

There has been much controversy over the terminology by which the rights to land in African indigenous systems may appropriately be described.<sup>1</sup> In essence the question has been whether the English word 'ownership' either by itself or in some combination such as 'individual', 'family' or 'communal ownership' provides a suitable rendering for the legal relationships between individuals or groups and land in African societies.<sup>2</sup> Some have held that these expressions are intrinsically misleading and should be avoided; it has been suggested that notions such as 'right' or 'interest' or the full Hohfeldian terminology of rights, duties, privileges, powers and immunities provide the most appropriate vocabulary. One should note that the question of the appropriate term to be used raises more than a purely linguistic issue. It conceals an important issue of substance, namely whether African societies know the legal institution of ownership. This issue in turn subdivides into the further issue whether the institution, if found, is 'family ownership' or 'individual ownership'. A number of considerations arising from these questions have already been adequately discussed in the literature and I do not propose to cover them again. Rather I should like to draw attention to two aspects of the problem which perhaps have received insufficient treatment. The first is the failure always to make a clear distinction between 'description' and 'comparison', and the second the handling of the indigenous terms. These aspects are connected because the process of 'describing' or 'comparing' involves the handling of indigenous terms but for convenience of exposition I have dealt with them separately.

If one asks, what does it mean to describe the legal institutions of another society, the answer may appear to be simple. One is recording the set of rules of which any particular institution consists. But simplicity is here deceptive. There may in fact be very considerable difficulty in ascertaining what is to be recorded. Some societies may possess a sufficiently complex set of rules in certain areas (such as the holding of land) for one to be justified in speaking of an institution but in many one would be faced merely with rules on particular topics which did not fall neatly into bundles to which the term institution might be applied. Usually the investigator is confronted by an even more basic difficulty, that of knowing what the rules are or even whether there are any rules. From this point of view the most important factor is writing. If the society has itself recorded its rules in writing in the form either of a code or a series of statutes or judicial decisions, the investigator has a reasonably secure foundation for his own version of the society's rules. But if there is no such written source the investigator has to rely on what he is told by members of the society. It is possible that his informants will communicate specific rules to him, that is, they will express propositions in some such form as: a person in the position of X ought (is under

an obligation) to behave in a particular way, or he may (has a right to) do something or other. But he may find there is no clear, consistent and unambiguous information communicated in the form of rules. Normative language may itself not be used. Information may be communicated in the form of what people actually do, or of what they feel, believe or think. Where normative language is used there may be no consistency in the reports of rules given by different informants. Hence the investigator has to try and reconstruct what the rules, if any, are from a medley of accounts of practices and attitudes not necessarily consistent with each other.

A related problem for the investigator is the choice of language with which to express the material he has obtained from his sources. Again the problem is less acute if he has been able to rely on a written source. Of course care has to be taken to avoid distortion in the rendering into English of the terms used in the source. However the advantage provided by a written source is that the rules appear in an authoritative form in which the context supplies a guide to the meaning of the terms used. This guide may be supplemented by such information as is available on the interpretation of the rules. Such an advantage is not present where the investigator has to rely upon a number of oral reports. In recording what he takes to be the 'sense' of these reports there is a very real danger that he will use misleading language. I do not mean merely that he may improperly employ specific, technical terms, such as 'ownership', but that there may be something misleading even in the use of the most obvious general words such as 'rule', 'right' or 'obligation'. By stating that there is a rule to the effect that people are to behave in a particular way or one which permits them to do certain things or by ascribing a 'right' or an 'obligation' to each member of a class of persons defined in some particular way the investigator may be introducing a stronger and more definite or certain normative sense than is warranted by his material. Where a certain haziness is present as to the respective 'rights' of people with 'interests' in land it is even easier for the investigator to attribute more extensive 'powers' to individuals than they possess and so construct and speak of 'ownership' as resting in individuals or groups.

The investigator may wish to do more than 'describe' the institutions and rules relating to the holding of land in an African society. He may wish also to 'compare' them with those of his own society. One may have a number of different purposes in mind when attempting a 'comparison' between two societies. Where the 'comparison' is between the rules relating to the holding of land in an African society and those obtaining in Britain (specifically England) the object is probably to ascertain the extent to which the rules of the latter society are found also to exist in the former. Since it would be unrealistic of the investigator to expect to find exact duplication he is most likely to be concerned with the degree to which the rules of the one society 'approximate' to those of the other. From this point of view the investigator may distinguish content and function and seek to discover not only whether the rules of the two societies are similar in content but also whether they achieve similar ends.

As soon as one recognises that one has to do with degrees of approximation one can see why the language of 'ownership', for example, is often to be found in accounts of African systems of landholding. In using the terms 'owner' or 'ownership' in his account of the African rules the investigator is not necessarily 'describing' in the sense of recording the rules which obtain within the society. He may be making an implicit comparison between the rules of the African society and the rules of his own society. This may be clear where he states that the African society does not have the institution of 'individual ownership'. It is less clear where the statement is in the affirmative, that is, that the society does know ownership by individuals or (far more commonly) that it knows ownership by families or other groups. What may be meant is that the African society has an institution which approximates to or resembles the institution known as ownership in English law and that the entity possessing the collection of rights, duties and powers called 'ownership' may be either the individual or the family or other group. Such statements are a source of confusion for two reasons. They do not always make sufficiently clear whether the object of the investigation is purely to describe or, as well, to conduct a comparison with the rules of the investigator's own society. Further such statements, precisely because they are intended to stress the degree of approximation and resemblance between the institutions of the two societies, tend to conceal the differences and hence convey a misleading impression of identity.

Whether the investigator wishes to 'describe' or to 'compare' his most important task is to ascertain and elucidate the terminology with which the people themselves express 'rights' to land.<sup>3</sup> He is likely to find in use a number of terms expressing 'having' or 'holding' or some sense of 'ought' followed by a reference to a specific mode of behaviour. But what he should particularly investigate is the conditions which govern the use of these terms. He should attempt to ascertain whether some are used only in connection with land or other types of property and whether they express any special form of relationship between individuals or between individuals and objects.<sup>4</sup> Only when he has performed these tasks will the investigator be in a position to assess the degree of abstraction possessed by terms which express 'rights' in land and reach a conclusion on the nature of the 'concepts' (if any) used by the people under investigation in their thinking about these 'rights'. A subsidiary problem is the question of how best the 'rights' and 'concepts' so identified can be rendered into the investigator's own language and made comprehensible to the people of another culture.

#### I.

I have not found many examples in the literature on landholding in African societies of the type of analysis I have described. Those that have been made are often tantalisingly brief leaving the reader with the impression that only the beginning of what might be an important investigation has been made. My first example of indigenous terminology is taken from descriptions of two Ghanaian peoples, the Lo-

Wiili and the Tallensi, who appear to have used very similar terms in expressing 'rights' to land. M. Fortes translates the Tallensi words solem and so as respectively 'ownership' and 'own'<sup>5</sup> but does not analyse the contexts in which those words are actually used. He contents himself with the statement that 'the ownership (solem) of farm-land is a precise jural concept among the Tallensi.'<sup>6</sup> Such 'ownership', he says, is vested in a lineage and means on the one hand that all males of the lineage have the right to inherit lineage land and on the other hand that the power to control the use of land is held by the head of the lineage. The latter, however, has the responsibility of ensuring that the other members of the lineage receive adequate provision.<sup>7</sup> A person who is said to 'own' (so) land or another person has both rights and duties with respect to the object 'owned' over which he is 'master'. The emphasis is at least as much on the duties as on the rights.<sup>8</sup> The same word (so) apparently expresses also a ritual relationship between a chief and the land.<sup>9</sup> There are also special terms for the donor or lender and the donee or borrower of farming land. The former is called 'owner of the soil' (kamraana, where the suffix -raana is elsewhere translated as 'master')<sup>10</sup> and the latter 'the owner of the farm' (kuo-raana).<sup>11</sup>

Goody states that the LoWiili speak of 'a certain area as belonging (so) to a certain patriclan' although effective rights are held by the senior members of farming groups. Within any such group the senior member is said to 'own' (so) the farm but is under an obligation to provide with land anyone who leaves the group.<sup>12</sup> From his subsequent remarks one can distinguish the following uses of so.<sup>13</sup> The ancestors 'own' the land and the crops in the sense that they first cleared the land and it is through their efforts that their descendants now farm the land. The patriclan or lineage 'owns' the land in the sense that it is held to have been farmed by the founding ancestor. From this sense appear to be derived further implications of 'own', namely that where a member of the lineage abandons his land the other members have the right to take it, and that the lineage elder has the right to allocate land among lineage members and certain ritual duties in connection with the ancestor cult.<sup>14</sup> The ritual leader of the community (tengaansob) (my italics) 'owns the land' in the sense that he has special ritual duties within a certain locality, although he has no control over the distribution or use of farming land. Finally the senior member of a farming group 'owns' the farm in the sense that he controls the cultivation of the land and has ritual duties in connection with the farm shrines; there is an implication that the powers of control are to be exercised for the benefit of the group as a whole. It also seems that if a member of a lineage 'borrows' land from another member both are said to 'own' the land.<sup>15</sup>

In most contexts the word so appears to express some form of mastery or control over property. It does not seem that its use is confined to the relationship between people and land; other property and even other people may be the object of such control or mastery. Associated with the control appears to be some notion of obligation. If one changes the language slightly one may say that the 'right' expressed by so in any given context is limited in two ways. On the one hand it

is of a strictly defined content (for example to allocate land within the family or lineage or to determine how it is to be cultivated) and on the other hand it is expected that the 'right' will be exercised with due regard for the interests or welfare of other people. However there are usages of so which cannot be elucidated in accordance with this pattern. The statement that 'the ancestors own the land' does not mean that the ancestors at the present time have mastery or control of the land; further the statement that the ritual leader 'owns the land' does not express mastery or control unless one is to think of some form of non-physical control exercised through the leader's communion with the gods.

One may agree with Goody that 'owns' is not an adequate rendering of so, and indeed may go further and consider it to be positively misleading. Equally one may doubt whether 'ownership' is a satisfactory translation of the Tallensi expression solem.<sup>16</sup> Yet the problem remains, how are these terms to be translated into English? Is it sufficient to accept a paraphrase built around the words 'right', 'power', 'duty' and so on? While conceding that this course might be preferable to an invariable rendering of so by 'own', one may still have some reservations. The difficulty is that so may possess a characteristic sense which is lost if one always paraphrases it in terms of some combination of right, power, duty or the like. In order to know whether so possesses such a characteristic sense one needs to know whether the Tallensi and LoWiili have other words that express rights and powers over property or people and obligation towards them. If other terms with this content are found, one might draw the conclusion that the rights, powers and duties expressed by so have some characteristic not shared by the rights, powers and duties expressed by other terms.

## II.

Kaberry has some instructive material on terminology in use among the Nsaw, a people of the former British Cameroons (now part of Nigeria). She records the following two rules: 'men own the land; women own the crops' and 'a woman owns only a farm; she does not own the earth (land); a lineage head owns the land. A lineage head, he alone, owns the land; a 'son' (or a 'daughter') of the compound does not own the land'.<sup>17</sup> The word translated as 'owns' is ker which is said to have 'a number of cognate meanings: to hold, have, own or manage'.<sup>18</sup> This list of meanings reveals an important ambiguity. Words such as 'hold', 'have' or 'manage' could express a mere factual relationship between an individual and the property in question; or they might conceal a reference to a 'right' or 'power' to have, hold, or manage. 'Own' on the other hand must have a reference to 'rights' and 'powers'. Although it is not absolutely clear, one probably has to assume that where ker occurs in a statement referring to the relationship between an individual and land there is an implication that the former has some 'right' or 'power'.

In the first statement, 'men own the land; women own the crops', the word translated by 'own' is ker. However it is clear from the elucidation offered by Kaberry and her subsequent discussion of land tenure<sup>19</sup> that 'own' in the two clauses expresses 'rights' and 'powers'

of a different nature. The first clause refers to the control vested in the heads of lineages over the allocation and distribution of land. They 'own' the land in the sense that they have the power to allocate it to members of the lineage and (if necessary) to reclaim it. But again the notion of 'responsibility' or 'duty' is just as strong as the notion of 'power'. Their 'duty' is to see that the dependent members of the lineage in appropriate circumstances have sufficient land from which to make a living; nor should they normally take back land from a person to whom it has once been granted. The second clause refers to the 'right' of the women to cultivate fields which have been allocated to them and 'to manage their crops'.<sup>20</sup> It is not made clear what exactly is involved in the 'management' of the crops. From the general discussion one may deduce that they may plant what crops they like and determine the day to day measures of cultivation; but it would be rash to assume that they might dispose of the crops as they liked. No details on this point are given but it is probable that the women were under an 'obligation' to dispose of the produce in certain specified ways. One might therefore conclude that the word ker in both clauses expresses 'control', with a combination of 'rights', 'powers' and 'duties', in relation to different matters, that is, the allocation of land and the cultivation of crops; its translation as 'own' does not seem particularly appropriate.

The second statement may be analysed in the same way. A woman 'owns' the farm in the sense that she has the 'control' of the cultivation but she does not 'own' the land because she does not 'control' its allocation or distribution. The lineage head 'owns' the land in the sense that he does 'control' its allocation. The position of the 'son' or 'daughter' is not fully explained, but one may infer that they, like the women, 'own', that is, 'control' only a farm and not the land itself.

The nature of the 'rights', 'powers' and 'duties' vested in any particular individual is thus demarcated by the predicate of the word ker. Unfortunately we are not told whether ker is used in contexts other than those relating to the holding of land. Nor do we have information on another important point. I have rendered ker basically by the word 'control' and glossed this as a combination of 'rights', 'powers' and 'duties'. Strictly, this is not a permissible procedure or at best is the translation of a term from another culture into the sort of language which an English lawyer would use in describing the legal relationship between an individual and land. But it does not emerge from the material presented by Kaberry whether the Nsaw themselves attribute a normative force to ker and if so what precise shade of 'right' or 'ought' is conveyed.

### III.

Allott gives a brief account of the terms used by the Ashanti in the description of a relationship between the individual and the land.<sup>21</sup> While the Ashanti have no word which can be translated by the abstract notion of 'ownership' they do have a number of verbs by which the

'rights' held in land may be expressed. The verb di in the sense of 'to use, enjoy or control' is used only in connection with land. The verb de, which appears to be of general use, means 'to hold' and conveys an implication of control or mastery. The verb wo may mean either 'to possess' or 'to belong to'. In the latter sense it expresses both the 'right' of the chief of the land and the 'right' of the farmer who actually occupies and cultivates it. The difference between their respective 'rights' is indicated by the predicate of the verb. There are also terms for the 'owner' of things or land where the governing implication is that of control or mastery.

The most interesting question which arises from this account is again the question of the sense of 'ought' or 'right' which the Ashanti themselves understand by the verbs used for the description of landholding. After stating that di means 'use, enjoy, control', Allott remarks 'several persons or authorities may be entitled (my emphasis) to use of or control over (di) land'.<sup>22</sup> What is not clear is whether the verb itself or the verb together with its predicate carries this association of 'right' or whether the word 'entitled' slips in because an English lawyer cannot conceive of landholding except in terms of 'rights' or 'titles'. The translation of wo as 'belong' or 'possess' suggests that the Ashanti may have used the verb in a sense carrying the implication of a specific 'right' or 'ought'. But one cannot be sure because the exact sense of 'belong' is not brought out and there may again be recourse to an English word which conveys an impression misleading for Ashanti usage.

#### IV.

The fullest account of the terminology used by an African people in the description of landholding which I have seen is that made by Gluckman in his examination of Barotse law. This account is particularly valuable because it places the specific terms by which reference is made to 'rights' in land against a background of the general normative vocabulary employed by the Barotse. Thus the word swanelo expresses 'ought' in a sense implying both 'right' and 'duty', tukelo has a similar sense with the emphasis perhaps more on the presence of a 'right', and mata or lizoho express both 'power' and 'responsibility' or 'liability'.<sup>23</sup> Consequently the first point that one can establish is that the Barotse might have drawn upon this range of normative terms in order to express the 'rights', 'duties' and 'powers' held in land. These terms are used by judges (and presumably others) in describing the relation of individuals to land<sup>24</sup> but in addition they employ also a special set of terms, mung'a and bung'a which Gluckman translates respectively as 'owner' and 'ownership'. Yet a further means by which 'rights' in land may be implied is through the use of 'possessive formatives' such as 'this farm is X's'.<sup>25</sup>

Two essential questions arise for consideration: what is the 'meaning' of the terms mung'a (owner) and bung'a (ownership), and why should the Barotse have employed these special terms when they might have described the individual's relationship to land just by means of their general normative terms or of their 'possessive formatives'?

The questions are related because the elucidation of the 'meaning' of the terms will supply also the reason for their use. The term mung'a is not confined to individuals who stand in a certain relationship to land; it may be applied to individuals in their relation to other species of property or to other individuals. In relation to land mung'a has to be understood in the context of the hierarchical structure of 'rights' to or 'estates' in land. If one takes a particular piece of land one finds that the farmer who actually occupies and cultivates it and his wife are both called mung'a; so is the headman from whom he obtained the land and the chief from whom the headman in turn has obtained it and finally the king who is called mung'a of all the land in the country. However the Barotse do not make abstract analyses of 'rights' in land or construct tables of 'owners' in land. They refer to a person as mung'a only where they wish to emphasise that he has some particular right to the land, and this usually appears to be the case where a dispute has arisen. In such a case the person with the stronger claim is described as mung'a in relation to the other. The only person with a right to or interest in land who is never described as mung'a is the borrower.<sup>26</sup>

The meaning of mung'a may be illustrated further from its use in connection with property other than land and interpersonal relationships. Special rules apply to hippopotami in Barotseland. Once one has been killed the king and the huntsman are termed 'owners' of the carcass as a whole. This is because each stands in a special, masterful relation to the slain hippo, that is, has greater powers of control over it than other people. But people occupying certain positions in the state are entitled to specific portions of the carcass and are called 'owners' of these. However, Gluckman emphasises that the Barotse are not interested in the aspect of 'right' to or 'control' over the meat; for them what is important is the whole complex of activities which takes place in connection with the storing and distribution of the meat. Entitlement to individual portions of meat is determined by the position of the person designated 'owner'. By 'position' is meant the status of the 'owner' and the relationship in which he stands to other people, particularly the king. Hence distribution of the meat expresses the relationship between certain individuals and the king and it is this aspect which a Barotse primarily thinks of when referring to one of these people as 'owner' of the meat.<sup>27</sup>

In the sphere of personal relationships the term mung'a is also used to express some aspect of a particular relationship. Normally the senior person in the relationship is called 'owner', not only because he has stronger rights or claims but also because correspondingly he has greater obligations. Thus the king, political authorities and senior kinsmen may all be addressed as 'my owner'. In the husband and wife relationship it is normally the wife who addresses her husband as 'owner' but she may be addressed in this way by him as a mark of respect or affection. If a dispute arises between husband and wife the court may term the wife 'owner of the marriage' or 'owner of the husband' in order to express the fact that the husband has not fulfilled his obligations toward her. In a divorce suit by a wife the court will call the husband 'owner of the woman' if the divorce is refused and her



father 'owner of the woman' if it is granted. By this phrase the court designates the person with control over (and obligations towards) the woman. A councillor in addressing a reprimand in court to a litigant or an accused person will refer to him as 'my owner' in order to emphasize that he is discharging an obligation to the wrongdoer by pointing out to him what he has done wrong.<sup>28</sup>

Even where mung'a is applied to a person in a context which involves his relation to land, the emphasis is not so much on his 'rights' or 'powers' over the land as on his 'rights' and 'obligations' vis-à-vis some other person in respect of the land. Hence in attempting to catch the essence of the meaning of mung'a one has to consider not the relation between the 'owner' and property but that between the 'owner' and some other person. From this point of view the term 'owner' applied to one of the parties in the relationship expresses the fact that he has a stronger 'claim' or 'right' against the other than the other has against him. Where a person is described as 'owner' of land the primary implication is that he has a stronger 'right' (of some sort) with respect to the land than some other person. However sometimes the emphasis is not so much on the notion of 'right' or 'claim' as on the notion of 'obligation'. A person may be termed 'owner' vis-à-vis another whenever the latter has failed to fulfil a 'duty' or 'obligation' owed to the former, thereby constituting for him a 'claim' or 'right'.

Bung'a, translated by Gluckman as 'ownership', expresses a more abstract notion than mung'a. The Barotse use the term to describe almost all 'rights' over or against persons or things. In other words bung'a, like mung'a, has a range of use that extends far beyond the area of 'rights' in land. In part it expresses the fact that a person has a masterful relationship with respect to property or another person. Again the essential point is that the position of one person is being compared with that of another. The one to whom bung'a is ascribed has a group of 'rights', 'powers' and 'obligations', the content of which varies greatly according to the specific situation, which places him in the 'strongest' position with respect to land or other property or generally in his relationship with someone else. In part bung'a also expresses the notion of responsibility and points to the existence of 'obligations' owed to other people. Where a particular relationship gives rise to a dispute the court will ascribe bung'a to the party with respect to whom 'obligations' have not been fulfilled by the other.<sup>29</sup>

A theme running throughout Gluckman's account of mung'a and bung'a is the relevance of 'status' for an understanding of these terms. By 'status' he refers generally to a complex social state of affairs under which people derive their 'rights' and 'duties' from the fixed positions which they occupy (at any given point in time) in the kinship and political structure. The way in which a person ought to behave towards another is determined for him by the specific relationship in which they stand. This relationship may be either political, such as that between king and subject, or between headman and villager, or it may be constituted through kinship or marriage. The point is that it is the nature of the specific relationship between two people that determines

the content of their respective 'rights' and 'duties' towards each other. In any of these relationships (termed by Gluckman status relationships) one of the parties in a given situation will be in the stronger position. This may consist in the fact that, taking the relationship as a whole, one of the parties is in a position of control vis-à-vis the other and has the more extensive set of 'rights', coupled, of course, with 'obligations' in the way they are exercised. But a party to a relationship may gain a position of strength not because he is possessed in general of more extensive 'rights' than the other but because the latter has failed in the fulfillment of some specific 'obligation' towards him. I think that I have paraphrased accurately what Gluckman means when he concludes his discussion of mung'a and bung'a with the words: "I hope I have demonstrated sufficiently that bung'a, ownership, is ascribed by the Barotse to anyone who has a masterful relationship of responsibility and demands on services over another in some situation. This masterfulness may arise out of property or not.<sup>[30]</sup> Barotse jurisprudence sees every situation that arises out of status relationships as containing an essentially similar element which it calls bung'a".<sup>31</sup>

At first sight it seems astonishing that Gluckman should have chosen to translate mung'a as 'owner' and bung'a as 'ownership'.<sup>32</sup> One's astonishment becomes all the greater when he declares that the concept of bung'a is similar to the concepts of injo among the Tiv and hka among the Kachin.<sup>33</sup> Both injo and hka are normally translated as 'debt'. Certainly the differences between what an English lawyer or even man in the street would understand by 'ownership' and what the Barotse equivalent would understand by bung'a are very striking.<sup>34</sup> Nevertheless there are some points of similarity and it may be that Gluckman had these in mind although he said nothing explicitly about them. First of all (although he is not entirely consistent about this) it seems that the Barotse think of the 'rights' and the 'duties' arising from status relationships primarily in terms of dealings with land or other property. Hence one might construct the following argument. Bung'a expresses the bundle of 'rights', 'duties', and 'powers' held by one person vis-à-vis another in a specific relationship derived from status where the former occupies the more dominant or masterful position. These 'rights', 'duties' and 'powers' concern and regulate behaviours with respect to the use of land or other property. Therefore bung'a itself expresses indirectly the 'rights', 'duties' and 'powers' concerned with the use of property where the viewpoint is that of the party in the relationship who occupies the stronger position. Although many usages of bung'a might fit this pattern it seems extremely doubtful whether all would. Gluckman himself provides an example of the use not of bung'a but of mung'a in which there is no reference, even indirect, to dealings with property in the ordinary sense. A court will call a wife 'owner of the husband' or 'owner of the marriage' where it wishes to stress either the claim of the wife that her husband should sleep with her on a reasonable number of nights or the fact that the husband has not fulfilled his 'obligations' towards her, as where he has entrusted the 'duty' of receiving visitors to someone else.<sup>35</sup> What appears to be involved here are 'rights' and 'duties' relating to the personal treatment of the wife, not to dealings with property.

Putting Gluckman's case at its strongest, one might say that normally or most often bung'a (and mung'a) are used in contexts in which the 'rights' or 'obligations' invoked relate to the use of property. The analogy between bung'a and 'ownership' can be taken further in that each expression has a similar function. Both terms do not so much describe as imply the existence of certain 'rights', 'powers' and 'obligations'. They function as a type of shorthand by which the process of legal reasoning is facilitated. An English or a Barotse lawyer reasons in the following way: If a certain state of affairs (X) is found to exist, a particular individual is 'owner' (mung'a) or has 'ownership' (bung'a). Since he is 'owner' or has 'ownership' he possesses certain 'rights' or 'claims' and may also be under certain 'obligations' vis-à-vis someone else. Both what constitutes the state of affairs (X) and the nature or content of the various 'rights', 'claims', 'powers' or 'obligations' involved may be different in the two legal systems and yet the same technique of argument is adopted. Certain terms are employed to act as a bridge between a complex state of affairs involving the presence of 'rights', 'powers' and 'obligations' and a particular legal conclusion concerning the existence or exercise of a 'right', 'claim' or 'power' or the fulfillment of an 'obligation'.

The similarities between 'ownership' and bung'a may be summed up as follows. Both terms refer to (imply the existence of) 'rights', 'powers', 'obligations' relating to the use of property (with some exceptions in the case of bung'a); they both imply that the individual to whom 'ownership' or bung'a is ascribed is in a position of strength or control vis-à-vis someone else; they both function as a shorthand in that they are used to imply the existence of a range of 'rights', 'powers' and 'obligations' and in a particular case to supply a reason for a conclusion as to the existence of a 'right' or 'power' or the fulfillment of an 'obligation'. Nevertheless in view of the difference in meaning between the terms 'ownership' and bung'a one wonders whether it would not have been better to refrain from the translation. There remains, of course, the problem, how are words like mung'a and bung'a to be rendered into English? Use of the words 'right', 'duty', 'power' and so on would be misleading because it would conceal the distinction the Barotse themselves make between their specialised mung'a and bung'a and the more general words and phrases used to express notions of 'right' and 'ought'. Hence the best solution is probably to leave the terms untranslated but provide a comprehensive survey of the way in which they are used.

#### V.

What are the lessons to be learnt from this discussion? First, at the most general level, the investigator should make his objective clear; is he attempting merely to describe a system of land tenure in an African society or is he drawing a comparison between the rules and institutions of that system with those of his own? Second, the investigator must decide whether the terms used by the people of their own system are descriptive or normative, or indeed, both. He has to decide from the context whether a particular term merely describes the relation-

ship of an individual to land (for example states that he occupies the land and determines what happens on it) or whether it conveys the notion that someone ought or ought not to perform some act or adopt some line of behaviour. Third, if a term is found to be used in a normative sense, there is the problem of ascertaining the precise degree of obligation. Would the investigator be justified in rendering the term by the words 'right' and 'duty'? Would the vaguer, less strong language of expectations be preferable? Finally he must ascertain the degree of specialization which the vocabulary associated with landholding has attained. This task can be further subdivided. The investigator needs to know, first, whether there are any special terms used only in the context of landholding, and, second, if this is not the case, whether landholding is described simply in terms of the ordinary vocabulary, or, in addition, with the assistance of a more specialised, 'technical' vocabulary even though the latter may not be confined to the sphere of landholding. The Barotse terms bung'a and mung'a provide an illustration of what I mean. These have a range of meaning more specific and specialised than that possessed by the general words ordinarily used by the Barotse to express normative notions and yet their use is not confined to the sphere of landholding. Particular care has to be taken in the rendering of these terms in the investigator's own language.<sup>36</sup>

#### NOTES

<sup>1</sup>This is not a problem confined to African societies but is conveniently considered in this context as the literature is particularly rich.

<sup>2</sup>Cf. the varying approaches of P.C. Lloyd, Yoruba Land Law (1962), 60f; M. Gluckman, The Ideas in Barotse Jurisprudence, 2nd ed. (1972), 21, 79; A. N. Allott, "Family Property in West Africa: Its Juristic Basis, Control and Enjoyment," in J. N. D. Anderson (ed.), Family Laws in Asia and Africa (1968), 122ff; A. N. Allott, A. L. Epstein and M. Gluckman, "Introduction," in M. Gluckman (ed.) Ideas and Procedure in African Customary Law (1969), 20f.

<sup>3</sup>There has been much controversy among anthropologists, especially between P. Bohannan and M. Gluckman, on the degree to which the ethnographer should confine himself to an elucidation of 'folk' terms and concepts. The best summary of the debate is contained in L. Nader (ed.), Law in Culture and Society (1969), Part IV (see especially the introduction to this part by Sally Falk Moore and the essays by Bohannan and Gluckman). Some writers have doubted whether the study of indigenous terms is the most rewarding approach. See W. N. Goodenough, Property, Kin and Community on Truk, 2nd ed. (1978), 61f; Sally Falk Moore, "Law and Anthropology," in B. J. Siegel (ed.), Biennial Review of Anthropology (1969), 266f. Both of Moore's papers are now reprinted in S. F. Moore, Law as Process (1978). I hold the view that such study is an indispensable prerequisite to any investigation of another people's ways of thought.

<sup>4</sup>Cf. A. Capell, "The Concept of Ownership in the Languages of

Australia and the Pacific," Southwestern Journal of Anthropology 5 (1949), 169.

<sup>5</sup>M. Fortes, The Dynamics of Clanship among the Tallensi (1945, reprinted 1969), 171.

<sup>6</sup>Fortes, op. cit., 178.

<sup>7</sup>id.

<sup>8</sup>Fortes, op. cit., 171.

<sup>9</sup>Fortes, op. cit., 172. It is not quite clear what is meant here. Fortes says: "Most tracts of uninhabited bush are 'owned' by chiefs, who have ritual jurisdiction over hunting rights".

<sup>10</sup>Fortes, op. cit., 171.

<sup>11</sup>Fortes, op. cit., 177.

<sup>12</sup>J. Goody, The Social Organization of the LoWiili, 2nd ed. (1967), 33f.

<sup>13</sup>Goody, op. cit., 34f, though there is some ambiguity.

<sup>14</sup>What precisely is involved here is not made clear. Goody says: "Rights of bestowal and duties of ritual supervision in relation to the ancestor cult are vested in the lineage elder on behalf of the other members" (op. cit., 35).

<sup>15</sup>Goody, op. cit., 34. He states: "The word so is used in both these cases to express the rights a man has over land and the range of meaning is but inadequately conveyed by the English 'own'."

<sup>16</sup>It does not appear whether this expression is also used by the LoWiili.

<sup>17</sup>P. Kaberry, "Land Tenure among the Nsaw of the British Cameroons," Africa XX (1950), 313.

<sup>18</sup>Kaberry, op. cit., 314.

<sup>19</sup>Kaberry, op. cit., 313ff.

<sup>20</sup>Kaberry, op. cit., 314.

<sup>21</sup>A. N. Allott, "The Ashanti Law of Property," Zeitschrift für vergleichende Rechtswissenschaft 68 (1965), 137f.

<sup>22</sup>Allott, op. cit., 138.

<sup>23</sup>M. Gluckman, The Judicial Process among the Barotse of Northern Rhodesia (1955), 195, 298f; Ideas in Barotse Jurisprudence, 140.

<sup>24</sup>Gluckman, Judicial Process, 195.

<sup>25</sup>Gluckman, Judicial Process, 193; Ideas, 141.

<sup>26</sup>Gluckman, Ideas, 142ff.

<sup>27</sup>Gluckman, Ideas, 155f.

<sup>28</sup>Gluckman, Ideas, 163f.

<sup>29</sup>Gluckman, Ideas, 147f, 162f, 165.

<sup>30</sup>Compare what he says at p.166: "Rights over property in Barotse society always involve rights over and obligations to other persons, and all rights over and obligations to other persons have a property element. As we have seen, the Barotse state all social relationships in terms of the handling of land and things."

<sup>31</sup>Gluckman, Ideas, 165.

<sup>32</sup>He states that his translation is reasonable "even though bung'a in Barotse law does not confer any absolute title and does not correspond exactly with our everyday conception of ownership" (Ideas, 140).

<sup>33</sup>Gluckman, Ideas, 261.

<sup>34</sup>Cf. however the interesting observations of Pollock and Maitland on the tendency in early law to treat what is owed as what is owned (The History of English Law, 2nd ed., reissued 1968 with introduction by S.F.C. Milsom, 2, 178).

<sup>35</sup>Gluckman, Ideas, 164.

<sup>36</sup>I am most grateful to Dr. Simon Roberts for helpful comments on a version of this paper which was originally presented at a seminar held in May 1980 at the University of Utrecht under the chairmanship of Professor G. van den Bergh.