Review Essay

History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law

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June Starr & Jane F. Collier, eds., *History and Power in the Study of Law: New Directions in Legal Anthropology*. Anthropology of Contemporary Issues, Roger Sanjek, Series Ed. Ithaca, NY: Cornell University Press, 1989. x+377 pp. Index. $42.50 cloth; $14.95 paper.

Laura Nader, *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*. Stanford, CA: Stanford University Press, 1990. xxiii+343 pp. Plates, references, index. $42.50 cloth; $14.95 paper.

Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islam*. Lewis Henry Morgan Lecture Series, 1985. Cambridge: Cambridge University Press, 1989. xvi+101 pp. Plates, notes, index. $15.95 paper.

It has now been just over ten years since John Comaroff and Simon Roberts published *Rules and Processes*, their study of Tswana law in its "total social context." At the time, the anthropology of law was emerging from almost 20 years of debate over a cross-culturally applicable definition of "law" and the appropriateness of using Western legal categories in the description and analysis of non-Western legal processes (Bohannan 1969; Gluckman 1969; Moore 1969; Nader 1965). These debates had doubtless been necessary as the subdiscipline of legal anthropology sought to define itself and its methods. After the 1950s many anthropologists of law followed the lead of Max Gluckman (1955), Paul Bohannan (1957), Leo Pospisil (1958), and others in exchanging jurisprudential models of law in favor of a more behavioristic and social-scientific approach (Greenhouse 1986:28–29; see also Snyder 1981; Hayden 1984). By the 1970s a crucial move, initiated, among others, by Laura Nader and her students (Nader & Todd 1978), was underway to shift the focus of anthropological studies of "law" (however it was to be defined) from the description and analy-

sis of rule-governed *institutions* devoted to maintaining social order to the description and analysis of *behavior* connected with *disputing*. Comaroff and Roberts persuasively argued that by the beginning of the 1980s contemporary studies in legal anthropology could be seen as situated in either a "rule-centered paradigm" or a "processual paradigm."[1]

The "rule-centered paradigm," represented by Pospisil (1971), E. A. Hoebel (1954), Ian Hamnett (1977), and others, was concerned largely with law as an aspect of social control and the imposition of sanctions, and saw legal procedures as the means of enforcing social rules. The tendency was to concentrate on clearly institutionalized forms of legal behavior and to see the outcomes of cases as predictably generated by the application of codified law. (Methodologically, this approach was associated with the analogizing application of Western legal concepts to non-Western societies, although in fact doing so was not inherent in a rule-centered approach.) The processualists were represented by political anthropologists like Elizabeth Colson (1953) and Victor Turner (1957) as well as by more recognizably legal anthropologists such as Paul Bohannan, Stuart Schlegel (1970), Laura Nader, June Starr (1978), and P. H. Gulliver (1979). They took a much broader view of what might constitute "legal" phenomena, treating conflict "as an endemic feature of social life," which was to be placed in a "total social context," thereby effecting "a shift *away* from judge-(and judgment-)oriented accounts . . . of dispute settlement" and toward analyses that see "indigenous rules" not as determinative laws but as "the object of negotiation," themselves "a resource to be managed advantageously" (Comaroff & Roberts 1981:13–14).

Although more sympathetic to the processualist camp (into which their own earlier work (Comaroff & Roberts 1977; Roberts 1979) could be seen as falling), Comaroff and Roberts also criticized the processualists for depending too much on a view of disputing as the merely utilitarian manipulations and transactions of calculating actors existing in a kind of moral no-man's land, insensible to cultural epistemological or moral imperatives. As a palliative, they were intent on being as catholic as possible in placing Tswana disputing in its social context. As a means of coming to grips with the paradox that legal systems are made up of theoretically fixed rules and practically unpredictable outcomes, they proposed to view Tswana disputing as a microcosmic, metonymic representation of the encompassing ideological universe of Tswana culture and social organization, holding that "the form and content of disputes . . . is securely

[1] Really, "paradigm" is too strong a word for what might better be characterized as analytical and methodological styles or approaches.

grounded in the constitution of that universe" (Comaroff & Roberts 1981:240). Their approach, as Bentley (1984:642) points out, "departs from previous practice in the prominence it assigns to meaning construction and interpretation in analysis of disputes."

In the decade that followed, the "rule-centered paradigm," already moribund, seems to have lapsed almost entirely. Relatively few book-length monographs were published during the 1980s—in addition to the works reviewed here, monographs by Keebet von Benda-Beckmann (1984), Carol Greenhouse (1986), Sally Falk Moore (1986), John Conley and William O'Barr (1990), and Sally Engle Merry (1990) come to mind as the more important and representative—all of which could be better situated in the processualist camp than they could be considered the products of a "rule-centered paradigm." Of these, moreover, it could also be said that the majority—Conley and O'Barr, Merry, and Greenhouse more than Moore or Benda-Beckmann—were consonant with Comaroff and Roberts's emphasis on "the cultural logic of dispute" in which resources of meaning in the construction of case narratives received particular attention. It can be said, I think, that one of the principal thrusts of legal anthropology in the 1980s was that it did extend Comaroff and Roberts's program of placing the study of law in a meaning-centered "total social context."

So when June Starr and Jane F. Collier open their introduction to *History and Power in the Study of Law* with the question "Should social anthropologists continue to isolate the 'legal' as a separate field of study?" I think there is now a fairly general consensus that the answer is an unequivocal no, of course not. But there is less consensus, I think, about what wider matrices are best for searching out connections to a "total social context." Should we focus on the fine-grained semiotics of "local knowledge," connecting ideas about law and disputing to other aspects of culture in search of a kind of Benedictine pattern? Or, alternatively, shall we seek out connections between local institutions of dispute settlement and what Marcus and Fischer (1986) call "the world historical political economy"? Can we do both at once? Are history and power simply aspects of the meaning construction Comaroff and Roberts enjoined upon us as a focus for the contextualization of disputing?

As the anthropology of law has moved beyond choosing between contrasting emphases on rules or processes (since clearly dispute settlement must consist of both) we seems to be confronted with a new set of choices: In one direction we are urged to connect palpably "legal" institutions and practices to broader historical processes creating and maintaining hierarchies and inequalities. In another direction we are drawn to ever-subtler examinations of the ontological and epistemologi-

cal categories of meaning on which the discourse of law is based. We must choose, it seems, between moving outward into the grand historical machinations of class and cash, power and privilege, or moving inward to the nubs and slubs in the fabric of meaning and belief. One suspects that this dichotomy will prove as misleading as its predecessors; yet for the present anthropologists of law seem to find it very difficult indeed do more than pay lip service to the idea that *both* local meaning and history and power need to be marshalled for an explanation of what happens when people dispute.

History and Power

There is certainly little question where Starr and Collier think the anthropology of law should be directed. *History and Power in the Study of Law* represents the proceedings of a Wenner-Gren conference on "Ethno-historical Models and the Evolution of Law" held in Bellagio, Italy, in 1985. Most of the papers have been reworked; a few are new submissions entirely. Contributions from both Nader and Rosen are included and are representative of their monographs reviewed here. I might add that I have used this book in teaching the anthropology of law and, along with my students, found it a useful and stimulating collection.

Starr and Collier, organizers of the conference as well as editors of this volume and authors of a splendid introduction, suggest that the 14 papers presented are held together by the willingness of their contributors to ignore disciplinary boundaries in an effort to hitch their analyses to "asymmetrical power relations and world historical time" (p. 1). What Starr and Collier are calling for, in effect, is a reorientation of the anthropology of law, and their claims occasionally take on a somewhat millenarian ring: "We have thus modified the field of legal anthropology in the process of revitalizing it" (p. 2). Just as legal anthropology has moved from a vision of law as social control and a relatively narrow concern with the judgment of judges to a broader concern with conflict, negotiation, and the management of rhetorical resources, so now it seems the anthropology of law is set to move from law as conflict to law as power: its creation, its distribution, and its transmission. In other words, Starr and Collier want to move away from seeing conflict as something to be *resolved* on the local stage toward seeing local conflicts as embedded in larger, often dialectic, conflicts between the interests of classes and peoples.

To what extent to the contributors to *History and Power in the Study of Law* accomplish this? The papers are grouped into four parts. The first part, "Resisting and Consolidating State-Level Systems," has articles by Anton Blok, Vilhelm Aubert, June

Nash, and Said Amir Arjomand. All four articles deal with issues in the evolution of state-controlled legal systems; three of them (Blok, Aubert, Arjomand) have special relevance to an understanding of Weberian processes of "rationalization." In "The Symbolic Vocabulary of Public Executions," Anton Blok presents the fascinating case of the Bokkerrijders, 18th-century robber bands operating in the Dutch enclaves of the lower Meuse valley. Blok presents the depredations of these bands of skinners and other marginalized artisans as a form of social protest. The "theater of punishments" to which they were subjected in the early part of the century was at once grisly and symbolically rich, including breakings on the wheel, amputations, burning, and so on. Blok makes some interesting speculations connecting the symbolic import of these punishments with the nature of the crimes the Bokkerrijders committed; one wishes he had elaborated a bit more. At the end of the period judicial torture and corporal punishment were replaced by the administration of an increasingly bureaucratized constabulary and imprisonment, part of a "gradual, long-term transition from corporal punishment to confinement" general throughout western Europe; "the symbolic vocabulary of these late eighteenth-century punishments had lost much of its eloquence" (p. 51). Blok seems to account for the change by assuming that the establishment of increasing state control over isolated populations made the need "to inspire fear and set an example" superfluous.

In "Law and Social Change in Nineteenth-Century Norway," Aubert, like Blok, documents a legal "*Zug nach Milde*," a move in rules and punishments from the harsh to the mild, and from stick to carrot. The increasing wealth of the state, suggests Aubert (p. 78), permitted Norwegian legislators to "establish a legal system based on rewards rather than on 'commands backed by force.' " As with Blok's "theater of punishments," though, the shift takes place in some ways locally, specific to the dynamics of domestic class cleavages and interests, but in other ways partakes of ideological shifts general to Europe as a whole.

In Said Amir Arjomand's "Constitution-Making in Islamic Iran," ideology and Weberian rationalization meet head on. Arjomand examines the creation of a theocratic "Islamic Republic" as it comes out of a Shi'ite legal tradition that he characterizes in terms of "moral idealism in jurisprudence, and informality and personalism in the administration of justice" (p. 114), terms reminiscent of Rosen's evocation of Weber's caricatured "*kadijustiz*," about which more below. The framers of Iran's 1979 constitution wanted to keep the "rationalized bureaucratic court system" of the old regime while infusing it with theocratically legitimated power and Islamic ideology. The

process sketched by Arjomand is a fascinating one, obliquely raising a number of intriguing and trenchant issues having to do with judicial discretion, procedural informality and the like which are also addressed by Rosen's descriptions of the *qadi*'s court at another end of the Islamic world in Sunni Morocco.

Part II, "Exporting and Extending Legal Orders," consists of articles by Bernard Cohn, Joan Vincent, and Francis Snyder. These three chapters might have been profitably grouped with Arjomand's contribution before it and Sally Falk Moore's after, in that they all treat the creation of new legal orders: Cohn and Vincent on British colonial legal systems in India and Uganda, respectively, and Snyder on the construction of "interests" in the emerging supranational legal order of the European Community. Here we are dealing with the nitty-gritty historical processes by which, to borrow Benedict Anderson's (1991) felicitous phrase, the legal orders of "imagined communities" are constructed. Of course, it makes a difference who is doing the imagining and what ideological tools they are doing the imagining with.

In a lucid description of the attempt of British officials to form the legal order of the Indian colonial state in the 18th and 19th centuries, Cohn shows how contesting British models of indigenous Indian legal institutions as alternately "despotic" and "theocratic" created a rhetorical and ideological environment for the enactment of a legal order that was thought to be both authentically "Hindoo" or "Muslim" and suited to colonial purposes. We begin to get a sense here of how preconceptions of India, Indians, Indian religion, and India's past, constructed in the context of shifting and immanent asymmetric power relations, themselves constitute an ideological environment within which those relations are construed and refigured.

The same theme emerges again in Joan Vincent's article on agrarian law in colonial Uganda. Vincent describes how much of colonial Ugandan law at the turn of the century was assembled in more or less modular form from the legal codes of other British colonies. She goes on to show the ways in which agrarian law changed over time to accommodate emerging class divisions at the same time that a "monumental body of legislation" was enacted to control almost every aspect of Ugandan peasant life. Echoing other students of African "customary law" (e.g., Chanock 1982; Moore 1986), Vincent reveals some of the ways in which Buganda modes of legal discourse were co-opted, for example, to legislate corvée labor, in ways that were perhaps useful to colonial administrations and local elites but that hardly represented indigenous practices as they had been in place before. It seems likely that the procedural flexibility of indigenous dispute settlement practices and the opacity of its intentions in the absence of "codification" al-

lowed colonial powers to adopt "customary laws" that had the appearance of indigenous authenticity at the same time it gave them a free hand to create laws that served their purposes and perpetuated their power. Thus Vincent makes a useful terminological distinction between "customary law," referring "to codification of elements of African law by a colonial power," and "folk law," that is, "a lived law in use at the local level." It is useless, says Vincent, to look to "customary law" for resistance to superordinate institutions of power or privilege. "Recognition of lived folk law and, above all, being able to distinguish it from customary law, is the beginning of reading between the lines" (p. 166).

Questions about the creation of "new" legal orders are also addressed by Francis Snyder, "Thinking about 'Interests,' " in the emerging legislative-legal environment of the European Community, using legislative processes regulating the "sheepmeat" market as his empirical base. Snyder issues a welcome invitation to rethink the variety and subtlety of the units participating in legislation in complex, Western democracies, avoiding the crudeness of a naive Marxist analysis, while offering plenty of room for a sophisticated Marxist understanding.

Part III, "Receiving and Rejecting National Legal Processes," maintains a focus on law and legal change in complex societies. George Collier examines "the Impact of Second Republic Labor Reforms in Spain" during the Socialist government of the 1930s, looking in particular at "the experience of implementation" of labor reforms and suggesting that they may have had a considerably greater impact "in reforming and revolutionizing agrarian labor than historians have credited" (p. 221). Jeremy Boissevain and Hanneke Grotenbreg look at "Entrepreneurs and the Law: Self-employed Surinamese in Amsterdam." In a fascinating examination of Chinese, East Indian, and Creole immigrants from Surinam to the Netherlands, Boissevain and Grotenbreg find them employing a range of adaptive strategies in coping with the legal and regulatory intricacies of the Dutch economy. The change in legal environments from Surinam to Holland is not merely a matter of learning (or ignoring) new rules but rather involves a change in a total legal ethos. The immigrants have found it both possible and necessary to achieve a measure of legal syncretism without actually changing any laws or procedures.

The gem of this section, however, is Carol Greenhouse's "Interpreting American Litigiousness." Greenhouse brings an exemplary sensitivity, both historical and ethnographic, to her analysis of "Hopewell," a middle-class community of devout Baptists near Atlanta. It is a well-known "fact" that Americans are "litigious"—highly problematic and contestable notions, as we now understand (Greenhouse cites Galanter 1983 among

others). Greenhouse eschews the question of whether we are or are not "litigious," preferring instead to unpack the notion of "litigiousness" itself, treating it "as a cultural category" and "as a cultural sign in the United States." She observes that in everyday speech Americans regard "litigiousness" as a negative trait that pertains to groups rather than individuals; that they are disturbed by anything that increases the use of the courts and are convinced that such use is on the rise because they can "no longer manage to accomplish the business of personal life without judicial intervention" (p. 254). In the historical context of Hopewell, the divisiveness of mid-19th-century politics required a backing away from dispute, which, given the religious focus of the community's constitution, took a theological form: disputing came to be constructed as "un-Christian" and a trait characteristic of the unsaved. But, argues Greenhouse (p. 264), the Baptists of Hopewell did not invent

> a legal ideology to separate their forces from those of the litigious group, for whom they felt distrust or antipathy. . . . [Rather, they] focused on litigiousness and the problematic aspects of human authority as a symbolic resource. Why? . . . Specifically, the antiauthoritarian sentiment enshrined in the American Revolution channeled questions of difference and distance into questions of conflict, control, and hierarchy. The Baptist prescriptions for avoidance can be read as prescriptions for egalitarianism. . . .

Contemporary members of the community accept this ideology as if it had been in place since the inception of Christianity, seeing the theological justification as primary, and using it as a means of maintaining a communal boundary between themselves and others among their neighbors.

Greenhouse goes on to examine the idea of litigiousness in general American thought and ideology as well. Americans, she holds, understand

> the law as the sum of their society's functional and organic qualities, [so] it is not surprising that Americans should perceive conflict with some apprehension, as a sign of social dissolution. In this sense, the Hopewell Baptist imagery of damnation differs from that of others neither by kind nor by degree, but only in its religious referents. (p. 266)

(This view of law, one might add, is hardly unique to the United States, but it is not one that one might assume out of hand to be omnipresent.) How, then, has the use of courts acquired such a bad odor? Why is it that "[s]ociety may be legal by definition, but this legality somehow excludes the bench and the bar" (p. 267)? Synthesizing a variety of analyses, principally linguistic, Greenhouse suggests:

> Americans seem to hold two views of the law: . . . a natural-law philosophy . . . when the question is the functioning structure of society itself, but when the question turns to the nature of official law, Americans are positivists. . . . Americans may see society as intrinsically ordered by collective contractual arrangements . . . but they simultaneously see official law as rules imposed externally by elite institutions." (P. 269)

American ambivalences toward hierarchy and authority thus become associated with litigiousness.[2]

Greenhouse's analysis, like David Schneider's (1968, 1977) on which it partly depends, is perhaps incomplete in that it largely ignores race, class, or gender as determinants of variations in what she proposes is a general "American" ideology. But Greenhouse is exemplary in the way she has managed to connect the local ideological environment of Hopewell to larger national and historical contexts. She has also given us a fine example of how cultural categories can be unpacked and illuminated to reveal the richness of discourse within which an element of legal culture like "litigiousness" can be placed.

The final section, "Constructing and Shaping Law," is made up of articles by Sally Falk Moore, Lawrence Rosen, Laura Nader, and June Starr. Starr's article, "The 'Invention' of Early Legal Ideas: Sir Henry Maine and the Perpetual Tutelage of Women," is a reexamination of Maine's appraisal of Roman law with respect to marriage, property, and the status of women. Starr critiques Maine's work, finding that elite women were "neither as dependent nor as independent as Maine suggested" (p. 356), and criticizes the past several generations of anthropologists of law for either dismissing Maine or taking him too uncritically. The articles by Rosen and Nader very much reflect the positions developed more fully in their monographs, and since they are reviewed in detail below, I shall say rather little about them now. Suffice it to say at this juncture that Rosen's lucid article on "Islamic 'Case Law' and the Logic of Consequence" concerns itself with the "cultural context of Islamic legal thought," particularly with the ways in which broadly shared Moroccan categories of person and everyday epistemological assumptions about them are codified and instantiated in the procedural conventions of the qadi's court; it is "hermeneutic" anthropology of law at its best. Nader's contribution on "The Crown, the Colonists, and the Course of

[2] Sally Merry's (1990:173) work among working-class urban Americans in the Northeast, it might be noted, has suggested that American "individualism and egalitarian values and . . . the expansive efforts of the state," rather than the collapse of the community, are responsible for the expansion of formal social control, and "litigiousness" with it. She goes on to suggest that it is "not clear that urban Americans truly regret the loss of an intimate, consensual community" and that many ordinary citizens may "turn to the law to escape from the bonds of community and to construct a preferred mode of social ordering." This is clearly a fruitful avenue of analysis for the future.

Zapotec Village Law" lays out an approach to the historical development of "harmony ideology" that she develops more thoroughly in the book by that title reviewed here.

Similarly, Moore's contribution, "History and the Redefinition of Custom on Kilimanjaro," deals with themes more elaborately developed in her 1986 monograph *Social Facts and Fabrications* (which had not been published at the time of the Bellagio conference). From the outset, Moore reminds us that whatever is cultural or ideological basis, law is also a mode of action:

> To abstract legal ideas from the operating community in which they are "used" generates the kind of categorical and semantic analysis recently produced by Geertz (1983:167). That kind of approach may tell us about ideological forms, but such "linguistic" or "literary" analyses of the conceptual elements in a legal order do not take one very far in understanding what people actually do on the ground or why they do it at particular times and places. I agree . . . that it is essential to know in what terms people think about basic moral and legal issues. Yet . . . presenting the "traditional" categories of legal discussion without the context of discourse offers statements without speakers, ideas without their occasions, concepts outside history. (P. 278)

Although she directs her comments specifically at Geertz's "Local Knowledge" essay (1983), her caution might equally well be aimed at Greenhouse's or Rosen's contributions to *History and Power in the Study of Law* (although Greenhouse's approach in particular is certainly innocent of atemporality).

Moore's critique is not to be dismissed lightly. Her article, which describes "tradition" in Chagga law as it has been constructed through time both by litigants and by governments responding to changing conditions of economy and land tenure is built around two finely observed case histories. In classic style, Moore uses these cases to root her generalizing analysis in a rich ethnographic context, thereby providing an argument that demonstrates rather than merely asseverates, and she does so in a way that is fully sensitive to the texture of chronological change and nuances of differences in power and hierarchy. But, as it turns out, this is surprisingly unusual for *History and Power in the Study of Law*. Of the 14 chapters, Moore's is the only one that makes real exegetical use of case histories (Collier and Boissevain and Grotenbreg make some use of cases, though not in the essential way Moore does). This strikes me as a noteworthy departure from what at least once might have been thought of as "standard" methodology in the anthropology of law. After all, as Conley and O'Barr (1990:167) have observed, "It is almost impossible to find any serious writing about law by anthropologists that is not conceived and

presented in terms of cases." That cases should be so conspicuously absent from this anthology seems both significant and troubling.

Surely there is nothing in adopting "history and power" as analytical keys that makes the 'extended-case method" (van Velsen 1967; see also Epstein 1967 and Holleman 1986) inappropriate; Moore's contribution belies that, as, indeed, she does more to really deliver on the promise of the anthology's title than anyone else. By the same token, there is nothing in the "hermeneutic" style that precludes the effective use of case histories—after all, what are case histories if not "texts"? But does it matter that so many of the contributors to *History and Power in the Study of Law* eschew actual cases? I think it does. If, as Starr and Collier suggest, social anthropologists should no longer "continue to isolate the 'legal' as a separate field of study" (p. 1), then it seems especially important to connect the ideational with the behavioral.

There is also a sense, I think, in which case histories are important if only because an integral aspect of disputing is the construction of narratives by disputants, umpires, and the watching community alike (see Conley & O'Barr 1990; Brenneis 1988; Just 1991). There is no reason that this should not be as true for historicized analyses or for analyses "of the power relations structuring speech" (Vincent 1990:422) as for the more synchronic case-study ethnographies in the style of Gluckman (or, for that matter, of Starr 1978 and Collier 1973 themselves). If the contributors to *History and Power in the Study of Law* are exemplary—and they include a great many if not most of the very best scholars in the field at present—then we find ourselves in what strikes me as a curious position. "Hermeneutic" anthropologists of law seem to be stopping their analyses at a level of symbolic abstraction that deprives them of what ought to be their richest source of "texts" for exegesis. And the "history and power" anthropologists seem equally hamstrung by a need to deal with reified asymmetric relationships of power. In the scramble to see "law as discourse" or "law as power" or even "law as culture," both the hermeneuticists and the hegemonicists—if I may be indulged in a somewhat precious coinage—seem to me to be losing touch with law as something that happens in the real world, with law as event, as experience, as ethnography. I think this is important, and it is a theme to which I will return at the conclusion of this review.

Starr and Collier have tried to bring into question the whole notion of conflict *resolution* as an appropriate focus for the anthropology of law.[3] A rethinking of conflict resolution is

[3] In *The Anthropology of Justice* Rosen also observes that he is not "taken with the idea that law is preeminently a mechanism of dispute *resolution*—an attitude which, even

certain to carry benefits: an insistence on seeing conflict only (or even primarily) in terms of its resolution may have led us to exclude from our purview conflicts that may never become eligible for resolution, either because they are too diffuse—embedded in larger contestations—or because the institutions of conflict resolution systematically exclude them. Similarly, a tendency to concentrate on the necessarily local texture of conflict may also have led us to ignore the ways in which local (intra-community) conflicts are seen to depend for their structure and meaning on wider constellations of "hegemony" and "resistance." These are important matters of analytical perspective, bound to have a significant and salutary effect on anthropological studies of law.

We should also be clear where these concerns are headed. Departing from an assumption that "legal orders inevitably create conflict," Starr and Collier (p. 8) assert that the contributors to *History and Power in the Study of Law* "assume that conflict, and not consensus, is an enduring aspect of any legal order." If this assumption of inevitability is yoked to an overarching concern in which "all the contributors hold the view that legal orders create asymmetrical power relations . . . [and] share the assumption that the law is not neutral" (p. 7), we find ourselves taking a theoretical stance that is, not to put too fine a point on it, neo-Marxist. It assigns a primacy to asymmetric relations of power that assumes class interests and antagonisms. If Comaroff and Roberts were to take issue with the processual paradigm because it tended to reduce conflict primarily to the teleologies of individuals, then the hegemonicists might be seen as equally reductionistic in regard to teleologies of class.

Above all, it seems to me that in some ways Starr and Collier are crashing through an open door. They announce their volume as beginning "the preliminary work of conceptualizing anthropology of law not as a subdiscipline 'apart from' social anthropology, but as a theory-building 'part of' social anthropology" (pp. 5–6). But the integration of the anthropology of law with the rest of social anthropology is something that has been implicit in a hermeneutic anthropology for some time now. Seeing disputing behavior as connected to, even deriving from, contests about impositions of meaning (both in everyday and legal-rhetorical settings) is largely a matter of paying close attention to how people go about composing the narratives in and about their disputes (e.g., Brenneis 1988; Hayden 1987; Conley & O'Barr 1990; Just 1991). Connecting this kind of meaning construction either to the epistemology and ontology of everyday life (e.g., Rosen 1984, 1985; Merry 1986, 1990) or

if one had never been involved in an endless and bitter legal case that never really resolved anything, could probably be dispelled by . . . watching . . . *The Edge of Night* . . . [or] *The People's Court*" (p. 4).

to superordinate institutions of power and authority (e.g., Moore 1986) is, as I have said, very much what the anthropology of law in the 1980s has been all about. It is also one of the reasons I find an absence of case histories distressing.

That "the law" or even "dispute settlement" cannot and ought not be analytically isolated from broader social matrices is not only no cause for despair, it seems little more than ethnologically axiomatic. After all, isn't looking at law looking at culture? As Sally Engle Merry (1987:2063) wrote in a *Harvard Law Review* epistle to the lawyers:

> Disputing . . . is cultural behavior, informed by participants' moral views about how to fight, the meaning participants attach to going to court, social practices that indicate when and how to escalate disputes to a public forum, and participants' notions of rights and entitlement. Parties to a dispute operate within systems of meaning; they seek ways of doing things that seem right, normal, or fair, often acting out of habit or moral conviction. The normative framework shapes the way people conceptualize problems, the way they pursue them, and the kinds of solutions they look for.

Anthropologists take it as more or less axiomatic that the elements of culture—ideational, experiential, institutional, conscious, unconscious, articulated, unarticulated—are in some sense *integrated*. "[T]he idea," as Robert Murphy (1979:36) put it, "that societies are systematized is central to the social sciences"; that, at least, is what we tend to teach our undergraduate students. This is a notion that has perhaps fallen into some disrepute with the rejection of functionalist equilibrium models (cf. Starr & Collier, p. 5). But taken in its most catholic sense, this supposition has led to a sensibly promiscuous methodology that permits us to take almost any point of entry as the beginning of analysis: a cockfight is as good a way as any of looking at the structure of Balinese social relations; a wink will suffice as the ethnographic event on which an understanding of Moroccan ethnohistory can be built. It leads, in other words, to a Geertzian "think description" (Geertz 1973c).

Marxist theorists and political scientists seem to have needed Gramsci to discover that culture is an intrinsic element of power relations, rather than epiphenomenal to them (e.g., Hall 1990; Lears 1985; see Messick 1988 for a recent application to the anthropology of law). But it seems deeply ironic, if not a little silly, that anthropologists, who along with others in the law and society movement have for some time now been preaching to jurisprudents the importance of placing legal institutions in a deeper cultural context, should find it necessary to proclaim so loudly that power relations are as substantially an outcome of meaning construction as myths or kinship systems. A more subtle point—and this, I think, may be one of

Starr and Collier's more relevant theoretical contributions—may be to remind hermeneuticists that meaning is not arbitrarily manufactured in some sort of ür-ethnic isolation but is part of continuous contestation (to borrow some Gramscian language) coming out of historical processes having to do with relations of power. At any rate, what seems to be at stake as far as Starr and Collier are concerned is not so much whether power is inscribed through meaning as the analytical *primacy* to be assigned asymmetries of power in looking at legal—or any other kind of—meaning. Here, it seems to me, Starr and Collier have urged us to open up the anthropology of law only to narrow it again by confining analyses to teleologies of power. Is this necessary? The real question, it seems, is not whether legal anthropology can profitably be separated from other aspects of culture, for everyone agrees that it cannot. Rather the question is whether the hermeneutic method of cultural anthropology is in some way inimical to a focus on hierarchy and power. As Barbara Frankel (1987:169, quoted also in Vincent 1990:427) put it, the question "is whether neglect of the issue of power and/or the promotion of myths of cultural unanimity . . . [are] intrinsic to hermeneutics *as a method*." It seems to me that they are not.

The choice between meaning and history and power seems to carry with it some old baggage. Fine-grained understandings of meaning seem, almost inevitably, to shortchange the role of superordinate institutions and of power relations in general, a necessary narrowing of perspective to achieve analytical closure, making cultural systems appear more isolated and self-contained than they in fact may be. Similarly, studies that enlarge their perspective to foreground connections between the local and the cosmopolitan seem, equally inevitably, to lose sight of what goes on in the hearts and heads of real people. The differences between these two approaches are well represented in the books reviewed in this essay, and I will have more to say about them as I treat the works in greater detail. But I want to suggest at the outset that the disparity between "history and power" and "meaning-centered" approaches seems to bear at least a family resemblance to the approaches, respectively, of Gluckman and Bohannan, who in the 1960s were seen as the champions in what is now regarded as a rather sterile (Hayden 1984:470 called it "furious," F. von Benda-Beckmann, 1979:14 "notorious") debate about whether Western legal concepts ought to be applied in analyses of non-Western law (Gluckman said yes, Bohannan no). At the time, Sally Falk Moore (1978:237–38; see also Comaroff & Roberts 1981:247), again an acute observer, noted that Bohannan, in addition to being interested in the

> *institutions* that settle disputes and "counteract" gross abuses of norms; . . . [he also] emphasizes *perception*, cognition, "key concepts," and ideas as the fundamental basis of law. . . . By contrast, . . . Gluckman . . . is trying to show how particular concepts can be explained in terms of their institutional setting. He is not treating the ideas as if they were a system of cognitive categories or value-laden principles that in themselves may give fundamental shape to the social system; rather, he assumes that the . . . ideas are expressions of the social and historical setting in which they are found.

The debate now, assuming there really *is* one, is no longer over the adequacy of Western legal concepts for the description of non-Western dispute settlement processes. The difference continues to be a more fundamental one, the one Moore (1969, 1978) so accurately put her finger on 20 years ago: are we to see law and the behavior its produces, however broadly defined, as a cognitive system, a system of meanings, an expression of culture produced from the inside out? Or are we to view them as products of history, themselves an arena of contestation for class, gender, ethnicity, an expression of society produced from the outside in? This is not a trifling distinction, for a great deal of the explanatory thrust of one's analysis depends on whether one's point of departure is bottom-up, inside-out or top-down, outside-in.[4] So, in a sense, the debates of the past have not been so much resolved as transformed into a muted but deeper form. The important question, of course, is can these approaches be harmonized; can we have *and* eat our analytical cake?

Harmony Ideology

With this in mind, let us turn to Laura Nader's monograph, *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*. It is impossible to be insensible to Nader's many and significant contributions to the anthropology of law, not only as a theorist and ethnographer, but also as the tutor and mentor of a generation of legal anthropologists. *Harmony Ideology* brings into one volume the results of fieldwork conducted over 30 years in the village of Talea de Castro, a Zapotec settlement in the Rincón region of Oaxaca, Mexico, with a population of around 2,000 during the 1957–68 period when most of Nader's case material was recorded. Talea is an ethnographic setting familiar to many, if only from the two excellent films Nader has done with

[4] It is not surprising, incidentally, that this disparity of approach can be traced respectively to American and British anthropologists—although Bohannan was trained at Oxford and Gluckman was South African—since the differences very nicely capture the subtle but real disjunctions between old-fashioned American *cultural* anthropology and British *social* anthropology.

Talea as a setting (1966, 1981). The material presented in *Harmony Ideology* has thus been long awaited.

The heart of the monograph, over a hundred cases presented and analyzed, makes the wait worthwhile. The ethnographic material is rich, and Nader does a good job of creating an overall context for its interpretation. The Talean court system is for the most part managed by three officials drawn from among the local political elite. The *presidente* oversees town government and may hold court to resolve disputes and "administer justice." The *sindico* has charge of the police and undertakes investigations relative to disputes, in the course of which he may also hold court to effect a compromise or impose a resolution. Ideally, the two work as a team and usually handle most of the disputes that come before the town government. An additional court is presided over by an *alcalde*, who may have some interest and experience in legal affairs, but is often more of a "small-town philosopher capable of 'making the balance' between town inhabitants and between his office and the district court in Villa Alta" (p. 31). The alcalde's court handles cases that the presidente or sindico is unable or unwilling to settle to everyone's satisfaction. Cases the alcalde cannot resolve can be taken to the state court in the district capital of Villa Alta. The purview of the town officials extends to cases involving family relations, land tenure, slander, debt, and the like; the Villa Alta court retains jurisdiction "where blood has been drawn," although it seems that if litigants are willing, even these can be settled within the community. As one might expect, these offices constitute part of the *cargo* system of the community, in which men of prestige and substance accept offices more as a burden than as an opportunity for enrichment, although the *cargo* system as a whole is in decline. Indeed, one of the most amusing observations Nader makes is that the police appoint the succeeding year's officers from among the town's worst troublemakers during their tenure, thereby forcing them to clean up their acts while giving them a taste of the medicine they have been serving up.

Nader characterizes the community within which this legal system operates as "primarily an endogamous organization that is largely self-sufficient economically. The people of each village [in the Rincón] own the land they cultivate" (p. 29). Nader describes the social organization of Zapotec villages in terms of three key structural principles: hierarchy, symmetry, and cross-linkage (pp. 35–37; also 1989:326–28).[5] All Talean organizations, kin as well as non-kin, are hierarchically structured according to gender, age, wealth, and experience. This

[5] Nader's description of Talea and its preference for legal insularity is very reminiscent of Eric Wolf's (1957) much earlier notion of the "closed corporate community."

hierarchy is mediated by a variety of leveling mechanisms (Nader's "symmetry"), for example, equal inheritance among all children, contributions to fiestas in proportion to wealth, and so on. "Cross-linkage" assures that group memberships will be distributed complementarily, thereby reducing the potential for the formation of factions that permeate all aspects of village life.

Five chapters (5–9) are devoted to analysis of the courts and their users. Nader provides an excellent analysis of the processes litigants go through in bringing their troubles before one of the courts. Not surprisingly, a variety of nonstructural elements may determine whether a person seeks to use the courts: "personality, type of case, the state of the opponent (his wealth, shared membership in a village, envy, recurrence of action, intention), the complainant's own state of wealth and his relationship with possible third parties, or a great desire of justice" (p. 87). What does emerge, however, is a sense that "citizens see themselves as empowered, active agents of law," who are able to use the courts to remedy circumstances they regard as unfair and intolerable. At the same time, Taleans feel that "a bad agreement is better than a good fight" and are inclined to operate in a legal environment that is predicated on compromise and conciliation, rather than an adversarial or coercive model—the "harmony ideology" of which Nader makes so much.

The following section of the book (chapters 10–13) concentrates "the substance of legal encounters" and provides the richest vein of case materials, some of them cases observed by Nader or her research associates, others cases taken from court records. It is here that we get a real feeling for the character and texture of Zapotec justice.[6] A key element, particularly in cases that involve violence, seems to be an eagerness on the part of the court not merely to listen to but to actively solicit the complex motives that may have impelled an individual to commit a violent crime (while sober; inebriation seems to be a comprehensive reason for doing almost anything and, while not exculpatory, seems nonetheless to mitigate just about anything). Implicit in this is a notion that sober violence is not random, and is rarely *unjustified*, but is usually a symptom of some more diffuse relational problem that the court also sees as within its purview to address. For this reason the preferred resolution of a case often takes the form of an agreement, a

[6] Inevitably in a body of material as rich and complex as this there are some contradictions. For example, Nader describes several cases in which the court acts with greater-than-usual severity to protect its authority, but offers no explanation of why a defendant who has shot a policeman is allowed to settle by paying a fine and limited compensation. Similarly, in one place Nader observes that the "overall proportion of males and females who use the courts as plaintiffs is relatively equal" (p. 139), while in another she holds that "cases brought by women dominate the Talean courts" (p. 217).

convenio, which all parties agree to and which may involve conditions that might seem only peripheral to the complaint that brought the case before the court in the first place. "the root causes of aggressive behavior are more important than the symptomatic behavior reflected in acts of violence because these mountain people are wary that an act might 'disorganize the group.' The Zapotec think sociologically about harmony and violence" (p. 243).

Also intriguing is the way in which weaker parties in intimate relationships—especially women in conflict with their husbands or lovers—use the courts to change the balance of power. We have become accustomed to looking at law as an aspect of "hegemonic ideational control" (to borrow Nader's own phrase, p. xxiii), as part of the apparatus whereby the state or other dominating classes reinstantiate and enforce relations of political, economic, ethnic, and gender superiority. Yet in comparing cross-sex and same-sex cases, Nader finds that in fact women who are otherwise at a disadvantage are able to invoke communal values to obtain improved circumstances. "In Talea the use of law augments personal power. Those intimates with less power use law to achieve more power, and for this reason the courts are a valuable resource for those who feel oppressed or frustrated" (p. 216). This is not to say that in other respects women or others who are oppressed are not subjected to "hegemonic ideational control" (e.g., the prosecution of women suspected of inducing abortions, pp. 213–16), for surely they are. But it does suggest (at least to me) that an appropriation of moral rhetoric in the court may be among the "weapons of the weak," to borrow James Scott's (1985) phrase. Taleans may not be alone in looking to legal processes to redress imbalances of power in domestic relationships (see, for example, Merry 1986, 1990), but according to Nader they do challenge the assumptions that most of us would share with Donald Black (1976): that a person is less likely to sue a close kinsman than a distant kinsman or a neighbor and that access to justice is in direct proportion to social rank. Clearly, these are assumptions that need rethinking.

Despite the volume and richness of ethnographic material presented—or perhaps because of it—there is a good deal more that one wants to know than Nader provides. There seems little attempt to develop a sense of what might be called Zapotec "legal ontology." For example, there seems to be some difference in the way the court officials handle consensual unions as against formal marriages, yet we get little of the ideology—"official" or practical—having to do with the relations between husbands and wives, the values and expectations according to which religiously solemnized unions are or are not contrasted with consensual unions, and so on. Similarly,

drunkenness seems to play a major role in the origins of disputes and is also regarded as a substantial mitigating factor. An ethnography of Talean Zapotec law would be much enhanced by a mediation on Talean norms, values, and expectations with regard to alcohol and drunkenness. It would be even more enhanced if we were provided with a sense—even anecdotal—of how Taleans regard liability, responsibility, causation, the nature of intent, essential moral similarities or differences between men and women, adults and children, and so on. I must admit that I am here criticizing Nader mostly for doing her ethnography in her own style rather than mine; this is certainly unfair and probably impertinent. But I am willing to do so because I think the sort of understandings I refer to form a kind of ontological and epistemological deep structure on which the judicial calculus of both the Talean courts and their users are built, and also because I think that much of this knowledge is already there, if latent, in the cases as Nader presents them.

The key idea for the theoretical context in which Nader has placed her monograph is, of course, "harmony ideology." Nader never provides a really full and clear definition of harmony ideology, although it is apparent from her use of the term here and in her other publications (e.g., Nader 1969:87–88) that it is an ideology that seeks to settle a dispute by uncovering its underlying causes; urges compromise and concludes by agreement; takes into account social relations ramifying beyond the disputants at hand; and places the restoration of amicable social relations above a search for "objective truth." Most succinct, perhaps, are the Taleans themselves, who contend that "a bad agreement is better than a good fight." "My research," says Nader at the beginning of the book (pp. 1–2),

> suggests that compromise models and, more generally, the harmony model are either counter-hegemonic political strategies used by colonized groups to protect themselves from encroaching superordinate powerholders or hegemonic strategies the colonizers use to defend themselves against organized subordinates. In the case of the Talean Zapotec, I have come to the conclusion that their harmony tradition stems from Spanish and Christian origin, an idea that leads me to propose that the uses of harmony are political. Legal styles are a component of political ideology that link harmony with autonomy or harmony with control.

Nader returns to this thesis in the two concluding chapters of the book, where she treats "harmony ideology" in a comparative context; her thrust is temporal as well as spatial. Nader has elected to regard "harmony ideology" as an historical outcome of Christian evangelism, not only in Mexico but in a variety of other non-Western societies. She maintains that Zapotecs have

not been unique in adopting harmony as part of a colonial "hegemonic control system" or in then turning its use to counter-hegemonic purposes in settling differences internally so as to keep state-controlled legal institutions at bay.

Nader is much to be admired for the sweep of her comparative effort and for directing our attention to a critical area for further research; the role that missionaries (and other colonial and neocolonial powers) have played in the creation of "indigenous" and "customary" law.[7] It is certainly true that anthropologists have paid less attention than they might have to the ideological impact that missionaries have had in the creation of what seems to be an increasingly global world system, in which legal systems may be seen as playing a crucial role. But Nader's attempt to characterize "harmony ideologies" as the product of the non-Western world's encounter with Christian theology as disseminated by missionaries does little justice to either the variety and subtlety of the missionaries (particularly across the vast spans of time and space of missionary activity Nader contemplates) or to the structural and moral imperatives of indigenous solutions to the problems of "making the balance." It seems particularly problematic to deny any autochthonous origins for harmony ideology in the absence of any account of what Zapotec dispute settlement was like before the Spanish conquest.

Certainly, "harmony ideology," as loosely as Nader has used the term, is a widely distributed sense of what justice ought to be and seems to be as common a mode of justice as Western adversarial/absolutist models of dispute settlement—which, it should be pointed out, have their roots as firmly planted in Judeo-Christian moral philosophy as does harmony ideology—more, some might argue (e.g., me). More to the point, harmony ideology abounds in places in which the presence and impact of Christian missionizing has been small or nil. I might point to my own experience among the Dou Donggo[8] of Eastern Indonesia, who would second the Zapotec maxim "a bad compromise is better than a good fight" with their own aphorism that "if objective truth is worth five, then compromise and concord are worth ten" and among whom the pres-

[7] As Nader aptly points out, Martin Chanock's work, along with Sally Falk Moore's, has been crucial in demonstrating the ways in which "customary law," particularly in Africa, has been produced not so much by recording an extant system of dispute handling as it has been the product of the intersecting interests of colonial officials and local (mostly chiefly tribal) elites (see Chanock 1982, 1985). I might add, however, that my interpretation of Chanock somewhat differs from Nader's (1990:296–98). It seems to me that Chanock (1985:5–8) suggests that the "harmony ideology" current among contemporary Africans is more a chimerical counterpoise to the justice imposed by colonial rule than it is an accession to Christian doctrine.

[8] The Dou Donggo are a group of about 25,000 agriculturalists who inhabit the highlands west of Bima Bay on the island of Sumbawa, in Eastern Indonesia. See Just 1986, 1990, 1991 for further descriptions of Dou Donggo dispute handling.

ence of Christian missionaries was (at the time of my research) a relatively recent and superficial phenomenon much overshadowed by three centuries of only marginally more successful Muslim proselytizing.[9] Indeed, Indonesian customary law in general, whose central principles of *musyawarah* and *mufakat* (discussion and consensus) could be said to fit comfortably within the generous confines of Nader's harmony ideology, owes more to Indic and Islamic antecedents than it does to Christian ones, if indeed it owes much at all to anyone in particular (Geertz 1983:210–11; Hooker 1978a, 1978b).

There are surely many other examples; for example, the role of conciliation, compromise, and "harmony" (*wa*) is well attested to in Tokugawa Japanese law (Smith 1983:39–43; Henderson 1965; see also Kidder & Hostetler 1990 on contemporary Japanese and Amish "harmony ideology"). Even among the works reviewed here, we can look ahead to Rosen's (p. 17) observation that the "aim of the [Moroccan] qadi is to put people back in the position of being able to negotiate their own permissible relationships without predetermining . . . the outcome"—a harmonious way of settling disputes that would seem to be equally innocent of Christian missionary theology. Perhaps even more to the point, Greenhouse's contribution to *History and Power in the Study of Law* is, as has been noted, exemplary in the way it sees the antilitigious harmony ideology of Southern Baptists as a need to feel apart given voice in terms of religious rhetoric rather than vice versa (pp. 264–65). Finally, it seems to me that while self-consciously Christian ideology is a prominent feature of Baptist disputing rhetoric, it seems to be conspicuously absent from Talean disputing rhetoric. If Christian theology plays so important a role in harmony ideology, why is the role of the church in dispute settlement apparently so inconsequential? One might have expected religious officials to play some role in mediating disputes; in more than a hundred recorded cases, Nader makes no mention of clerical intervention. Even ignoring the apparent absence of an institutional Christian presence in Talean dispute settlement, it seems odd that there is not more frequent reference to religious ideology in the rhetoric of disputing as recorded in the many cases Nader presents throughout the book.

Harmony ideology may—or may not, in historically contingent ways—draw considerable rhetorical strength from missionary ideologies, but clearly cannot be considered dependent on them. It seems to me that it would be far more profitable to look elsewhere for the roots of harmony ideology; we may look to the structural imperatives other than Christian proselytizing

[9] In fact, one of the more recent Christian proselytizers showed himself to be understandably uncomprehending of the particular Dou Donggo style of "harmony ideology" (a story related in Just 1990).

that Taleans might have in common with other ethnographic instances of harmony ideology. Here Nader is on much firmer ground in attributing harmony ideology at least in part to local strategies for keeping external authorities at arm's length. If there is a connection between the presence of harmony ideology and Christian missionary activity, it would seem important to remember that missionaries have rarely appeared *ab nihilo* but rather as the vanguard or handmaiden of colonialism, its attendant meddling in local politico-jural affairs, "customary law" not the least among such meddlings (see Moore 1986 and her contribution in Starr & Collier and also, as Nader observes, Chanock 1985). This, too, was my experience among the Dou Donggo (Just 1990:78) and certainly makes perfect intuitive sense. It seems unlikely to me that harmony ideology arises solely as a form of resistance to colonial rule, or even as a necessary consequence of resistance combined with Christian evangelism. After all, it seems a bit contradictory to argue that harmony ideology should hold the colonial state at a distance with one arm while it embraces colonial religious institutions with the other. But this is an historical and empirical question requiring historical and empirical, rather than theoretical, evidence. Even more likely, and more productive, would be to consider conciliatory and adversarial models as complementary but not mutually exclusive. Nader (1990:308) herself moves in this direction, aptly urging that "[h]armony and conflict are not antithetical, as previous theories have suggested."

Nader begins and ends her monograph with a hegemonicist's theoretical concerns for history and power. But in between the opening and the ending, I found little to connect the operation of Zapotecan legal harmony either with Christian traditions or with "encroaching superordinate powerholders." The political ideology that Nader speaks of at the beginning and end of *Harmony Ideology* seemed quite elusive in the ethnographic analysis that is the book's strength. One gets the sense from Nader's book that the theoretical perspective she employs has been imposed on the data, almost as an afterthought, rather than deriving from the data as a self-evident conclusion. I wonder if this does not say something significant about the state of legal anthropology[10]—a problem that Nader may share with most of the contributors to *History and Power in the Study of Law*, who seemed to be so chary of case studies. To be sure, connecting theory and data is probably the most perdurable problem any scholar faces; it should not be surprising if ethnographers, who are in many ways closer to their data than

[10] In truth, I must admit that it was Joseph Sanders, reviews editor of this journal, who wondered this first. I am indebted to him not only for this particular point, but for a most constructive and insightful review of this essay altogether, though surely he is innocent of its many flaws and occasionally harsh judgments.

other scholars, find it a particular vexing difficulty. But it seems to be becoming an especially tough problem for the anthropology of law. I suspect that this may have something to do with the fact that over the past several decades anthropologists of law have far more often been the consumers of theoretical innovation than its producers. The 1950s processualism of the Manchester school in British social anthropology—Gluckman, Turner, Colson, *et alia*—is probably the most recent contribution to anthropological theory that can be portrayed as originating in (or at least connected to) the anthropology of law. For the most part anthropologists of law have derived their models from exogenous sources like Parsonian structural-functionalism, Geertzian interpretivism, or even a baffling Lévi-Straussian structuralism (Moyer 1975). Often, it seems to me, the adoption has been awkward and the process of fitting theoretical innovations to old data turns out to be rather procrustean. I cannot say why this should be the case. Certainly there is nothing in the subject matter of the law that should inhibit theoretical innovation, and if the promise of Comaroff and Roberts's opening moves has yet to be fulfilled, there is no reason they should not be. Perhaps a deeper sense of the integration of law in culture is what is called for. If so, then Lawrence Rosen would have to be considered one of its leading exponents.

Law as Culture

Some of the style and substance of Lawrence Rosen's *The Anthropology of Justice: Law as Culture in Islamic Society* has already been adumbrated; let me turn now to a fuller exposition. To begin with, I should note that Rosen's book is not an ethnography, as is Nader's, but a series of lectures delivered at Rochester University in 1985.[11] It is a brief book, fewer than 80 pages of text proper, although its brevity is no indication of its significance. *The Anthropology of Justice* is one of several publications by Rosen appearing in the past several years, including his contribution to *History and Power in the Study of Law* (Rosen 1985, 1989a, 1989b), that lay out a particular approach to the anthropological study of law. It is, I should admit from the outset, an approach that I find very congenial.

Rosen's ethnographic setting is Sefrou, Morocco, a small city of Arabs, Berbers, and (formerly) Jews at the edge of the Atlas Mountains; his subject is an analysis of the justice administered in the court of the *qadi*, whose jurisdiction extends to family law and property cases in which his court has drawn up

[11] They are, in fact, the Lewis Henry Morgan Lectures, a distinguished series which also provided the basis for S. F. Moore's *Social Facts and Fabrications*.

the documents. Sefrou is familiar to us not only from the work of Clifford Geertz, Hildred Geertz, and Paul Rabinow, but also from Rosen's earlier (1984) ethnography, *Bargaining for Reality*. In it he argued that the "personalistic" social relations characteristic of North African Arab society—and the perception of reality pertinent to them—are a product of constant, if subtle, negotiation and adjustment.

The book is divided into four chapters. The first introduces us to Sefrou and the qadi's court. In a fashion rather reminiscent of Geertz's (1983) use of the concepts of *haqq*, *dharma*, and *adat* to explore the nature of Islamic, Indic, and Malaysian law respectively, Rosen delves into "Moroccan views of self and society": "those relating to essential qualities of human nature, . . . those describing the sources of one's social attachments, and those connected to the idea of mutual indebtedness and obligation" (p. 12). Moroccan conceptions of human nature see males and females, children and adults, as tending to be composed of differing mixes of *nafs* (passion) and *'aqel* (reason), with consequences for their legal standing. (Among these consequences is that the testimony of women is given less credence than that of men. Indignant Westerners might consider what effect our own cultural associations of "reason" and "emotion" with gender (Lutz 1988) might have on the credibility of witnesses.) Similarly, Moroccans employ the concept of *asel*—glossable as "origins," but also as "patrimony," "descent," and "strong in character,"[12] by which is meant the regional, ethnic, and familial sources of a person's nurturance—as the most reliable means of ascertaining a person's character and inferring his or her motivations. Hence, the qadi's interest in inquiring after a disputant's or a witness's "origins" as a means of evaluating testimony. And in the realm of obligation and indebtedness Rosen examines the concept of *haqq*—"right," "truth," "duty"—which is not only "a summation of the idea that all contracts between persons carry with them a sense of obligation" but implies "that the actual terms of such an obligation are themselves subject to constant negotiation and manipulation" (p. 13).

In the second chapter Rosen concentrates on "determining the indeterminable," his meditation on evidentiary canons and the evaluation of witnesses. Naturally, all the assumptions and understandings surrounding human nature, *'asel*, and *haqq* come into play here. Testimony, especially when it is about the obligations attendant on relationships, is not to be regarded as

[12] The variety of these glosses evokes an important point harkening back to the notorious Bohannan-Gluckman debate. As Clifford Geertz (1983:216) observed, the comparison of legal systems cannot "be a matter of locating identical phenomena masquerading under different names"—a rather obvious caution, but one nonetheless important.

either phenomenally true or false but rather as a position open to negotiation. Given the negotiable nature of evidence, then, oral testimony given by witnesses is preferred to documentary or physical evidence. The number of witnesses giving the same testimony before court notaries can become an important aspect of a case, in effect allowing the community to play a role in validating (or refusing to validate) a person's claims. And

> just as people may accept legal fictions as legitimate even though they know them to be false because such fictions produce results that are capable of being regarded as "true," so too, reliable oral testimony is, notwithstanding the tendency for people to forget or lie, accorded presumed credence in Islamic law because it is through speech that people achieve ties to one another that can be shaped to the preservation of a community of believers. (P. 23)

In "determining the indeterminable" a fascinating—and to Western sensibilities, anachronistic[13]—role is played by decisory oaths. In situations where neither side can present decisive evidence, the plaintiff may challenge the defendant to take an oath; if accepted, the defendant wins or may refer the oath back to the plaintiff, who then can win by taking the oath. But, Rosen demonstrates, the control that the qadi exercises over the application of such oaths (e.g., by deciding who the "plaintiff" or "defendant" really is) keeps them from being far from mercurial or irrational in their effect on the outcome of cases.[14] On closer examination, in other words, the use of decisory oaths is seen to be the product of "a highly rational process of assignment . . . based on reasonable cultural assumptions about the nature of facts, human relationships, and desirable social consequences" (p. 35).

The next chapter approaches "reason, intent, and the logic of consequence." Here, as in other facets of his description and analysis, Rosen is concerned with the integration of commonly held ontological and epistemological categories with legal praxis. Any juridical process, regardless of the formality of its codification and institutionalization, must in some sense have a way of looking into the hearts of disputants and assessing inner states of intent and motivation, however strict the legal system's sense of liability may be (Just 1990). In the qadi's court, a person's intent is uncovered by locating "his or her situated acts—occurrences that draw together the qualities of nature, background, and biography [i.e., *'asel*] to make an inner state 'obvious' " (p. 53). People are assumed to do not

[13] Apparently it is still possible to take decisory oaths in Holland, France, Italy, and Spain, although one suspects to less effect than in Morocco (p. 33).

[14] The terms "plaintiff" and "defendant" are used advisedly, since according to Rosen the real criterion is which of the parties can be assumed to know the most about the particulars of the case. This person is usually designated the "plaintiff."

only what they habitually have done, but what their characters and backgrounds would intend them to do, and for the "obvious" reasons. Thus American legal strictures against introducing past convictions or testimonial assessments of character that are "irrelevant" to the charge at hand or the credibility of witnesses make no sense at all to the qadi, to whom such information is of crucial importance. Following a "logic of consequence" we find an epistemology that holds individuals likely to have done what they have been likely to do, that makes a statement that something happened more credible than a statement that it didn't happen, also assuming that a plaintiff is better informed of the events in a case than the defendant and that understands it as a legitimate supposition that government officials will be corrupt.

The last chapter of the book is concerned with the issue of judicial discretion, as, indeed, Rosen has been throughout the work. We find, in words reminiscent of Talean harmony, that "the central goal of the qadi is to put people back into a position of negotiating their own ties, within the bounds of the permissible and that the entire process—of fact-finding and questioning, of using experts and legal presumptions—contributes to the reinforcement of the local in the context of the judicially cognizable" (p. 65). In a sense, Rosen can be seen as responding to the seeming contradiction that Comaroff and Roberts (1981) found so perplexing at the beginning of the 1980s: how are we to reconcile law as a codified, regularized, inscribed, enacted, set of rules and procedures, reflecting broadly held and valued cultural norms, with disputing behavior that seems to operate according to a different but clearly *not* unrelated "cultural logic"? Like Comaroff and Roberts (ibid., pp. 247–48), I think, Rosen finds that the " 'gap' problem—so called because apparent disparities between rules and behavior are allegedly incapable of elucidation— . . . ceases to exist once rules and processes are seen to be generated from the same systemic source."

Rosen undertakes this resolution (as, indeed, he has since before Comaroff and Roberts's manifesto; Rosen 1980–81) in the way he goes about looking at the question of "judicial discretion" in the court of the qadi, of whom Weber coined the term *kadijustiz* to "characterize that form of judicial legitimacy in which judges never refer to a settled group of norms or rules, but are simply licensed to decide each case according to what they see as its individual merits" (p. 59). What Rosen ends up arguing, I think, is that the seemingly wide latitude of a qadi's discretion is in fact limited by a variety of rules—Comaroff and Roberts's "systematic source"—that are cultural, diffuse, rarely articulated, and extremely powerful because they

are indeterminate categories rather than narrow, literal, codified, and determinate laws.

Crucial to the effectiveness of this system of law "is the similarity of the concepts by which courts and ordinary people think about human nature and interaction and how few are the juridical rules or procedures that differ sharply from those employed in numerous other domains of the community's life" (p. 28). Rosen finds that "it is the coherence of the entire [cultural] system—of prayers and rituals, beliefs and practices, judicial inquiry and subjective assessment, oral witnessing and divine oaths—that contributes to the acceptability of any one element within the cultural scheme" (p. 36). This, it seems to me, is real hegemony, the hegemony of culture, hegemony from the bottom up. Rosen's qadi can truly create reality. "Like judges in some other cultures, he faces a society which is uncertain, chaotic, and indeterminate, and must create out of it an assessment that is itself quite determinate" (p. 37). The creation of a fabric of meaning and belief that "seems uniquely realistic" is not something peculiar to religion "as a cultural system," but to law as well (Geertz 1973b), and indeed, the judicial creation of realities from chaos is a process very much at the heart of justice (see Just 1986).

Rosen's account is a cultural account par excellence, as its subtitle *Law as Culture is Islamic Society* suggests. This may in part have to do with the nature of Moroccan law per se. Rosen finds that "the actual course and goal of qadi decisions . . . suggests . . . that regularity lies not in the development of a body of doctrine which is consistent with other elements of the doctrinal corpus itself, but rather in the fit between the decisions of the Muslim judge and the cultural concepts and social relations to which they are inextricably tied" (p. 18). With this move, Rosen artfully sidesteps a tradition of viewing Islamic law in terms of its own interpretive apparatus and doctrinal history (e.g., Khadduri 1984, Powers 1986). It seems to me that the fruits of Rosen's analysis more than justify doing so. The seeming absence of "history and power" from Rosen's approach, however, is a bit troubling—although one must recall that *The Anthropology of Justice* is a compilation of four lectures and does not purport to be a comprehensive ethnography of Moroccan law. In the case of power, Rosen suggests that "[w]ithin Moroccan society at large power is enormously diffused" (p. 68) and that the qadi's focus on the personal and the local diffuses power even further. Still, it seems to me that the extensive application of *'asel'*—origins—to legal processing is indeed, as Rosen proposes, far more than stereotyping and consequently an important way in which the qadi's decisions reflect and create power differentials. Similarly, it has been suggested that the "proper context for the study of the rela-

tionship between the theory and practice of Islamic law is social history," even if "the social history of Islamic societies has barely commenced" (Al-Azmeh 1988:251), and Rosen's approach seems strikingly ahistorical (this is less so of his contribution to the Starr and Collier volume).

Finally, one is reminded of Sally Falk Moore's critique, quoted earlier in this essay. Her complaint that " 'linguistic' or 'literary' analyses of the conceptual elements in a legal order do not take one very far in understanding what people actually do on the ground or why they do it at particular times and places" seems reasonably applicable to *The Anthropology of Justice*. Rosen provides us with virtually no case material, and for the most part we get only anecdotal connections between the categories of meaning invoked and the framing, pursuit, or outcome of actual disputes. Again, it is only fair to recall that these are lectures, not an ethnography, but one could have wished for more ethnographic texture to go with the hermeneutics. So we return, again, to Barbara Frankel's question: Is it true, after all, that hermeneutics and hegemonics are incompatible?

Where Do We Go from Here?

In the works under review here much of the analytical harvest is reaped by connecting indigenous belief with the particular institutional arrangements and procedures present in a given community for the settlement of disputes—what Nader (1969) calls a "court style." This kind of emphasis on the relationship between "belief" and "style" is, as I have said, one that concerns much of the best recent legal anthropology and strikes me as being a particularly fruitful mode of analysis. It is a mode of analysis perhaps best represented in Rosen's work, which is relatively inattentive to issues of "history and power," at the same time that it is one which Nader has pursued less avidly than one who favors this approach might have liked. One wonders anew if a hermeneutic or meaning-centered mode of analysis necessarily contrasts with the "history and power" approach. Have I done more than construct a convenient but false dichotomy? Nader (1990:xxiii) suggests that "[o]ur understanding of hegemonic ideational control must be connected to our knowledge of social or institutional control," and Rosen (p. xiv), perhaps anticipating criticism of his more or less atemporal and anocratic analysis, has proposed that

> the analysis of legal systems, like the analysis of social systems, requires as its base an understanding of the categories of meaning by which participants themselves comprehend their experience. . . . The institutions of class and money, power and privilege, far from being submerged by such an

> analysis, are seen to depend for their very impact on the broader system by which knowledge itself is produced; the significance of rules and procedures is seen to reside in their capacity to operate as systems whose constituent features are far more extensive and interrelated than our own disciplinary divisions may embrace. Seen in this fashion, law and anthropology are not just inextricably linked to one another; they actually constitute two sides of the same configuration.

Rosen here makes a strong case that the kind of hermeneutic analysis he executes so well is in an important sense propaedeutic to the kind of understanding top-down institutional analyses produce. I am (as should by now be more than apparent) inclined to agree with him, but it nonetheless remains for us all to move beyond such programmatic statements to a demonstration of the way in which such dependent links are forged.

Now what Nader is getting at when she talks about "hegemonic ideational control" or what Rosen is getting at when he refers to "knowledge" is in effect what is often called "ideology"— something the very title of Nader's ethnography suggests. The problem of "ideology" is, of course, a central and perennial one (see, among others, Geertz 1973a; Williams 1977; Giddens 1979; Wuthnow 1987) and seems now to be coming to the fore again in legal anthropology (see in particular the various articles in 22 *Law & Society Review* No. 4 (1988), an issue especially devoted to ideology and law). It is not in the scope of this essay to resolve (or even sort out) all the issues raised by the several ways in which the notion of ideology is used in legal anthropology; the term is notoriously diffuse and hard to define (Kidder 1988). But it is my sense that the question of "ideology" is a pivotal one in all the works reviewed here, and one that is likely to concern the subdiscipline for the next several years. Could this be the arena in which the relationship between meaning and power can be clarified? Let us see what we can say with respect to the works reviewed here.

As I noted earlier, Nader makes a good deal out of contrasting harmony and conflict, as "styles" or "ideologies," although she herself does not see them as mutually exclusive in a single system. The contrast, of course, is not between harmony and conflict, which are outcomes, but is rather one of contrasting styles in dispute handling—the notion of "court style" itself being one introduced by Nader (1969)—a contrast of styles familiar to every legal anthropologist as one between "negotiation and adjudication" (e.g., Gulliver's 1979:3–24 lucid discussion or Black's 1987:564 discrimination between "penal" and "conciliatory" styles—along with "therapeutic" and "compensatory" styles—in dispute management). At the crux of Nader's harmony ideology lies a contrast between an ideology of dispute settlement that depends on the satisfaction (or at least the

grudging acceptance) of all parties in a dispute to the solution arrived at, against an adversarial ideology that is dependent on a zero-sum determination of which party was "right," which itself is dependent on a "sense, without which human beings can hardly live at all, much less adjudicate anything, that truth, vice, falsehood, and virtue are real, distinguishable, and appropriately aligned" (Geertz 1983:231). As I understand it, the difference in the two styles is not, as Gulliver (1979:3) would have it, "the [presence or] absence of a third-party decision-maker," for surely the Moroccan qadi's or Zapotec alcalde's roles tend as much to facilitating negotiation and compromise as they do to making decisions or declaring winners and losers in an adversarial face-off. Instead, I think, the difference is grounded in a deeper shared sense of what the community is in a moral sense,[15] what human nature is, and what can be done about it. Whether justice is seen to reside in accommodation or in consistency, for example, may show preferences, respectively, for a harmony ideology or for a more formalistic, absolutist sort of dispute settlement style. But making this distinction may in turn depend on whether the community is viewed as a unitary moral whole or a congeries of competing groups.

The next step, of course, is to try to come up with some sort of explanation for the presence of one kind of legal style rather than another. One fairly obvious way of explaining conciliation or harmony ideology is in terms of constraints imposed by social organization. As Nader (p. 316) remarks, "Legal styles vary with the stratification of social life, its morphology, culture, organization, . . . social control, and . . . with the diffusion of legal cultures." Similarly, Rosen points to ethnic pluralism and the "personalistic" nature of Moroccan society as explaining (or at least being part and parcel of) a number of the institutional characteristics of the qadi's court. Nader has argued also that harmony ideology imposes its own kind of hegemony, but has served Talean Zapotecs well in preserving their autonomy, a kind of politico-historical explanation. But the circumscription—even when it is a matter of unwanted isolation—of small communities is another, persuasive, way of understanding some instances of harmony ideology; one is reminded of the mother of Siamese twins, who remarked, "When you can't get away from the person you're arguing with, you solve it quickly" (*New York Times* 1991). It seems to me that other kinds of explanation might be sought as well.

If I may be permitted an ethnographic excursion of my

[15] I find it both remarkable and lamentable that hardly anyone in the anthropology of law seems to have had a major interest in the moral dimensions of legal ethnography since Stuart Schlegel's (1970) *Tiruray Justice*; Greenhouse's *Praying for Justice* is an exception.

own, I would like to take the style[16] of Dou Donggo dispute settlement as an example, it being the one I know best. As I have said, Dou Donggo disputing would fit quite nicely in Nader's model of harmony ideology. Dou Donggo have an overwhelming preference for settling disputes within the confines of the community. Nader attributes this tendency among Talean Zapotecs to an "anti-hegemonic" desire to preserve communal autonomy. I think an element of this is doubtless present among Dou Donggo; they are certainly loath to enter into institutional arrangements they only poorly understand or control and which tend to be expensive regardless of outcome. It is certainly possible to see this as an "anti-hegemonic" urge or as "resistance." But I wonder if doing so would not be, as Lila Abu-Lughod (1990) puts it, "romanticizing resistance," or of seeing "resistance" everywhere. It seems to me that the Dou Donggo might also have achieved communal autonomy not by adopting a harmony model of dispute settlement but by taking on an adversarial/absolutist model in which troublesome members of the community are dealt with summarily so as to avoid attracting the attention of outside authorities—a very plausible interpretation of a case I have described in detail elsewhere (Just 1986). To be sure, maintaining communal autonomy is a tacit act of resistance to central authority, a "diagnostic of power" as Abu-Lughod suggests, but, as she also suggests, this ought to be only the beginning of the analysis, not the end. Arguing that Dou Donggo (or Talean Zapotecs) employ a "harmony ideology" *because* it is an act of "anti-hegemonic resistance" could be arguing from final causes, obscuring other, structural reasons for the configuration of their juridical style.[17]

Able to invoke few, if any, real coercive sanctions, the ideology of internal dispute handling is one of conciliation and compromise: Dou Donggo elders engaged in dispute settlement see themselves as trying to effect the "repair of bad sounds and speech." This does not mean that Dou Donggo adjudicators cannot or will not act as agents of social control to protect what they see as the best interests of the community. But it does mean that Dou Donggo (like Nader's Zapotecs and Rosen's Moroccans) see the resolution of a dispute in terms of the reestablishment of ruptured or faulty social relations rather than in terms of enforcing either "the law" or someone's "rights" in any absolute sense. Now, we might approach the Dou Donggo

[16] I speak here of *the* style of Dou Donggo dispute settlement, but it goes almost without saying that a given community, even a small and homogeneous one, may very well employ a number of legal styles, fight over which one is appropriate in a given context, etc. This is the essence of legal pluralism (see Merry 1988).

[17] See also Michael Brown's (1991) recent analysis of South American millenarian movements providing a critique of "resistance" as "inadequate to the task of illuminating the dialectical processes by which native people define themselves in relation to other societies, indigenous and otherwise."

style of harmony ideology—accepting, as I do, the descriptive and analytical utility of this typology—in terms of a religiously divided but otherwise unstratified and homogeneous social organization based on nuclear family households nested comfortably in patrilaterally skewed bilateral kindreds. One might easily postulate that village endogamy (which until recently has been almost complete) and an absence of hierarchies beyond age and gender, together with the particular history of relations between the Dou Donggo and the more numerous and politically dominant neighboring Dou Mbojo, has impelled them to adopt a juristic style that stresses conciliation and restoration rather than confrontation and repression. If, on the other hand, one were to look at the Dou Mbojo (as I have admittedly done less thoroughly than I have the Dou Donggo), one would find far more frequent village exogamy and an elaborate system of political and social hierarchies in which "harmony ideology" could also be seen to dominate dispute settlement. In other words, there certainly seems to be a good deal more to "harmony" than can be explained in the rather simple terms of "anti-hegemonic" impulses. I do not doubt but that the economic and social organization of Dou Donggo communities and of their social history (i.e., their relations of "history and power") are intimately bound up in the style of their dispute settlement. But for me it makes at least as much sense to understand the style of Dou Donggo dispute settlement in terms of a general moral ethos that includes not only articulated values but deeply rooted ontological and epistemological assumptions. That Dou Donggo see themselves as reborn in their descendants; that they see the evil behavior of their fellows as originating with spirits who are angry at not having become human beings; that "pity" has a particular constitution and occupies a particular place in their moral and emotional lives; that physical ills and social ills are treated by the same healers and that legal cases are, in a sense, as much exorcisms as they are trials and as much theatricals as they are exorcisms; all these are powerful determinants of Dou Donggo dispute settlement style. If, just to take one example, I believe that the thief who has stolen my bushknife will have to wander through the afterworld until he finds me and returns it, then I may be more content to accept relatively rigid canons of evidence and less likely to resort to self-help than I would be if I believed otherwise, and this may be an important constituent of a "harmony ideology." Indigenous cosmology and ontoloy may thus be seen not as epiphenomenal to politico-jural ideology, economic interests, or asymmetric relations of class or power, but as potent determinants in themselves.

The precise manner in which these and other elements of belief combine and act to create a distinctive Dou Donggo ju-

risprudential "style" is obviously beyond the scope of an essay that takes as its point of departure the work of others rather than my own. But what happens when we look more closely at a juristic "style"? Nader suggests that ethnographers have been susceptible to the "hegemonic" rhetoric of harmony ideology as our non-Western subjects have expostulated it to us, and that we are partly responsible for its perpetuation. All ethnology engages, implicitly if not explicitly, in a comparison of "the other" with ourselves; the anthropology of law is no different. Inevitably, the ethnographer finds a key element, a characterization of style, a *contrast* that seems to have caught the ethnographic imagination as characteristic but also as distinguishing the institutions under analysis. For Rosen (p. 28) the principal distinguishing characteristic of the Sefrawi qadi's court "is the similarity of the concepts by which courts and ordinary people think about human nature and interaction and how few are the juridical rules or procedures that differ sharply from those employed in numerous other domains of the community's life." For Nader (p. 309) it seems to be harmony ideology itself, a style of dispute settlement in which the need to "make the balance" outweighs most other interests most of the time and has allowed the Talean Zapotecs "to combat the vandalizing aspects of colonialism and to form the basis for their peaceful utopia." For both, the implicit contrast is with our own system of jurisprudence, one in which the epistemology and ontology of the law is the province of specialists and in which absolutist principles of right are yoked to an adversarial procedural ethos that is institutionally dominated by the state.

This is, in effect, "anthropology as cultural critique," to borrow a phrase from a much-cited recent manifesto (Marcus & Fischer 1986): the appropriation of the other as a means to self-understanding and auto-critique. Among anthropologists there is an ancient tradition of portraying the appropriated other ("my people") in rather Rousseauian terms or, at any rate, of finding and accentuating those aspects of the other that we rather wistfully would wish for ourselves. So it is not surprising that Nader finds Zapotecs "harmonious," even though the incidence of violent crime, particularly attributable to drunkenness, would seem to give our own violent society a run for its money; or that Rosen finds Sefrawi justice epistemologically accessible to the everyday person, even though the court finds it necessary to engage a variety of notaries and expert witnesses.

There is nothing wrong with this per se. After all, anthropology would be a pretty dull affair if ethnographers were to come back from the field with little more to report than that, all things considered, the Gitchegumie are pretty much like thee

and me.[18] But it is also incumbent on the ethnographer to try to give the reader a sense of those aspects of exotic institutions that the local people themselves find characteristic, even if they should prove to be chimerical. This brings us into the realm of ideology in one of its several senses: a self-conscious portrayal of an ideal set of social relationships, but a portrayal that inevitably stands in contrast with some other set of relationships—the current or past configuration of this society, the social relationships of those bastards over the hill, the Great Satan, the Jews, Muslim Fundamentalists, Neocolonialism, etc. It is not merely the nature of the values applauded or wished for, it is the contrast with an alternative set that gives this form of ideology its cathectic force, and one that is sometimes all too persuasive for the ethnographer. Ideologies, in other words, never stand alone, but always at least implicitly stand in contrast to something else (see also Greenhouse 1982, 1988).

The anthropologist of law, then, must be careful not to mistake legal ideologies constructed on the basis of informants' bêtes noire for a savvy informant's analysis of what is really going on. But the anthropologist of law must be even more careful when he or she sees something in the other society that has ideological implications for his or her own, careful not to confuse those ideological implications for either a clear-sighted vision of "what is going on" in the other society (however elusive and illusory such an objectivist—nay, positivist—sense of ethnographic reality may be) or for indigenous ideology. We should be careful, in short, not to appropriate *them* simply as a means of talking about *us*.

This is not the place to enter into the ongoing debate about the role of ideology in the analysis of law. But it would be useful, I think, to follow the example of the Amherst Seminar (1988:630) in heeding Alan Hunt's (1985:13) cautions: "Consistent world views may exist, but they must be treated as special or exceptional cases." Certainly a good deal of both Nader's and Rosen's characterizations of Zapotec and Moroccan law is predicated on a notion that the fundamental concepts and categories of meaning—the legal ideologies, if you like—structuring their respective legal systems are shared, consistent, and uncontested. This may in part be a product of a common ethnographer's tendency to invest more descriptive and explanatory power in the patterns we have discovered than they sometimes deserve. It may in part be a product of the relatively synchronic nature of both works. It is something that the hegemonicists, ever sensitive to contests of power, might be expected to avoid, save that the tendency to reduce all con-

[18] Or, as the student of a colleague recently put it in a midterm exam, Napoleon Chagnon would not have done nearly so well had his famous monograph, *Yanamamo: The Fierce People*, been titled *Yanamamo: Plantain-Eaters of Amazonia*.

testations to contests over class power can obscure other kinds of inconsistencies and contestations. Consigning other contests to "false consciousness" is not helpful either, as Hunt also suggests (see also Amherst Seminar 1988:630). A view of ideologies as "formed through the mobilization of symbolic resources by groups promoting different projects" (Harrington & Merry 1988:714) comes closer to the mark but may be inclined to miss categories of meaning and belief that are so fundamental and diffuse as to be linked to the construction of *articulated* ideologies in only the loosest possible way.

Sally Merry (1990:5) gives us the notion of "legal consciousness" which she sees as "the way people conceive of the 'natural' and normal way of doing things, their habitual patterns of talk and action, and their common sense understanding of the world. . . . [It] is not only the realm of deliberate, intentional action but also that of habitual action and practice." She proposes to look at dispute settlement in terms of its processes, but also to approach ideology

> as a set of symbols which are subject to various kinds of interpretation and manipulation. From this perspective, disputing is a process of meaning making or, more precisely, a contest over meanings in which the law provides one possible set of meanings. . . . The focus on dispute processes is attentive to social interactions and to the way the social world is revealed in moments of fight. The focus on ideology foregrounds meaning and the power inherent in establishing systems of meaning. (Ibid., pp. 6–7)

There is plenty of room in this prescription for a synthesis among hegemonicists and hermeneuticists; pulling it off will be another matter entirely. The challenge of connecting meaning and behavior is daunting for both, as it always has been for us all. But the anthropology of law seems poised to bring some new perspectives to bear on the problem. The issues of disciplinary boundaries and "isolating the legal" now seem a bit irrelevant. Disputes and all the cultural baggage—institutional, ideological, behavioral, political, even legal—that surrounds them are important to us because they are important to *them*, to the people doing the disputing. Everyone—judges, disputants, and the watching community as well—brings into the arena of disputing understandings about all sorts of things: what a person is, what legally cognizable beings inhabit the world, what harm is and what can cause it, what emotions are, how emotions relate to reason and behavior, and more: understandings that predicate other, more recognizably "legal" understandings like liability or contract. We need to attend to the ideology as it is operationalized, to the processes by which meanings are linked to actions. *Of course* these understandings are resources in meaning construction and *of course* these constructed

meanings are going to be mobilized in contests, not just contests of power and privilege, but contests of identity, contests of belief that are undertaken because they are about things that matter to conceptions of the self and the world one inhabits. Disputing is not just about my rights and your obligations, it is about who I am and what we are. Disputing is cultural behavior like kinship and marriage, like politics, like art, like poetry. If it is an arena for contestations of power and dominance, then so are kinship, politics, art, and poetry. If kinship, politics, art, and poetry are arenas for meaning construction, then so is law. If there is a legal consciousness, then it is a segment of cultural consciousness. It is time to stop looking at culture to illuminate law and start looking at law to illuminate culture.

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