

LAW, LANGUAGE, CULTURE VERBAL ACROBATICS AND SOCIAL TECHNOLOGY

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I

I found it difficult to formulate the question I wanted to address in this paper. I knew that it had to do with the relations between law, culture and language and, more specifically, with the possibility and desirability of devising a culturally neutral language which could be used to describe culturally different forms of law without distorting them. Yet, whenever I tried to be more precise, I discovered subsequently that I had said too much, or too little, or both. Nonetheless, I remained convinced that there loomed a serious 'translation problem' in the field of law, which had to be dealt with, although it kept on changing its shape and sometimes disappeared altogether.

Let me try to explain by putting some of my cards on the table. My perception of the relations between law, culture and language was based on three assumptions: firstly, that all human societies had some form of law; secondly, that all forms of law were cultural constructs; and, thirdly, that all human cultures used language as their central medium of construction. Taken together these three assumptions seemed to rule out the possibility of a culturally neutral language of law, because law appeared to be not only culture-specific but also firmly tied to a particular 'natural' language in which it expressed itself. On the other hand, there existed multilingual societies which had a single system of law, and shared the same culture, and other societies which had adopted culturally alien forms of law without sacrificing their own culture, so that I also had to assume that law and culture were capable of transcending language barriers, and that law and language were capable of transcending cultural barriers.

Now it hardly needs saying that this apparent paradox merely demonstrated that I

was facing a complex and fluid state of affairs which I could not hope to capture with a single question which permitted a simple 'yes' or 'no' answer. To come to grips with it was rather like crossing a swamp without knowing how large, how deep or how soft it was.

To begin draining the swamp was not a promising option under these circumstances. Whether I liked it or not, I had to step out onto a solid looking clump of vegetation in the hope that it would carry me long enough to make out another such clump, rising in jumping distance out of the mist—until I would, with some luck, eventually reach firm ground on the other side. Besides, I had already found a guiding star: the idea of a 'grammar' of law, as a counterpart of the 'grammar' of language, which permitted linguists to describe different natural languages in an apparently culturally neutral manner, although each of them was as much a cultural construct as different forms of law. Since I knew nothing about linguistics, I had to approach my goal indirectly, starting in the field of legal anthropology, with which I was more familiar and which offered an obvious starting point in the form of the 'Bohannan/Gluckman controversy'.

As I remembered it, the 'controversy' had started by Bohannan accusing Gluckman of having distorted his account of Barotse law by using the language of Western jurisprudence (Bohannan 1969), and by Gluckman accusing Bohannan of rendering his account of Tiv law useless for comparative purposes by insisting on describing it in its own terms (Gluckman 1969). As I had far more sympathy with Bohannan's position, I had been disappointed when he had concluded the 'controversy' with a proposal which had nothing to do with translation problems in the field of law. Instead he had bypassed it by calling for a new, comparative language, consisting of "a logical structure of interrelated propositions about the working of society and culture" (Bohannan 1969: 417-18).

While the proposal had struck me as bizarre, I still thought that a review of this 'controversy' would be a convenient way of setting the scene, before moving on - in the direction of social anthropology rather than comparative law, because I could recall no stimulating discussion of my kind of translation problem which had been conducted by comparative lawyers. While I could not recall any such discussion among social anthropologists either, apart from the 'Bohannan/Gluckman controversy', I could still feel the shock I had suffered when I had discovered that the language of kinship used by social anthropologists distorted a description of the social organisation of the Melanesian societies I was trying to understand at least as much as the language of Western jurisprudence had distorted Gluckman's account of Barotse law according to Bohannan. Indeed, it had been this experience which had first suggested the idea of 'grammar' to me, although then with decidedly negative connotations. The social anthropologists, I had thought, for professional reasons of

their own, had invented a ‘grammar’ of kinship which brutally violated natural languages of kinship instead of explaining them.

My next stop would therefore be an examination of the reasons which disqualified this ‘grammar’ of kinship as a model for a ‘grammar’ of law. After these two negative lessons I would bravely jump to linguistics to establish why their ‘grammar’ of language worked, and to consider whether it could serve as a positive model for a ‘grammar’ of law. Having pondered these questions, however, I was inclined to believe that my conclusion would again have to be negative. As I saw it, the ‘grammar’ of language worked because linguists treated languages not as communication but as means of communication. That is to say, their language of grammar merely described the technological aspect of natural languages. It was not concerned with particular meanings but with the techniques employed to make meaning in general communicable. Moreover, it only worked because these techniques were themselves not verbalised and because they were apparently in truth universal. In other words, the linguists had not managed to square the circle by inventing a culturally neutral language suitable to talk about different cultural constructs. Instead their ‘grammar’ of language related to a culturally neutral technology, which was employed to construct different cultures.

The question, then, was whether it was also possible to separate law as technology from law as culture. A comparison with the ‘grammar’ of language suggested that it was not, because law was a ‘secondary’ technology. It used natural languages as a means of communication but relied itself on the meanings so communicated, and it did so in order to produce specific legal results. Even as a technology, law, it appeared, remained firmly bound to culture and language. But this did not necessarily mean that it remained bound to a particular language and a particular culture. Did law as technology, although historically produced by a particular culture and expressed in a particular language, become transportable across the boundaries of language and culture once it had become ‘operational’? Was law as technology rather like mechanical engineering? Was it as much a cultural myth to speak of ‘German’ law as of ‘German’ engineering? Was the German Civil Code as readily exportable as a Volkswagen? Was a translation of the German Civil Code into Japanese, and its administration by Japanese to Japanese in Japan, no more problematic than the translation of a Land Cruiser manual into German, and the driving of a Land Cruiser by a German driver on the Autobahn?

Although a comparison between law and mechanical engineering could be instructive, I was loath to embark on it because I dreaded that it would take me back to Bohannan’s “logical structure of interrelated propositions about the workings of society and culture”, and then on to the ultimate annihilation of culture by

technology. I was therefore happy to concede that law could be treated as a technology which was as culturally neutral as mechanical engineering - for example, a normative, rights-based, law-enforcement technology - which could be employed by culturally different societies and be described in different natural languages with no more difficulty than the technology of mechanical engineering. But this did not take us very far, because mechanical engineering differed at least in one crucial respect from law: it was, as a technology, necessarily uniform: there was and could only be one form of mechanical engineering; it did not offer cultural choices. Irrespective of the culture to which he belonged, a mechanical engineer had to apply the same physical laws, or, more precisely, he had to conform to the same universal structures inherent in nature which these laws described. Mechanical engineering utilised the 'grammar' of nature which was, as such, not a cultural construct. In the field of law, on the other hand, a choice had to be made because law could be treated as a part of culture as well as a part of nature - in the sense of also having a pre-existing, rational structure. Choosing the 'nature' path would take us to a 'grammar' of law, reflecting the universal structures in this field, the existence of which we had to assume in order to test them empirically. By contrast, the 'culture' path required us to assume that such universal structures did not exist 'naturally' but that any such structures were themselves cultural constructs which altered the state of affairs in the field of law instead of explaining it.

This created a dilemma, since both choices affected the outcome if the assumption they made turned out to be wrong. By wrongly assuming universal structures, we unwittingly contributed to an artificial 'mechanisation' of culture, while we were wasting cultural potential by ignoring actually existing universal structures instead of utilising them constructively.

As far as I was concerned, the choice was clear. Personal, 'pluralist' preferences apart, the actual plurality in the field of law - which certainly also included the potential for more than one legal technology - made the existence of a universal 'grammar' of law unlikely. Moreover, if such a 'grammar' existed, it would necessarily transform all normative forms of law into cultural hocus-pocus, because law as a normative enterprise could then only be effective if it conformed to these pre-existing universal structures, so that it was superfluous, while it was bound to be ineffective as soon as it departed from them, so that it was a sham.

For the translation problem our choice made initially little difference, since we also had to deal with the actual plurality of law, if we assumed that it was due to different cultural misinterpretations of the universal structures of human nature. Yet, our approach to the problem had to be fundamentally different.

If we chose the ‘nature’ path our aim was to solve the problem, and we would attempt to do so by focussing on similarities between different forms of law from which we could generalise in order to discover the underlying structural unity. We would solve the translation problem by removing the need to translate from one natural language of law into another, because, by the time we had finished, we would have reduced all of them to their universal ‘grammar’ which we could then describe in a culturally neutral, technical language.

If, on the other hand, we chose the ‘culture’ path we had to accept the translation problem as a continuing challenge. We would focus on cultural differences, with the aim of making them culturally transparent instead of generalising them away. Rather than developing an artificial, but culturally neutral language of law, we would try to develop the potential of all natural languages to talk about different forms of law, by making them richer, more concrete and more specific, and by decoding the cultural prejudices and preferences they contained. We would investigate the historical variability of law rather than its logical coherence. We would be interested in insights rather than theories, in understanding rather than explanation. We would make law culturally more colourful rather than scientifically more manageable, let alone technologically more efficient.

II

Although I was happy with the course of my journey, I was concerned that it had traversed a far larger terrain than I could hope to cover. I had to be selective, and a combination of a general map with a more detailed examination of one of the ‘stepping stones’ seemed to be a sensible choice. After a careful consideration of all possibilities, I settled for the ‘grammar’ of kinship as the most instructive option...

In fact, of course, things did not happen quite that way. I did have vague ideas along the lines sketched above, but instead of pursuing them by moving forwards and backwards until everything had fallen into place, I started to re-read bits of the ‘Bohannon/Gluckman controversy’. As I read on I became increasingly frustrated, because the ‘controversy’ confused the issues instead of clarifying them. In retrospect, it looked as if it had largely been an accident, caused by Bohannon rashly challenging Gluckman without appreciating what his challenge involved. The more I read, the more it resembled a charade, acted out so as to enable the two main protagonists to leave the scene without losing face, so that social anthropologists, including Bohannon, could resume playing their old games as if nothing had happened.

Had I become unduly cynical? Had the social anthropologists long solved the translation problem in their field? Apparently not - at least Gluckman admitted that there was

no difference between using the language of Western social anthropology and the language of Western jurisprudence in tackling these sorts of [translation] problems. Theoretically, both are equally distorting, even while they may be illuminating. (Gluckman 1969: 372).

Yet (so the message) social anthropologists had not only learned to live with these unavoidable distortions but had even managed to turn them into a source of illumination.

How were they doing it? If I wanted to find out I had to move to a non-controversial setting, preferably to an area of social anthropology where social anthropologists felt professionally less threatened than at the border between social anthropology and law.¹ What better place to look than the field of kinship where the language of Western social anthropology had struck me as being remarkably distortive, as well as entirely unilluminating. Since I expected plain sailing, I did not care which version of this 'grammar' of kinship I considered. As both Gluckman and Bohannan were Africanists, Radcliffe-Brown (1950) seemed an appropriate choice.

Re-reading that essay with the 'Bohannan/Gluckman controversy' fresh in mind led to a minor revelation. In addition to displaying the expected underlying biologism, Radcliffe-Brown relied, on the one hand, even more heavily, and much less self-consciously, on Western jurisprudence than Gluckman. On the other hand, his 'grammar' of kinship looked suspiciously like the new language of comparative anthropology proposed by Bohannan. Moreover, Radcliffe-Brown used the same kind of 'verbal acrobatics' which characterised the contributions of both Bohannan and Gluckman to the 'controversy', although his 'grammar' of kinship was presented as if it could not possibly be regarded as controversial. In other words, these verbal acrobatics were not polemical aberrations but part of the normal discourse of social anthropology. They were performed habitually in order to get around a translation problem which was by no means restricted to the field of law. On the contrary, with the exception of Bohannan, social anthropologists were treating the language of Western jurisprudence as part of the 'solution', rather than

¹ After reading the Preface to Bohannan (1957), I had little doubt that a personal uneasiness which Bohannan had felt in relation to law and lawyers had played a major part in getting the 'controversy' started.

as constituting a problem of its own.

Reading between Radcliffe-Brown's lines, it was easy to see what this translation problem was. It was caused by the embarrassing fact that social anthropologists were professionally incapable of describing the realm of 'the social'. They had to translate it into social anthropology before they could begin to do their job—at least in theory. In practice, there was little left to do, once this translation had been completed, because the language of Western social anthropology did not describe any living society but an artificial world of social anthropology which was largely self-explanatory since it was assumed to have an inherent 'systemic' structure. All social anthropologists had to do was to feed some suitable principles into 'the system', which would then automatically take care of the rest.

The tricky bit was the 'translation' of the unmanageable social into predictable social anthropology, because it had to be performed without the translators becoming aware of what they were doing. After all, social anthropologists could not admit that the 'grammar' they were using was not a 'grammar' of the social but their invention. The question then was whether there was any point in examining Radcliffe-Brown's verbal acrobatics, if all he had to offer was an imaginary 'grammar' of kinship, expressed in a language which was incapable of describing any actual language of kinship without distorting it? Although it was tempting to move straight to the 'grammar' of language, there were also strong reasons for persisting.

Firstly, Radcliffe-Brown did not just use the language of Western jurisprudence to assist him in his analysis, he described systems of kinship and marriage essentially as 'legal' systems, superimposed on a biological (or is it biotic?) foundation. Moreover, by treating the social as the meat in a bio-legal sandwich, he not only solved his descriptive problems but he also denied legal theory any explanatory value in the social realm. By turning the language of Western jurisprudence into a descriptive tool he reduced law to single, universal and uniform technology. To be sure, there was still a 'grammar' of law, but it could not possibly explain anything, since everything was legally identical. What required explanation were the differences in the realm of the social, and they could only be explained in terms of universal, but culturally variable social principles. Law was itself no more than a specialised means of communication, a way of talking about something else, namely the social, which unfortunately had no language of its own. Yet, it was precisely for that reason that there could be a non-verbalised, universal 'grammar' of the social which social anthropologists could describe in their own 'grammatical' language.

Secondly, Radcliffe-Brown's verbal acrobatics were plainly not calculated. Yet they

were not antics but purposive steps which carried him towards his goal. It was unlikely therefore that they were a professional disease restricted to social anthropologists. It was far more probable that they were part of his general cultural baggage which goaded him along a culturally desirable road. Since it was equally unlikely that I had recognised them as acrobatics because of my superior intelligence, I had to assume that I had only done so because I personally did not find Radcliffe-Brown's goal culturally attractive, whereas I was just as prone to engage in such verbal acrobatics when following my own line of argument.

Thirdly, if Radcliffe-Brown's verbal acrobatics had to do with an inability to talk about the social in social terms, we were in deep trouble, whichever way we turned, because his 'grammar' of kinship was then part of a general, anti-social cultural enterprise. On the other hand, Radcliffe-Brown's reliance on the language of Western jurisprudence did not mean that Western culture was pro-law. Rather, it was pro-technology. It favoured a technological view of law, but it did not favour a normative technology. Indeed, it merely tolerated the normative as a stopgap until a mechanisation of human society could be completed. Radcliffe-Brown's 'instinctive' reliance on biology was a good indication of things to come. Yet, this did not mean that Western culture was pro-nature either, favouring the physical over the mental. Far from it, it favoured regularity over regulation. It was anti-social as long as the social could not be understood intellectually as a rational structure, which could be managed technologically, in the same way as the applied natural sciences managed nature.

Radcliffe-Brown was merely floating with this cultural current by insisting that it was not law which ruled society but some structural, social principles. He was still dreaming the dream of an intellectual unity of the social and natural sciences. But then Western culture was favouring technology rather than science. What counted culturally was whether something worked, no matter why or how, so much so that the working of a technology proved the assumptions on which it was based, even if they were known to be wrong. Western culture was not about knowing as much as one could know, but about knowing as much as one could use and about disregarding what one could not.

While I was not concerned about the absurd belief of a car mechanic that he 'really' understood how cars worked - as long as he could fix them - I was worried about social scientists who believed that they knew how society worked. "Where is the harm in that?," you may ask, "granted that their belief is also absurd. Social scientists are not in the business of fixing societies, and their theories have no more impact on society than a flat-earth theory has on the shape of our planet." Wrong, I say, social science, pursued as a technology, contributes to an actual flattening of the social universe. It is a prescriptive, rather than a descriptive and analytical

enterprise. It creates a picture of the social which fits between the intellectual and cultural blinkers of its practitioners, thus enabling them to do something with the picture so created - and to do something theoretically is only the first step. Social science pursued as technology cries out for its practical application. It tempts its practitioners to follow the example of the lawyers and economists and to try to fix society by applying their theories, by instrumentalising their artificially limited understanding.

This was what worried me, since even the most bizarre social theories will ‘work’ in practice, if a social machinery is created to apply them, although the results may be quite different from those intended. Worse still, the accumulative effect is a gradual reduction of the actual social potential because its shapes are talked in and out of existence. The social, including law as a social phenomenon, is primarily language. But it is language as cultural communication, and not language as a technology of communication, so that imaginary social ‘grammars’ restrict communication instead of facilitating it.

As I saw it, everything spoke against searching for a ‘grammar’ of society and in favour of investigating the differences between the various natural languages of culture. But what if such a ‘grammar’ actually existed and I merely did not like the idea that it did? Yet, if it did, it had to operate independently of culture and language so that anything I, or anyone else, said about it was immaterial. This finally convinced me that I should examine Radcliffe-Brown’s ‘grammar’ of kinship. Perhaps a warning example could do more to discourage lawyers and sociologists of law from tying themselves into similar knots by searching for a culturally neutral ‘grammar’ of law than even the most daring verbal acrobatics on my part.

III

I want to begin my demonstration with Radcliffe-Brown’s (RB) description of his comparative/analytical method.

Social systems are compared so that their differences may be defined and beneath their differences more fundamental and general resemblances may be discovered. One aim of comparison is to provide us with schemes of classification. Without classification there can be no science.

Analysis, as the term is here being used, is a procedure that can only be applied to something that is in itself a whole or synthesis.

By it we separate out, in reality or in thought, the components of a complex whole and thereby discover the relation of these components to one another within the whole. To arrive at an understanding of kinship systems we must use comparison and analysis in combination by comparing many different systems with one another and by subjecting single systems to systematic analysis.

A study of kinship systems all over the world by this method reveals that while there is a very wide range of variation in their superficial features there can be discovered a certain small number of general structural principles which are applied and combined in various ways. It is one of the first tasks of a theoretical study of kinship to discover these principles by a process of abstractive generalization based on analysis and comparison. (Radcliffe-Brown 1950: 2).

Although this sounds straightforward, it is no more than a circular self-justification which ties method to a particular, anticipated result. Why does RB describe the social as a “system”? Because he wants to define “analysis” as a process which can only be applied to something which is itself a “whole”. Analysis discovers the relations which the components of a complex whole have to (not with!) one another. Analysis is only ‘systemic’ analysis - just as there can be (!) no science without classification, which utilises the structural principles which are shared by different systems. Moreover, these structures also replace the relations which the components of each system have to one another. The realm of the social becomes society as a thing-like object whose members (i.e., components) behave in relation to each other in accordance with universal, structural principles, the existence of which is in general taken for granted, although the actual existence of particular principles, which the social anthropologist has hypothesised, is to be tested against actually existing phenomena.

This gives the entire method an experimental, natural science flavour, although it can obviously only work ‘scientifically’, if the wishful assumptions on which it is based - and which are themselves not tested - are valid. In short, RB uses his verbal acrobatics to turn assumptions into fictions which are presented as facts, because their existence is necessary in order to enable him to do the kind of social anthropology he wants to do, regardless of the actual ‘design’ of the social reality he is observing.

Let us now observe how RB applies this method to the field of kinship or, rather, the kinship *system*, which he deftly transforms into a system of kinship *and*

marriage. I am afraid we shall need long quotations here to illustrate the style adopted.

Two persons are kin when one is descended from the other, as, for example, a grandchild is descended from a grandparent, or when they are both descended from a common ancestor. Persons are cognatic kin or cognates when they are descended from a common ancestor or ancestress counting descent through males and females.

The term ‘consanguinity’ is sometimes used as an equivalent of ‘kinship’ as above defined, but the word has certain dangerous implications which must be avoided. Consanguinity refers properly to a physical [!] relationship, but in kinship we have to deal with a specifically social relationship. The difference is clear if we consider an illegitimate child in our own society. Such a child has a ‘genitor’ (physical father) but has no ‘pater’ (social father). Our own word ‘father’ is ambiguous because it is assumed that normally the social relationship and the physical relationship will coincide. But it is not essential that they should. Social fatherhood is usually determined by marriage. The dictum of Roman law was *pater est quem nuptiae demonstrant*. There is an Arab proverb, ‘Children belong to the man to whom the bed belongs’. There was a crude early English saying, ‘Whoso boleth my kyne, ewere calf is mine’. Social fatherhood as distinct from physical fatherhood is emphasized in the Corsican proverb, *Chiamu babba a chi mi da pane*.

The complete social relationship between parent and child may be established not by birth but by adoption as it was practised in ancient Rome and is practised in many parts of the world to-day.

In several regions of Africa there is a custom whereby a woman may go through a rite of marriage with another woman and thereby she stands in the place of a father (pater) to the offspring of the wife, whose physical father (genitor) is an assigned lover.

Kinship therefore results from the recognition of a social relationship between parents and children, which is not the same thing as the physical relation, and may or may not coincide with

it. Where the term 'descent' is used in this essay it will refer not to biological but to social relations. Thus the son of an adopted person will be said to trace descent from the adopting grandparents.

The closest of all cognatic relationships is that between children of the same father and mother. Anthropologists have adopted the term 'sibling' to refer to this relationship; a male sibling is a brother, a female sibling is a sister. The group consisting of a father and a mother and their children is an important one for which it is desirable to have a name. The term 'elementary family' will be used in this sense in this essay. (The term 'biological family' refers to something different, namely, to genetic relationship such as that of a mated sire and dam and their offspring, and is the concern of the biologist making a study of heredity. But it seems inappropriate to use the word 'family' in this connexion.) We may regard the elementary family as the basic unit of kinship structure. What is meant by this is that the relationships, of kinship or affinity, of any person are all connexions that are traced through his parents, his siblings, his spouse, or his children. (Radcliffe-Brown 1950: 4-5)

RB's main task in these paragraphs is twofold: to show, on the one hand, that kinship has a universal, biological base; but that it has, on the other hand, nothing to do with biological - or physical! - but with social relations. But kinship as a system of social relationships is quickly transformed into (a system of?) corporate bodies. This gives RB another opportunity to distance anthropology from biology, because his 'elementary family' has nothing to do with the so-called 'biological family', consisting of a mated sire and dam and their offspring - since, so the implication, it would be plainly ridiculous to speak of 'kinship' among animals.

How does RB move from the biological to the social in the human sphere? With the help of the ambiguity of the English term 'father', which is contrasted with the clear distinction between *pater* and *genitor* in Ancient Rome, and the social position of the illegitimate child in "our" society.

First to Rome! Instead of quoting *pater est quem nuptiae demonstrant*, RB could have quoted the dictum *pater est semper incertus*, which shows that the Roman term *pater* was just as ambiguous as the English term 'father'. Moreover, did Roman law have the miraculous power of turning the mother's husband into a social father or did the dictum quoted merely establish a legal fiction, or perhaps only a rebuttable

assumption? Could a Roman husband, for example, have declared to be legally illegitimate the children borne by his wife 15 months after he had taken up a lone posting in colonial Asia?

What about ‘our’ society? What does the legal ‘illegitimacy’ of a child in contemporary England have to do with the presence or absence of a social father? Whereas an ‘illegitimate’ child whose mother has a *de facto* marriage with a man (not necessarily its genitor) may have a social ‘father’, a ‘legitimate’ child whose legal father has died, or whose parents’ legal marriage has been legally terminated by a divorce, may have none. However, to combine selective social blindness with a strategically over-simplified version of law is far more convenient. It gets RB where he wants to be - and the ‘verbal acrobatics’ this involves have become so much second nature that he even feels utterly secure when telling us that the child of an adopted person not only has a social grandchild/grandparent relationship with that person’s adoptive parents but “will be said to trace descent” from them - irrespective of whether or not the child, or the society to which it belongs, is in the least interested in ‘tracing descent’ in this manner.

Now to the ambiguity of the English term ‘father’ - an argument to which RB returns, claiming that the same applies to the English term ‘mother’. Here the extended argument is used to deal with the fact that many African societies speak of ‘female fathers’ and ‘male mothers’ - which to “some Europeans... may seem the height of absurdity” (Radcliffe-Brown 1950: 25).²

The reason for this is simply a confusion of thought resulting from the ambiguity of our own words for father and mother. There is the purely physical relation between a child and a woman who gives birth to it or the man who begets it. The same relation exists between a colt and its dam and sire. But the colt does not have a father and a mother. For there is the social (and legal) relation between parents and children which is something other than the physical relation. In this sense an illegitimate child in England is a child without a father. In the African tribes with which we are dealing it is the social and legal relationship that is connoted by the words which we have to translate ‘father’ and ‘mother’. To call the father’s sister ‘female father’ indicates that a woman stands in a social relation to her brother’s son that is

² RB also takes this point a step further by assuring us subsequently that “we tend to judge other people’s customs by our own...”, “unless we are anthropologists” (Radcliffe-Brown 1950: 43).

similar in some significant way to that of a father with his son. It is more exact, however, to say that a father's sister is regarded as a relative of the same kind as a father's brother, with such necessary qualifications as result from the difference of sex (Radcliffe-Brown 1950: 25-26).

Who is confusing whom in this passage? The confusion to which RB refers could not possibly arise if the English terms 'father' and 'mother' were ambiguous in the sense required by his argument. On the contrary, the African terms can only seem absurd because the English terms are decidedly unequivocal as far as the sex of fathers and mothers is concerned. To be sure, the English terms 'father' and 'mother' are ambiguous because they can refer to a biological as well as a social relationship between a man and a woman and child - and ideally to both - but the English language is far richer than RB suggests in this context.

Who or what forces us to translate as 'father' and 'mother' the African words which stand for "the social (and legal [!]) relation between parents and children"? Is it the same 'force' which causes RB to insist that the social roles of males and females are necessarily qualified by the difference of sex, apparently in universally predictable ways? Or is it the force which justifies RB in claiming that it is "more exact" to say that the African term 'female father' means that "a father's sister is regarded as a relative of the same kind as a father's brother" - although the African languages in question may have no term for 'father's sister' or 'father's brother', although their words 'father' and 'mother' may be applied to males as well as females without any linguistic qualification and although they may have quite different words for *genitor* and *genitrix*?

This does not mean that the African societies which recognise 'female fathers' or 'male mothers' have transcended 'biology' in their social relations - the terms themselves, if their translation is 'literal' (which I doubt), demonstrate the opposite - but a biologicistic social anthropology will certainly not help us to understand how they have dealt with the co-existence of nature and culture in human society, and RB's reluctance to let go of biology as the basis of kinship has primarily professional reasons. It provides anthropologists with a simple 'egocentric' genealogical grid into which all possible forms of kinship can be fitted.

Since every human being has to have, bio-logically, two parents, four grandparents and so on, the vertical ascent line of genealogy is assured, but a genealogical grid also has to have a horizontal dimension: it requires that EGO has siblings in order to become operative as a system - but it then provides a conveniently simple system

because every genealogical relationship can be expressed with the help of six terms for parents, children and siblings: father and mother, son and daughter, brother and sister. This makes a descent-based kinship system sexist, as well as biologicistic and individualistic. Equally importantly, a genealogical grid does not show social relationships but the biological status of an individual in relation to another, thus reducing the social relationship to a kind of personal attribute with distinct possessive, if not hierarchical undertones, expressed in statements such as: “You are my father”, “I am your son”.³

This brings us to RB’s central problem: his inability to come to grips with social relationships as relationships. He solves it by jumping straight from biology to law - and this jump is hardly noticeable, because he simply has to translate genealogical status into legal rights and duties.

Right from the start RB takes it for granted that a system of kinship and marriage expresses itself in the form of “customs”, which perform functions within the system (Radcliffe-Brown 1950: 3). These customs soon become “norms”, which we have to seek in the study of a kinship system. This also poses no problem because we can obtain statements from members of any society “as to how two persons in a certain relationship ought to behave towards one another”. Moreover, these “norms of behaviour” have an important “jural element”, so that the “relationship can be defined in terms of rights and duties” (Radcliffe-Brown 1950: 10-11).

Having stuck out his neck so far, RB now has to make sure that he avoids a complete identification of the social with the legal. He therefore assures us that only some of these customary rights and duties - and only in some societies - are subject to legal sanctions - which, according to his strategically narrow definition, means “that an infraction can be dealt with by a court of law”. This has the added advantage of allowing RB to distinguish law from other normative systems, because all of these “customary rules” are backed by “what may be called moral sanctions sometimes supplemented by religious sanctions” (Radcliffe-Brown 1950: 11).

Now RB can safely borrow from “legal terminology”, in particular the distinction

³ The kinship terms called by RB “self-reciprocal”, which are used in African societies by partners in a social relationship to address each other are useless for genealogical purposes. They are also ideologically counterproductive because they are, however socially asymmetrical these relationships may be, essentially non-hierarchical, non-possessive, non-sexist and non-individualistic.

between *jus in personam* and *jus in rem* - the latter of which can, so he claims, also give its holder what he elects to call a “possessive right” over another person, allowing, for example, an English husband to sue for injuries inflicted upon his wife. For RB such a *jus in rem* is not an absurd legal creature⁴ but an important building block for most African systems of kinship and marriage because they too give a husband a possessive right in relation to his wife which is infringed “if a man commits adultery with her or if someone kills or abducts her”. On the other hand, it is also helpful to contrast these ‘customary’ possessive rights with contractual ‘legal’ rights. Kinship relations, we are told, are not like contractual relations because they “are not entered into voluntarily and normally continue throughout life”. This applies even to a marital relationship although it is “entered into”, because it is “best described as a union”, since the rights and duties of husband and wife “are incidental to the relationship in the same sort of way as the rights and duties of parents and children” (Radcliffe-Brown 1950: 12).

If we expect to be finally told which “sort of way” this is, we are mistaken; for it is at this point that RB produces his possessive rights over persons. This allows him to sidestep the awkward question as to whether African jurisprudence perceives adultery as injuring ‘the marital union’ rather than a possessive right of the husband or whether the husband’s claims are, perhaps, based on the infringement of a customary obligation which the adulterer owes the husband as a kinsman rather than as a husband. To work instead with individual, possessive rights is certainly simpler, although it tells us nothing about the social relationships involved.

The crux is that RB does not know how else to deal with social relationships. As we have seen, his starting point is that kinship “results from the recognition of a social relationship between parents and children” (Radcliffe-Brown 1950: 4). But he quickly moves from this inter-generational, social relationship to an intra-generational, “cognatic descent” relationship between children of the same father and mother. The next step is to replace this ‘sibling relationship’ by male and female siblings who are [!] “a brother” and “a sister” - and who are, together with their father and mother, the components of the ‘elementary family’ as a social group. However, this social group is, in turn, transformed into the “basic unit of kinship structure”. Nonetheless we are given to understand that this structural unit actually exists ‘out there’ as the foundation of all human societies.

⁴ Does that also mean that a man can only sue for an injury which has been inflicted on him because he has a ‘possessive right’ over his own body, or that a child can sue if its father has been killed only because it ‘owned’ him when he was still alive?

Just as, according to RB, there can be no science without classification, there can be no human society without the elementary family, without brothers and sisters and fathers and mothers - or without a descent-based social structure. For this reason RB's genealogical terminology is not an artificial, professional language but a description of 'the real thing' which actual human societies only imperfectly reflect - so much so that social anthropologists are entitled to classify the terminology used by African societies to describe their own social organisation as 'classificatory' if it does not coincide with their own terminology which they have classified as 'descriptive'.

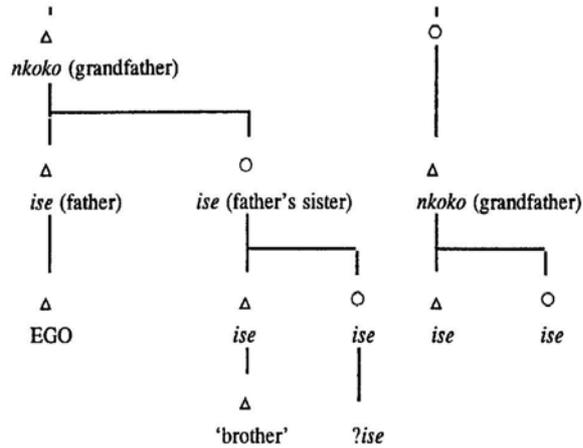
Such departures happen frequently. In particular, many African societies have the strange urge to apply "terms which apply [not: are applied by anthropologists] to lineal relatives ... also to certain collateral relatives". For example, the term 'father' is also applied to the father's brothers and the term 'mother' also to the mother's sisters. As a result in the next generation a distinction has to be made "between two kinds of cousins", namely 'cross-cousins' (the children of father's sisters and mother's brothers) and 'parallel cousins', "who although 'collateral' in our sense are classified as 'brothers' and 'sisters'" (Radcliffe-Brown 1950: 8). Fortunately there is a kind of reverse process, because these "classificatory systems" also distinguish - according to RB again "necessarily" - "between near and distant relatives in the same category", which happily happens to follow the descriptive, genealogical grid of social anthropology and therefore eventually brings us back to 'normal'. "Thus amongst the men referred to as 'fathers' the nearest relative is, of course, the actual 'own' father. After him come his brothers and after them his first parallel cousins ..." (Radcliffe-Brown 1950: 9).

Even if African societies actually proceed in this fashion - which I find hard to believe - the fact remains that all the 'father's brothers', 'mother's sisters' and 'parallel cousins' do not exist 'socially' in the societies in question, so that we seriously distort African social reality if we 'translate' it into a genealogical grid instead of describing it in its own terms.

Is it nonetheless theoretically illuminating to do so? Judging by RB's treatment of "the arrangement of nominal generations in the Nkundo of the Belgian Congo" - based on the "not very clear" statements of Father Hulstaert (Radcliffe-Brown 1950: 38) - this is far from certain.

According to RB the Nkundo not only call all members, male and female, of their patrilineage belonging to their father's generation 'father', but also the children of their female 'fathers'. By contrast, they call 'children' the children of their mother's brothers - whom they call 'male mothers' - although they belong, like the children of their 'female' fathers, to their own generation.

Consistently with this a man treats the children of his father's sister's son (who is 'father' to him) as 'brothers' and 'sisters'. A diagram may help to make the matter clear.



Since my father calls his father's sister's children 'fathers' I call them 'grandparents', and I call the children of my father's father's sister's son 'fathers' male and female. Father Hulstaert does not tell us the relation of a man to the children of his father's sister's daughter (who is his female 'father'). It seems very probable that they also are male and female 'fathers'. If this be so, then for any person there is a series of female lines each stemming from his own lineage; the descendants through females of a father's sister or a father's father's sister are 'fathers' to him and rank above him, he being 'child' to them. For our present purpose the Nkundo system affords another example of the use of terms having a generation reference to establish relations of rank, together with the use of such terms to establish categories containing relatives of different real generations. Relatives of one's own generation are given superior rank by being called 'father'.

It is amazing what one can do with a few incomplete and unclear statements, if one thinks one knows the underlying structure. The problem is that there are more than one, rather different possible structures, and that they may be less universal and 'logical' than we might like them to be. Why, for example, should a Nkundo say: "Since my father calls his father's sister's children 'father', I call them 'grandparents'", rather than saying: "Since I call my father's father's sister

‘grandfather’, I call her children ‘father’ and therefore their children ‘brother’ and sister”⁵ More to the point, can a Nkundo make the statement RB attributes to him? To begin with, he would not say ‘father’s sister’ but ‘father’.⁶ It is also doubtful that he would call the children of his female ‘father’ her ‘children’, considering that he is himself her ‘child’ and they are his ‘fathers’. Is it not more likely that a Nkundo perceives the children of his father’s sister not as her ‘children’ but rather as the ‘children’ of their own male ‘father’, to whose patrilineage they belong?

In other words, does Nkundo kinship follow a path which differs fundamentally from RB’s genealogical grid? Does it, for example, imply that only patrilineages (rather than individuals) can have children, who are ‘fathered’ by all its male and female members of the previous generation and ‘mothered’ by a range of other patrilineages? Does it further imply that a Nkundo can only have sibling relationships within their own patrilineage - and that this is the reason that they use ‘inter-generational’ terms for members of other patrilineages who belong to their own generation? Do Nkundo have ‘mothering’ obligations in relation to the children of their ‘male mothers’ because the patrilineage of these men has provided them with their own ‘female mothers’, and a claim to be ‘fathered’ by the children of their ‘female fathers’ husbands because their own patrilineage has provided them with their ‘female mothers’ - and does that explain why the former are called ‘children’ and the latter ‘fathers’?

I do not know the answer to these questions, but I am confident that an approach which tried to follow the currents of Nkundo culture would produce a socially far more meaningful picture than RB’s attempt to force the information into a plainly

⁵ Another alternative would be that the Nkundo call all children and children’s children of their ‘female grandfathers’ - but see below in the text - also ‘grandfathers’, just as it would logically make as much sense to say that the Nkundo do *not* distinguish terminologically between the children of the male and female children of their fathers’ sisters.

⁶ I should add, however, that I find it hard to believe that the Nkundo can only address the female members of their patrilineage belonging to their father’s generation as ‘fathers’. Is there not also a Nkundo counterpart to ‘aunt’? Or is there none because all Nkundo women live with their respective husbands’ patrilineages, so that Nkundo children are only surrounded by mothers? Do the Nkundo have a ‘classificatory’ term for ‘mother’ which they apply to all the wives of their ‘fathers’, although these women may belong to different patrilineages? Or do the Nkundo perceive the relationship between sisters-in-law (and perhaps also brothers-in-law) as ‘spousal’? Are there also ‘female husbands’ and ‘male wives’?

inappropriate genealogical grid. The disadvantage of such an approach is that the resulting picture would be 'anthropologically' more difficult to handle because it is essentially holistic and resists being cut into analytically convenient pieces. RB's neat 'ranking' argument, for example, loses much of its weight if we take into account that the same Nkundo who is called 'father' by some members of his own generation is called 'child' by others, and that he calls still others 'child' or 'father'. In contrast to genealogical links, social relationships are rarely black or white but usually display a changing mixture of lighter and darker grey, because they represent a social potential the utilisation of which is influenced by a number of variables. It is therefore professionally far more satisfying to assert that Africans measure the 'nearness' of 'classificatory' relationships in genealogical terms than to deal with the multitude of social factors which can affect them. But this makes the assertion no less absurd. Did RB seriously believe that an African child had a 'nearer' social child/father relationship with its 'own' father's 'own' brother whom it had never seen than with a genealogically more distant 'classificatory' father who had lived all its life next door? Of course not, but then he was not concerned with social reality but with social anthropology.

The same is the case with the search for a culturally neutral, universal language of law: it will merely serve professional convenience rather than contributing to a better understanding of law. But the fact that *African Systems of Kinship and Marriage* was reprinted at least six times during the 'Bohannan/Gluckman controversy' should perhaps make us think twice. Perhaps it is not knowledge, as the old saying tells us, but rather the strategic dispensation of ideologically attractive misinformation which gives power, even academically, so that the real art is to learn not to know what we are doing, so that we may be able to eat our cake and keep it by keeping our innocence and still reaping our rewards.

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