struggled to impose a rule of law where there had been only a rule

of threat and retaliation of privately invoked sanctions. Particularly due to the inspired efforts of Judge Phillips, later Sir Beaumont Phillips, a policy was set up which attempted to treat native and white man alike, as equal under the law. The Judge, in full wig, sat beneath a corrugated iron roof in some isolated outpost struggling to unravel the details of some native feud or impose sentence upon a group of men, who, in a district not yet under control, had killed a white recruiter. Counsel was appointed on behalf of the row of uncomprehending, scantily clothed "murderers," and counsel in turn argued that as the area was not yet under control and the natives had been acting according to native custom, the king's writ did not run. But Judge Phillips argued that if a native could not be tried for killing a white man, neither could a white man be tried for killing a native — if he also were in territory that was not yet "under control." And so groups of "murderers" who had killed either other natives or an occasional white man were hailed into court, together with a large assortment of witnesses; and after they were found guilty, Judge Phillips would write a long, careful opinion recommending clemency; then the convicted men would spend a few months in gaol, learning the lingua franca of the Territory and the rudiments of European ways. This policy, which preserved the full intent of the law and permitted no watering down preliminary to the sentence, contrasted sharply with scenes that could be witnessed in the court in American Samoa in 1925-26, where I once heard a woman forgiven for bigamy.

From these courtroom scenes, the New Guinea natives took back impressions that were strengthened by the smaller courts held by patrol officers when they visited the villages — patrol officers who had also received most of their experience in law from the courts conducted by Judge Phillips and his associates.

Throughout the Territory, enthusiasm for the rule of law spread; government-appointed native officials, who had been given a hat as a sign of their official positions as appointed headman or interpreter, began holding courts themselves in an attempt to settle as many disputes as possible without recourse to the administration. The pattern of holding courts spread far into the interior, even beyond the lines of control.[11]

During and after World War II, there was considerable discussion of the feasibility of training native magistrates and of the hazards of exposing the interpretation of the law to the vicissitudes of local kin ties and veniality.

11. Dr. Ronald Berndt has made an extensive study of court cases of this type. It is lodged as a dissertation at the London School of Economics, University of London. A book by Dr. Berndt, based on his Ph.D. dissertation and entitled ORDER AND DISORDER IN NEW GUINEA is in press at the University of Chicago Press and in London with George Allen and Unwin, due for publication in 1961.

The administration had always been alert to the dangers of abuse of power by government-appointed officials and were prepared to discipline very heavily any local official who exceeded his authority. Events in Manus which I am about to describe must be understood against this background.[12]

In 1946 a local leader of exceptional ability inaugurated a sweeping social revolution among the Manus speaking peoples of the South Coast and several adjacent linguistic groups. Old custom was swept away and a new social order was introduced, which was articulatedly patterned on an idealized model which drew upon British law as experienced during the Mandate, Christianity as experienced through Catholic Missions, and American styles of interpersonal relations as experienced during the occupation of Manus during World War II.[13] This revolution was intensified in its sweep by a nativistic cult episode, which, before its extremes of enthusiasm were brought under control, had resulted in a break with the Mission, clashes with the Administration, and sharply drawn lines between those who came inside the new Movement and those who remained outside. Inside, a whole set of institutions was set up to replicate the model — government, courts, hospital, school, bank, customs, passports, etc. The local "courts," administered by native leaders who were both government appointees and elected officials of the new Movement, came in sharp conflict with local Administration, already deeply unfriendly to the Movement. The Movement, however, received support from top Administration which, under a Labor Government in Australia, had established a policy of encouraging local leadership and setting up local councils.

Our own study of the operation of the native "courts" was conducted in a part of the Movement area — the South Coast Manus villages — in which legal elections had been held but where a legal, Administration-approved Council had not yet been inaugurated, so that the "courts" which were operating not only had no sanction as yet but were so disapproved by Administration that any native who disliked a ruling could inform against their very existence. They functioned, therefore, with only moral sanctions which lay in the villagers' adherence to their new Movement and loyalty to its leader, Paliau, on the one hand, and in the general moral

12. H. Ian Hogbin and C. H. Wedgewood, *Native Welfare in the Southwest Pacific Islands,* 17 PACIFIC AFFAIRS 133-55 (1944); K. E. Read, *Effects of the Pacific War in the Markham Valley, New Guinea,* 18 OCEANIA 95-116 (1947).

13. MARGARET MEAD, NEW LIVES FOR OLD: CULTURAL TRANSFORMATION MANUS— 1928-53 (New York: Morrow, 1956, and London: Victor Gollancz, 1956); Margaret Mead and Theodore Schwartz, *The Cult as a Condensed Social Process,* in GROUP PROCESSES, Transactions of the Fifth Conference, October 12-15, 1958, B. Schaffner, ed. (New York: Josiah Macy, Jr., Foundation, 1960, pp. 85-187); Theodore Schwartz, *The Paliau Movement in the Admiralty Islands, 1946-1954.* A Dissertation in Anthropology, University of Pennsylvania, 1957 — in press, American Museum of Natural History Anthropological Papers.

support which the villagers gave to the imported idea of a "court" on the other.

I have records of such "court" cases over a period of six months which I could compare with a study made in the village of Peri under near aboriginal conditions in 1928-29.[14] In 1953 a "court" was presided over by "judges" who sat in pairs, mirroring an old dual composition of the village, which the Administration had institutionalized by giving the composite village two "books" containing the rolls of each division, and a double set of officials, headman, interpreter and medical officiant. From these "court" cases and discussions with informants, it is possible to derive which were those aspects of the law as they had experienced it which had appealed to the people. These were: a method of settling disputes without anger or violence; the substitution of orderly and impersonal forms of punishment, flogging,[15] fines, and damages, for the old methods of supernaturally invoked illness and misfortune, or burning, pillaging, and internecine strife; insistence upon the institutional character of justice, in which the "judge" claimed greater wisdom but not greater virtue or strength than those he judged. The emphasis upon impersonality was reiterated frequently by opening remarks in a hearing in which the "judge" would make a speech saying: "I am no better than any one of you; I also have done many wrong things. When I talk, it is not because I am good, but because this is the way of courts." Or he would interject something like this: "If it was my own wife who was being tried, I would give the same judgment."

The respect in which the court was held was expressed by the participants wearing European dress, which was also worn in church, and by insistence upon quiet and orderly proceedings. Written records were kept and used somewhat unfairly against the illiterate women, to confront them if they gave evidence which did not tally verbatim with what had been taken down. The value of recorded contracts and decisions was one of the Manus' early perceptions of the good that would come from a knowledge of writing. There were prolonged and serious struggles with questions of evidence, and valiant attempts to eliminate hearsay on the one hand, and intuition on the other, as the "judge" relentlessly pushed the question: "Did you see it with your eyes, did you hold it in your hand?" Also, evidence based on what witnesses claimed to have "heard" was rigorously scrutinized

14. MARGARET MEAD, GROWING UP IN NEW GUINEA (New York: Morrow, 1930; London: George Routledge and Sons, 1931; New York: New American Library — A Mentor Book — 1953); REO F. FORTUNE, MANUS RELIGION (Philadelphia: The American Philosophical Society, 1935).

15. Earlier sentences of flogging had been rigorously punished by Administration so that none were actually given while I was there.

— a process particularly necessary in a language where there is no gender, so that the third person pronoun may stand for a man, a woman, or some material object. One court case involved a minor theft by a highly disturbed child who had been reared by a woman well known for her pathological behavior. In this case the "judges" fined the little girl, and they themselves discussed the extenuating circumstances of the girl's upbringing, and themselves paid the fine for her into the village treasury — an echo of the concept of justice that had been established in the high court.

Comparison with attempted political reform in other parts of New Guinea indicates that throughout the area there is a fundamental recognition that a system of sanctions, based upon "anger" and reinforced by magical or physical strength only is inferior to that of "courts" based upon moral sanctions, reinforced by governmental backing. Paliau himself, the leader of the Manus movement, was perfectly clear that the order which he sought to introduce would collapse without the superior strength of the Administration back of it. He sought a legal standing for his movement, and help from the Administration. Similarly, in the South Coast Manus section, where the legality of the new system had not yet been established, the "judges," although sitting illegally, invoked the availability of future governmental sanctions; the "fines" were placed carefully in a treasury which would only be tapped when the system became legalized, and the punishments were verbally invoked which in the future might be meted out, with government support.

Where political reformism in New Guinea takes a more religious form with promises of ancestral spirits who will return with large supplies of "cargo" — which once comprised tinned beef, kerosene, and cloth, today even airplanes and bulldozers — the emphasis upon the abolition of anger remains as a spiritual aim. In the more secular movements, the need for coalitions among groups, the abolition of old feuds, and the establishment of some more central authority and of "courts" is emphasized. These are clear indications of the ability of primitive people to recognize aspects of more developed institutions in some of the same terms that the civilized bearers also value them.

In the Trust Territory of New Guinea, it is the orderliness and peacefulness and reliable powerful sanctions which are the aspects of our law which are appreciated. A very much more pallid case can be made for the sense of justice, as in the case of the kleptomaniac little girl, from a discrepancy between a correct court procedure and the actual human circumstances.

In other areas of the world, such as the Netherlands East Indies with the Republic of Indonesia, for example, it was possible to introduce an idea of

justice which recognized the validity of local law, or *adat,* as it is called in Indonesia. It was, under Netherlands rule, the duty of the magistrate to ascertain what the *adat* of any given village or district was, and to give a decision in terms of the *adat.* An unjust decision in Bali, for example, was a decision, rendered by a government official, that was not in accord with the local *adat.* The *adat* itself was absolutely impersonal, and no human extenuating circumstances of any sort were expected to be introduced, either in locally and traditionally administered *adat,* or by Netherlands government officials. Deliberation and discussion centered upon whether an individual was guilty of a breach of *adat,* and upon what the exact *adat* was.[16]

Attempts to prevent a decision, either of village elders or of a higher official might involve complicated intellectualistic arguments. For example, in a case of incest in the Balinese village of Bajoeng Gede, the guilty pair stood in the relationship of second cousin twice removed to one another, the girl being the "second cousin grandmother" of the boy, a relationship which is not incestuous under the *adat* of many other Balinese villages. The village council deliberated for hours because the local intellectual raised the question of whether a second cousin grandmother was not further removed than a second cousin, with whom marriage was permitted; but in the end they said firmly: "In this village, sex relations with a female second cousin of the grandparental generation is forbidden," and carried out the sentence — which had also been extensively researched in the memories of the old. The houses of both the offenders were removed to the Land of Punishment, and ceremonies were prescribed in which both ate like pigs — with a pig yoke over their heads, eating with their mouths from a pig trough — and said farewell to the Gods of the village and went to live in the nether regions presided over by the Gods of Death. In such procedures there was no place for anger or scolding or even impersonal moral oratory.

But in the Trust Territory of New Guinea, not only was the very concept of customary law lacking, but custom itself was extraordinarily variable and fluid. With the absence of genuine political boundaries, the small linguistic groups not only bartered for a great variety of local manufactures, and exchanged or carried off one another's women, but also included in intergroup barter identifiable customs, such as forms of marriages, or forms of social organization. The constant import and export of items of custom was accompanied by a willingness to accept new customs very rapidly, whether these were new variations within a group or recent imports.[17] The

16. B. Ter Haare, Adat Law in Indonesia, trans. from the Dutch by A. Arthur Schiller, ed. with an introduction by E. A. Hoebel and A. Arthur Schiller (New York: International Secretariat. Institute of Pacific Relations, 1948). Also A. Arthur Schiller, The Formation of Federal Indonesia (The Hague and Bandung: Van Hoéve, 1955).
17. Based on unpublished field notes from Balinese expedition 1936-38. Cf. Margaret

serious European administrator in search of local custom to use as a guide to an indigenous cultural sense of justice would have been hopelessly bogged down in arguments about which group had which custom, or in testimony on customary behavior which would seem in logical conflict, such as prescribed marriage with a woman of father's mother's clan, or brother and sister exchange, or marriage with father's sister's daughter — all of which may be described as "the" correct marriage within one village. Under such circumstances instead of following customary law, the practice has grown up of taking into account more generally humane considerations such as ignorance of the ethical tenets of European behavior. This in turn is now reflected in the interpretation of *justice* as primarily a congruent or incongruent relationship between human feeling and legal rules.

A third instance of contact between Western law and an Oceanic people can be found in Eastern Samoa, where a portion of the Samoan islanders ceded their lands to the United States, and were governed for a very long time by a series of Naval Administrators who had to administer in the absence of any organic Act.[18] The Samoans had an elaborate although uncodified set of social rules which would quite easily have been assimilable into an overriding legal system which respected local *adat,* as the Netherlands had done. However, the system of sanctions was inextricably interwoven with the protocol surrounding the hierarchically arranged titles. Punishment for an offender who failed to conform with village rules about the disposal of a certain type of fish, or the entertainment of strangers, or participation in village work, was phrased as punishment for contumacious behavior towards the holder of a high title; the offender's house and fruit tree might be destroyed, the whole family banished, or even sent out to sea in a small canoe. Such sanctions appeared to the Naval officers charged with interpreting them as the type of "royal" privileges or exercise of aristocratic prerogatives inconsistent with the United States Constitution. Sanctions were used against the Samoan chiefs who had themselves exercised traditional sanctions, thus undermining the force which lay behind the regulation of Samoan behavior, and leading to a phrasing of the situation as primarily a conflict of sovereignty. Samoan customary law was perceived further as part of a large amorphous mass of tangled protocol and prerogative called

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Mead, *On the Concept of Plot in Culture,* in TRANSACTIONS OF THE NEW YORK ACADEMY OF SCIENCES, Ser. II, Vol. 2, November 1939, No. 1, pp. 24-27; Margaret Mead, *Researches in Bali, ibid.,* pp. 1-8; Gregory Bateson, *Bali: The Value System of a Steady State,* pp. 35-53 in SOCIAL STRUCTURE, Studies presented to A. R. Radcliffe-Brown, ed. by Meyer Fortes (Oxford: Clarendon Press, 1949).

18. MARGARET MEAD, COMING OF AGE IN SAMOA (New York: Morrow, 1928; London: Jonathan Cape, 1929; New York: The New American Library — A Mentor Book — 1949); MARGARET MEAD, SOCIAL ORGANIZATION OF MANU'A (Honolulu: P. B. Bishop Museum No. 76, 1930); J. A. C. GRAY, AMERIKA SAMOA AND ITS NAVAL ADMINISTRATION (Annapolis: U.S. Naval Institute, 1960).

the *fa'a Samoa* (a phrase meaning "in the Samoan fashion") which became reified into an entity by repeated invocation. Relationships between American standards, interpreted by officials with inadequate backing who had to use a large amount of discretion, and Samoans who alternated between submission and apparently capricious outbreaks of refusals to cooperate, have resulted not in a sense of amalgamated law, but in a notion that Samoan customary law is an irrational layer underneath American law.

It will be seen that there are a very large number of possible developments when Western systems of law encounter older or underdeveloped systems of customary behavior — as many developments in fact as there are contact situations.[19]

III

Meanwhile as contact between different parts of the world becomes more rationalized and self-conscious, new approaches to the problems of culture contact have emerged. Instead of the earlier haphazard reliance on accidents of personnel and period, any segment of Western culture involved in the process of diffusion can be scrutinized for suitability.[20] The science of nutrition provides a useful model for such scrutiny, as methods of assaying both the nutritional status of human beings and the nutritional content of foodstuffs are available. In the old haphazard style of culture contact, whether nutritional information was diffused by bringing students from the less developed countries to the more developed, or by exporting experts from the scientifically specialized centers, the result was substantially the same. The scientific core of information about calories, types of balance among proteins, carbohydrates, and fats, and the need for essential vitamins and minerals, was diffused surrounded by a large amount of cultural baggage peculiar to the country where the science of nutrition had been elaborated. Such cultural baggage included such items as an insistence on animal milk as a substitute for mother's milk, and styles of food preparation, meal arrangement, etc., which were alien to the importing countries, irrelevant to basic nutritional needs, incompatible with the local food resources. Today we know that there are two possibilities: for the importing country with

19. The situation in Western Samoa, with its sequence of Imperial German colonial rule, a League of Nations Mandate to New Zealand, a United Nations Trust Territory under New Zealand, and probable emergence as an independent unit in 1962 is very different from that in American Samoa. Similarly, attitudes towards the law in Australian New Guinea (Papua) developed very differently from those in the Trust Territory, where German colonial rule was followed by trusteeship, against the general background of New Guinea cultures which themselves displayed the same type of lack of political organization and systematic sanctions. Netherlands New Guinea, which was administered in a style developed in the East Indies, presented still a third variant.

20. Margaret Mead, *Cultural Factors in Community Education Programs,* COMMUNITY EDUCATION, The 58th Yearbook of the National Society for the Study of Education, Part I, pp. 66-96 (ed. by Nelson B. Henry, 1959).

an old literate tradition, i.e., Java, Burma, Thailand, Lebanon, students can be trained in the science of nutrition in such a way that they can take the basic scientific knowledge back to their own countries, and embody the principles they have learned in the dietary practices of their own culture; or where the underdeveloped country lacks a literate tradition, an expert can be sent to that country to work out ways of applying the nutritional principles there within the limits of the local conditions. The basic principles of nutritional science may be regarded as universals, derived from man's biology and from the biochemical composition of specific foods grown on specific types of soil. They are as applicable in one culture as in another, and we may expect to add to our understanding of the nutritional process as intensive scientific investigation proceeds in the laboratories of modern industrialized societies. Stripped of the cultural traditions of the country within which the science of nutrition had developed, it can be applied anywhere.

Although a system of jurisprudence provides us with a very different set of problems, it would be worthwhile, I believe, to experiment with the model of stripped universals when we are faced with attempts to diffuse our legal system beyond the boundaries of the civilization within which it grew. We have seen that recognition of natural rights, to life, property, and reproduction, is found in all societies, although with profound variations in interpretation. However, when Western law and traditional law or primitive custom have confronted each other, it is rather the question of sanctions, authority, order which have constituted the aspects of the law which have become salient. It would be worthwhile to undertake a series of intensive explorations of societies on the verge of intensive modernization who are at the moment attempting to formulate their legal systems, relying variously upon British, American, Swiss, French, Soviet models and others. In each such case two sets of cultural envelopes are involved, the culturally embedded system of the donor or model country, and the culture of the receiver or model-seeking country. If such situations were analyzed with a view to finding a minimal set of legal principles which might be regarded as stripped universals, the creation of new legal systems might be effectively streamlined — in contrast to the present attempt to tinker with models which are hoary with specific traditional accretions, many of which are inappropriate in the new situation. Is it possible to regard law as having such a set of universals, which can in any way be compared with scientific principles such as govern nutrition, or can we only arrive at a°scientific study of the law by way of the study of comparative legal systems, each seen as part of a particular culture and one link in a long historical chain of legal inventions?