Legal Culture and Social Development

LAWRENCE M. FRIEDMAN – *Stanford University*

THE PROBLEM STATED

Legal scholars come to the problem of development somewhat tardily. But legal systems are clearly a part of political, social, and economic development, just as are educational systems and other areas of the culture. No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws. Legal institutions are responsive to social change; moreover, they have a definite role, rather poorly understood, as instruments that set off, monitor, or otherwise regulate the fact or pace of social change. Many basic questions of the relationship of law to social change and to cultural development are completely neglected. Does the type of legal system and legal institutions that a society uses help or hinder that society in its march toward modernization? How does law influence the rate of economic growth? How does law brighten or darken the road to political wisdom or stability? How can a society improve its system of justice? What happens when laws are borrowed from more advanced countries?

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Comparative law is a recognized, traditional field of legal learning, but its usual strategy of research has not led it to touch on these questions in any systematic way. The persons who have been interested in law and development, and in the larger questions of culture, history, and law, have not classified themselves as comparativists in the traditional sense. Their questions belong outside the field of comparative law as hitherto understood; they belong to a new field of study only now in the process of emerging. This freshborn field, which aims to explore general connections between law, culture, and development, so far lacks a name and a shape of its own. Its literature is fragmentary, at best. It is full of false starts and blind alleys. Max Weber probed the connection between the rise of capitalism, modern rationalism, and the legal order, at the dawn of modern sociology. Unfortunately, neither sociology nor political science, nor history, nor economics, nor law, has carried Weber's line of thought much further. In general, sociology and anthropology of law have had quite a different emphasis and aim. Work on specific societies, and on specific needs of the developing countries is sometimes quite relevant to the broader questions of culture, history, and law—studies, for example, of land tenure reform, the modernization of family laws, or the adaptation of a Western code in a non-Western land. But these studies remain, by and large, isolated in their own geographic departments.

There are, of course, tremendous obstacles that stand in the way of developing general theory about law and development. Cross-disciplinary work is hard enough; cross-cultural work compounds the difficulty. Since Weber, few scholars have had a grasp of history, law, economics, and sociology equal to the task. Legal education, in Western countries, is oriented toward training lawyers in their craft, chiefly by teaching doctrine and by inculcating legal skills. The social scientists are even more seriously handicapped. They find law and its language very formidable. In Western societies, legal systems have grown to monstrous size. They consitute inbred, highly technical information systems. In non-Western societies, empirical data on law is hard to find. Foreign law is a Babel of tongues and a statistical desert. Moreover, social scientists take their definitions of law from the lawyers; hence they do not relate what they find about the economics and social control mechanisms of various cultures to what they put in a separate box labelled law.

It could also be argued that law and development are not ripe for theory. What is necessary, it might be said, is a lot more patient work on particulars. Patient work on particulars, to be sure, is sorely needed. But this work would be enormously more efficient if it were guided by some general theory. In fact, no work is possible without some ruling concepts or propositions. The point is that these concepts and propositions do exist,

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as assumptions, superstitions, half-formed notions. There was an implicit theory of law and development, or part of one, in Ataturk's mind when he imported the Swiss Civil Code into Turkey. Something of the same theory seems to be at work in the new African states. There is some sort of theory, disguised or implicit, in the work done by law schools and legal professionals in underdeveloped countries all over the world—probably also in law reform projects at home.

This essay does not claim real progress toward a general theory of law and development. It tries merely to clarify a few concepts that might seem important when a theory is built.

THE CONCEPT OF A LEGAL SYSTEM

The idea of law implies a group of people subject to governance by law. It is not easy to decide what absolute institutional minimum would allow us to say that a system is legal at all. Can we reasonably say that the simplest societies have legal systems? In any event, highly organized societies *do* have law and legal systems. These societies are characterized by much social division of labor. They have separate, distinct, and highly specialized institutions to make and administer laws.

In the modern world, the boundaries between legal systems are largely territorial. Legal power follows political lines and is divided into jurisdictions. Every independent country has its own body of laws. Many have more than one; for example, federations. Many countries are or have been legally plural without being federal. In most African countries, the law of the colonial masters applied most completely to those parts of society which had adopted Western ways and which took part in some kind of market economy. In the interior, native ethnic groups settled disputes through the use of so-called customary law, which differed from the law applied at the center, even when judges sent out from the center applied it. In the old Ottoman Empire, each ethnic group enjoyed its own family law and its own system of courts.

Every body of laws, together with its supporting institutions, whether national or part of a federal or pluralistic system, can be called, somewhat loosely, a legal system. One can speak of the federal law of the United States, and also of the legal systems of Colorado, Florida, and Maine. National legal systems in turn can be grouped and classified into larger units, or families of law, also loosely called "legal systems." One speaks, for example, of the common law legal system, in England, the United States, and most of the English-speaking world, and the civil law system of France, Germany, Italy, and Spain.

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Classification of legal systems into families assumes that national legal systems are more than the sum of their parts; that they have a definite character and style. In the families of law, all members share certain basic legal traits. These traits or characteristics are consistent with each other, persist over time, and permeate the legal institutions of the society in such a way as to give the legal system a definite flavor or character. The classifiers, like taxonomists in biology and linguistics, single out certain basic or core features as diagnostic. The core features are then used to assign a body of law to this or that system. The diagnostic features tend to be mostly lawyers' law. That is, they pertain to those parts of law most exclusively controlled by lawyers, or which, for some reason of history or of the position of the profession in society, loom large in lawyers' minds and are stressed in their training. If one asked a traditional legal scholar how a common law system–like that of the American states–was different from the law of Italy or France, he might mention the doctrine of precedent, point out that American law is not wholly codified, refer to the civil jury, and perhaps mention a few concepts, such as consideration in the law of contracts–all these as opposed to the civil law system.

But no one singled out these traits because they were known to be important to the way law actually operates in contemporary times. The traits, the typology, the classification scheme are based on historical evolution. To be sure, evolutionary theories have yielded useful classifications in linguistics and biology. This has been the model for the classification of systems of law. But what use is evolution as a basis for classifying and evaluating legal systems? Of course, it is true that in one interesting sense, American law "descends" from English law; and the law of Louisiana from the civil law of France and Spain. The evolutionary schemes yield a typology; but do they explain anything, except the formal sources of those traits selected as "basic"? Besides, the traits were labelled basic precisely because they fit the classification so well.

Does classification of legal systems by the historical-evolutionary method tell us anything about *other* characteristics of a nation or society? Is there a causal connection between membership in a family and some level of social or economic development? Many scholars have speculated on this general subject; it was, in a way, one of Max Weber's central themes. It is fair to say that nothing has been proven.

The jury, for example, is a common law institution. Through jury service, ordinary people make law, or at least take part in decisions. Does this kind of participation in law mean that the jury is vital to the growth of democratic government? Perhaps there is some functional equivalent to the jury in systems without it. Perhaps the actual impact of jury service is not so democratic as it seems. Some countries with juries seem less

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participatory than some countries without juries. Similar doubts can be expressed about any of the diagnostic features of the traditional classification—and about the features as a whole. One simply cannot say that the common law system, as it evolved in England, was a decisive factor in the rise of the English form of government. Even less could one say that it had anything to do with the flowering of the industrial revolution. Could we even say that it *contributed* to economic or political change? And what does it do today? What would it do in Burma or Iran?

Notice that our skepticism is limited to the common law "system." We neither asserted nor denied that English *law* had an influence on political or economic development in England. We drew a sharp line between what is conventionally called the common law system, and English law (or the English legal system), which is something broader and quite different. All we are saying, for now, is that the conventional concept of the legal system, based on historical evolution, is not a helpful tool of research and theory, if the purpose of classifying bodies of law and generalizing about them is to understand the relationship between law and society. This is so, for at least two reasons. First, the conventional concept does not do an adequate job of describing how legal systems work. The traits it singles out have not been tested empirically for their impact on the economy, the political system, or on society in general. Second, the conventional concept does not presuppose or yield any coherent theory of the relationship of law and society. It may even stand in the way of developing such a theory.

THE LEGAL SYSTEM: TOWARD A NEW DEFINITION

Very often, when people speak of the legal system of their community, they do not mean that static bundle of traits traditionally used to classify legal systems. Rather, they are speaking of concrete activities going on about them. They are thinking of lawyers and judges at work, legislators passing laws, administrative agencies making rules and settling disputes. One way to look at the legal system is as a process—what legal institutions do, and how they do it. This is one meaning of the word "system" in modern social science—an actual operating unit in the social system, which takes in raw materials, processes them, and produces an output. The comparison between the legal system and a machine is vulgar but useful. It directs our attention to actual moving parts. In these terms, study of the legal system would include study, first of all, of the demands made upon legal institutions, calling for action of one sort or another; second, the responses made by the legal institutions; third, the impact and effect of these responses on the persons making the demands, and on society as a whole.

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The concept of demand, as used here, is broader than its general use. Any request for action or redress of grievance, any use of legal or administrative process is a demand. Litigation is a demand made upon a court. When one or more persons brings a lawsuit, he is asking for a response from the court, as well as from the defendant. The legal system as a whole consists of the universe of demands upon legal institutions—not only courts, of course—together with the responses and the effects of the responses.

A working legal system can be analyzed further into three kinds of components. Some are *structural.* The institutions themselves, the forms they take, the processes that they perform: these are structure. Structure includes the number and type of courts, presence or absence of a constitution, presence or absence of federalism or pluralism, division of powers between judges, legislators, governors, kings, juries, administrative officers; modes of procedure in various institutions; and the like. Other components are *substantive.* This is the output side of the legal system. These are the laws themselves—the rules, doctrines, statutes, and decrees, to the extent they are actually used by the rulers and the ruled; and, in addition, all other rules and decisions which govern, whatever their formal status. Other elements in the system are *cultural.* These are the values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole. What kind of training and habits do the lawyers and judges have? What do people think of law? Do groups or individuals willingly go to court? For what purposes do people turn to lawyers; for what purposes do they make use of other officials and intermediaries? Is there respect for law, government, tradition? What is the relationship between class structure and the use or nonuse of legal institutions? What informal social controls exist in addition to or in place of formal ones? Who prefers which kind of controls, and why?

These aspects of law—the legal culture—influence all of the legal system. But they are particularly important as the source of demands made on the system. It is the legal culture, that is, the network of values and attitudes relating to law, which determines when and why and where people turn to law or government, or turn away.

The three elements together—structural, cultural, and substantive—make up a totality which, for want of a better term, we will call the legal system. The living law of a society, its *legal system* in this revised sense, is the law as actual process. It is the way in which structural, cultural, and substantive elements interact with each other, under the influence of external or situational factors, pressing in from the larger society.

In this revised definition, the key concept, perhaps, is that of the legal culture. People are quite accustomed to comparing legal structures and

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substantive law. They fall into error when they fail to distinguish between mere paper systems and reality; between dead rules and institutions, and living ones. Hence they may be enormously misguided in their view of a country's legal system, even from the structural or the substantive viewpoint. But even this mistake is a mistake with respect to the legal culture. This is so, because legal culture is the term we apply to those values and attitudes in society which determine what structures are used and why; which rules work and which do not, and why.

Legal cultures obviously differ in ways that cut across the conventional similarities and differences of legal systems, classified by historical evolution; so, therefore, do legal systems differ. Louisiana, for example, is said to belong to the civil law family. By convention, this makes it a close legal relative of France and a stranger to the system of its sister states. Yet cultural elements of Louisiana's legal life are surely closer to those of Arkansas or Texas than to those of France. The number of lawyers and judges, the jobs they do, their place in Louisiana society, what the public thinks of law and lawyers, the kinds of disputes that go to court or stay out of court—these are probably very similar in Louisiana's neighboring states, and quite different in France. Actually, culture is only the most striking case. Textbooks sharply distinguish Louisiana's substance from that of Mississippi, stressing historical and diagnostic traits. Yet, if we look at the working laws of social and economic life, tax law, economic regulation, race relations, occupational licensing, labor codes—the two states are not that different. Federal law, of course, is identical in the two states and is of great importance. French tax and regulatory law, on the other hand, are quite remote from Louisiana. Even the structural elements of law in Louisiana are closer to those of its neighboring states than one might expect from traditional theory. The states are parts of a federal system; all are subject to the constitution. They have shared a century and a half of common history; they are all part of a single, large, free-trade area: the United States. Population streams freely across borders; and so the public image of law tends to be much the same in Louisiana and its neighboring states. Finally, Louisiana lawyers speak English; in their training they are exposed to the influence of common law institutions. Hence the legal system of Louisiana as a whole, is very similar to those of its neighboring states.

Contrariwise, two members of what was historically one legal family may move along separate paths as their societies diverge. American law obviously owes a great deal to English law. But British and American law have grown apart over the last three centuries. Much of the working law of a mature, industrial society is comparatively specific to its country. In the United States, this includes a vast sea of regulatory law, tax law, labor law, insurance and corporation law, welfare and planning law, and an enormous

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body of administrative rules and codes. Regulatory and planning law are vital parts of the legal system. They provide a good share of the daily business of lawyers and government officials. They are obviously of first importance in economic and social development. Yet, comparative legal studies have traditionally paid little attention to these modern aspects of law.

Possibilities of comparison are intriguing, however. In England, statutes that govern land use are broadly worded. They vest great power in local authorities; courts rarely pass judgment on land-use decisions. The United States, on the other hand, is the homeland of *zoning*—a rigid, specific kind of land-use control. Cities enact a land-use map; this determines, for long periods of time, the fate of particular parcels of land. On the other hand, landowners can get "variances"; and zoning decisions are reviewed with some frequency in court.

Other differences between the two countries seem to run parallel to differences in land-use control. There seems to be an American attitude toward law and toward power, which fears centralization and likes to split authority into countervailing pieces. This cultural attitude, perhaps, explains why the English style of planning law never took hold. American law, at least here, seems to prefer to control agencies collaterally, so to speak; English law seems to prefer control through hierarchy, with a regular chain of command. It does not necessarily follow, however, that the outcomes of land-use control are necessarily different in the two countries. That depends in turn on the substance of the law (though in the living law, not the formal law, sense).

Distinguishing between two definitions of legal system—one historical and evolutionary, one based on a process model and stressing the legal culture—may bring some clarity into general discussion of the relationship between society and law. One theoretical position is that law is insulated from the general social system. It is not culturally specific, but can be adapted to any level of social development. The legal system has habits, and embodies values; but these habits and values, reduced to essentials, are timeless; different legal systems are part of an eternal dialogue between different ways of looking at the world. Law, then, is analogous to language, another rather insulated social phenomenon. The Japanese speak Japanese now, during their economic miracle, just as they spoke Japanese in the Middle Ages. French is spoken in France, a rich, sophisticated, urban country; it is spoken, too, in rural, backward Haiti. French, like all languages, can invent or adopt new words; it can assimilate changes in technology or art or thought without significant time lag or serious social disruption. Japanese adapts itself to the modern world without fundamental structural change. Legal systems can be looked at in the same way. Edward I and Elizabeth II reigned in a country that was English-speaking

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and professed the common law. For a thousand years, the common law maintained some sort of continuity, while absorbing and responding to the most fundamental kinds of social change. Law, in this view, is a tough, persistent, relatively self-contained social subsystem. It can accommodate itself to social change, of course, but its basic structure is firm and tenacious.

Another extreme position asserts that a system or body of law is tied to specific levels or kinds of culture. Law is not self-contained; it is culturally very specific. If a community wants to put through some program of drastic political and economic change, it must make drastic changes in its laws. If it wants to modernize, and especially if it wants to modernize fast, the legal system has to be radically altered, or even replaced. Some scholars, for example, might argue that the new African nations must stamp out all traces of customary law, not merely in the name of national unity, but also because customary law is incompatible with the modern state, and modern agriculture, business, and trade. They do not feel that customary law has any values worth preserving or that it could be usefully adapted to modern needs. In most of Africa and much of Asia, colonial powers brought in some law from the mother country; this law had some effect, at least on the upper class in the colonial capital. The new nations, however, have been scarcely less avid in seeking legal models outside of their boundaries. Mostly these have been Western models, sometimes socialist models. In either case, they have acted on the assumption that only these models are conducive to the kind of economic growth they want.

There are many other ways of looking at legal systems and their relationship to the larger society, and many hybrid views. Most of them rest on observations that are undeniably true in part. The various theories simply assume different conceptions of the legal system. It is certainly true that legal systems, in the historical and evolutionary sense, are tough and persistent; and can be adapted to societies of quite different types and levels of culture. France and Haiti share a legal system (in the historical sense) as well as a language. It is also clear that any radical social change implies a radical change in the law. When a community moves from a tribal system to nationhood and a money economy, the law will have to be changed; the law will have to implement and support the new political, social, and economic realities. If the legal tradition does not by itself support these programs, new law—sometimes in massive doses—must be manufactured or brought in from outside.

As far as we know, any of the great historical evolutionary families of law is *capable* of supporting any level of economy or culture. But this point is not very helpful. It merely means that, over a long enough time period, legal institutions can accommodate themselves to a variety of social

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arrangements. It also requires us to define legal institutions very narrowly, using, as tools of definition, criteria which do not relate to the question at hand. On the other hand, legal systems are not collections of brittle little sticks to be picked up and discarded at the command of the rulers. Some parts of the living law are deeply imbedded in national culture; and to replace major parts of it either means to uproot something quite fundamental, at considerable cost in disruption, or face the possibility that new law will lapse into ineffective life. A study of legal culture may turn up conditions under which legal change occurs—either spontaneous change, or imposed change; and, in the case of imposed change, the conditions which make it fail or succeed.

STABILITY AND CHANGE IN THE LAW

This is an age, by common consent, of rapid and continuous social change. On the legal side, it is an age which is interested, as few periods have been before, in law reform and social reform through law. This means first, that the idea of social engineering through law is itself an important aspect of the legal culture; second, that legal scholars might well define, as a major research goal, a search for those conditions under which law is "effective."

On the first point: Modern societies, as opposed to those societies which we call primitive or traditional, are change-oriented. This means not only that they are changing, but also that they *want* to change. Whatever vast differences separate the laissez-faire governments of the nineteenth century from the government of Maoist China, to take two extreme examples, this cultural attitude is held in common. Modern societies share a belief in the directive power of government and law. None believes absolutely in the fixity and permanence of law. They may believe in some absolutes, whether the bill of rights, the ban on birth control, or the inviolability of Marx; but they all assume that there is a sphere of human life in which governments can and must act in furtherance of consciously articulated notions of the common good. Demands for change are addressed to governments. It is the rulers who must respond. They, not the gods, must bring on the magic.

The question of effectiveness is more difficult. In one sense legal institutions are effective if society is stable, that is, if the demand side and the supply side of the legal system are in some sort of equilibrium. In some societies, it is easy to see this equilibrium. This is true of static or traditional societies. Members of the community make demands on public authorities, of course; grievances are addressed to chiefs, or bureaucrats;

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trouble cases go to court. But these demands are routinely handled. The authorities have the capacity to meet ordinary demands to keep the society in a steady state. Equilibrium is not a property only of primitive or traditional peoples; it characterizes ordinary legal process, even in complex societies. The traffic court judge comes to court and does his job, day in and day out. Demands flow in, decisions flow out, fines flow in, flagrant violators go to jail, drivers with good stories go free. Probably the whole court system in Western countries is stable and effective in this sense.

On the demand side, the dominant factor which we have discussed—the push toward change—does not necessarily mean that modern governments live in a perpetual state of political or legal crisis. Stable governments are not changeless governments in the modern world, but governments which are lucky enough or sound enough to find ways to satisfy the most pressing demands made upon them. Their legal systems are equilibrium systems, in the sense that they are stable. But they differ from the simpler equilibrium of traditional society, in that they accept, process, and produce change, just as a functioning market system accepts, processes and produces outputs that reflect all sorts of changes in consumer demand. The restlessness of twentieth century life, then, does not *necessarily* mean a state of crisis. But often enough crisis does come. Some intrusive force, some novelty occurs, and the number or type of demands is thrown out of balance. There may be, for example, demands from some economic class for a higher national income, or for better distribution of wealth. The demands may stem from a Westernized elite; or the mass of the people may want better food, more bicycles, or a greater say in their lives. In either case, demands often cannot be met without radically changing society. Nor are radical demands by any means confined to the less-developed nations.

On the supply side, then, the critical question is whether the legal system is responsive enough or effective enough, measured by some ideal, or end product, or goal. There is no such thing as effectiveness in the abstract. Effectiveness may be judged from the inside of the system—does the system *survive* without overthrow; does it satisfy its own customers? Or effectiveness may be judged by some outside ideal or product, whether an abstract product, like justice, or some concrete goal, like a lower crime rate or a higher amount of wealth.

LEGAL CULTURE AND THE EFFECTIVENESS OF LAW

At the present time, legal research is in no position to identify legal factors that make for successful economic development, for political stabil-

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ity, or indeed for any reasonable measure of the effectiveness of law. For one thing, no country, not even the United States, has an accurate bank of quantitative information about its legal system. For non-Western countries there is even less information. Not even such a simple thing as the number of lawyers is known for many countries. But an accurate description, or "map" of the legal system, is vitally important for generating comparative social theory, and for learning the conditions under which legal systems work and fail. What is most notably missing, even for the Western countries, is information on what we have called the legal culture. What are the attitudes of different populations toward law and the legal system? Who goes to court and why? Who occupies legal roles–lawyers, judges, policemen–and what do the role-players do? What is the conversion process of the legal system; that is, how are demands handled, by whom, and how are decisions made? Which officials have discretion; which do not? What questions are matters of rule, and what questions are matters of discretion? Are various parts of the system bureaucratic or flexible? What are the effects of the outputs on the population and how can we measure them? What is the source of the legitimacy of various parts of the system? Who is supposed to make law; who is supposed to carry it out? Is there much corruption and maladministration and why?

Opinion research that touches on law is rare. And legal culture is not "public opinion," in the crude sense of a public opinion poll. There is no such thing as *the* public; to understand legal culture, one must carefully define *a* relevant public; for various issues, this will be a different group of people.

Clearly, however, the effectiveness of any law, actual or proposed, depends on the response of some public whose interests are at issue. But public response is a cultural factor. The relevant values and attitudes are not easy to get at. If one proposes that some nation adopt for itself an income tax law, more or less on the American plan, can one know in advance whether the law will actually work? How much money will it raise, and at what economic and social cost? Economists can compute the dollars and cents that the law would yield, if perfectly enforced. But one still needs to know about evasion and noncompliance–consequences that may flow from a lack of public support. Italy and the United States are both modern industrial nations; it is notoriously hard to collect income tax in Italy, but not in the United States. Yet it would be no simple matter to discover the precise social conditions that lead to obedience or compliance with particular forms of law (or to respect for law in general) in these, or any other two countries.

Litigiousness varies from culture to culture; the social meaning of litigation is different in different countries and sometimes in adjoining villages.

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What a public agency means to its community should be taken into account when decisions are made to assign particular social tasks to that agency. There is no inherent social role that a particular institution, or agency, must play. Courts, for example, have had many uses. In political trials and purges, or in courts such as the Star Chamber in Tudor England, they have served as instruments carrying executive decisions and policies into effect. They may act as agencies of conciliation and dispute settlement, as in many traditional societies, and to some extent in American family courts. Anglo-American appellate courts, and the courts of some theocratic systems, act as oracles of law and makers of law. These functions serve as both cause and effect of the cultural meanings that surround the idea of judges and courts. And this cluster of cultural meanings in turn determines whether the court can be useful in taking on some slightly different role.

Much of the discussion so far has dealt with engineered social change, a polite way of speaking about change imposed from above. There is, in this approach, a certain danger of treating culture purely as an obstacle. The word culture reminds us of the term tradition; and tradition, in modern discourse, is a word often used with a slight sneer. A traditional society is a society which is primitive, torpid, obsolete. It would be unfortunate to think of culture in such a pejorative sense. If one assumes that enacted laws, ideally and magically, ought to work exactly as planned, then culture is indeed an obstacle, since it is the culture which determines the amount of deviance from the norm. But the assumption is, of course, absurd. One might just as easily assume that no law printed on paper ever came to life without some cultural input; in which case, it is the culture which is the sole source of effectiveness of law.

Modern regulatory law stands in a particularly complex relationship to culture. Most of the research on the effectiveness of law (hence on legal culture) has shied away from this area. Many social scientists have warned of the limits of legal effectiveness; formal changes in law are doomed to fail if they ignore restraints imposed by custom and culture. But this point of view can be carried much too far. Taken literally, it would mean that important changes in law would be impossible, unless they were preceded by cultural change; law reform would mean little more than codification of custom. There are aspects of law which do codify custom; and probably no law is effective that does not make some use of the culture of its society. Still, regulatory law in general is far more than the codification of custom. In a modern state, tax law and the law regulating industry are not really customary law. On questions that affect basic drives and values, law may be weak and slow to change people's minds. But it does not follow that law cannot achieve a particular result, *within* a culture, by making use of the tools which work best for that culture.

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Attitudes toward law within a community need not act as an obstacle to social change. These attitudes can serve as a tremendous source of strength —a value which can be tapped at low or no cost to the government. If people habitually obey the law, for example, new regulation can achieve high compliance at very low cost. Imagine trying to assign a value to this aspect of legal culture. Americans, for example, seem willing to pay their taxes; they evade, but within acceptable limits. This attitude, and this behavior, have made it possible to raise enormous sums of money through the income tax. If the government needs somewhat more money, it raises the tax rates slightly; additional loss through evasion or rebellion is relatively small. On the other hand, any attempt to use law to eliminate adultery in the United States creates entirely different problems of enforcement. No one obeys adultery laws simply because they are laws. Large segments of the population disapprove of these laws; others feel the laws are not worth enforcing. Adultery laws, then, have an uphill battle for enforcement; state intervention in private sexual behavior is culturally disapproved. It would require a great input, in real enforcement resources, to raise the rate of effectiveness even a little. At the same time, enforcement would cause public dissatisfaction and a costly disruption in social life. In this case, culture is a source of difficulty and cost to anyone who seriously wished to enforce the adultery laws. In some societies, adultery, as defined in the United States, is not considered immoral, and attempts to ban it by law would be even more futile. In still other societies, adultery is deemed a most serious offense; violators of the norm are punished swiftly and without social disruption. Even for the United States, where adultery laws are unenforceable, cultural and religious taboos limit the actual incidence of adultery.

Legal researchers might wish, then, to explore the cultural factors that influence the cost and effectiveness of law. Some countries have achieved very high levels of national income—the United States, nations in Western Europe, Japan, the Soviet Union. Are there elements in their legal culture which, in partnership with specific economic and social policies, were conducive to economic growth? If there are, can they be transferred or applied to other countries? Or are there functional substitutes that can be tapped in these other countries?

The twentieth century is an age of cross-cultural influence, of wholesale diffusion of laws and borrowing of legal institutions and codes. Conquerors have often imposed their legal systems on the people they conquered; but only recently, perhaps, have societies borrowed codes, legal systems, and whole bodies of law, in order to upgrade themselves in some way. Japan and Turkey are among the countries that have borrowed Western codes, lock, stock, and barrel. We know that the engineering of social change does

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not require the replacement of a whole legal system (in the historical-evolutionary sense), or even a whole code. An indigenous system is not inherently incapable of changing to meet the needs and interests of its society. Yet, change is sometimes the only way to ensure the success of a conquest. The stamping out of tribal law, for example, might be functional if this were the sole way or the best way to destroy the power of the chiefs. It might have been right for Turkey to adopt Western law, to break the political power of Moslem elites. But this is a special effect of the borrowing of laws, and it is one that is not closely related to the content of those laws. It is another question whether these borrowings are effective in the substantive sense.

We may apply the term *penetration* to the degree to which a rule, code, or law takes hold in its population. Penetration refers, then, to the number of actors and spheres of action that a particular rule, legal institution, code, or system of laws actually reaches. How far are rules paper rules? Who really governs in the country? How far does the power of the central government extend? What is the living law of the provinces, or the streets, or the corporation, in comparison to the law on the books?

Over the last two centuries there has been a growing tendency for the legal system of the capital, or the central political organs of a country, or its ruling class, to extend its reign deeper down into the population and further out into the land. No community or group is truly lawless. But if law is defined as the formal law of the capital or the rulers, then in every country there are lawless groups and territories. In Africa, the colonialist's law governed, if at all, chiefly in the capital; native or customary law shared power in most of the colony. But there were, and are, equally real dualities in Western countries. The common law was not the law of the English manor; American book law does not really describe the living law of the urban ghetto; the Uniform Commercial Code does not really illuminate the norms of business behavior. All modern nation-states have been endeavoring, sometimes quite ruthlessly, to increase the degree of penetration of their central legal system, at least geographically, and usually in other senses, too. In the United States, federal rule has been crowding the states; the tax collectors and the regulators have brought more and more men and affairs into their orbit. In Africa, new nations have been trying to stamp out their plural legal systems. All countries have been struggling to exert their authority on outlying areas and on more and more of their population. Perhaps some aspects of the rage for increased legal unity, legal penetration, and centralization are less rational than these governments imagine. Active government—hence a higher degree of legal penetration—is an unavoidable necessity in the modern world. But not *all* forms of the imperialism of the center can stand the test of reason. Pluralism, like

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federalism, is not merely a structural matter. It rests on cultural differences. That is easy enough to see in plural legal systems; but it is even true of a country like the United States, where decentralization has flourished, though not because of any tribal differences between Maine and California.

Penetration is a concept of command; it refers to the degree that government is successfully imposed. But government is a two-way street. *Participation* is a twin concept of penetration. It refers to the role of members of the general public (or some special public) in making and carrying out law. Juries and elections are forms of participation. Intriguing questions can be asked about participation, similar to questions about penetration. Is a legal system more stable, the more it is participatory? Can a system with more participation meet demands more effectively; or are the costs in lost efficiency too great? Can one define and measure participation in the legal system?

It is not likely, in the near future, that anyone will prove or disprove propositions made up of concepts so general and abstract, and which cut across most national boundaries, periods, and problems. But these concepts and others may provide the vocabulary for more modest proposals in specific fields. For example, it would be a major advance to show in theory and practical effect, what elements of legal culture are supportive of a collectivized form of land tenure and which of cooperative or individual ownership of land. The traditional approaches to foreign law by American lawyers would not be likely to evolve the right kind of hypothesis. Concepts of culture and process may hopefully bring better results.

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