LAW AND ANTHROPOLOGY: A CASE STUDY IN INTER-DISCIPLINARY COLLABORATION

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> *"If the integration of law and anthropology is to flourish, it must be on a truly functional basis. Each must contribute to the dynamics of the other; each must add to the operative effectiveness of the other; each must nourish the other as a process. Mere static comparison, a paralleling of civilized rules of law with selected examples from sundry primitive tribes, is a sterile accomplishment."*
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> E. Adamson Hoebel
> "Law and Anthropology," 32 Va.L.Rev. 835 (1946)

The partnership between Karl Llewellyn and E. Adamson Hoebel is generally regarded as the most successful example of collaboration between a lawyer and an anthropologist in the annals of Anglo-American scholarship. In many respects it is unique. There have been individuals who have been trained in both disciplines; a number of legal scholars have made extensive use of anthropological literature; jurisprudence has regularly provided ethnographers of law with some of their main concepts and in recent years there has been an extensive, if disjointed, dialogue between representatives of the two disciplines. But, Llewellyn and Hoebel apart, in respect of research there has been little alacrity on the part of lawyers and anthropologists in responding to calls for interdisciplinary co-operation.[1] Moreover, there are sometimes signs of tension in relationships between the two groups, although for the most part such tensions are hidden behind the curtain of academic diplomacy.

Against this background, it is worth asking what lessons may be drawn from the case of Llewellyn and Hoebel about relations between law and anthropology and about the prospects and problems of lawyer-anthropologist collaboration. It is, of course, difficult to talk precisely in general terms about relations between disciplines; it is also dangerous to try to draw general lessons from the analysis of a single example. Nevertheless the present inquiry may be useful for at least two reasons: firstly, the quotation from Hoebel at the start of this paper expresses a widely held view, *viz.*, that the closer

https://doi.org/10.2307/3052961 Published online by Cambridge University Press

integration of law and anthropology is both feasible and desirable. Yet there has been relatively little discussion on what precisely is involved in "the integration of law and anthropology," or what purposes this might serve and even less on the practical problems and mechanics of actual collaboration.[2] It is hoped that the present paper may suggest some questions which need to be faced and some ways of talking about these questions, and that this may help to break the circle of optimistic assertion followed by frustration that accompanies so many attempts at interdisciplinary co-operation. Secondly, the collaboration between Llewellyn and Hoebel is in itself historically important and highly suggestive and it is appropriate that, in a volume honouring Hoebel, an attempt should be made to examine the significance of this part of his contribution.

People sometimes ask whether Llewellyn and Hoebel should be treated as representing the paradigm case for lawyer-anthropologist collaboration. Common sense suggests that it would be foolish to purport to give a confident general answer to this question, if it means: "Will any deviation from the Llewellyn-Hoebel model damage the prospects for success of any collaboration between a lawyer and an anthropologist?" Apart from the exceptional ability of both Llewellyn and Hoebel, there are at least two reasons for this: First, interdisciplinary collaboration should be viewed as a means to an end, not as an end in itself. The ends it may serve are numerous. It is, perhaps, most appropriately sought when an individual from one discipline feels that in conducting some research he has certain needs (*e.g.*, information, concepts, skills) which are most likely to be supplied by some kind of specialist from another discipline. It would be dangerous to assume that what Llewellyn and Hoebel had to offer each other was exhaustive, or even typical in all respects, of the needs that other lawyers and anthropologists may seek to meet through collaboration. A second reason for caution is that scholarly collaboration, like marriage, is in many respects a highly personal matter. Individual characteristics may be at least as important as class characteristics in determining "success." The present analysis may throw some light on the intellectual traditions and tendencies of two disciplines and how these may affect collaboration, but it does not purport to suggest any general lessons about problems of personal relationships in inter-disciplinary studies.

The relationship between Llewellyn and Hoebel began in 1933 and continued intermittently until Llewellyn's death in 1962.[3] Llewellyn acted as one of Hoebel's advisers in two early studies of the law-ways of the Comanches and the Shoshones (Hoebel, 1935, 1939, 1940); they then collaborated on their famous study of the Cheyennes (Llewellyn and Hoebel, 1941). In 1943 they embarked on an investigation of the law-ways of some of the Keresan Pueblos of New Mexico. This was still not completed at the time of Llewellyn's death. The significance of *The Cheyenne Way* has been widely canvassed (especially Malinowski, 1942; Levi-Strauss, 1942; Gluckman, 1965; Twining, 1968, 1973; Ali, 1970). Their Pueblo study, although less well known, has also been described elsewhere (Twining, 1973). In this paper I propose to concentrate on those aspects of their collaboration which have a direct bearing on questions about relations between law and anthropology. However, it is necessary to begin by outlining the story of their partnership.

Briefly the facts were that Hoebel as a post-graduate student at Columbia, in the days of Benedict and Boas, encountered scepticism in his own department when he expressed an interest in studying the law of the Plains Indians. This scepticism was based on two grounds: that the societies he wanted to study did not appear to have anything that resembled law "properly so called," and that they were unable or unwilling to articulate in general terms the customary norms, if any, which guided their behaviour or which were used in settling disputes. On the advice of Boas, Hoebel contacted Karl Llewellyn, who was then Betts Professor of Jurisprudence at Columbia Law School, and was rapidly gaining a reputation as one of the most creative and colourful of American law teachers. The date was June, 1933. Llewellyn was forty, Hoebel was twenty-six. At this time Llewellyn was best known as a commercial lawyer, but he had also recently come into prominence as a controversial protagonist of Legal Realism; he had had no formal training in anthropology, but as an undergraduate at Yale he had come under the influence of Sumner and Keller. At Yale Law School he had been a protégé of Arthur Corbin who, like Sumner, emphasized the influence of "folkways" and "mores" and the cultural dependence of law. After graduating from Yale in 1918, Llewellyn had continued to read generally in anthropology and sociology, but up to 1933 he had not done much sustained work in this area.

When Hoebel outlined his problems to Llewellyn, the lat-

ter immediately suggested how to overcome the sceptics' doubts. The way to deal with the definitional question (Do the Comanches have "law"?) was, in the first instance, to side-step it: disputes are to be found in all societies, so attention should be focused on the institutions and techniques for settling disputes, whether or not they deserve to be designated as "legal." The way round the methodological problem was to focus attention on actual disputes and how they were settled rather than on what the rules were, or were not, said to be. These two ideas were at the root of Hoebel's method in his doctoral thesis on the law-ways of the Comanches (Llewellyn was his supervisor), and for his rather less successful study of the Shoshones (Hoebel, 1935, 1939, 1940). They were then more fully developed in connection with their joint study of the Cheyennes and received their fullest statement in *The Cheyenne Way* and Llewellyn's important, but difficult, article "The Normative, the Legal and the Law-Jobs" (Llewellyn, 1940).

The division of labour up to the production of the first complete draft was fairly clear-cut: Llewellyn, who only spent ten days among the Cheyenne, contributed the basic theory and the inspiration for the case-method approach; Hoebel did almost all of the field-work and collection of data and was primarily responsible for drafting the descriptive sections of the book. The two worked closely together in producing subsequent drafts and making final revisions, and it is not possible to isolate with precision their respective contributions in the later stages.

The Cheyenne Way is a marvellously suggestive and entertaining book. It is rich in insight, poetry and anecdote. According to Max Gluckman it "raised new problems and set new standards in the analysis of tribal law" (Gluckman, 1965: 1). Its chief significance lies in two related sets of ideas, both of which have been extensively discussed elsewhere: "the law jobs" theory and the methodology of studying tribal law. The essence of the law-jobs theory is that in all human groups, group survival and co-operative activity by or within the group is dependent on the satisfactory performance of the "jobs" of dispute-settlement and dispute prevention. "Law" and "Law-Government" is most fruitfully seen, in this context, as the main specialized institution for the performing of these jobs in groups which deserve to be termed "societies".[4]

The theory of investigation employed and expounded in *The Cheyenne Way* was a natural corollary of "the law-jobs"

theory (Ali, 1970: 46). The detailed study of actual disputes is a necessary, but not the exclusive, way of ascertaining how the law-jobs are handled in a particular society. This approach has since been adopted by nearly all Anglo-American anthropologists, but by no means all lawyers, when investigating tribal law; it has been much discussed and refined since 1941 (see especially Epstein, 1967; Gulliver, 1969; Twinning, 1968, 1973; Abel, 1969-70). It is not necessary here to rehearse all the claims which have been made for the approach, nor to restate its limitations. However, it is worth making one point which is too often overlooked: there is not just one kind of "case method." Reports of disputes vary from entries of only a few lines made by court clerks to verbatim transcripts of everything that was said in court (or some other arena) to the selective accounts of trained observers who have witnessed the processes of dispute settlement at firsthand. Such reports can be analysed for different purposes in a variety of ways. In *The Chyenne Way* the authors were more concerned with the processes of handling conflict than with the details of substantive rules. They had, of necessity, to rely heavily on oral accounts of events which had occurred many years previously in circumstances in which the borderline between history and myth was tenuous. In the Pueblo study their situation and their purposes were rather different and so was their use of cases.[5] Thus, even in respect of Llewellyn and Hoebel it is, strictly speaking, incorrect to talk as if they used just one method. Nevertheless there was a consistent message underlying their insistence on the value of detailed analysis of disputes. For them the essence of the matter was that this approach was concrete, it dealt with actual rather than hypothetical events, it was dynamic rather than static, and it focused attention on the processes and techniques of dispute settlement. Not all those who have subsequently claimed to use "*the* case method" have used cases in the same way.

While *The Cheyenne Way* is widely regarded as a classic, Llewellyn and Hoebel's study of the Pueblos was both less successful and less well known. Once again the manner of its inception had important consequences for the direction of the project. Largely through the efforts of William A. Brophy, who was then Special Attorney for the United Pueblos Agency, Llewellyn and Hoebel were invited to investigate the lawways of some of the Keresan-speaking Pueblos of New Mexico. The aims of this investigation were to be as much practical

as scholarly; the Pueblos had retained a measure of internal self-government, but their leaders found themselves increasingly under pressure from several directions. There was uncertainty about the exact scope of their jurisdiction and about the extent to which the actions of officials were open to challenge in state or federal courts, and a number of officials had in fact been gaoled for applying what were held to be harsh punishments in execution of Pueblo law. At the same time members of the younger generation were increasingly beginning to question traditional ways. It was felt by Brophy and others that Pueblo autonomy could be more effectively defended from within and without if the gist of their law and procedure was recorded and published.

Llewellyn and Hoebel were invited to assist in this process. They accepted and set out to ascertain and describe the contemporary system of law-government, with particular reference to two Pueblos — Zia and Santa-Ana.[6] At the same time they had some further, theoretical, objectives. Hoebel was anxious to test out Benedict's picture of the Pueblos as having a system of social control that was devoid of coercive physical sanctions (Benedict, 1934). They were naturally interested in the juristic method of the Pueblos, but it was not long before Llewellyn became absorbed by other questions posed by a regime which combined totalitarian, communalistic and theocratic features:

> The small but almost "complete" Pueblo governments and systems of law-and-administration force inquiry into a large number of bedrock problems in political philosophy. For example, the relation of religious freedom to a Church-State Unity and the problems of toleration, tolerance, and repression of dissenting views in terms of the kinds of dissent: passive, active, aggressive, obstreperous. Or, the problem of combining a high degree of collective control of economic life with a very material degree of individual or family independence and even economic initiative amid changing economic conditions. Or the problem of maintaining or adjusting an ingrained ideology without disruption of its values, with a younger generation affected by a wider and utterly diverse ideology; and of producing peaceful relations with an utterly diverse neighboring, and to some extent predatory, culture. Or the manner and degree in which officially unrecognized changes creep in under maintenance of the older ideology and forms.[7]

Llewellyn saw some striking similarities between Pueblo and Soviet society; in 1946-47 he formulated plans for an ambitious project on Soviet law which would parallel the Pueblo study. The law-jobs theory provided a basis for treating any two groups as comparables and for exploring possible

similarities between the systems of law-government of a huge, technologically quite advanced nation-state and some miniscule, technologically undeveloped societies. In this Llewellyn exhibited less inhibition than most lawyers, who tend to be highly sceptical of the comparability of simple and complex legal systems and of the relevance of the study of tribal law to the problems of "modern" legal systems.[8]

Thus the project had five main objectives: (1) to ascertain and describe the contemporary law-ways of the Keresan Pueblos; (2) to advise and assist Pueblo officials in connection with some of their problems; (3) to re-examine the picture of Pueblo society as one in which secular authority and law played a minimal part; (4) to compare and contrast the Pueblo and Soviet systems of law-government; and (5) to develop a typology of law-government regimes and dispute settlement mechanisms.

These objectives were only partially achieved. The Pueblos have traditionally been very secretive about their institutions. Their semi-official status gave Llewellyn and Hoebel an almost unprecedented opportunity to obtain co-operation from informants and to have access to information that had not previously been made available to researchers. This status had some corresponding disadvantages. For they had to undertake "not to write anything that would hurt the Pueblo" (Hoebel, 1969: 92). By the time it was felt this injunction could be honoured, Llewellyn was dead and the research was somewhat stale. Moreover, as sometimes happens, there was some conflict between the roles of observer and participant. Llewellyn in particular devoted much energy to drafting codes, giving advice and even participating in cases. This not only absorbed his attention, but it also led to a sense of commitment to some of the traditional Pueblo values and ways of doing things. Hoebel, who was in any case less sympathetic to these values, remained more detached. The distractions of practical affairs and Llewellyn's emotional involvement made sustained collaboration harder and may have contributed to the partial failure of the project. Another factor may have been a divergence in their respective concerns: in *The Cheyenne Way* they had been interested in identical questions to a greater extent than appears to have been the case in their study of the Pueblos. During Llewellyn's lifetime some draft codes were prepared and some preliminary fragments of a book were drafted;[9] subsequently Hoebel has published a number of ar-

ticles on Pueblo law which, *inter alia,* establish the importance of secular authority in Pueblo society.[10] The project on Soviet Law was never implemented, but Llewellyn was stimulated by it to produce a tentative formulation of a typology of dispute-settlement mechanisms (the parental, the adversary and the umpire), which has subsequently been developed and used by his widow, Professor Soia Mentschikoff.[11] It is difficult to assess the value to the Pueblos of the practical assistance given to them by Llewellyn and Hoebel, but it is fair to conclude that the full promise of the project was not realised.

What lessons of general significance are suggested by these two projects? To start with they tend to confirm the view that there are certain pre-conditions for success in cross-disciplinary collaboration in research: it is probably desirable, and in most instances necessary, that the collaborators should have compatible personalities, that they should share a common vocabulary and that they should be interested, for the most part, in the same questions. At least in the case of *The Cheyenne Way* by and large Llewellyn and Hoebel satisfied these conditions:

> The success was due in part to common, in part to complementary, characteristics. Both men were interested in jurisprudential questions and this provided an identity of objectives, the absence of which is the first obstacle to this type of collaboration. Both favoured the closer integration of the social sciences. Temperamentally they were well suited: each had a touch of the poet that enabled him to achieve almost instant rapport with informants and to appreciate the "beauty" of Cheyenne techniques; in other respects their characters were complementary, never more so than in the matter of obtaining a balance between imaginative insight and hard fact. Llewellyn's genius lay in devising new approaches, he was less fitted for applying them systematically. His inclination and aptitude for sustained fieldwork were limited. Hoebel on the other hand was both by training and temperament an excellent field worker; a man of notable intellectual humility, he was prepared to accept the role of disciple of Llewellyn's theories. He was, of course, predisposed to accept Llewellyn's ideas. Before they met they shared a common interest in the dynamics and functioning of institutions with human behaviour as the central focus. This was a meeting of realistic jurisprudence and functional anthropology. If Hoebel had been a rebel against Malinowski's functionalism, or if Llewellyn had been a more orthodox lawyer, collaboration would have been harder and much less fruitful. This basic harmony of approach was decisive in the success of this attempt to pool the skills and knowledge of scholars from two different disciplines. Both the relationship between Llewellyn and Hoebel and subsequent developments in the study of tribal law are epitomised in Hoebel's striking dictum " 'Primitive Law' is the henchman of Legal Realism." (Twining, 1968: 167).

I hope that I shall not be considered guilty of a solecism in quoting myself here, for I wish to comment on and develop several points arising from this passage. First, a number of questions arise concerning the relationship between Legal Realism and the study of tribal law: In what sense were Llewellyn and Hoebel "Realists" in this context? Was a shared conception of "law" a necessary pre-condition of collaboration? What was the connection between their conceptions of law, Legal Realism and the study of tribal law? Secondly, the passage echoes a commonly held view that Hoebel was a typical anthropologist of the Boas school, but Llewellyn was not a typical lawyer: What are the criteria for typicality in this context? Can we usefully talk of typical lawyers and typical anthropologists here? If so, in what respects were Llewellyn and Hoebel typical or atypical members of their respective professional groups? And what bearing have these considerations on problems and prospects of lawyer-anthropologist collaboration? It is to those two sets of questions that we now turn.

LEGAL REALISM, THE CONCEPT OF LAW AND THE STUDY OF TRIBAL LAW

"Legal Realism" is often used loosely to designate some of the ideas of a rather variegated group of American jurists. For some people, at least, it is associated with some rather unorthodox and easily criticized ideas, such as the belief that talk of rules is a myth or that propositions of law are predictions or that judicial decisions are largely determined by non-rational factors. In the present context "Legal Realism" is used in a narrower and more precise sense, although it is still somewhat vague; it involves no commitment to the views mentioned above.

The core of the concept of realism for Llewellyn and Hoebel was the idea that when studying "the law" or "the legal system" or "the law ways" of some group or society it is not enough to focus on rules alone; it is necessary also to study, *inter alia,* the actual behaviour of participants in processes related to the doing of the law jobs. Thus to obtain a "realistic" picture of the legal system of tribe X or of any legal system it is necessary to have broad criteria of relevance which include not only rules, concepts, ideals and perspectives, but also personnel, techniques, practices, processes and institutions. To assert the relevance of other phenomena does not involve denial of the existence or the relevance or the importance of rules. But in the context of research and descrip-

tion, it does involve the proposition that in studying "the legal system of tribe X" it is not enough to focus on rules alone. Thus insofar as concepts of "law" and "legal system" suggest criteria of relevance for description and understanding, elucidation of these concepts in terms solely of rules (or rules and principles) is inadequate.

In discussions of the concepts of "law" and "legal system" confusion may result from failure to distinguish between two types of question: (1) questions of the kind "What is necessary and useful to understanding the legal system of tribe X?" (criteria of relevance) and (2) questions about the necessary or the salient features of legal as opposed to moral or customary or other phenomena in a particular society (elucidation of "law" and "legal system"). For instance, when Llewellyn and Hoebel talk about "law jobs," "law ways," or "the institution of law government" of a particular group they are at least implicitly distinguishing "legal" from other phenomena and it is a fair question to ask what are their criteria for making such distinctions. But their criteria for their usage of such terms are not necessarily identical with their criteria of relevance for understanding and describing an actual legal system. The phrase "law in context" illustrates this distinction; to assert that law can only be understood in its social context does not involve identifying "law" with "context." It does, however, make an important point about what is involved in "understanding law" or "understanding a legal system." There may well be significant epistemological differences, in practice, between "realists" (or contextualists) and those who accept a model of law as a system of rules or rules and principles.[12] But these are probably only necessary differences if such a model is conceived of as providing criteria of relevance for describing and understanding a legal system.

Llewellyn and Hoebel were both clearly "realists" in this sense. But they disagreed with each other over the problem of the definition of law. During the writing of *The Cheyenne Way* Hoebel urged that they should make explicit a working general definition of law. He failed to convince Llewellyn and none appeared in that work, but in *The Law of Primitive Man* Hoebel set out the following formulation which has frequently been quoted: "A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognised privilege of so acting" (Hoebel, 1954: 28).[13]

The basis for the disagreement between Llewellyn and Hoebel on this point related more to form than to content. Llewellyn preferred to elucidate his usage of terms such as "law" and "legal" by resorting to the Weberian device of ideal types rather than to the more dogmatic stipulative definition *per genus et differentiam*. He accepted all the differentiae of Hoebel's formulation as being significant, but he wished to have a more flexible way of indicating gradations between phenomena. Perhaps at the root of the disagreement was a feeling on Llewellyn's part that general definitions of law are in practice *used* to provide criteria of relevance even if they were not necessarily so intended by their authors. This interpretation is supported by a passage in one of Llewellyn's earliest articles:

> So I am not going to attempt a definition of law. Not anybody's definition; much less my own. A definition both excludes and includes. It marks out a field. It makes some matters fall inside the field; it makes some fall outside. And the exclusion is almost always rather arbitrary. I have no desire to exclude anything from matters legal. In one aspect law is as broad as life, and for some purposes one will have to follow life pretty far to get the bearings of the legal matters one is examining (Llewellyn, 1930: 432).

This disagreement between Llewellyn and Hoebel did not impede their collaboration. They were in basic agreement as to which phenomena they were trying to study and what was relevant for their purposes. They agreed that the Plains Indians had institutions and other phenomena that deserved to be designated "legal." They apparently had similar epistemological assumptions as to what is involved in describing and understanding a legal system.

What is the significance of legal realism, in the sense used above, for the study of tribal law? The general answer suggested by *The Cheyenne Way* is that the broader criteria of relevance of legal realism are more in harmony with the intellectual traditions of social anthropology than are the narrower criteria of lawyers who wish to focus almost exclusively on rules. The narrower tradition is often associated with models of a legal system of the kind advanced by Austin or Hart. This association is not a matter of logical necessity, but it may be one of historical fact by virtue of a tendency to use such models to provide criteria of relevance in conducting research. The broader approach has the advantage of being better equipped to cope with situations in which apparently conflicting rules or principles are regularly invoked, in which the outcomes of dispute-

settlement processes regularly diverge from what the generally accepted rules are said to be, or in which members of the relevant society deny that they have any rules or are unable or unwilling to articulate them. In such situations an inquiry which is restricted to stating what the rules are is *prima facie* inadequate. But the realist claim appears to be that such a narrow approach is not merely inadequate in these special situations, but that it is inadequate generally. In other words, it is claimed that a bare statement of the generally accepted rules of a particular tribe or society (as exemplified by what Llewellyn and Hoebel termed "the ideological approach") is inadequate as an account of its legal system. This claim appears to be much more generally accepted by anthropologists than by lawyers.

STEREOTYPES OF "THE LAWYER" AND "THE ANTHROPOLOGIST"

In the passage quoted above it was suggested that "if Llewellyn had been a more orthodox lawyer, collaboration would have been harder and much less fruitful." This statement requires elaboration. What are the characteristics of an "orthodox" lawyer? To what extent did Llewellyn share or not share these characteristics? And, it might be asked, to what extent was Hoebel an orthodox or a typical social anthropologist?

Obviously such questions are not susceptible to precise general answers. Even if we confine ourselves to American academic lawyers of the period of the Llewellyn/Hoebel collaboration, that is to say 1933-1962, it would be dangerous to generalize about so individualistic a group. The same no doubt applies to American anthropologists of the period. It is even more dangerous to generalize when the inquiry extends to contemporary and future relations between Anglo-American lawyers and anthropologists.

While it is important to bear in mind the dangers of generalizing about "the lawyer" and "the anthropologist," this is not in itself a good reason for avoiding discussing questions of the kind posed above. For, at least at the level of common sense, it is plausible to suggest that some of the main obstacles to co-operation between anthropologists and lawyers are attributable to differences in the intellectual traditions, the ethos, the biases and other attributes of their respective professions. Anyone concerned with the closer integration of law and anthropology or who is contemplating collaboration with

a member of the other professional group needs to be aware of such potential obstacles, which may or may not be present in individual cases.

The point can be illustrated, perhaps, by constructing ideal types from a number of tentative hypotheses about differences between the two professions, which may at least help to identify some important features of the Llewellyn/Hoebel collaboration.[14]

1. Academic lawyers belong to a larger and longer established professional group than social anthropologists. In particular, there is a much older and more extensive theoretical literature in law than in social anthropology.[15]

2. Academic lawyers have close professional connections with a large, politically powerful, practically-minded service profession. Much of their activity is directed to training for, assisting, criticising and participating in the activities of this profession. There is no counterpart relationship for social anthropologists. One consequence of this is that academic lawyers, even in their research activities, tend to be participant-oriented, while social anthropologists tend to be observer-oriented.[16] The distinction between pure and applied research is more clearly drawn in anthropological than in legal contexts.

3. Academic lawyers typically study and write about their own legal system. Their training tends to have been largely mono-cultural and ethnocentric. Indeed, one function of legal education is to socialize students into a particularly "tough" sub-culture. Social anthropology involves the comparative study of alien cultures. A common claim made for the subject is that it removes "cultural blinkers" or "blinders."[17]

4. The typical unit of study for academic lawyers is large — a national legal system, the common law, African law. The typical social unit of study for social anthropologists is smaller — a tribe or sub-tribe or small geographical area.[18]

5. Most academic lawyers are concerned with the legal systems of economically developed societies, the converse is generally the case with social anthropologists interested in law.

6. Typically legal research is concerned with the present and the future. With the exception of some legal his-

torians, academic lawyers tend to be interested in those aspects of the past which may have a bearing on the present and the future.[19] "The anthropological present" is indicative of a quite different temporal orientation in the dominant intellectual tradition of anthropology.

7. Typically academic lawyers are rule-oriented, *i.e.*, their main, sometimes their sole, concern is with the exposition, application and evaluation of legal rules. While "policy oriented," "realist" and "contextual" ideas have gained widespread acceptance, especially in the United States, they by and large operate as a gloss on the older tradition of exposition and analysis. Anthropologists, in dealing with law, have tended to be more interested in structure, process and general concepts than in the detailed exposition and analysis of substantive legal rules. Contrast for example most anthropological monographs on law with the *Restatement of African Law*. This does not imply that most anthropologists disbelieve in rules or ignore them entirely.

8. Academic lawyers are more inclined to treat legal phenomena in isolation from other social phenomena than are anthropologists. There is a strong, but controversial, tradition of treating law as an autonomous discipline; there appears to be no counterpart tendency in anthropology. Thus the intellectual tradition of anthropology is more "contextual" than that of academic law.

9. Law as a discipline is typically viewed as being cold-bloodedly intellectual.[20] Anthropology is recognized as giving rather more scope to such qualities as empathy, imagination and intuition.

10. The case law tradition of the common law is thought to condition academic lawyers to have a rigorous concern for detail, to be pragmatic, sceptical of vague generalization, and skilled in drawing fine distinctions. Anthropologists have adopted and developed the Llewellyn/Hoebel type of case method, but there does not appear to be an obvious counterpart in social anthropology of the case-trained lawyer.[21]

11. Finally, in the common law tradition the predominating approach to research has been to a very large extent library-bound. Few academic lawyers have undertaken sustained empirical research and, at least until very re-

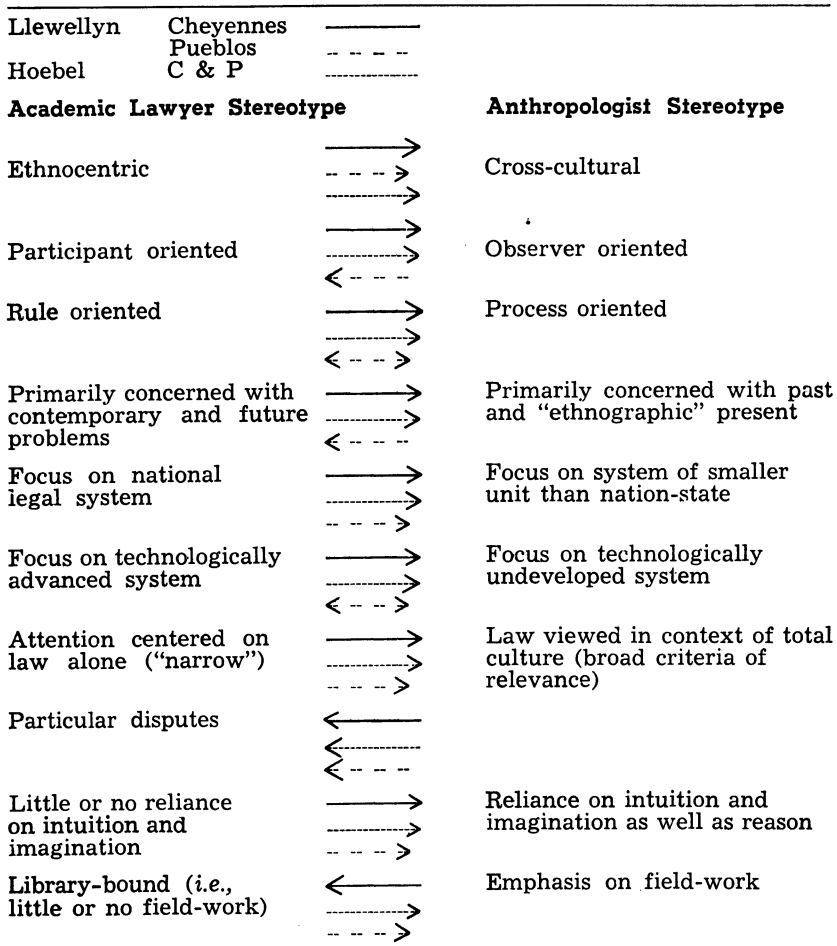
cently, even fewer have had systematic training in techniques of field-work. On the other hand, considerable emphasis has been placed on extensive field-work by Anglo-American anthropologists, at least since the time of Malinowski.

These hypotheses are, no doubt, crude and incomplete. However, they may serve as rough working tools for the immediate purpose. If they are fair criteria of typicality, then it is also fair to say that Hoebel did not diverge far from the stereotype of the typical Anglo-American social anthropologist of the period. Insofar as they are applicable to him, Hoebel does not appear to have deviated significantly from any of these 11 propositions. Llewellyn, on the other hand, presents a less straightforward case. In certain respects he regularly deviated from the stereotype of the typical academic lawyer. Thus in respect of (3) he was much less culture-bound than most of his colleagues, as was to be expected of one who had been partly educated in Germany and who was influenced at an early age by Sumner and Keller. He was in revolt against the narrow, rule-oriented tradition usually associated with Langdell, and initially came into the limelight as a Legal Realist (7 & 8). He was a highly imaginative and intuitive person and was a prolific writer of lyric verse (9). Llewellyn's artistic characteristics, perhaps more than anything else, gave him the reputation of being unorthodox — a poet abroad in the law. Thus in respect of characteristics 3, 7, 8 and 9 Llewellyn could be said to have diverged significantly from the stereotype of the academic lawyer.

On the other hand, he was in certain respects typical of his class. He strongly identified with practitioners of law and he believed passionately that law is first and foremost a practical art (2); he had all the skills of a case-trained lawyer and was proud of this (10);[22] the bulk of his work was concerned with contemporary problems of law in the United States (3 and 4); and it is no coincidence that he was one of the most perceptive and articulate interpreters, in his generation, of American legal culture and more generally of the common law tradition. Indeed, this is one of his principal claims to lasting fame as a jurist. And, apart from his work among the Pueblos, the great bulk of his research was conducted indoors (11). Thus, except in respect of 7, 8 and 9, he was often very close to the stereotype of the academic lawyer.

As was pointed out above, Llewellyn's behaviour and role

were not identical in the Cheyenne and Pueblo projects: he spent only ten days in the field studying the Cheyennes; his contact with the Pueblos was much more prolonged and intense. In *The Cheyenne Way* his contribution was largely that of an armchair theorist, interpreting past events relating to a period before Cheyenne culture was swamped by that of the white man. In his relations with the Pueblos he was as much participant as observer, concerned with practical problems arising largely from the interaction of Pueblos and modern American government and culture. His research interests were in both instances largely theoretical, but in the case of the Pueblo project he was practising law as well as conducting research. Hoebel, on the other hand, appears to have conformed fairly closely to the stereotype of the anthropologist in his approach to both projects. The behaviour of the two partners can be roughly depicted as follows:



This analysis suggests that Llewellyn was more of an anthropologist than Hoebel was a lawyer. It also appears that Llewellyn's approach to the Pueblos was more "lawyerlike" than his approach to the Cheyennes. However it would be dangerous to conclude that the relatively greater success of the Cheyenne project is to be explained solely in these terms. There are other factors, such as the reticence of the Pueblos, Llewellyn's health and certain other chance elements which would need to be taken into account in a full explanation. It would also be wrong to infer from this example that active participation in the affairs of the group being studied is necessarily a barrier to enlightenment, although it does illustrate some of the practical difficulties of combining the roles of participant and observer.

CONCLUSION

This case-study of a single, and atypically successful, example of interdisciplinary co-operation itself illustrates some of the uses and limitations of case studies. They are useful as a device for breaking away from vapid generalizations and for bringing concreteness and a sense of reality into a discussion. But they are, at best, only fragmentary and suggestive. They cannot, on their own, support confident general conclusions.

In this paper I have tried to suggest that those who are genuinely concerned with the integration of law and the social sciences need to examine more rigorously than has been done in the past the nature of the relevant intellectual and professional traditions, and the practical mechanics of inter-disciplinary collaboration. Before embarking on collaborative research, individuals need to ensure that the demands and expectations of each partner are realistic and reasonable and that due allowance has been made for individual characteristics, both personal and professional.

The example of Llewellyn and Hoebel further suggests that, in respect of co-operative studies of tribal law, more adjustments (in the sense of divergence from the stereotype) may be demanded of lawyers than of anthropologists. This may also be true of collaboration between lawyers and other social scientists. On the whole the literature of legal anthropology reveals a willingness on the part of anthropologists to struggle with the literature of general jurisprudence, but it also indicates a tendency to shy away from technical detail. A common

complaint by lawyers about anthropological works is that they are too vague about substantive details to be helpful. Of course, what is required by way of mastery of technical detail depends on the objectives of the inquiry. What is of paramount importance in a handbook for participants, such as judges, may be less vital in a general descriptive work or one the main significance of which is theoretical. But even the most abstract theory rests ultimately on sound detailed knowledge. This, as Llewellyn and Hoebel well realized, is a central idea in the common law approach which is sometimes characterised as "the method of detail."

A similar point has been well expressed by an anthropologist in the recent debate on "emics" and "etics":

> We have not been seriously concerned to understand what one has to know to behave acceptably as a member of an Australian aboriginal tribe any more than zoologists have been seriously concerned, until very recently, to know how to behave acceptably as an ostrich. We wanted to know *about* other societies, not how to be competent in the things their members are expected to be competent in. Our best ethnographies were, to be sure, coming from people whose interests and circumstances led them to want to know how to operate successfully with people in other societies on their terms, or at least, to communicate with them competently about their activities and beliefs in their language, whether they were anthropologists (*e.g.*, Malinowski, 1922, 1935; Firth, 1936), missionaries (*e.g.*, Junod, 1927), or government administrators (*e.g.*, Rattray, 1929). But none thought of himself as writing a "how-to-do-it" book. The closest thing to this has been provided by a few accounts of technology or arts and crafts (*e.g.*, Buck, 1930, 1944).
>
> I do not think that how-to-do-it books are what all ethnographic accounts should aim to be. Far from it! But by failing to see such an orientation as appropriate to the task of ethnography, fundamentally appropriate, we have tended until recently to neglect the emics of ethnography. And to the extent that we have neglected the emics, we have failed to develop a satisfactory etics (Goodenough, 1970: 110-111).

This passage also suggests one reason, perhaps the main reason, why collaboration between lawyers and anthropologists in the study of tribal law is likely to be important and fruitful. The intellectual tradition of law has encouraged identification with participants and close attention to details of particular cases and rules, but sometimes there has been a corresponding neglect of seeing law in its broader context and relating legal to other social phenomena. Largely because of this, anthropologists often find legal writings "narrow." Conversely, the tradition of social anthropology has encouraged its practitioners to think in terms of total cultures or societies; also, as we have already

observed, it has saved anthropologists from at least the cruder pitfalls of ethnocentrism, but it has not always been matched by a rigorous concern for practical detail.[23] Collaboration is most likely to be fruitful where the complementary characteristics of the two traditions can be combined while the limitations or weaknesses of each can be abandoned. In the present instance Llewellyn succeeded in being lawyerlike without being narrow, while Hoebel showed himself to be an exceptionally competent orthodox anthropologist, who at the same time made brilliant use of what legal theory had to offer, especially in his exploitation of law's principal gift to anthropology (so far) — intensive analysis of "trouble cases." Their collaboration may not be a paradigm case, but it should continue to be a source of inspiration.[24]

FOOTNOTES

[1] Only two publications involving collaboration in the field by a lawyer and an anthropologist are mentioned as such in a recent bibliography (Nader, Koch and Cox, 1966) on the ethnography of law: Cory and Hartnoll (1945) and Smith and Roberts (1954). See, however, Allott, Epstein and Gluckman (1969). This is not a complete list. It would be artificial and sterile to try to give precise connotations to the terms "lawyer," "anthropologist," and "collaboration" in the present context. The object of the present inquiry is to explore some aspects of relations between two amorphous professional groups, each based on a discipline which is only vaguely defined, and which participates to some extent in a common intellectual heritage. It is not sensible to expect, nor to pretend to, a high degree of precision in this type of inquiry.

[2] See generally Hoebel, 1946; Cairns, 1931; Reisman, 1951; Diamond, 1965; Nader, 1969. On the scepticism of many lawyers as to the relevance of tribal law to the study of law in "developed" societies, see infra note 8.

[3] See generally Hoebel, 1964. For personal details of Llewellyn and for more extensive accounts of the Cheyenne and Pueblo projects, see Twining, 1973.

[4] The gist of "the law jobs" theory is that in any human group certain "jobs" have to be done if the group is to survive and operate effectively as a group. In groups which can be usefully categorized as "societies," law (or law-government) is the principal, but not the only, institution for performing these jobs and the jobs are the main, but not the only, jobs performed by the institution. In *The Cheyenne Way* five jobs were identified as deserving special attention:

> I. The disposition of trouble-cases.
>
> II. The preventive channeling and reorientation of conduct and expectations.
>
> III. The allocation of authority and the arrangement of procedures which legitimatize action as being authoritative.
>
> IV. The net organization of the group or society *as a whole* so as to provide cohesion, direction, and incentive.
>
> V. The job of juristic method, which has been indicated roughly above as that of keeping claims and the order in balance, but which may here be defined more fully as that of keeping both law-stuff and law-personnel up to the demands of *all* the law-jobs (p. 293).

This characterization of the functions of law is useful, but not *prima facie* strikingly original. However, in at least two respects, both of which are directly related to the case method, the theory represented an important advance. First, Llewellyn and Hoebel drew attention to the role of conflict as a catalyst for social change and for the development of new rules, institutions and practices (see Coser, 1956). Sec-

ondly, through isolating juristic method as a job in itself, the theory focuses attention on a general area which has traditionally been neglected — on what might be termed legal technology. Concern with juristic method lies at the basis of such varied works as Llewellyn's *The Common Law Tradition,* the Uniform Commercial Code and Hoebel's *The Law of Primitive Man.* Much of the novelty and significance of *The Cheyenne Way* lies in this conjunction of conflict, process and technique.

[5] In the Pueblo project not only did Llewelyn and Hoebel and their assistants have access to written records, but they were also able to witness some proceedings at first-hand and even to take an active part in some cases.

[6] Less intensive research was also undertaken in Santo Domingo, Laguna and Jemez (Hoebel, 1969). Professor Emma Corstvet (sociologist) and Professor Soia Mentschikoff (lawyer) also participated in the project for substantial periods.

[7] Llewellyn, "Project on Soviet Law." Memo to Social Science Research Council, Columbia (1947). Llewellyn Papers, R.III.14 (University of Chicago).

[8] Such views are typified by Jerome Frank's suggestion that Llewellyn might have spent his time better writing about the trial courts of "Tammany-Hall Indians" in New York than about the Cheyennes (Frank, 1949, 1963: 77).

[9] These survive in the Llewellyn Papers in the University of Chicago Law School. The codes deal mainly with questions of jurisdiction, powers of officials and due process.

[10] See references. Hoebel concluded that "the utilization of extreme forms of physical sanction applied by designated officials is a commonplace feature of societal maintenance in the Pueblo cultures of New Mexico" (Hoebel, 1969: 93). This confirmed the earlier published findings of Smith and Roberts with regard to the Pueblo of Zuni (Smith and Roberts, 1954).

[11] See Mentschikoff, 1960, 1961.

[12] On the models of law as a system of rules or of rules and principles see esp. Hart, 1961, Dworkin, 1968.

[13] A similar formulation is to be found in Hoebel, 1940: 47. Very recently Hoebel has formulated a new working definition which gives more emphasis to economic sanctions and to leeways:

> A law is a social norm of which it can be predicted with reasonable probability that its violation beyond the limits of permissable leeway will evoke a formal procedural response initiated by an individual or a group possessing the socially recognized privilege-right of determining guilt and of imposing economic or physical sanctions upon the wrong-doer (Hoebel, 1972: 506).

[14] The following statements should be treated as hypothetical propositions formulated as ingredients of ideal types to aid analysis of claims about the typicality of actual or potential students of legal anthropology. Typical of whom? For the purposes of the present analysis I have chosen to classify Hoebel as a functionally-oriented social anthropologist of the period 1930-1960. In the case of Llewellyn it is harder to choose an appropriate reference group; all lawyers, common law trained lawyers, Anglo-American or American academic lawyers, jurists, Legal Realists, are some of the many possible categories. Statements about Llewellyn's unorthodoxy probably relate to one or other of the first three categories, rather than the last two. For present purposes the most appropriate category seems to be Anglo-American academic lawyers of the period.

[15] It is easy to point to anthropologists who have borrowed significantly from juristic literature: *e.g.,* Rattray, who was law-trained, (Maine and Austin); Hoebel (Llewellyn, Hohfeld, Radin); Gluckman (various); Fallers (Llewellyn, Hart, Levi). The traffic in the other direction is less obvious: Llewellyn (Sumner, Boas, Malinowski, Hoebel); and Corbin (limited use of Sumner) appear somewhat exceptional. On the intellectual ancestry of anthropological studies of law see further A.S. Diamond (1971) and Ali (1970).

[16] See, for example, Cotran 1966 passim. The distinction between "observer" and "participant" is one which occasions difficulties in some

contexts. All that is intended here is that lawyers are more likely than anthropologists (1) to have some practical objective in mind, (2) to identify, consciously or unconsciously, with certain types of practitioner — to look at legal processes from an internal point of view. The relationship between (2) and ethnocentric tendencies of lawyers is, no doubt, complex.

[17] *E.g.*, Bohannan, 1957. On recruitment, training, ethos of lawyers see esp. Reisman, 1957.

[18] This may affect their attitudes and approaches to, for example, the phenomena and problems of pluralistic legal systems — *vide*, for example, the hostile reactions of some anthropologists to the recent Ethiopian codes and attempts at unification of personal law in Kenya.

[19] The locus classicus is Holmes, "The Path of the Law" (1897).

[20] Holmes: ". . . the law is not the place for the artist or the poet. The law is the calling of thinkers" (1913: 22). On Llewellyn as "artist," see Twining, 1973. The lyricism of parts of *The Cheyenne Way* is hardly typical of either legal or anthropological writing.

[21] Professor Max Gluckman comments: "Anthropologists have independently developed the detailed analysis of a series of cases and other incidents in the lives of the same set of people (see Gluckman 1967), but this development was largely subsequent to Hoebel's training in anthropology and his field research. The anthropological analysis of the detail of cases has different aims and emphases from those of case-trained lawyers, in terms of their interest in whole socio-cultural systems. This development in anthropology is not relevant to the collaboration between Hoebel and Llewellyn but may be important in future collaboration."

[22] Hoebel reports: "I had with each case carried the analysis of its import to the limits of my ability. Yet again and again, as our discussions proceded, he would challenge or add, defend what he had added, if defending were needed, with inexhaustible brillance, until I in awe one day, queried, 'Karl, how do you do it?' 'Why, Ad,' he replied, with more pride in his profession than in himself, 'I am a case-trained lawyer — and what is more, I am one of the three best in the country!' " (Hoebel, 1964: 742-3).

[23] The reverse may be the case where "practical" or "law reform" projects are involved. For instance, one criticism sometimes privately leveled by lawyers against anthropologists is that they are more willing to snipe critically at enterprises such the Kenya Commissions on Marriage and Divorce and Succession than to contribute to them constructively. An indication of some of the factors at work is given in Richards, 1961.

[24] I am indebted to Professors Max Gluckman, Elizabeth Hopkins and Geoffrey Wilson, all of whom read this article in draft and made valuable comments and suggestions. All errors, opinions and distortions are, of course, my own responsibility.

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