BOOK REVIEWS

GENERAL

DUNDES, ALISON RENTELEN and ALAN DUNDES, editors. *Folk Law: Essays in the Theory and Practice of* Lex Non Scripta, 2 vols. Garland Folklore Casebook 7. New York & London: Garland Publishing, Inc., 1994. xvi + 1,037 pages. Cloth $150.00; ISBN 0–8153–1314–4.

The field of the anthropology of law has been growing, with each stage of development marked by the opening of new areas of study, among them ancient law, primitive law, tribal law, and folk law in legal pluralism. Outstanding achievements have also been made in researching the actual circumstances of people's law and the interaction of people's law with state law, thus clarifying the variations of legal pluralism.

Among the remarkable developments in this field have been the publication of encyclopedic works intended to offer a general view of legal pluralism. The most voluminous of these is the series on legal cultures in the International Library of Essays in Law and Legal Theory, under publication by Dartmouth Publishing Company since 1992 (a series unfortunately weakened by a methodology oriented to Western law) (SACK and ALECK 1992). Another important contribution is ARNAUD's dictionary (1993), which, by my count, contains thirty entries in the field of the anthropology of law, including, for the first time in a Western publication, eleven entries on non-Western legal cultures (among them CHIBA 1993a). Four other entries (including BERMAN 1993) contain information indispensable for the comparison of Western and non-Western legal cultures. A further treatment of non-Western law is CHIBA's small compilation (1993b).

The volume under review represents yet another development in the field of folk law. This collection brings together fifty-seven essays in two volumes with a total of 1,037 pages. There is an introduction to the entire work, separate introductions to the eight sections that comprise the work, comments on and references to each essay, and forty-eight selected references. Below I give one-line summaries of each essay, along with the year of its original publication and the name and nationality (if known) of the author.

The first section, dealing with the definition of folk law, begins with the 1986 essay of G. C. J. J. van den Berghe (The Netherlands), which outlines variant conceptions and treatments of unwritten law in European history and concludes that we have "to strive for a better operational definition of them." A. Arthur Schiller (USA, 1938) next focuses on the Roman treatment of customary law. The four essays that follow discuss various forms of and approaches to folk law: M. P. Jain (India, 1963) surveys Indian customs and the wide variations they show depending on locality, tribe, village, family, guild and caste; Gordon R. Woodman (UK, 1969) stresses, on the basis of his Ghanaian and Nigerian data, the necessity of "sociological investigation"; J. P. B. de Josselin de Jong (The Netherlands, 1948) considers the "law-complex" as a phenomenon of culture; and A. W. B. Simpson (USA, 1973) sees common law as "more like a muddle than a system." Finally, the modern jurisprudential doctrine of customary law is considered in an essay by Alan Watson (USA, 1984).

The second section reviews trends in folk-law study in different countries. It opens with

a wide-ranging overview of achievements in legal ethnology from eastern and western Europe by Ernó Tárkány-Szücs (Hungary, 1967). Following this we find contributions on pre-twentieth-century Russian studies of custom and customary law by Samuel Kucherov (USSR, 1972); on "ethnological jurisprudents" and later ethnologists and historians among the German-speaking peoples by Rüdiger Schott (West Germany, 1982); on Dutch juridical ethnologists after C. van Vollenhoven (the founder of adat law studies) by A. K. J. M. Strijbosch (The Netherlands, 1977); on the debate between those British who argued for the supremacy of British policy versus those who advocated "esteem for customary law" by Cornelis van Vollenhoven (The Netherlands, 1927); and lastly on J. M. Sabah, J. B. Danquah, and N. M. Ollennu in Ghana by Irina Sinitsina (USSR, 1981).

The third section, on official ascertainment, selects essays on English law as it was forced upon African people. First, A. N. Allott (UK, 1953 and 1957) advises the adoption of careful practice techniques to counteract "the frequent attempts to force customary legal systems into an alien framework," while T. O. Elias (Nigeria, 1958) pleads for caution, patience, and care against "fossilization and fragmentation." There follow four essays analyzing the British restatement of native law: Simon Roberts (UK, 1971) emphasizes "the discrepancy between the court records and everyday behavior" in Tswana; Muna Ndulo (Zambia, 1981) argues that the dual system should be respected; Obeid Hag Ali (Sudan, 1971) discusses E. Cotran's failed attempt to force English law on the Kenyan people; and Robert J. Gordon (USA, 1989) attacks South African legislators for depriving the native population of indigenous law.

The fourth section collects various expressions of law in the folklore, symbolism, and ritual of different cultures. An essay on a variety of "legally relevant" cultural forms among German-speaking peoples by Herrmann Baltl (Austria, 1968) is followed by two sketches of children's games, one by Paul G. Brewster (USA, 1938) on a German song about an old crime and the other by A. F. Chamberlain (USA, 1903) on a game called "law of finding" found in six Western European countries. These are followed by reports from various countries. John C. Messenger, Jr. (USA, 1959) shows how among the Anang in Nigeria eleven legal proverbs are used in traditional subtribal courts even after their official invalidation. Harry L. Levy (USA, 1956) reports on the Greek custom of distributing family property between brothers by lot. Durica Krstić (Yugoslavia, 1981) lists numerous examples of legal symbols prevailing in the Balkan countries and certain other parts of the world. Clinton Bailey (Israel, 1976) discusses the Bedouin image of justice as "well-balanced saddlebags" on a camel. Hazard (USA, 1962) compares proxemic relations in the courts of the USA with those in the courts of several European countries. Carl Bock (1884) reports a water ordeal used to judge the ownership of a slave in Thailand. Theodor Reik (USA, 1945) argues that oral ordeal is disguised in the modern oath taken before a criminal court.

The fifth section considers different forms of legal codes. Two essays introduce ancient codes: Albrecht Goetze (USA, 1949) discusses two pre-Hammurapi codes (the Sumerian Lipit-Ishtar and the Akkadian Eshnunna) and Raymond Westbrook (Israel, 1985) takes up codes of Biblical and Cuneiform law. The next three contributors present rare data: Shih-Yü Yü Li (1950) discusses the Ch'ing penal law applied since 1733 in Tibet, with sixty-eight articles partly adopting Tibetan customs; Joseph Minattur (1964) considers poetic adat law in rhythmic form among matrilineal and exogamic Malaysians; and Edward Westermarck (Finland, 1947) reports on well-organized customs, concerning homicide among eleven Berber tribes in Morocco.

The sixth section contains case studies of folk law, preceded by two essays that take opposite sides in a debate on case method, one, by J. F. Holleman (Holland, 1973), advocating the trouble-less case method, and the other, by A. L. Epstein (1969), promoting the trouble case method. Roger Howman (1948) tells of a midwife in Zimbabwe accused of practicing witchcraft (*muroyi*) but finally discharged by a native magistrate, who found that *muroyi* is used in twelve different meanings, including one approved of as lawful. R. F. Barton (USA, 1930) reports homicide cases among Philippine tribes that could not be duly

understood by the white man's law. R. S. Freed (USA, 1971) surveys an Indian homicide case in which a Brahman daughter who allegedly died of cholera just before marriage was in fact killed by her father, who, realizing her infidelity, wished to give her a "merciful" death to ensure her rebirth. Beatrice Farnsworth (1986) analyzes late nineteenth-century records from four town courts in agricultural Russia that reveal customary law, as symbolized by the peasants' "right to beat their wives." Finally, Hendrick Hartog (USA, 1985) records the development of "the judicial denial of the right to keep pigs in the street" in New York that was finalized in 1849 after thirty years.

The seventh section contains fascinating essays on the conflict of folk law with official law. L. C. Green (Canada, 1975) cites cases from former British colonies in which tribal or primitive law was accommodated with "civilized" law in accordance with British standards. R. D. Kollewijn (The Netherlands, 1951) shows the different attitudes taken by Holland, France, and England in their official recognition of non-Western marriage law that mitigated the Western "barbarous attitudes to alleged barbarians." E. G. Unsworth (South Africa, 1944) analyzes the standards used by the British to discriminate "applicable" from "inapplicable" native law in their African colonies. Alec Samuels (UK, 1981) looks into English cases in which immigrants' religious, polygamic, and other customs were adopted. Robert B. Seidman (USA, 1965) reduces possible opinions in a hypothetical case on how to apply customary law in an African court to three: "not at all," "wholly," and "between." Roy Carleton Howell (1989) reports on a well-known Kenyan case concerning burial rights, in which the Luo tradition of the deceased Otieno won over his Kikuyu widow's invocation of official law. Alison Dundes Renteln (1988), one of the editors, claims that there is no particular need for a cultural defense of the native practices of immigrants or refugees in the USA, since the existing legal mechanisms have been sufficient, an opinion the author later reinforced (RENTELN 1994).

The final section brings together essays that discuss the legal nature of international custom. Following Peter E. Benson (1982), who criticizes the opinion of François Gény as static, Nirmala Nagarathan (Sri Lanka, 1971) analyzes certain recent trends, like the legal protection of the continental shelf and outer space. Rudolf Bernhardt (West Germany, 1977) encourages further scientific research into unwritten law for its "inseparable connection with written law." Two essays then maintain that official authorization by sovereign states is needed for internationalization to have legality: Richard J. Erickson (USA, 1975) introduces certain Soviet opinions, while N. C. H. Dunber (Australia, 1983) supports an English Court of Appeal decision to regard customary international law as "myth" when it comes to international conflict. Steven M. Schneebaum (USA, 1982) insists on the need to protect existing individual rights internationally. Vladlen S. Vereshchetin and Gennady M. Danilenko (USSR, 1985) promote the legality of international practices as applied to outer space. Allan Rosas (Finland, 1984) finds customary international law applicable both regionally and universally.

Perfectionists might find it easy to find shortcomings in this collection. For example, there are no essays in non-English languages, and only a few of the articles were written in the present decade. The quality of the section introductions is uneven, as is that of the respective bibliographies. Readers might also wish for indexes and bibliographical information on the authors.

And yet in spite of such shortcomings the book must be recognized as an invaluable contribution to the anthropology of law, providing as it does so many important essays, many of them overlooked, forgotten, or difficult of access. Its essays on folk law inform the scholar of historical variations in terminology and concepts (secs. 1, 2) and of the problems standing in the way of its official recognition by governments and scientific recognition by scholars (secs. 3, 5). It highlights the seriousness of folk law as an issue outside of or in conflict with state law (secs. 6, 7). And it reminds us of the two neglected fields of folk legal symbolism and international customary law (secs. 4, 8).

This said, I am nevertheless concerned that the book lacks any discussion of basic tool

concepts that would enable us to grasp the dynamic realities of folk law as it actually exists. For example, if the data in the book is reformulated in accordance with the seven concepts I have discussed elsewhere (CHIBA 1989, 177–80; 1993a, 203), a much different reality is revealed, one more vivid than the simple view delineated by the book's static contrast between folk law and state law.

Folk law is an indigenous or unofficial form of law that is often regarded as inauthentic by the state, but that nevertheless forms a system under the central authority of a social group, be it based on kinship, locality, tribe, occupation, religion, or voluntary association. Indigenous law evolves through history, impelled by its own potentials and by positive or negative interaction with pressures from outside, especially those of state law. And it may eventually even modify state law to some degree. We find cases in which it reshapes itself to better coexist with other forms of law, and cases where it disguises certain of its elements in official law (an example being the reformulation of certain types of Western folk law into modern state law). It may be imposed on or received by other peoples in the form of "transplanted law," as when the Roman legal system was adopted by Western peoples. The transplantation of Western law to non-Western cultures has led to acculturation in some cases and to conflict in others (as in Trinidad, where the transplanted Western law of the colonizers clashed with the Asian indigenous law of the Indian immigrant laborers; see HARAKSINGH 1993).

Whether indigenous or transplanted, whether unofficial or official, law represents itself not only in the guise of "legal rules" (typical of state law, canon law, and "sports law"; see CHIBA 1994), but also in the form of "legal postulates" (prominent in religious law and international "social norms"; see GRAHL-MADSEN and TOMEN 1984, 20–24). Law also works in various symbolic forms (as in Tarkány-Szücs above; sec. 4) and functions (see GUSFIELD 1967; 1981).

The more our analytical concepts are sharpened, the more accurately folk law can be observed and analyzed. However, the responsibility to promote such theoretical work must be borne not by editors who aim to be *anthropologists* of law but those of us who aspire to be anthropologists of *law*.

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KEYES, CHARLES F., LAUREL KENDALL, and HELEN HARDACRE, editors. *Asian Visions of Authority: Religion and the Modern States of East and Southeast Asia*. Honolulu: University of Hawaii Press, 1994. ix + 366 pages. Maps, figures, photographic plates, bibliography, index. Hardcover US$35.00; ISBN 0–8248–1471–1.

This is an exceptionally useful work, likely to please all who are professionally involved with the study of modern Southeast and East Asian societies, but especially anthropologists and students of religion. *Asian Visions of Authority* constitutes an important antidote to much Western modernization theory, which is premised on the conceit that "as Asian states 'progress', they will become increasingly secularized." On the contrary, as the editors of this book tell us, "as these states have modernized, religion has become more, not less, significant" (3). The individual essays, dealing with aspects of religion in Cambodia, Java, Malaysia, Japan, Korea, Taiwan, and the People's Republic of China, certainly bear witness to the continuing and critical importance of religion in these countries, even in the face of state atheism as in the PRC. But religious expression in Asia during the present era may have meaning of a kind altogether different from that of times past. For example, as Jean deBernardi tells us, Chinese folk religion in Penang, Malaysia, now carries an important political message: pride in Chinese culture and opposition to the Malay-dominated Malaysian state's attempts to establish Malay culture as the basis for a new Malaysian cultural tradition. Alternatively, subtle combinations of new and old signification may be evident, as in the memorial rites to the atom bomb victims of Hiroshima, which accommodate both the traditional and quintessentially particularistic Japanese need to propitiate the unfortunate family dead, and a universalistic yearning for world peace as expressed in the drive to eradicate nuclear warfare.

Few will dispute the claim (heralded in the dust jacket blurb) that this is a "work of substantial and well-grounded scholarship." The editors provide a fine introduction that offers real insight into why religious phenomena remain so important in modern Southeast and East Asian societies. They show, for example, how secular governments — from Indonesia to the PRC — co-opt religion (or, more accurately, those aspects of religion of which they approve) in the interests of nation-building. Religion, in other words, often becomes a major ingredient in the construction of a new national identity. This, in turn, is usually a response to profound political, economic, and ideological changes that challenge the validity of old ideas and old social institutions (ideas and institutions that, paradoxically, were themselves informed by the same religious traditions now being used to support the new social order). The editors tell too of the importance of "endemic" or "minimal religion" — customary practices such as religious festivals and traditional rites of passage that are seen more as expressions of a particular cultural tradition than of a religious ideology. Such endemic religion is not "the frozen artifactual stuff of museum plays and cultural performances . . .