KINSHIP, MARRIAGE, AND DIVORCE IN COMPARATIVE FAMILY LAW

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SOCIOLOGICAL STUDIES OF the family, ethnographic studies of kinship and marriage, and legal accounts of family law have been neither clear nor comparable in explaining how members perceive and interpret arrangements such as "marriage" or "divorce." These comparative studies invariably include case materials,[1] and accounts which presuppose various linguistic and para-linguistic phenomena,[2] meanings, and unexpli-

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1. *Cf.* N. BELL & E. VOGEL, eds., A MODERN INTRODUCTION TO THE FAMILY (1960); W. GOODE, WORLD REVOLUTION AND FAMILY PATTERNS (1963); M. GLUCKMAN, ORDER AND REBELLION IN TRIBAL AFRICA (1963).

2. Para-linguistic phenomena, such as voice intonation and gestures, depict social structure through the use of language categories and body movements by members. The problem of what the observer means when he states that the crowd was "unruly," the adolescent was "hostile," or the group's mood was "serious" emerges sharply in animal studies where the problems of adequate description have been addressed for some time. *Cf.* H. Elliot, Animals and Man: Notes on Animal Behavior Studies as a Model for Scientific Sociology, unpublished master's thesis, California (Berkeley), Dept. of Sociology, 1966; C. SCHILLER, INSTINCTIVE BEHAVIOR (1957); I. DEVORE, PRIMATE BEHAVIOR: FIELD STUDIES OF MONKEYS AND APES (1965). Studies of animal

cated usages. The precise character of comparable behavior remains obscure. Truncated categories translated from one language to another become verbal signals disengaged from the actual perception of social behavior and its interpretation in subsequent descriptions. The categories of different scholars are presented as equivalence classes in which the adequacy of the descriptions is never an issue because the author assumes that the reader "knows" what the author "means." Although the categories employed describe general routine practice of members, there is little concern with the language, gestures, voice intonation, and body posturing accompanying the action scenes to which general categories refer.

Anthropological or sociological accounts are seldom clear about how members arrive at their decisions by their experience of objects and events over time. If we assume members' everyday decisions are governed by properties such as ambiguity, typicality or "normalness" of objects and events, and further that members seek through decisions to "close" [3] or terminate relationships and dilemmas so that further inference and action is possible, then such properties become integral to knowing what the researcher describes as having "happened." The fol-

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social structure invariably presuppose that certain body movements and gestures mean something similar to the common sense understandings employed by humans in describing their own social interaction. Animal studies, therefore, like small group studies of humans, presuppose an unexplicated body of common meanings for making sense of what happened; these common meanings remain "what everybody knows" rather than empirically investigated phenomena.

3. I am suggesting that the ways in which members of different cultures or societies decide to "close" the unfolding or emergent and routine features of everyday practical activities become the central properties sociologists must investigate if we are then to compare general practices or rules across cultural, societal, or national boundaries. The problem of "closing" unfolding or routine features of practical activities can be linked directly to the measurement of social events by reference to the ways in which members, singly, in social exchanges, and bureaucratic arrangements, decide that some event or sequence of events occurred or happened and "bounds" events such that a judgment is made that something is an account with a "beginning" and "ending."

Practical reasoning or decision-making provides members of a group with the grounds to "close" an act or sequence of events so that it assumes a bounded character and thereby permits counting. Thus, the "cases" of law that are invoked as bounded instances of some set of activities take on the character of homogenous entities which can be counted in support of a particular or general position.

Each event or sequence of events can be broken down into various parts. The theoretical and empirical problems of infinite regress into further divisions lead researchers to decide that the event or sequence of events can be closed and hence viewed as "terminated" and a codable unit. See H. GARFINKEL, *Remarks on Ethnomethodology*, forthcoming.

lowing passage, for example, presumes the reader "knows" what the writer is "talking about."

> Thus in Anglo-Saxon England a marriage, the legal union of man and wife, was a compact entered into by two bodies of kin. As the Church steadily increased in power and in control of social life, marriage became the concern of the Church and was regulated by canon law. There was a new conception that in marriage the man and woman entered into a compact with God (or with His Church) that they would remain united till parted by death. The marriage was under the control of the Church; matrimonial cases were dealt with in the ecclesiastical courts.[4]

As a set of general rules or practices, the above quotation appears to be quite reasonable, for we are not faced with articulating thousands of particular cases with the general rules or practices, but "feel" that what is being said "makes sense."

The comparative study of social arrangements, phenomena labeled "marriage" and "divorce" in Western societies are assumed to correspond with activities in non-Western societies to which social scientists attach similar labels. The routine social encounters and practical decision-making that make up activities labeled differentially as forms of social organization, remain unclarified by researchers even though it is presumed that members' and researchers' descriptive categories can be appropriately "closed" to generate sets permitting counting and ordering of phenomena.

Comparative analysis must consider the manner in which members employ categories to depict objects and events, the method by which the researcher objectifies[5] what the member responds to in his descrip-

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4. A. RADCLIFFE-BROWN, *Introduction* in AFRICAN SYSTEMS OF KINSHIP AND MARRIAGE 43 (1950).

5. Members of social groupings pay attention to an environment of objects with some stock of knowledge or presuppositions. Researchers often obtain reactions to some ambiguous phenomena rather than mapping the reaction into the elements of an "objectifiable" social scene. The term "objectifiable" assumes the existence of a theory that will explain an ideal sound film or video-tape of "what happened," or at least a tape recording, verbatim notes by the observer or court recorder, or fragments of verbatim notes by the observer of routine daily interaction. But, in fact, "objectifiability" may take at least three forms for researchers differentially removed from actual scenes. It may simply be a verbatim interview of "what happened" according to the interviewer's attempt to describe the respondent's environment of objects via a series of questions and answers. A second and less objective account would be a fixed-choice questionnaire where the observer's categories are forced upon the respondent without the subject's feedback of his own categories. Finally, there might be an informal or official report submitted by participants as part of a bureaucratically

tions, and the exact points at which those descriptions become adequate grounds for further inference and action. Legal scholarship and social science research has traded on, rather than studied, the common sense categories used by members. Accordingly it is difficult to untangle researchers' use of descriptions and categories from members' usage, and how both include or exclude, impute or impose meanings by reference to objectifiable or imagined properties "out there." [6] When members are asked about usage the researcher often imposes "structure" by the formulation of the question.

The use of categories, whether by members for everyday practical activities or by researchers in seeking to characterize socially organized activities of members, is designed to facilitate practical actions. Hence, simply to speak of kinship and divorce "comparatively" as a "substantive problem" to be "understood" or "improved" presupposes that our

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organized procedure. The researcher's task in each of these data generating settings is to estimate how some description of "what happened" is influenced by the respondent's practical reasoning and stock of knowledge at hand, that is, his presuppositions about what is known in common and taken for granted by him in making sense (*i.e.*, arriving at practical decisions) of the social scene. Each of the three strategies, or any combination of them, is cross-cut by three general problems that are part of the attempt to objectify the materials we label data: (i) The linguistic, semantic and meta- or usage semantics of conversational material that provide the researcher with categories that members of the society employ to depict themselves, others, and different events or objects; (ii) the para-linguistic properties of communication such as voice intonation and gestures for communicating meaning; and (iii), closely related to (ii), what we might loosely call "postural" properties that include body motion and position. These dimensions pose the more basic problem of how conversational materials, and their properties, are transformed into the more "managed" forms—interviews, questionnaires, and written reports or documents. Interviews and questionnaires usually are removed from the actual conditions of social interaction in which conversations occur (where the conversation involved in conducting the interview includes similar problems but divorced from the substantive context of routine conversations), and therefore in doubtful correspondence (seldom established empirically) with the actual activities to which the interview and questionnaire items refer. Reports and documents, because they can be drafted and re-drafted, acquire the largest number of "managed" appearances because contingencies of actual social interaction can be eliminated, altered, or distorted. The sociolinguistic problems here are only now being addressed by sociologists. The para-linguistic properties of conversations are seldom describable such that any reader can readily understand what the observer intends; the reader must assume that he "knows" what the observer "means."

6. Because we cannot objectify the daily activities of members (in any culture or society) adequately at this time, we are often forced to equate abstract categories rather than the linguistic and para-linguistic properties of actual behavior and how members accomplish daily tasks. For examples, *see* RADCLIFFE-BROWN, AFRICAN SYSTEMS OF KINSHIP AND MARRIAGE (1950).

research vocabulary contains categories distinguishable from members' terms. If researchers are to transcend both linguistic confounding and an apparent infinite regress, they must make some attempt to objectify the environment of objects members and researchers take into account when engaged in emergent social interaction and generating reports and documents. The demand for practical solutions to social problems like "divorce," "delinquency," and the like, presupposes that the "problems" be given "sociological" attention for "solutions," and should not be "confused" with pedantic "methodological and theoretical" issues.

Sources of Research Data

The sociologist's research materials begin with the ways in which lawyers label conditions of family life and family structure, refer to societal values, refer to norms governing family interaction in the course of making decisions, advising clients, arguing before a judge, and bargaining with a district attorney or social worker. The theories employed by jurists, law school professors, practicing lawyers, law enforcement officials, and ancillary personnel associated with the court provide the sociologist with contrasting perspectives, to be treated as data which can be compared with some environment of objects the researcher can observe with independent procedures.

The verbal and non-verbal behavioral referents and descriptive accounts provide the sociologist with linguistic information about members' intended reference to the socially organized activities being studied. Hence, members' use of language categories provides the sociologist with depictions of the social structures. Official and unofficial encounters produce exchanges of information which may not enter into documents or reports. How the legal or social objects being studied are depicted in conversations as opposed to documents or reports provide the sociologist with members' commitments to and justifications of theories of lay social structures, and how practical matters are decided in day-to-day social interaction. Some idea of how members communicate in conversational exchanges enables the sociologist then to ask how different forms of communication are to be analyzed given the fact they represent different layers of meanings as they are progressively removed from the primary source of contact with members' environments of objects. The socially organized activities which led to the production of a docu-

ment or memorandum provide the observer with the necessary background expectancies[7] that he must take into account to interpret the text. Documents and memoranda are like frequency distributions of objects and events; they represent truncated versions of actual events and the contextual appearance of objects rather than more redundant and ambiguous conversations.

When frequency distributions of age, sex, divorce, child custody cases, adoption, marriage, and the like, are presented as evidence of socially organized activities, the researcher creates explanations that link the independent variables with dependent variables, but where the contingencies of actual exchanges are excluded in accounting for how things "happen." Hence, in surveys the questions provide the respondent with ready-made categories that are already coded both as to potential meanings to different respondents, and analytic utility vis-à-vis assembling cross-tabulated findings. The objective is to short-circuit the actual social encounters that may be involved in producing an abstract outcome (*e.g.,* the number of divorced women who will remarry) so as to summarize the activity for a population, and then armed with the table seek a functional or general explanation as to what social factors could have produced such findings. In "explaining" how the cross-tabulated responses are to be seen as reflecting particular social forces, the researcher "creates" the social structures. The "discussion" that follows the presentation of tables becomes an imaginative set of descriptive statements that are similar to the kinds of remarks that members use to "make sense of" a document or report or memorandum. The categories of language used by survey researchers are based on ideals rooted in common sense or lay notions of how "things happen" or "what happened." In both survey-statistical and participant observer or content analyses of documents, we are at a loss to specify the referents in objective terms so the reader can check out the researcher's attempts at verification. If we are to transcend the common sense reasoning codes that enter into such depictions, some way of objectifying both the actor's and researcher's environment of objects must be approximated.

The respondent's remarks, the judge's opinion, the lawyer's brief, the police report, the client's comments to his counsel, the psychiatrist's

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7. The concept of "background expectancies" or what Schutz describes as what everyone knows and takes for granted, is derived from H. Garfinkel, *Studies of the Routine Grounds of Everyday Actions,* 11 SOCIAL PROB. 225 (1964). *See also* A. SCHUTZ, COLLECTED PAPERS (1962).

report, the references to common law traditions, are all data even when the environment of objects to which they refer is not available to the researcher for independent examination. The conceptual apparatus requires more elaboration as we move away from an initial encounter being described—the unofficial exchanges leading to formal statements —toward truncated oral or written versions of "what happened." The problems of measurement here cannot be resolved if we cannot come to grips with how communication is achieved in everyday life. Attempts to use surveys or demographic materials, counts of types of law cases or types of judges or "themes" in content analysis, and the like, merely short-circuit the contextual properties whereby meanings are encoded and decoded, both in the course of social interaction and upon later reflection. The short-circuiting enables the researcher to categorize "what happened" by eliminating the contingencies or ambiguities that occur during actual encounters. In the absence of an explicit theory that is independently linked to objectifiable materials, this is done via the researcher's use of implicit theories that necessarily contain common sense or lay ideas about how "things happen" or why people act the "way they do."

MEASUREMENT AND COMPARATIVE RESEARCH

The researcher seeks "underlying patterns" or "concealed" feelings that might be suggested in the manifest data, and then utilizes the underlying patterns to explain differences in the data.[8] Survey or demographic analysis leads to inferences about social organization that only include the actor's experiences and understanding of "what happened" as "fat points" or collapsed unambiguous attitudes that are crystalized and readily understood motives to action. The inferences preclude identification of activities related to divorce which are typically vague and vary considerably over time; the actual decision-making process "bounces" around as contingencies emerge. Once such decisions are "finalized," the process of historicizing "what happened" begins. In these processes each party may or may not develop an appropriate rationale to explain the situation to themselves and to others. What is

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8. This statement illustrates "the documentary method of interpretation." *Cf.* H. Garfinkel, *Common Sense Knowledge of Social Structures: The Documentary Method of Interpretation,* in THEORIES OF MIND 689 (Scher ed. 1962).

of interest in court cases, as formally described in law textbooks, for example, is the way the contingencies are also eliminated even though an attempt is made to provide a coherent "story" or sense of unfolding events. The problem is whether or not such decisions can be viewed as unequivocal outcomes rather than negotiated and often vague sequences of events that may be "finalized" by default or the inactions or arbitrary actions of others.

One way of putting this problem of the documentary method of interpretation into another context that would provide both lawyer and sociologist with some common ground is to refer to a distinction made by both John Rawls and H.L.A. Hart between the justification of an institution or rule and the justification of a particular action falling under the institution or rule.[9] The reader may quickly say to himself that this is nothing more than the old problem of articulating policy with practice. Such a conclusion would miss the point that we do not have available a set of propositions and correspondence rules, a theory, whereby the articulation of policy with practice can be made so that some group of lawyers or social scientists can readily agree. Nor is it possible to show that a set of procedures exist which, if followed, will produce the same outcome when attempts are made to articulate general policies with particular cases. I make this issue central both to lawyers and sociologists because the former have always been in the business of interpreting statutes or common law practices vis-à-vis particular cases over time, while the latter have been assuming that their theories of structure and process explain "data."

In the remainder of the paper I assume the following problems are integral to any study in the sociology of law. How do persons trained as lawyers come to interpret the existing statutes or common law tradition when confronted by particular cases? In arriving at interpretations and decisions, how do such professionals depict the social structures or elements of social organization by reference to what is "known" or "true" or "probable" about everyday life? What social meanings do professional

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9. So far I have tried to show the importance of the distinction between the justification of a practice and the justification of a particular action falling under it by indicating how this distinction might be used to defend utilitarianism against long standing objections.

John Rawls, *Two Concepts of Rules*, 65 PHILOSOPHICAL REV. 3.18 (1955); H.L.A. HART, THE CONCEPT OF LAW 86 (1961) seems to hint at a similar distinction. For a general discussion of rules *see* D. SHWAYDER, THE STRATIFICATION OF BEHAVIOR 233–80 (1965).

lawyers and jurists impute or take for granted when they seek to "make sense of" clients, witnesses, experts, and other lawyers and jurists, in deciding "what happened" and arriving at decisions about "just" or "legally binding" courses of action? How do prospective clients or witnesses report "what happened" in official and unofficial legal contexts? The methodical ways in which laymen decide they "understand" each other become the basis for using descriptions as the means for "seeing" the object or knowing "what happened." [10]

The study of comparative family law, via an examination of kinship, marriage, and divorce, cannot be undertaken by ignoring what is proposed as comparable. How can we establish procedures for comparing descriptive statements about social interaction within and outside of bureaucratic settings? A key feature of the problem of comparative analysis might be stated as follows: Comparative analysis across cultures or societies requires the study of practical reasoning or decision-making so that the particulars of action scenes in their course and ecological settings can be articulated with the general language categories, and policies or rules invoked for comparable or contrastive purposes.

KINSHIP, MARRIAGE, AND DIVORCE AS FORMAL CATEGORIES

Many anthropologists analyze kinship terminology elicited from native speakers in the same way that sociologists analyze divorce statistics: as formal properties of social organization that are disengaged from the

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10. Two further points: first, the descriptions contained in conversations or documents used to "see" or "understand" or "know" an object or event, provide methodical arrangements for revealing the social structures or elements of social organization intended by the reader, speaker, and hearer. Second, if the term "comparative" is to have any consistency, the comparison of language categories and descriptions must be articulated with procedures for comparison of the daily activities to which the categories and descriptions are sign functions in different societies or cultures. Comparability is not merely making abstract truncated references to different practices in different countries by quoting statutes or even descriptive studies, but demonstrating the comparability of observed activities and language categories from which inferences are to be made. Statements by persons labeled lawyers, jurists, clients, witnesses, are not automatically "data," unless we address how persons in everyday life "see" events and objects via the descriptions they produce, the kinds of background expectancies or tacit knowledge that are employed in producing utterances and interpreting them, and the relation between events as objectifiable activities and their selective interpretation via lay or scientific theories.

unfolding and emerging interaction scenes which make up the more abstract activities we label "groups," "institutions," "bureaucracies," "nation-states," and the like. The formal practices assumed to prevail in maintaining kinship or dissolving families are stated as general rules followed by "well-built-in" members, that is, members socialized to presumed dominant norms and values of the society. But this is like saying that members are "programmed" during the period of socialization so that adult life can maintain an ordered quality over generations. Hence, each society's theory of history, particularly its own, whether an oral and/or written tradition, is in correspondence with the norms and values that are inculcated via the socialization experience. The table of organization or structural-functional theory is similar to saying that general policies or rules are clearly articulated with the particular events or cases to form the basis of everyday social life. The point I wish to make is that we use language categories and general policies or a rule to "close" our relations with others and thereby fit particular cases or emergent social interaction into more abstract meaning structures that are disengaged from particulars, even though the latter are seen as instances of the general policy or rule.

Lawyers and sociologists also utilize kinship terms under the assumption that "everybody knows" the referents, and that the terms somehow stand apart from the interaction situations and conceptions that become attached to social encounters that members associate with actual kin relations. I am not disputing the use of kin terms by members in American or any other society as general categories for locating others and themselves in some kind of abstract social organizational space, but do wish to question the insistence of certain writers which would lead to measurement procedures that would be disengaged from members' procedures and language categories employed in everyday practical actions in particular contextual settings.[11] Such an emphasis would be concerned with only researchers' rules for "closing" activities to generate countable sets.

By ignoring the member's tacit knowledge or background expectancies in encoding and decoding communicational material in daily inter-

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11. Ward H. Goodenough, *Componential Analysis and the Study of Meaning*, 32 LANGUAGE 195 (1956). A general reference on componential analysis or ethnographic semantics is collected at 67 AM. ANTHROPOLOGIST No. 5, pt. 2, 259 (1965) and in B.N. Colby, *Ethnographic Semantics: A Preliminary Survey with Comment*, 7 CURRENT ANTHROPOLOGY 3 (1965).

action, the componential analyst[12] conveniently transforms a useful procedure for establishing the structural materials for constructing members' and researchers' ideal types into a model that tends to be truncated and formally stated prematurely. Denotata[13] are meaningful to members or researchers because they presuppose what "anybody knows," the tacit knowledge or background expectancies that breathe life into members' categories when they become detached from everyday natural encounters. Asking members via standardized eliciting procedures for labels or categories used routinely to comprise some group's terminological system, is not a direct or necessarily most accurate or most comprehensive procedure for understanding how socially organized activities emerge, maintain stability over time, change, become diffused, or terminate.

One way of noticing this problem is by examining the ways in which members use structural categories or labels to depict their own or others' fate or circumstances, while on other occasions the same labels or categories are called into question by reference to the details of particular cases as the relevant terms to characterize kinsmen or kin relationships. Legal materials continually reveal such phenomena directly or by reference to expert testimony by social workers, psychologists, and psychiatrists. Thus, the term "mother" may be invoked as a structural category in a child custody case where its use is intended to convey "usual" meanings about the importance of the "mother-child" relationship. The quotation marks around "usual" are intended to tell the reader that it is what "anyone knows" but seldom made explicit that becomes the basis for using the term. Thus, when used as a denotative structural category the term "mother" may imply certain "rights and duties" attached to persons occupying some conventional notion of status.

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12. Denotata are minimal classes or categories of real or imagined objects, events and relationships. Following Morris' (1946) usage, the set of possible denotata for a word is its designatum, a more general class of which any particular denotatum is a member. The criteria for being in the class are what the word signifies, its significatum. . . . Componential analysis systematically contrasts the sets of denotata of the labels in a terminological system in order to arrive at hypotheses regarding the variables and their values that will most elegantly predict all of their respective denotata. The result is an inductively developed and validated "model" of the conceptual organization of an ideational domain, regardless of how accurately it represents the actual conceptual organization in other than the analyst's "head."

See generally, Goodenough, *Yankee Kinship Terminology: A Problem in Componential Analysis*, 67 AM. ANTHROPOLOGIST, No. 5, pt. 2, 286 (1965).

13. *Supra* note 12.

The structural notion could be extended *to imply* (but not make precise) certain affectional states expected of "mothers" with respect to their children. But a few modifying adjectives attached to "mother" could also connote that the structural notion is to be made problematic such that the particular person occupying the status is a "mother" in "name only." Notice that the general rules applied to kinship terms (or any others routinely employed by members) presumably stand as "closed" denotative meanings so long as we do not designate a typology of "mothers" that would interact (in situated ecological settings) with a typology of "children," "fathers," and the like. When we shift to actual cases, the general rule is strained even more for the structural terms may now be attacked from a variety of perspectives in an adversary system so as to call into question how any particular "mother" is to be adjudged by some tribunal, expert witness, or other familial or other kin relations.[14] But the "good" or "bad" judgments of familial members presupposes a notion of the "normal family" against which the structural features, as merged with behavioral activities, can be compared. Consider the following statements on "Yankee kinship":

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14. See the recent Iowa Supreme Court case of *Painter v. Bannister* where the issue was one of custody over a boy who went to live with his maternal grandparents (Bannister) after the boy's mother died. The father, remarried, sought to return the boy to California. A few remarks from this case may illustrate my point:

> The trial court does not say which of Dr. Hawks' statements he felt were exaggerated. We were most surprised at the inconsequential position to which he relegated the "biological father." He concedes "child psychologists are less concerned about natural parents than probably other professional groups are." We are not inclined to so lightly value the role of the natural father, but find much reason for his evaluation of this particular case.
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> Mark has established a father-son relationship with Mr. Bannister, which he apparently had never had with his natural father. He is happy, well adjusted and progressing nicely in his development. We do not believe it is for Mark's best interest to take him out of this stable atmosphere in the face of warnings of dire consequences from an eminent child psychologist and send him to an uncertain future in his father's home. Regardless of our appreciation of the father's love for his child and his desire to have him with him, we do not believe we have the moral right to gamble with this child's future. He should be encouraged in every way possible to know his father. We are sure that there are many ways in which Mr. Painter can enrich Mark's life.

Notice that the "best interest" of the child is best served by the grandparent rather than the "natural" father. The "fact" of Mark's "well adjusted" life with his grandparents is given more weight than the "rights" of the "natural" father that the court labeled a "bohemian." The court makes reference to differences in "philosophies of life" and "value systems" between the Bannisters and the Painters, but notes that "We are not confronted with a situation where one of the contesting parties is not a fit or proper person," yet makes clear that the father's "bohemian" way of life is "romantic, impractical and unstable."

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Kinship is regarded as following from biological procreation. Conception is seen as resulting from a single sexual union of a man as genitor and woman as genetrix; and prenatal growth is independent of subsequent sexual unions. My culture allows for an individual to have only one genitor as well as only one genetrix, unlike Lakalai culture in New Britain, which allows for the possibility that several men may be cogenitors of the same individual. My culture also disallows the possibility of conception without a genitor, unlike Trobriand Island culture which has the dogma that men play no essential part in procreation (Malinowski, 1932). Each individual must have a genitor as well as a genetrix.

As genitor and genetrix of joint progeny, a man and woman are supposed to have established a common household independent of the household of any other adults. Following traditional procedures known as *marriage* they are supposed to have entered into lifelong agreement to maintain such a household, to confine their sexual relations to one another, and to be jointly responsible for the care, socialization, education, and sponsorship of their joint progeny. No man may be married to more than one woman, or woman to more than one man, at a time. Remarriage by the survivor following the death of his (her) marriage partner is permitted. Although marriage is ideally for life, there are formal procedures for terminating a marriage, *divorce* and *annulment*, after which a man and woman are free to marry again. The common household established by a marriage is dissolved following a divorce or annulment. . . .

The foregoing ideal of what is supposed to be does not always obtain in fact. A man and woman may establish a common household without having gone through a formal marriage. Their marriage may be dissolved, formally or informally. Men and women may have sexual relations and procreate with other than their marriage partners. Responsibility for the care, socialization, education, and sponsorship of progeny may be assumed by other than the genitor and genetrix. The cultural principles for classifying kin relationships necessarily takes account of such departures from the ideal.[15]

The above quotation on American family organization is of interest because it is the product of considerable idealized tacit knowledge. But the conception is not likely to come from the kinds of elicitation procedures recommended by the proponents of componential analysis, rather from knowledge obtained via participation and observation of actual group activities where both linguistic and para-linguistic materials are utilized for deciding how members understand events and objects and arrive at decisions about "what happened" and "what should happen." It is easy to arrive at equivalence classes through the elicitation of kinship terms in a given culture if the procedures of componential analysis are utilized, particularly if the researcher seeks to demonstrate use by reference to reported idealized natural events in the daily activ-

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15. Goodenough, *supra* note 12, at 262–63.

ities of the group studied. But the equivalence classes would be like general rules or policies where it is assumed that a given rule is adequate for saying that particular cases fall within or outside of the set. What is of interest about kinship terms, and the rules for applying them to some population, is that not only are the structural sets not all that clear (as will be discussed below), but as we move towards the daily social relationships of actual encounters we are likely to find that componential analysis does not account for key elements of familial social organization. A comparative study of legal statutes on divorce, therefore, is like studying the grammars of several languages, but disengaging the statements therein from the practiced and enforced activities of members. And like grammatical rules, the application of the statutes presupposes a stock of knowledge about social organization and "what everyone knows." The formal terms, or modifications of them that presumably correspond to special usages, cannot be understood apart from the tacit knowledge or background expectancies and emergent contingencies of actual encounters between members. Nor is it possible to discern how socially organized activities systematically violate or evade the formal conditions and use of kinship terms, much less how such activities change over time even though there are no noticeable changes in formal arrangements. Hence we can suggest that "exceptions" to the general rules or practices constitute a collection of alternative "rules" that could be called another "grammar" of kinship and marriage. But there are two types of problems here: (1) a difference in usage and organization that challenges the structural interpretation rendered by Goodenough directly; and (2) the problems of how day-to-day contingencies contribute, by the closing of practical decisions by members and by professional legal action, to the designation of something as having "happened" and hence establishing some basis for counting the object or event as something palpable.

One cogent argument in support of the first problem of the relevance of componential analysis is:

> One of the first things that anyone who works with American genealogies notices is that the system is quite clear as long as you take Ego as the point of reference and do not venture far from there. But as one goes out from Ego—in any direction—things get more and more fuzzy. This fuzziness, or fade-out, is seen in many different ways. Most fundamental, of course is the fact that there is no formal, clear, categorical limit to the domain of kinsman. Or, to put it in another way, the decision as to whether a particular person is or is not a kinsman is not given in any

simple categorical sense. One cannot say that all second cousins are kinsmen but all third cousins are not. . . .

There is one especially interesting way in which this fuzziness of boundary is expressed, and this is through the Famous Relative. We not infrequently encountered the statement that So-and-So, a famous personage, was a relative. Sometimes the relationship was traceable, sometimes not. When it was traceable, it could clearly be seen that this was the only relative of such distance on the genealogy, whereas closer relatives were unknown or unheard of.

There are really two different elements that account for the fuzzy boundary. One is the absence of any effective boundary rule, for the rule itself is infinite in its coverage. The rule is that a relative is someone related by blood or marriage. Hence, as some informants were quick to point out, everyone descended from Adam and Eve is related.

The second element is the fade-out principle, and it is really this which limits the network of kin. Ethnographically, informants express this in terms of a "close-distant" dimension, saying that certain relatives are "close" while others are "distant" and yet others so distant as not to be counted as relatives.[16]

Members have discretion in "closing" kin relationships so as to generate sets that enable one to count and partition presumed equivalence classes when generalizing about groups or entire populations. The fact that many variations can exist in a country like the United States complicates the usefulness of the componential analysis particularly if the researcher is interested in how the use of kin or other terms is articulated with everyday social encounters such that decisions are contingent upon such usage and binding upon Ego and others. The "boundary" and "fade-out" problems emphasize the importance of the nuclear family when seeking precise measures of kinship via componential analysis, and it is presumed that the closer we get to the inner core, the more predictability or correspondence between kin terms, their use, and the decisions and relationships that obtain in daily encounters. Notice the measurement problem suggested in the following statement by Schneider:

What Americans call "distance" consists in a chain of unbalanced dyads, and because they are unbalanced they dribble, and dribbling means that they fade out. If all members of a set are of equal importance then the set stands as a unit. But precisely because the elements in a dyad are, with one fundamental exception, never of equal importance chains of dyads consist in chains of dyads of diminishing value and hence they fade

16. Schneider, *American Kin Terms and Terms for Kinsmen: A Critique of Goodenough's Componential Analysis of Yankee Kinship Terminology*, 67 AM. ANTHROPOLOGIST, No. 5, pt. 2, 288, 290–99 (1965).

away. The anomaly of the Famous Relative is simply a relative who by virtue of some attribute external to kinship, takes on a wholly inconsistent importance and so sticks out along the fading chain of relatives who become less important as they go farther away.[17]

The significance of Schneider's statement is to be found in his remark that the members of a set of dyads are "never of equal importance," rather of "diminishing value and hence they fade away." Therefore, Ego may *close* or create a set in some verbal report to a researcher or others, but there remains the problem of not only the Famous Relative, but also any other dyad both internally and across dyads for Ego and others when we seek to compare the meaning of kin relationships. If attributes external to kinship can alter some "fading chain of relatives," then the significance of kin (or other formal designations like "nuclear family") terms for understanding everyday social encounters and the structure of socially organized activities over time is equivocal. For, as Schneider notes: "What is called 'the family' cannot be treated as a whole unit, having corporate membership qualities, but must be treated as a system of unbalanced dyads." [18] The significance of usage by members of terms like "my family" or "he is a relative," or similar usage by law-enforcement agents or counsel or judges to the effect that "the family" should stay together, or the "mother's role or relationship" is "basic" to the child's "welfare," or the husband was not "fulfilling his role as father," is not to be found in formal analysis of kin terms, nor in members' use of such terms when being asked about how or whom do they address as "relatives." [19] Such usage carries unstated tacit knowledge and presumptions about actual and normative or ideal activities that are not acknowledged and seldom made problematic empirically. The formal analysis of kin terms and usage cannot be disengaged from the occasions of use, and the common sense knowledge presupposed in their use that is integral to understanding and communicating meanings, but remain integral to the interpretation of "what happened."

The importance of day-to-day contingencies in "closing" unfolding activities to create a set where determinate objects and events can be said to have "happened" is not to be found by merely examining the occasions in which police, probation, social welfare, psychiatric, or

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17. *Id.* at 293.

18. *Ibid.*

19. Schneider makes the point that "relative" can be used either for a blood relative alone or for a "relative by blood or marriage." *Id.* at 301.

general witnesses are consulted to discern "what happened." The use
of categories by members carries unstated taken-for-granted background
knowledge. Categories are usually truncated descriptions detached from
any examination of the referents or objects or sequences of events that
led to their being designated by some label or set of labels.[20]

I call the reader's attention to the ways in which both surveys and
componential analysis (ethnographic semantics) seek to utilize members'
categories for mapping common sense or folk elements or practical
knowledge into domains of relevance "closed" by elicitation procedures
such that an actual set is said to exist that permits classification or
taxonomic procedures for ordering objects and events. In the case of
surveys the researcher presumes he "knows" the structural meaning of
the terms used (or that they have been clarified by consulting a native
speaker, perhaps himself, and that a pre-test has explored the meanings)
when fixed-choice or open-ended questions are posed for the respondent.
For the student of ethnographic semantics the elicitating procedure is
designed both to discover categories and constructions utilized by mem-
bers and to "test" their relevance in different projected ethnographic
settings. For the survey researcher language is merely a possible tech-
nical obstacle (naively employed) to posing the "right" questions; it is
not a variable condition of obtaining members' everyday meanings so
much as trading on everyday meanings implicitly as a basis for eliciting
information about past or hypothetical future events and decisions. The
student of ethnographic semantics is very sensitized to the significance
of linguistic structure and usage in both posing and interpreting ques-
tions and answers. The use of members categories and constructions,
however, is concerned primarily with ideals or structural meanings
(meanings "closed" by theoretical fiat or unstated common sense knowl-

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20. There is a resemblance between fixed-choice questionnaires (and open-ended
ones as well) and the eliciting procedures described by students of ethnographic
semantics. In both cases there is either a presumption that categories are already
known to the researcher and respondent that are identical in their structural meaning
as in the questionnaire items of surveys, or the use of a contact language, for example,
or ethnographic observation that presumes some similarity between the ethnographer's
knowledge of his own culture and the one he is studying to enable him to identify
"houses," "places of religious worship or ceremonies," "hunting," and the like, so that
attempts to ask questions "correctly" in the native language about specific categories
and constructions is possible. When students of ethnographic semantics speak of
"frames," they are using a sort of survey designed for cultures where no dictionary
exists for formally (structurally) mapping the two languages. See for example Mary
Black & Duane Metzger, *Ethnography of Law*, 67 AM. ANTHROPOLOGIST, No. 6, pt. 2,
141, 146 (1965).

edge), and while such meanings may be clarified when examined in the context of natural conversations, in the case of surveys they may beccme and remain detached or disengaged from the emergent inter- action scenes in which they assume particular significance, and from which general rules or practices may be inferred by both members and researchers. The following points must be separated:

1. The "closing" of events or objects seen as common sense group- ings of elements by members is itself a feature of practical action. Such "closing" enables the actor to "get on" with his everyday affairs and order his existence according to something like a rule, or collection of rules. Notice that "members" can be other lay members of the group or community as well as witnesses, police officers, probation officers, lawyers, judges, members of juries, jurisprudential theorists, and scientific researchers. Detailed attention to the public character (via verbal and non-verbal behavior) of the "closing" procedures used reveal the various ways "members" decide something is "known" or "happened."

2. When the researcher utilizes particular procedures for eliciting information from informants or respondents there is an automatic com- mitment to procedures or strategies of "closing" events and objects, and if the researcher is not sensitive to the possibility of forcing a "grid" or "filter" over or on the members' natural ways of expressing themselves, then the fidelity of how members close their practical activities, so as to provide for their socially organized character, will be distorted or transformed by the procedures themselves.[21]

3. The measurement procedures employed, therefore, must not ob- scure how information will be obtained, but chosen so as to clarify *members* "closing procedures" and the strategies or procedures employed by the researcher. Notice that an emphasis upon naturally occurring events, assuming they permit some form of objectification that seeks to minimize the perspectival view of the observer, seeks to discover members' usage of categories, and the rules they utilized for "closing" and "opening" events and objects to further perception and interpre- tation.

The reader's attention is directed to the problems of deciding how members reach or accomplish activities whereby kinship, marriage, and

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21. *See* Ch. 1 in A. CICOUREL, METHOD AND MEASUREMENT IN SOCIOLOGY (1964).

divorce terms become meaningful when contrasted with what is prac-
ticed and enforced in some community or society. Recent work by Kay
notes that a broader perspective would show considerable variation,
while her present-day California cases can be used as instances of
existing but changing conceptions of notions like "the family," "divorce,"
the "rights" of children or parents in custody cases.[22]

FAMILY ORGANIZATION AS STRUCTURAL MEANINGS
AND PRACTICAL ACTIVITIES

I have been using "structural meanings" as the "closing" attributed
by the researcher to the members' reports about the use or existence
of kinship terminology. Another type of "structural meaning" might be
terms invented by the researcher to explain members' terms. I assume
that the researcher's use of an informant (including the researcher as
informant) leads to a formal system of meanings that are disengaged
from the use of such terms in the emergent contextual settings of every-
day activities.

Both members and researchers (who may also be members if it is
their own society or culture) may have the same or similar structural
terms and meanings for ordering their respective practical activities
of living or engaging in systematic research. But members seldom are
compelled to specify the referents for the structural terms they use for
classifying, evaluating, or organizing their thoughts, meanings, per-
ceptions, interpretations, and actions. On the other hand, researchers
are expected to pay careful attention to the problem of objectification
and what is selected for the verification of theories. One serious con-
sequence of the overlap in members' and researchers' use of structural
categories and constructions is that conversations (including eliciting
procedures and interviews with questionnaires) and documents can
be carried on and read without any specification of referents or demand
of a "check-out" as to what was "really" said, observed, or thought
to have "happened."

Formal analyses of legal statutes and cases and kinship terminologies
are of value in understanding day-to-day social organization and change,
but we must not confuse (1) some correspondence between members'

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22. H. Kay, *The Family and Kinship System of Illegitimate Children in California
Law*, 67 AM. ANTHROPOLOGIST, No. 6, pt. 2, 57 (1965).

and researchers' formal classification systems and their use to explain "what happened," with (2) some correspondence between members' use or explication of formal terms and those properties of action scenes that were observed and interpreted in particular ways at the time of their occurrence, or (3) the researcher's intended correspondence between the structural meanings attributed to legal statutes and cases and formal kinship terms, and the ways in which such terms (and their presumed meanings) enable the researcher to account for members' actual practical activities as opposed to their reports of what usually "happens."

When we examine law cases, as instances of events that "happened" as stated in the available materials, we must accept the validity of the information in so far as members known as lawyers and judges place or impose "factual status" on the information therein. These cases may show how members labeled "mother" or "father" or "child" or "uncle" are or are not "really" "mothers," "fathers," and so on, for some particular or general issue of right or duty. The consanguinal and affinal structural meanings may not be challenged directly, but the structural meanings may be invoked in a categorical way to evaluate some familial problem, with the contextual practical activities of everyday life occasionally invoked as particular instances that "prove" the general rule.

Structural meanings of kinship are also challenged every day in juvenile delinquency and child neglect cases in the United States, and families are broken up by court order even though the parents stay together and do not seek a divorce. The "community" via the court decides that certain persons labeled "parents" are unfit to raise children and legally removes the children from the home. Parents that may be described as "poor" or "irresponsible" or whatever by police and probation officers and subsequently divested of children may appear as "stable" from the usual "facesheet" and attitude data that a survey or census materials might pick up on family life. Structural or ideal typical meanings of kinship and family life, as employed both by lay members and persons engaged in law-enforcement and legal activities, show considerable variability in what and how something is "known" about family activities, and pose difficult problems for the researcher who seeks to articulate structural meanings with occurrences as seen by members and objectified by researchers during and after the fact. What passes as "evidence" for both the laymen and law-enforcement and legal personnel is not always clear, for there exists a strong tendency to force

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particular features of a given situation or sequence of events into more general categories so that general rules can be applied for reaching a "solution" to "what happened" and "why."

The historical study of childhood by Aries,[23] the commentary by Bohannan on marriage and the family,[24] and the recent study of illegitimate children in California law by Kay[25] all point to extensive variations in conceptions of kinship and family life in different societies or cultures. These variations mean that structural meanings cannot be divorced from the "folk-systems" or practical activities whereby members come to utilize general policies or rules embedded in structural meanings as justifications for action contemplated or taken. Legal statutes provide structural meanings of kinship terms and lead to the formal acceptance of various but not all existing practices in the community. Particular cases elevated to general rules often take on the aura of "tradition" and "stability." But in the United States the enormous variations in family law not only compound the difficulties of articulating structural meanings of kinship with actual practices, but also provide a broad base for comparative study of social change within the same country. The significance of legal statutes and case law for changing general social conceptions of kinship and family life by members has previously been suggested by Kay.[26]

The cases found in police, probation or court files are not clear as to the kinds of social encounters that occurred in the assembly of "closed" categories employed by law-enforcement and legal personnel in arriving at their depictions of "what happened." The bounded character of grammatical structures facilitates communication, but in particular cases of unfolding interaction and changing social relationships, it is not clear

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23. P. ARIES, CENTURIES OF CHILDHOOD (1962).

24. P. BOHANNAN, SOCIAL ANTHROPOLOGY (1963).

25. Kay, *supra* note 22.

26. The California courts, in dealing with cases involving the claims of a child born illegitimate to be treated as legitimate, have worked out a family system based upon the common residence pattern of father, mother, and child and upon the factual performance of the roles of parent and child within this setting between persons not biologically related. Yet even this statement cannot be taken as the law's final word on the family. The law defines terms for a limited purpose only; and in a common law system, each definition must be understood in the light of the cases that give it substance. In the case of the family of the illegitimate child, the courts themselves are working up another "trouble" case that will test the definition arrived at for the moment: the problem of the household of the unmarried father and his child.

Kay, *id.*, at 75.

how we are to honor descriptions contained in anthropological accounts or sociological accounts,[27] much less those contained in law-enforcement reports and documents or court cases. Kay,[28] like Schneider,[29] provides abstract case interpretations of kinship that challenge the results of structural accounts of kinship, but does not address the problems of objectification and verification of action scenes for both members and researcher that generate "adequate description" to permit some kind of comparative analysis. While I do not wish to generalize concerning complicated activities like trials, appellate court decisions, and legislative committees, I would argue that the kinds of practical theories about objects and events in everyday life that law students invoke in class would be common in other areas of the legal system. My notes from a family law course suggest law students consistently invoked pieces of theories, arguments, conjectures, and the like from classes they had had as undergraduates, as well as their own everyday experience as laymen. The ideal standards presupposed in speaking of "the family" or some member of the family would be invoked as structural meanings in some cases, and then challenged directly when simulating the prosecution of one or both of the parents. In mock telephone conversations between student lawyers or mock confrontations in court each seeks to negotiate his client's case by allusions to "facts" and adverse consequences or "obvious" conditions (e.g., "Why don't I file an action on the grounds of mental cruelty . . . forget the adultery . . . seeing that your client is desirous of a divorce . . ."). The descriptions participants use in discussing legal matters pertaining to divorce (or criminal) actions are invariably truncated expressions of "what happened," but where the reader, the listener, and often the researcher must "fill in" that which is assumed or imagined to have "happened."

I am not arguing that such information is useless or unreliable, but that the sociologist must be prepared to invoke his own theories of how members not only produce such statements from conversations, gestures, voice intonation and the like, but how members variously situated in the legal system are likely to interpret such statements. Phrases like "the marriage was a normal, happy one," or "unhappy differences arose," or "she drank moderately," or that "there were repeated quarrels," do

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27. For example Goode, *Family Disorganization*, in CONTEMPORARY SOCIAL PROBLEMS 528–29 (Merton and Nisbet ed. 1966).

28. Kay, *supra* note 22 at 75.

29. Schneider, *supra* note 16.

not carry invariant structural meanings much less situational meanings. The comparison of statutes with truncated actual cases provides the basis for encouraging the law student to develop theories, learn how to use "rapport" with clients to extract information, negotiate with other lawyers or judges, and the like. But the various types of information produced are not available in the classroom and have seldom been studied in natural situations. I assume that the kinds of conjectures advanced by the student lawyer carry over to practice. The training that precedes actual practice incorporates common sense theories of the "causes" of divorce, the "role" of the father, the "mother's person-ality problem," what is "best" for the children, and so on. The law student is trained to modify his practical theories and reasoning so that a tight and "logical" argument is advanced, one that can draw upon existing statutes and precedents for fitting the particulars of a case into a more general rule so that each can be used to justify the other. In confronting material from clients, the lawyer must decide "what happened" by utilizing whatever theories or hunches he can muster so that he fits the particulars of a case into other cases as prece-dents and/or into existing general rules. This means "closing" events and the evaluation of objects so they can be "coded" and/or "counted" as instances of known or knowable sets.

The grounds for divorce are especially interesting to the sociologist because of the vagueness and day-to-day uncertainty of married life for many people, and the abstract ways in which legal statutes are written to cover events and objects that are part of everyday social organization. The kinds of information submitted by clients to argue, respectively, that each was treated in ways that deviate from the structural meanings of "proper" married life, are instructive because such materials point to the difficulty of establishing the credibility of "findings" by members acting in the capacity of client, witness, lawyer, or judge.

A court transcript may reveal fairly graphic accounts of "what happened" from the wife's point of view in divorce proceedings, but the contextual settings and the detailed conditions of the encounters are frequently vague. The plaintiff's attorney may employ leading ques-tions throughout, effectively putting many ideas into the court record that probably followed pre-court interviewing about what would be said in court. The counsel for the defense may rebut testimony by accusing the wife of "starting arguments," going "out with other men"

during their later separation, "attacking" her husband physically, neglecting the home to run a business, and the like.

In arguing cases, both lawyers seek to invoke precedents to support their particular client. The descriptions given can be seen as "convincing" as argued from either side. How it would be determined that what was described by either party had something or nothing to do with what "really happened" is not clear from the kind of information given. If the marriage were to stay intact for another twenty years a subsequent survey might reveal retrospective accounts about how the marriage had "its troubles" but was a "successful" one. We have little basis for distinguishing "successful" from "unsuccessful" marriages using the descriptions of participants at different points in their careers, for marriages are temporal events that are historicized frequently. But members of the community's legal organization, like many sociological students of the family, presume a model of "normal" marriage, just as we all assume that kinship terms have structural meanings that are invariant to the particulars of everyday social organization. They can be applied successfully to particular cases even though there might be exceptions. The testimony of the plaintiff and defendant are geared to eliminating contingencies that could make either "look bad" and, of course, this is a well known procedure in public hearings.

With the material admitted as evidence, however, it is possible to impute or add or "fill in" additional claims so that a particular version of "what happened" can be "closed." While we may not be able to specify what happens in the home on a day-by-day basis, we can avoid the error of accepting descriptions without asking how they might have been assembled, thereby provoking particular "closings" and excluding others. The issue may not be how we are to deter divorces from occurring by changes in the law, or simplify the procedures for obtaining a divorce, but how married persons manage their daily activities such that similar events lead to different types of decision-making about continued marriage or divorce.

The problem of how practical decision-making leads to different courses of substantive action (continued marriage vs. divorce), even though it is not clear how the environments of the participants differed or were similar, is usually separated from the problem of how members seek divorces when one or both parties are determined to do so and have the official or unofficial help of legal agencies. What is of interest to students of the family and social organization is that the meanings

of kinship terms and the family as a "basic unit" of our society or any other society, are not clear as we move from one organizational setting to another, or when we consult members as to relevant meanings as opposed to usage and actual behavior in day-to-day living. We may say that: "The family is the basic unit of our society, and . . . . Since the family is the core of our society, the law seeks to foster and preserve marriage." But when a marriage has failed and the family has ceased to be a unit, empirical clarification is required of such phrases as "basic unit" and "the core of our society," as opposed to saying that a "marriage has failed" or that "the purposes of family life are no longer served." Studies of kinship, marriage, and divorce, like phrases suggesting "what the law means" with respect to the family, obscure the articulation of practical decision-making of everyday family life with the meaning of kinship terms, and the practical decision-making of legal agencies in granting or not granting divorces.

Comparative Family Law

Comparative family law, like the comparative study of legal statutes, is similar to the study of formal systems of kinship: both stipulate ideal general rules for marriage, divorce, and duties and obligations binding upon members of the community or society or culture in question. One generalization about divorce in different countries would follow what American legal scholars have said about how routinized divorce has become in virtually all American states. Despite policy differences stated in statutes and actual cases, the issue boils down to the question of under what kinds of quasi-fictions different states agree to grant divorces.[30] The meaning of "the family," or particular members and their rights and obligations, becomes problematic depending upon the practical issues at hand. Many divorce actions amount to cooperative fraud among all of the participants, including the presiding judge. Legal procedure, therefore, becomes instrumental in challenging the structural meanings of kinship and the "sacredness" of the family as a unit portrayed in folk beliefs and institutionalized in legal statutes and precedents. The lack of accurate statistical information makes it difficult to

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30. See M. Rheinstein, *Trends in Marriage and Divorce Laws of Western Countries*, 18 Law and Contemp. Prob. 3 (1953); Rheinstein, *The Law of Divorce and the Problem of Marriage Stability*, 9 Vand. L. Rev. 633 (1956).

pinpoint the meaning of divorce statistics, much less how marriage breakdown is to be specified. The legal requirements are often formal obstacles, contradicting what is practiced and permitted in the community. Hence, in Argentina members may ignore the legal channels altogether; but within the community and among friends and relatives the alignments may alter structural meanings considerably. The couple may remain legally married with each now having different "families" where consanguinal relations are in part preserved for children, yet affinal relations follow unclear rules depending upon parental friendships.

Rheinstein notes that it is difficult to pinpoint when you have actual separations or abandonment, and even more difficult to uncover existing arrangements. Hence, he notes that it may do little good to count decrees or speak about the "stability" of the family when so many persons are remarrying and the negative consequences for children and partners are not clear. Chile, for example, permits divorce but no re-marriage. Yet it is possible to obtain annulments in Chile, even when several children exist, and then re-marry. The same kind of fictions that obtain in the United States operate in Chile, and social class lines tend to be the deciding factor, though additional influence may be necessary when more than one annulment is sought.[31] In Argentina divorce is not permitted but legal separation is common.[32] One or both

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31. While annulments are possible in Chile, there are considerable costs involved that effectively preclude many from seeking this procedure for terminating marriage. Further, impressionistic accounts obtained from Chilians suggest that considerable collusion and fraud often accompany the granting of an annulment. Except in aristocratic religious circles, the variety of living arrangements that result from annulments, legal separations ("divorces"), and the like, leads to notions of everyday family life not to be equated with structural meanings attributed to legal statutes. How members (religious versus non-religious in particular) located in positions of authority interpret and "close" cases is to be understood by reference to how clients present the practical circumstances of their cases. Having "friends" at each step in the process of securing an annulment and "knowing" that the judge involved has "favorable views" toward annulments, all become part of the game. "Divorce" in Chile seems also to mean "legal separation" in American terms. But we have no objectifiable information as to the daily consequences of such legal action in either country and their contrasts with structural meanings.
Cf. M. SOMARRIVA UNDURRAGA, DERECHO DE FAMILIA (1963).

32. The same Spanish equivalents for "adultery," "abandonment," and the like appear, but there is no way of comparing the use of terms in statutes with application to everyday activities. The Argentine law states that marriages in Mexico and Uruguay do not constitute bigamous offenses. The term "divorce" in Argentine means "legal separation," with neither party eligible for remarriage in Argentina. Impressionistic material obtained from field work in Argentina by the present writer suggests that many "young intellectuals" will frequently re-marry in Mexico or Uruguay. Many middle and upper income families will avoid legal proceedings, separate and become married in

spouses may seek to marry in Uruguay or Mexico (by mail), and Argentine law allows the children of both "marriages" some form of inheritance even though the children from the Uruguayan marriage are illegitimate according to Argentine law.[33]

CONCLUSION

I have argued that we should view members' solutions to "social problems" as the focus of study. Questions about the impact of divorce upon the "family," the "sacred institution of marriage," and kinship arrangements pertaining to family members' "rights and obligations," become contingent upon a study of the interaction between *normative talk* by members and their actual practices in seeking further inference and action.

We cannot escape our reliance upon members' categories and constructions to understand how an environment of objects is seen from "within." We can avoid the circularity of an enterprise that confuses members' categories with researchers' categories, such that our questions evoke linguistic responses from members because we trade on rather than study common sense meanings.

Uruguay or Mexico. Many lower income families never enter into legal procedures because of presumed high costs of a legal separation. Members' views of their living arrangements seem to contradict structural meanings of "the family" and notions like "father" and "mother." But even legislative interpretations of extra-legal or illegal action seem to engage in the fictions found in the United States in that laws have been passed that tacitly recognize the violations of the basic canonical roots of Argentine family law.

Cf. 1 G. BORDA, TRATEDO DE DERECHO CIVIL ARGENTINO (1961); A. MORELLO, SEPARACION DE HECHO ENTRE CONYUCES (1955); and A. SPOTA, *La Ley de Matrimonio Civil*, 1881–1888 in ANALES DE LEGISLACION ARGENTINA (1955).

33. The problem of separations in Argentina may become quite involved when both spouses re-marry in Uruguay and both have children from their earlier marriage, and further, when their new spouses are also separated in Argentina with children from former marriages. The problem of inheritance is minor in comparison with kinship terminological confusions and the kinship and personal social relationships that are altered. The problem is also acute when separated couples who marry outside their country enter into contracts within Argentina or seek visas to travel as married couples from consulates in Argentina.