

MAIN TRENDS IN GERMAN ETHNOLOGICAL  
JURISPRUDENCE AND LEGAL ETHNOLOGY

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1. THE INFLUENCE OF JURISTS ON GERMAN  
ETHNOLOGICAL JURISPRUDENCE

1.1 Introduction

German ethnological jurisprudence (ethnologische Jurispru-

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20 Journal of Legal Pluralism (1982)

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denz or ethnologische Rechtsforschung: for a discussion and definition of both terms see Adam, 1919:17-20) began its work under the assumption that law manifests itself among all the peoples of the world in the form of legal rules. It consequently behaved the comparative jurist who was interested in the laws of foreign, "exotic" peoples, to elucidate these rules and to write them down in a systematically ordered code.

The theoretical system and the terminology for performing this task were, for the greater part, derived from European legal systems. Ethnological jurisprudence in Germany was at first and for a long time solely the work of lawyers or jurists and not of ethnologists or anthropologists. It is therefore somewhat anachronistic to take the founders of ethnological jurisprudence in Germany to task from a present-day anthropological point of view for their "inadequate methodology" and for "serious theoretical faults," as Nader, Koch, and Cox (1966:268) have done, apparently in ignorance of the particular aims and methods of the pioneers of ethnological jurisprudence. The basic assumptions of the founders of ethnological jurisprudence concerning "primitive law" may have proved to be wrong, but their mistakes as well as their merits must first of all be weighed in the context of the historical situation in which they developed this new academic discipline. Before their time, there had appeared the works of J. J. Bachofen (Das Mutterrecht, 1861), Sir Henry Maine (Ancient Law, 1861), J. F. McLennan (Primitive Marriage, 1865), and L. H. Morgan (Systems of Consanguinity and Affinity, 1871; Ancient Society, 1877). These books--all of them by learned jurists--had laid the foundations of modern ethnology and social and cultural anthropology. But they had not created an "ethnological jurisprudence," i.e. the scientific treatment of "exotic," non-European law on its own merits with the methods of jurisprudence.

## 1.2 The Evolutionist Method of Albert H. Post

The first stepping stones in the direction of such an endeavour were laid by Albert Hermann Post (1839-1895), who was a judge at a regional court in Bremen. In 1872 he published his first book on comparative law: Einleitung in eine Naturwissenschaft des Rechts [Introduction to a Science of Law]. The title of this book proclaimed a program: Post wanted to get away from the speculative approach of philosophy of law in order to establish an inductive, scientific method capable of reconstructing the development and evolution of law from its very beginnings up to the present time.

In his second book, entitled Die Geschlechtsgenossenschaft der Urzeit und die Entstehung der Ehe. Ein Beitrag zu einer

allgemeinen vergleichenden Staats- und Rechtswissenschaft [The Lineage Community of Ancient Times and the Origin of Marriage. A Contribution toward a General Comparative Science of State and Law] (1875), Post set forth his belief that a comparative method entitles the researcher "to pull together the analogous [gleichartigen] facts taken out of the most diverse times and from the most diverse peoples" because "unchangeable natural laws govern the lives of all peoples, especially the life of the body politic and the law. These laws may be established by comparing the corresponding periods of the different peoples." This method presupposes:

that all steps of civil and legal organisation exist side by side on earth--from the most primitive community of peace [Friedensgenossenschaft] up to the most developed political system [Staatswesen], and that every higher organism has developed previously from most primitive stages up to its later stage in conformity with the sequence of natural law, and that every higher organism still embodies the rudiments of the whole sequence of stages, recognizable to the trained eye (Post, 1875:IV-V).

Post was thus an "evolutionist" in the purest sense. He thought, for instance, that the Geschlechtsgenossenschaft [lineage or sib community] was the original form of human society, characterized by a community of wives, children, and chattel, "and there was no individual property at all" (Post, 1875:16). From this stage monogamous marriage developed through intermediate steps of a "restricted community of wives," polyandrous, and polygynous marriage. Post brought together examples of customs from the most diverse populations of the world as "proofs" for this general evolutionary pattern. Yet Post refuted Bachofen's idea of a gynaeocracy or matriarchy as a "normal stage of development in the history of peoples" (Post, 1875:94) since women are, even in matrilineal societies, excluded from succession to property and to positions of authority; they only function as intermediate social links.

Post expounded these ideas in many further publications such as Der Ursprung des Rechts [The Origin of Law], 1876; Die Anfänge des Staats- und Rechtslebens [The Beginnings of Political and Legal Life], 1878; Bausteine für eine allgemeine Rechtswissenschaft auf vergleichend-ethnologischer Basis [Elements of a General Jurisprudence on a Comparative-Ethnological Basis], 1880/81; Die Grundlagen des Rechts und die Grundzüge seiner Entwicklungsgeschichte [The Foundations of Law and the Fundamental Traits of

Its Historical Development], 1884; Einleitung in das Studium der ethnologischen Jurisprudenz [Introduction to the Study of Ethnological Jurisprudence], 1886. (For a thorough critique of Post's work see Trimborn, 1928:429-447.)

### 1.3 The Universalistic Comparative Approach of A. H. Post and Josef Kohler

Post's magnum opus, which appeared in two volumes one year before his death, was entitled: Grundriss der ethnologischen Jurisprudenz [Outline of Ethnological Jurisprudence], 1894. In this work, Post attempted to assemble in a systematic manner the knowledge of his time with regard to the laws of all ethnic groups, organized according to the different fields of law. "There are . . . certain fundamental forms in the law of the peoples, which recur in essentially the same form at all times and at all places in innumerable local variations" (Post, 1894, I:IV).

In the first volume of his Grundriss he describes the Universalrecht der Menschheit [the universal law of mankind] in terms of different forms of social organisation, since "the law is a function of social formations" ["Das Recht ist eine Funktion der sozialen Verbände"] (Post, 1894, I:1), created by the Volksgeist [the 'spirit' or 'mentality' of a people]. The study of comparative law by the "Historische Rechtsschule," founded by Gustav Hugo and Carl von Savigny, had, according to Post, received "a considerable enlargement and deepening through ethnology--that new science which deals with the life of all nations according to a method arising purely from the natural sciences and which has taken into its realm all peoples on earth" (Post, 1894, I:2ff.).

The comparative ethnological method had, according to Post, led jurisprudence to the discovery "of far-reaching parallels in the laws of all peoples on earth which could not be reduced to accidental correspondence, but which could only be regarded as emanations of the common nature of mankind" (Post, 1894, I:4). The genuine field of ethnological jurisprudence, therefore, consists in those legal norms and legal institutions which recur among all peoples on earth (Post, 1894, I:7). Law is a universal phenomenon: "There is no people on earth without the beginnings of some law. Social life belongs to human nature and with every social life goes a law" (Post, 1894, I:8). Even the "least cultivated" [die allerunkultiviertesten] peoples possess some form of customary law [Gewohnheitsrecht], "an inherited treasure of legal rules" (Post, 1894, I:11).

In the Grundriss Post is less concerned with the evolution

or development of law than with the systematic ordering of the bewildering multitude of legal customs. Although especially the second part of his Grundriss resembles a modern code or statute book, divided into chapters and paragraphs such as "Das Personenrecht" [the law of persons], "Das Familienrecht" [family law], "Das Erbrecht" [the law of inheritance], etc., Post takes a functional view of law: it is, in his view, an emanation of the respective social order and of psychological factors. However, he never questions the fundamental idea of a continental lawyer, that law is everywhere expressed in codifiable rules.

Another cornerstone of ethnological jurisprudence was laid by Franz Bernhöft and Georg Cohn who in 1878 edited the first volume of the Zeitschrift für vergleichende Rechtswissenschaft [Journal of Comparative Jurisprudence]. In his introductory essay "Über Zweck und Mittel der vergleichenden Rechtswissenschaft" [On the purpose and methods of comparative jurisprudence], Bernhöft (1878:2) welcomed efforts "to expand the limits of jurisprudence." Legal philosophy and the theory of natural law had been founded upon the empirical evidence and the epistemology of only two legal systems: the Roman and the Germanic. These efforts were just as inadequate as if someone wanted to found comparative linguistics on the study of only two languages. Also, with a practical view to producing new general German legal codes on a national level, Bernhöft hoped to obtain helpful suggestions from the comparative study of foreign laws "so as to learn to imitate foreign virtues and to avoid foreign faults" (Bernhöft, 1878:4). However, the final aim of comparative jurisprudence was "to find general laws of the development of law and to apply them to the history of particular nations" (id.). Bernhöft restricted himself to a consideration of the law of peoples of Indo-Germanic languages, assuming corresponding analogies in the field of law itself (Bernhöft, 1878:12). Yet he also voiced a word of warning that, in expanding its limits, comparative jurisprudence should "not transcend law in the strict sense of the word." Customs, being merely a preliminary phase of law, should only be considered insofar "as they had contributed to the formation of law." Jurisprudence "must exclude completely those people who had not yet reached this phase" (Bernhöft, 1878:37).

This ill-defined borderline between peoples with and without law was boldly transgressed by Josef Kohler (1849-1919) who joined the above-mentioned editors of the Zeitschrift für vergleichende Rechtswissenschaft from its third volume onwards in 1882. Kohler, being himself a practical jurist who had demonstrated exceptional merit in the fields of incorporeal law and commercial law (see Adam, 1919:5-8), was convinced that jurisprudence, although a practical science, did not exhaust itself in practical aims and

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purposes, but had to aspire to a history, a science, and a philosophy of law (see Adam, 1919:9). Kohler was averse to a purely formalistic jurisprudence. Law, for him, was a social phenomenon of political life (Adam, 1920:4). Kohler understood law as a "Kulturgut [cultural heritage] of the highest order" that had to be studied "in connection with the total cultural organism" of a people (Kohler, 1885, quoted from Adam, 1919:21). He saw law not as an isolated phenomenon, but as an interdependent "factor" of the mental and material culture of a people and he paid special regard to the religious foundations of law (see Adam, 1919:21; 1920:3,6).

Kohler's approach to comparative jurisprudence was strictly empirical. Starting his publications on Rechtshistorische und rechtsvergleichende Forschungen [research on legal history and comparative law] in 1882 with articles on the law of bonds and pledges and on marriage and family law in India, Kohler explored and exposed to the readers of the Zeitschrift the laws of the peoples in all corners of the earth. Some of these numerous articles had the size of full-blown books (cf., for instance, his famous "Recht der Azteken" [The law of the Aztecs], Kohler, 1895a). Out of a total of more than 2,300 scientific publications --books, articles, and reviews--written by Kohler (see the bibliography composed by his son: Kohler, 1931:12-30) no less than 106 dealt with general problems of a universal history of law, with the laws of indigenous peoples, and with the "development" of certain legal institutions on a comparative basis. Another 210 dealt with the laws of particular non-European peoples.

As early as 1887 Kohler published an article "Über das Recht der Australneger" [On the law of the Australian aborigines] and another "Über das Recht der Papuas auf Neu-Guinea" [On the law of the Papuas in New Guinea]. Basing his views on Howitt, Fison, Smyth, Eyre, and other travellers and field researchers, Kohler came to the conclusion that the Australian aborigines, however "primitive" their economic life:

possess law. They possess legal institutions which are put under the sanction of the general public, for law exists before any organisation of the state, before any court or any executory performance exists: it exists in the hearts of the people as a feeling of what should be and what should not be . . . . Although it may be left to the single individual to obtain justice for himself, and although there may be no possibility to obtain a formal decision on the question of right or wrong--law shows itself in that the community as a whole not only approves

or disapproves of the act of the individual, but also supports the one who is believed to have justice on his side in his pursuance and exercise of law (Kohler, 1887:323).

Compare this wide and yet precise concept of law with later attempts to define law as Radcliffe-Brown did, as:

"social control through the systematic application of the force of politically organised society" (Pound) . . . ; the field of law will therefore be regarded as coterminous with that of organised legal sanction . . . in this sense some simple societies have no law, although all have customs which are supported by sanctions (Radcliffe-Brown, 1952 [1933]:212).

Another "modern" anthropologist tells us that "the really fundamental sine qua non of law in any society--primitive or civilized --is the legitimate use of physical coercion by a socially authorized agent" (Hoebel, 1954:26). Neither of these two renowned authors tells us what they mean by the terms "legal" and "legitimate" on which their tautological definitions of "law" hinge!

Kohler as a jurist was far more broad-minded and less ethnocentric than many modern anthropologists in attributing law to peoples in a colonial situation of European domination that had left them virtually without rights and "law-less" in every sense of the word. Kohler's important contribution to ethnological jurisprudence may have suffered "from inadequate methodology" and "serious theoretical faults" as Nader, Koch, and Cox (1966: 268) proclaim without taking the trouble to substantiate their charges--and yet his fundamental insight into the law at work in societies that were (and are) disdained as being "primitive" or "savage" certainly surpassed that of many of his later critics. Kohler thought that there is a Rechtsgefühl [feeling for law] recognised by the public in each and every human society:

Therefore there is no people without law: there are people without courts, there are peoples that lack a state organisation or that possess one which is developed only in merest rudiments--but there is no people without law: Man cannot be Non-Man (Kohler, 1887:324).

With great acumen and assiduity Kohler utilized the ethnographic sources at his disposal long before the times of any systematic ethnographic fieldwork. In view of these severe

limitations it is amazing what he achieved. He gives, for instance, a succinct description of the Australian exogamous "class" system, especially in respect of its legal aspects (Kohler, 1887: 329-337). His exposition may be marred by evolutionist assumptions that held sway over most minds of his day, yet he knew how to differentiate where others thought in gross categories.

Kohler, in his grand effort to assemble materials for a truly comparative jurisprudence, in principle excluded no society from his investigations, however "primitive" or "developed" it may have been. These ethnocentric categories, in fact, had no meaning for him: every people had its own laws which were worth being recorded. The results of these efforts were to serve as a base for a universal science and history of law. (For an assessment of Kohler's life and work see Adam, 1919 and 1920).

## 2. APPLIED ETHNOLOGICAL JURISPRUDENCE IN GERMAN COLONIAL ADMINISTRATION: THE FRAGEBOGEN PROJECTS

Kohler's efforts toward founding a universal comparative jurisprudence soon came up against limits resulting from the relative paucity of published materials pertaining to the laws of non-European, especially non-literate peoples at the turn of the last century. Yet Kohler was not discouraged by this circumstance. After he had exhausted the relevant legal material in the existing literature with his astounding assiduity, an impressive example of German Gründlichkeit, he searched further for original material, based on observations and information on legal norms from other societies. His academic interest was combined with the conviction that the knowledge of legal norms among overseas peoples could be usefully applied in the administration of the newly acquired German colonies. From the nineties of the last century onwards, Kohler had succeeded in gaining the support of the German Imperial Government, especially the Foreign Office, for his project of registering the laws (or what he and his collaborators thought to be "laws") of the Eingeborenen (indigenes) in all German overseas territories.

As there were no trained ethnologists to perform this tremendous task, Kohler fell back on the Fragebogen (questionnaire) method. This method, developed and applied before by Lewis Henry Morgan in the United States, had been first worked out in Germany for field research in ethnological jurisprudence by Albert Hermann Post (see Post, 1903) who, together with Felix Meyer, had drafted a questionnaire on the legal customs of the Natur- und Halbkulturvölker [primitive and half-civilized peoples] in 1893. This



Fragebogen was sent by the two scholars privately through the German Foreign Office, the Union Coloniale Française, and various missionary societies to officials, missionaries, and other persons in various European colonies of Africa and Oceania. The replies to these Fragebogen were published by the eminent Dutch scholar S. R. Steinmetz (1903), at that time Privatdozent (unsalaried lecturer) at the University of Leiden, who closely collaborated with his German colleagues. He, together with Richard Thurnwald, afterwards worked out another, very detailed Fragebogen which was published in 1906, but was never put to any practical use.

In the same year (1893) that Post and Meyer started their Fragebogen project, Josef Kohler addressed to the Deutsche Kolonialgesellschaft [German Colonial Society] a number of questions pertaining to the laws of indigenous peoples. According to Schultz-Ewerth and Adam (1929:VI; cf. also Kohler, 1931:14), whose report I follow here, Kohler had received a considerable amount of ethnographic information on African laws through the Colonial Department of the German Foreign Office. He used these materials in some of his publications (see, e.g., Kohler, 1895b). In 1897 Kohler published his own Fragebogen which the German colonial administration sent out to all the German colonies. Kohler published the incoming material, which was collected by numerous officials and missionaries, in the Zeitschrift für vergleichende Rechtswissenschaft from 1900 (vol. 14ff.) onwards.

In March 1907, Felix Meyer suggested in a letter to the Colonial Department of the Foreign Office that for the practical purposes of jurisdiction over the "natives" in the German colonies a systematic collection of "the authentically established law of the natives . . . was urgently required." A corresponding petition to the German Reichstag [Imperial Diet] was submitted and adopted on 3 May 1907. An official commission in charge of the undertaking was formed. This commission consisted, among others, of Father Wilhelm Schmidt as ethnologist. Its chairman, however, was Josef Kohler, who in the same year (1907) sent out a somewhat enlarged version of his Fragebogen of 1897 with questions pertaining to all fields of law. Administrators, judges, and missionaries were required by the German colonial administration to use this Fragebogen in order to elicit information from their native informants concerning what legal norms they allegedly possessed.

The Fragebogen method appeared at that time as the only practicable ethnographic method available: it ensured quick returns and covered, if not all "tribes" in the colonies, at least a fairly wide area and a considerable part of the population. Seen from the vantage point of our time, it had, of course,

serious defects--the worst being that the Fragebogen was worked out at the desk of European jurists according to the categories of European law which bore little or no affinity to the legal concepts and practices of the "natives" who were more or less summarily interrogated by local German officials or missionaries. Clearly the answers, apart from thorny linguistic problems of understanding and translation, often bore little or no relation to the "living law" of the people concerned. What the questions elicited were threads and patches of concepts and practices torn out of their living context. Moreover, the whole procedure was, according to the bias of continental law, directed towards eliciting legal norms, which, if they existed at all, often had little relevance to legal practice in settling disputes and other aspects of the actual functioning of law.

Kohler himself seems to have perceived some of the severe limitations of the Fragebogen method, for in the introduction to his 'Questionnaire on the laws of the natives in the German colonies' (Kohler, 1897:427) he insisted that a "general description of the country and people in their ethnological and economic aspects," especially with regard to their "religion, language, history, tales and stories" should precede the answers to the juridical questions. Although Kohler was well aware of the functional interdependencies of legal norms with all other aspects of culture, he failed to follow his own methodological postulates to their logical conclusions.

Before the findings of the official Fragebogen project could be published, let alone be applied in colonial administration and jurisdiction, the First World War broke out. Josef Kohler died immediately after the war and with the demise of the German colonial system interest in the indigenous laws of the peoples of the former German colonies became negligible. It was ten years after Kohler's death before Leonhard Adam and Erich Schultz-Ewerth, the latter being the former governor of German Samoa, edited the combined results of the Fragebogen venture in two large volumes under the title Das Eingeborenenrecht (1929/30), which they presented as a "work with source material for ethnological jurisprudence." The articles in this collection covered the Rechtsverhältnisse [legal conditions] of the indigenous peoples of all former German colonies. Most of the articles were written by German scholars, ethnologists and/or jurists, such as Bernhard Ankermann (German East Africa), Julius Lips (Cameroons), Hermann Trimborn (Micronesia), and Richard Thurnwald (German New Guinea and the Bismarck-Archipelago).

### 3. THE POST-KOHLER ERA IN GERMAN ETHNOLOGICAL JURISPRUDENCE AND THE WORK OF LEONHARD ADAM

There were a number of learned jurists who continued the work of Kohler, most of whom shared his truly universal comparative outlook, such as Richard Thurnwald, the founder of German legal ethnology, and Hermann Trimborn, who in 1928 wrote his Method of Ethnological Jurisprudence, aiming at a universal cultural-historical study of law. Their work will be dealt with further on.

After Kohler's death in 1919, the Zeitschrift für vergleichende Rechtswissenschaft was edited by Leonhard Adam (1891-1960), another eminent jurist who had published monographs on the law of various Northwest Coast Indians (see Adam, 1913; 1918). During the war he did original research on the law of the Nepalese by systematically questioning prisoners of war (Adam, 1934; 1936a). The results of similar research concerning prisoners of war from North Africa were published by Ubach and Rackow (1923). These were the last instances in which the Fragebogen method was applied.

Leonhard Adam contributed a methodological and terminological essay entitled "Recht im Werden" [Law in the making] to the Festschrift presented to R. R. Marett on his 70th birthday (Adam, 1936b). He also wrote the chapter on "Ethnologische Rechtsforschung" [ethnological jurisprudence] for the first edition of the Lehrbuch für Völkerkunde [Textbook of Ethnology] (1937), which immediately after its appearance had to be withdrawn by order of the Nazi authorities because Adam fell under the Nazi racist laws. In the second edition, which appeared in 1939, the article was rewritten by Richard Thurnwald who before had come under heavy attack by his colleagues W. Krickeberg (1937:466; 1938:122) and H. Baumann (1938:124) because of his Jewish collaborators and because he was supposedly a propagator of British functionalism. Adam himself left Germany in 1938 and went into exile in England and later on in Australia where he was first interned after the outbreak of the Second World War as an "enemy alien" but later occupied a post at the University of Melbourne. After his return to Germany towards the end of his life, he, together with Hermann Trimborn, edited the third edition of the Lehrbuch für Völkerkunde (1958) where his original article on "Ethnologische Rechtsforschung" appeared in a revised form.

In this article Adam tried to define the position and method of ethnologische Rechtsforschung. He said that it finds its subject, the legal system of non-literate peoples, "between the disciplines" of jurisprudence and ethnology; accordingly it had developed its aims and methods in an "interdisciplinary" manner

since its beginnings in the last century. Adam remarked on this:

One should imagine jurisprudence and ethnology as two intersecting circles; the segment belonging to both circles constitutes ethnological jurisprudence (ethnologische Rechtsforschung). However, ethnological jurisprudence has hardly anything to do with legal dogmatics or with "analytical jurisprudence" of the highly developed legal systems; therefore, it belongs predominantly to ethnology (Adam, 1958:190; cf. also Adam, 1936b:217; 1937:281).

Nevertheless, from its very beginnings, the laws of non-European peoples were considered to belong to the academic sphere of jurists rather than ethnologists or anthropologists in Germany. But since the jurists at German universities were hardly interested in "exotic" laws and since German ethnologists usually had little or no legal training and interests, ethnologische Rechtsforschung, instead of finding a happy hunting ground between the two disciplines, fell by the wayside, especially after Germany lost her colonies in World War I. (On the relation of comparative jurisprudence and ethnology see also the article by M. Schmidt, 1920.)

#### 4. RICHARD THURNWALD'S ETHNOGRAPHIC FIELDWORK AND COMPARATIVE FUNCTIONAL APPROACH IN LEGAL ETHNOLOGY

Richard Thurnwald (1869-1954) may be said to have founded not only German legal ethnology (Rechtsethnologie), in contrast to the older comparative ethnological jurisprudence, but to have given legal ethnology or, as it is usually called today, anthropology of law, some of its fundamental concepts and methodological precepts.

Thurnwald was born in Vienna where he later studied law and Oriental languages at the university and where he passed his state examinations and his doctorate as a jurist. (For an outline of his life and work cf. H. Thurnwald, 1950.) He did his first ethnographic fieldwork in the service of the Austrian administration in Bosnia from 1896 onwards. In 1901 he went to Berlin where he was made assistant curator at the Berlin Ethnographic Museum. In this capacity he travelled from 1906-1909 in the then German colonies of Micronesia and Island Melanesia. In 1908 he lived for almost nine months amidst the inhabitants of Buin, the southernmost part of the island of Bougainville (Solomon Islands), doing--probably for the first time at least in German

ethnology--stationary ethnographic fieldwork that was, for a considerable part, concerned with legal ethnography (see Thurnwald, 1910b:98ff.). The results of this fieldwork, as far as they concerned legal matters, were published in the Zeitschrift für vergleichende Rechtswissenschaft (Thurnwald, 1910a).

He undertook a second field trip, to German New Guinea (Kaiser-Wilhelms-Land), towards the end of 1912. The German Imperial Colonial Office asked him to penetrate into the interior of this island, following the Sepik to its up to then unknown middle and upper parts. After the outbreak of World War I Thurnwald stayed in New Guinea until autumn 1915 at which time he left for the United States; there he worked on some of the findings of his expedition until 1917. Part of the results of his ethnographic research in New Guinea was published in his famous studies on the Gemeinde der Bânaro [The Community of the Bânaro] (Thurnwald, 1916; 1920/1921). These studies were mainly concerned with kinship and social structure. They also bore on the legal aspects of the complicated two-class kinship system which Thurnwald had analysed.

By closely observing the economic and social life of the people among whom he lived and by noting down information on their religious concepts, he soon discovered the inadequacy of the Fragebogen method as it had been conceived by German jurists. Before World War I he had reached the insight that law, however defined, could only be studied and understood in connection with the totality of all the other manifestations of the life of a given people. The "comparison of norms, torn out from here and there, in the manner of the older 'comparative law,' is an interesting playing about with curiosities" (Thurnwald, 1934:8).

He regarded "law as a function of the conditions of life and of the mentality of a society, a regulative order for the behaviour of personalities in a community." He consequently put forth the methodological postulate that it is necessary "to conceive the law as the expression of a cultural attitude, i.e. to comprehend and to understand the legal order functionally in the context of a cultural system," especially since in the relatively small communities of "primitive peoples" (Naturvölker) the connection of law "with the rhythm of other cultural functions" is likely to be much closer than in complex societies with a highly differentiated division of labour (Thurnwald, 1934:2ff.).

Thurnwald stressed the importance of ethnographic fieldwork: in order to explore the "functional interdependencies" of law with all other aspects of life, the researcher had to observe the ways of acting and thinking of the people he studied himself;

he could not rely on secondhand reports by amateur ethnographers. Thurnwald did not stay for as long a time amidst "his" people as did Bronislaw Malinowski (willynilly as an "enemy alien"), also in Melanesia, among the Trobriand Islanders during the long years of World War I. Yet Malinowski's method of "participant observation" was in fact preceded by Thurnwald's research on the spot in the Solomon Islands and in New Guinea.

As a fundamental insight of his field research, Thurnwald stressed the importance of "symmetrical" social relations that manifest themselves in a "chain of gifts and counter-gifts" and in other forms of reciprocity which he recognized as the fundamental principle of law in so-called primitive societies, or rather, in all human societies (see Thurnwald, 1920:378, 395, 406, 414; 1919:385). Malinowski, in Crime and Custom in Savage Society, explicitly recognized that Thurnwald was the first to have pointed out the far-reaching import of reciprocity for the functioning of the social order in "primitive" societies (Malinowski, 1926:24). Thurnwald himself described this principle of reciprocity as follows (translation mine; emphasis by Thurnwald)

If one tries to get at the core of all regulations which govern the behaviour between human beings and which are entwined by religious and magic phantasies, one arrives at the insight that it is reciprocity which balances out the scales of law. This applies to retaliation (for instance, in the form of blood-revenge or as symmetrical punishment) as well as to punishment in general, or--in the field of economics --to the return of a gift, to the adequate payment, or--in the realm of personal relations--to the exchange of daughters between communities, to the marriage order between groups, to bridewealth (return of distinguished objects), or--in the law of obligations--to the repayment of credits, to interest payments etc. . . . . On the other hand, one-sided services are felt to be unjust: the tributes of bondmen, the economic services of slaves. . . . Abuse is the violation of reciprocity (Thurnwald, 1934:5).

From his own personal experience among tribes in the mountainous regions of central New Guinea, which had never seen a white man before, Thurnwald concluded that the fundamental principle of reciprocity is understood "spontaneously" in all human societies (Thurnwald, 1934:5-6).

Thurnwald was, to my knowledge, the last to write a

comprehensive book covering systematically the whole field of legal anthropology on a comparative basis: Werden, Wandel und Gestaltung des Rechts [The Beginning, Change and Configuration of Law] (1934). This book grew out of numerous articles which he contributed as ethnologist to Eberts Reallexikon der Vorgeschichte [Ebert's Encyclopedia of Prehistory] during the twenties. The book forms the fifth volume of Thurnwald's magnum opus: Die menschliche Gesellschaft in ihren ethno-soziologischen Grundlagen [Human Society in Its Ethno-Sociological Foundations] (Vol. I-V, 1931-1934). It deals systematically with all major subjects of law without being confined to a narrow division according to ethnocentric categories of European law. With its wealth of ethnographic detail and its sober theoretical insights, it has not been matched or superseded by any other work.

In the introduction to this book, Thurnwald stressed the great diversity of laws in so-called primitive societies, a diversity which corresponds to the variability of the cultural context in all its aspects:

Primitive law cannot be opposed to the law of peoples with higher civilisations (Kulturvölker) as something uniform. . . . This follows from the mere fact that the political organisation [of 'primitive' societies] shows a great diversity: from the homogeneous democratic associations of hunting-and-gathering tribes, through the agglomeration of ethnic groups, to stratification according to descent and according to social and occupational characteristics, and from chieftainship without [official] authority up to the sacred sovereign and the rationalistic despot (Thurnwald, 1934:16).

To these extremely diverse political systems correspond legal concepts and practices which are just as varied.

Thurnwald saw another functional variable of law in the different degrees to which societies are equipped with technical knowledge, abilities, and appliances. The objects to which laws refer change with the process of "irreversible accumulation" that marks the universal increase in the number of goods available to mankind and which corresponds to the growth of civilisation. This process has its effects on numerous other aspects of life. A people that has at its disposal improved technical means can force other, less well-equipped ethnic groups into a state of economic and/or political dependency. This process is often accompanied by the extension of "areas in which peace was maintained under the rule of a more or less unified administration of justice" (Thurnwald, 1934:7). Interethnic relations and

processes were one of the main fields of Thurnwald's interest in political and legal matters. He never saw "primitive" or "civilized" societies as isolated entities as some British "functionalists" working in insular communities were wont to do.

5. THE HISTORICAL TREND IN GERMAN LEGAL ETHNOLOGY  
AND THE "KULTURKREIS" THEORY OF W. SCHMIDT,  
W. KOPPERS, AND H. TRIMBORN

It would be completely wrong to label Thurnwald a "functionalist" pure and simple. He never developed the anti-historical or a-historical affect that was characteristic of British functionalism for a long time (cf. in opposition to this trend: Evans-Pritchard, 1962:46-65). The title of Thurnwald's book as well as the quotations above show that he was historically minded to a high degree.

True enough, he was opposed to the bare speculations of "evolutionists" as well as of "diffusionists," and he certainly did not agree with the schemes of the Kulturkreis theoreticians, which he severely criticised on account of their unrealistic assumptions and their lack of firsthand experience with so-called primitive peoples (see Thurnwald, 1931:12-19). But Thurnwald was not averse to the idea that civilisation had evolved in a slow process of "irreversible accumulation" of techniques and skills and a growing rationality that had its effects upon all aspects of social life. Nor was Thurnwald opposed to the idea that cultural traits had diffused from one people to others and that this process had great import for the development of specific cultures as well as for human culture in general. But he was more interested in the actual processes and interactions between concrete peoples. He was well versed in Oriental and in European history and this knowledge gave his treatment of law, whether "primitive" or "civilized," a highly realistic character.

The much-abused Kulturkreis method and theory has been caricatured by many Anglo-American anthropologists who have little or no firsthand knowledge of what Frobenius, Graebner, W. Schmidt, W. Koppers, and many others had actually thought and written (as a recent example see Voget, 1973:35ff.). Schmidt and Koppers, in their great work, Völker und Kulturen [Peoples and Culture], which was published only in 1924 but was, for the greater part, written before World War I, dedicated much space to law as it appeared in different Kulturschichten [cultural strata]. Schmidt even designated his various Kulturkreise ['culture circles' or 'culture spheres'] with purely sociological and legal terms--thereby promptly falling back into the schematic thinking in evolutionary "stages" (Entwicklungsstufen) that had characterized his sociological predecessors. Although Schmidt did not accept



unilineal evolutionism, the idea of cultural evolution was a correlate of the ultimate aim which he shared with the "evolutionists": viz., to write a universal history of mankind in all its aspects. Schmidt, at least in Völker und Kulturen, was far removed from the pedantry of tracing innumerable Kulturelemente [cultural elements or traits] in their diffusion all over earth. Instead, he often all too boldly postulated functional interdependencies. He attributed the invention of agriculture to the work of women who subsequently laid claims of inheritance to the fields on which they grew their produce. These possessory rights, in the opinion of Schmidt, led to the matrilineal and uxorilocal social order of his Mutterrechtlich-Exogamer Kulturkreis [matriarchal-exogamous culture circle.] This, of course, is pure speculation and perhaps not even very original, but the example shows that Father Schmidt was less given to spiritual speculation on the mystic aspects of the Mutterrecht (as Bachofen and his epigones had been), than to a sound if somewhat flat materialism.

Admittedly, he saw all technologically developed cultures as degenerations from the purer state of his beloved Wildbeuterkulturen [cultures of hunters-and-gatherers] which he thought represented, at least in their common traits, Urkulturen [original cultures]. This could be passed over with a smile as just another proof of the simplistic naiveté and the pious beliefs of Father Schmidt and his school were it not for the fact that in the course of a revived interest in evolution and in the most simple cultures still found on earth, innumerable American and other anthropologists and ethnologists have started to study the very same hunters-and-gatherers--Bushmen, African Pygmies, Australian aborigines, etc.--with the hope of gaining some insight into "original" human behaviour (see, e.g., Service, 1966).

The legal aspects of this behaviour, as it can be observed in the small bands of these hunters-and-gatherers, form one of the most important subjects of these more recent studies. The same can be said with regard to the studies of Schmidt, who unfortunately never performed ethnographic fieldwork himself but sent out many of his disciples who, like Father Schebesta and Father Gusinde, have done admirable fieldwork under difficult conditions and have contributed greatly to our knowledge of law among hunters-and-gatherers. This work, however, is not even known among our Anglo-American colleagues who seem to master the most exotic idioms for their ethnographic field work but are apparently unable to acquire a reading knowledge of German. "The Kulturkreislehre never developed any impulse for fieldwork . . .," writes Voget (1973:35), for example. He even quotes but apparently has never glanced at the volumes of Martin Gusinde on the Fuegians and of Paul Schebesta on the Bambuti-Pygmies, otherwise

he would not have written the nonsense on the next page of his article (Voget, 1973:36).

Out of ignorance, the Kulturkreislehre is usually lumped together with the "extreme diffusionism" of G. Elliot Smith and W. Perry (Voget, 1973:32, 36-38), both Englishmen, by the way, whose wild imaginations had nothing in common with the sober, if not pedantic work of a Fritz Graebner. He, being trained as a historian, tried to introduce the strict methodological principles of the traditional historical discipline into the rather anarchic field of ethnology. In his Methode der Ethnologie [Method of Ethnology] (1911), he demanded that each and every object or literary testimony pertaining to any people under study be subjected to the merciless scrutiny of "outer" and "inner" critique before being accepted as a valid source. Few of our standard ethnographies on which we happily build our lofty "theories" would stand up to the standards which Graebner set. His formal and quantitative criteria to be applied in the comparison and combination of "culture elements" are likewise worth being carefully considered in any comparative work (e.g. with the Human Relations Area Files), whatever its theoretical purpose. Graebner's Kulturkreis theory is obsolete today, but what other theory in anthropology is not obsolete after almost seventy years?

Graebner's historical method was taken over in a modified form by Hermann Trimborn, a student of economics and law, in his article on "Die Methode der ethnologischen Rechtsforschung" [The method of ethnological jurisprudence] (1928). Although his "method" was based on the theoretical assumptions of the Kulturkreise, which are no longer tenable, its lasting value lies, in my opinion, in that Trimborn introduced into the field of legal ethnology the stern demands which the professional historian places on his source materials, thereby expressly following the example which Graebner set for general ethnology (see Trimborn, 1928:422-429). Trimborn considered ethnologische Rechtsforschung to be part of a general legal history or a universal history of law (Trimborn, 1928:420ff.), an "exclusively historical science" (Trimborn, 1928:430). In his article on "Familien- und Erbrecht" im präkolumbischen Peru" [Family Law and the Law of Inheritance in Pre-Columbian Peru] Trimborn (1927) applied his "culture-historical" method of ethnological jurisprudence to a concrete example.

## 6. PUNISHMENT AND PROPERTY AS MAJOR SUBJECTS OF GERMAN LEGAL ETHNOLOGY

### 6.1 Crime and Punishment

Trimborn thus not only established methodological principles, but he also produced a number of outstanding monographs in the field of legal ethnology, based on ethno-historical research. In 1925 he published an article on "Straftat und Sühne in Alt-Peru" [Crime and expiation in Old Peru] in which he worked out the contrast between the criminal law in the local clan communities (ayllus) and that of the central state of the Inca. Trimborn showed that concomitant with the historical expansion of the Inca empire, completely new criminal offences developed as a function of Inca rule, such as high treason and criminal offences committed by public officials in breach of duty.

In another article, "Der Rechtsbruch in den Hochkulturen Amerikas" [The breach of law in the high civilisations of America] (1936/1937), Trimborn compares the substantive criminal law as was practised in the Inca empire with that practised by the Chitcha in Columbia and by the Aztecs of the Triple Confederation in Mexico. Trimborn investigates in this article the "causal dependency of law on the total culture" as well as the "historical stratification" of different concepts of law according to the "lower" or "higher" levels of civilisation. These terms do not imply a value judgment, but Trimborn shows that in the "pure criminal law," as practised in the ancient civilisations of the New World, psychological considerations pertaining to the concept of guilt gained prevalence, although the older concept of objective liability according to the damage caused lingered on.

In two general contributions, Trimborn dealt with the evolution of the "modern" concept of offences and punishments: Auffassung und Formen der Strafe auf den einzelnen Kulturstufen [Concepts and Forms of Punishment at the Different Stages of Culture] (1931) and "Die Privatrache und der Eingriff des Staates" [Private vengeance and the intervention of the state] (1950). To each major phase in the development of cultures--hunters-and-gatherers, agriculturalists, cattle-herders--he attributes certain concepts and practices in the treatment of crime and punishment. The latest phase, marked by "the organisation of public authority according to the principles of the division of labour," is characterized by the separation of "private" claims for damages from "public" demands for punishment--the latter intended to work as a deterrent.

Thurnwald (1939) had expounded a similar culture-historical development of crime and punishment, stressing however the idea that contract and the breach of contract stood at the beginning of legal ideas. Much of this may be speculative, but Trimborn and Thurnwald at least made the attempt to correlate certain socio-economic and political structures with definite concepts

and practices of crime and punishment. This they did on the basis of empirical facts, documented by ethnographic research, comparing the legal conditions existing among peoples with similar material equipment.

Julius Lips (1928; 1938) added to these general outlines a certain differentiation with his concept of Erntevölker, i.e. peoples specialised in gathering certain foodstuffs, among whom particular forms of punishable and non-punishable "offences" can be observed. Other monographs on crime and punishment, like those by König (1923-1925) on the Eskimo or by Harrasser (1936) on the Australian aborigines have also contributed to a differentiated picture of law among specialised hunting and gathering peoples. It is to be regretted that these studies of functional correlates have not been continued. (For a summary of ethnological researches on crime and punishment with special attention to German legal ethnology, see Schott, 1965.)

## 6.2 Property

Another even more controversial subject which has engaged German legal ethnology since its inception is property. The discussion was opened by Lothar Dargun in 1883. After a careful study of the ethnographic sources at his disposal, he came to the conclusion that, contrary to the received conviction (Justinian, Pufendorf, Montesquieu, Laveleye, Bücher, etc.), "there existed among the savage natural peoples [bei den wilden Naturvölkern] only individual property and nothing else" (Dargun, 1883:76). Gemeineigentum [communal property], especially Feldgemeinschaft [communal land tenure] was, according to Dargun (1883:3, 13, 29, 32, 38, 43 et passim) nothing original or ancient, but a later development and merely a transitory phase on the way towards a renewed individualization of property rights. "The lowest and the highest developments of law on our earth resemble each other" (Dargun, 1883:28-29, 45, 49). Dargun was of the opinion that "individual property is, without exception, the more marked and pronounced, the more original and simpler the conditions are" (Dargun, 1883:59). Dargun (1883:24) recognized long before Pospisil (1963) that "among the Papuans of New Guinea the dominance of individual property is most marked among the rudest" tribes. Among Jägerbauern ['hunter-farmers'] in general, individual property prevails with regard to land (Dargun, 1883:29, 43). "Equality and independence of all is a characteristic feature of lowest barbarity and can be shown to have existed wherever men were still rude and without agriculture" (Dargun, 1883:44). Individual freedom and individual property were correlates, according to Dargun, and only with the institution of formal authorities such as chiefs could communal land tenure arise as a

functional correlate of restraining the unhampered personal liberty (Dargun, 1883:40-42). Although Dargun shared the evolutionist convictions of his time (see Dargun, 1883:4-5), he voiced severe doubts on the validity of the so-called stages or phases which were thought to have marked the evolution of humanity in all its branches: "One has to cease propounding the three phases of hunting, herding, and farming life as a norm of human progress" (1883:60).

Dargun's views were in complete opposition to those held by most of his contemporaries, among them Friedrich Engels, who in 1884, only one year after the death of Karl Marx, published his famous book Der Ursprung der Familie, des Privateigentums und des Staats [The Origin of the Family, Private Property and the State], based on the ethnographic material which the American lawyer and ethnologist Lewis Henry Morgan had gathered in his Ancient Society (1877). Marx himself had made extensive notes from Morgan's work (cf. Krader, 1972), which fitted admirably the materialistic concept of the development of human society before the formation of the class society and the state. According to Engels, the communal production and consumption of goods in primitive societies disappeared in the face of the amassing of private property--mainly in the form of herds of cattle--in the hands of privileged groups. With incipient division of labour and the alienation of the goods produced from their producers, communal property as well as the communal family or gens were destroyed (cf. Schott, 1968; 1976).

Wilhelm Koppers (1919; 1921), the collaborator of Wilhelm Schmidt, was the first ethnologist to criticize Engel's concept from the point of view of culture-historical ethnology in Germany. According to Koppers, there was no "unbounded primitive communism" among peoples which he and Schmidt thought to represent the Urkultur. Among these primitive hunting-and-gathering peoples there was only a "family communism" with regard to food, whereas weapons and other utensils were individual property of the producer. The land was the common property of the whole group. The fact that individuals exchanged goods (foodstuffs, minerals, utensils) even under these most primitive conditions was for Koppers proof of a clear concept of individual property among these peoples.

Wilhelm Schmidt (1937-1942) carried these ideas further and based them on research on a large scale, reflecting the great ideological importance which both Marxists and Roman Catholics attach to the concept of property in their respective doctrines on society. Yet it would be wrong to charge either side a priori with prejudices which completely blind them to the reality of

property among "primitive" peoples. As I have shown elsewhere, there are many points of agreement between Marxist and non-Marxist authors concerning this subject; at the same time, there are, of course, also fundamental differences in the evaluation of the ethnographic facts (see Schott, 1968:47-54).

In the first volume of his work on Das Eigentum auf den ältesten Stufen der Menschheit [Property in the Earliest Stages of Mankind], Schmidt (1937) pointed out that among the peoples of the so-called Urkultur (Pygmies, Bushmen, Andaman Islanders, Tasmanians, and others) there exists a clear concept of individual property. Moreover, this concept is subject to no restrictions according to sex, age, status, or class: "Taken in a relative sense, the Urkultur [original culture] shows the greatest and the greatest possible number of proprietors, and all further developments of mankind have not increased but reduced this number" (Schmidt, 1937:284). The openhandedness which people show, especially in sharing their food, should not be taken as the expression of an original communistic attitude, but rather as a primitive altruism which confirms the idea of individual property rights which are sanctioned and limited in their exercise by the religious commands of a High God.

In contrast, Richard Thurnwald voiced the opinion that the sharing of food among hunters-and-gatherers derives mainly from the necessity of mutual help and of reciprocity in a continuous process of give and take which leads to an equal sharing of the produce and to a distribution of the risk to which the single hunter is exposed (Thurnwald, 1934:39). Walter Nippold (1954; 1958) has stressed that one can understand the concepts and practices of property in the communities of hunters-and-gatherers only in the context of their whole culture and way of life.

One fundamental principle comes out clearly in all recent ethnological works on property: individual work provides a title to individual property in the sense that the individual may enjoy the fruits of his labour, subject to certain restrictions which proceed from the interests of the community. In my doctoral thesis on food distribution among hunters-and-gatherers I showed that this principle applies also to the sharing of prey after a communal hunt (Schott, 1955). The principles of communal sharing either according to certain fixed rules or according to the decision of a person in authority, on the one hand, and of private distribution of food on a reciprocal basis or in exchange for other goods, on the other hand, can both be observed in communities of hunting-and-gathering peoples: the incipient forms of a centrally planned and of a private economy are both present in these "primitive" cultures. In a report to the Sixth International

Congress of Comparative Law, I described recent research on private and communal property among so-called primitive peoples (Schott, 1962).

Wilhelm Schmidt published "only" three volumes of his work on Property in the Earliest Stages of Mankind, in which he dealt with hunters-and-gatherers and with cattle-breeders in Asia and Africa. His work was, in a way, continued by an interdisciplinary undertaking which was started in 1954 under the direction of Hermann Trimborn. Under the general heading of Frühgeschichte des Eigentums [Early History of Property] more than forty collaborators, ethnologists, jurists, and orientalists, produced monographs on property rights, taken in the widest sense of the word, among peoples representing different economic, social, and political orders in all parts of the world. More than half of these monographs have been published in the meantime; a preliminary report on one aspect, the religious ties to which property is subject among various peoples, has been published by the present author (Schott, 1960), but a comprehensive summary of the results of this undertaking has yet to appear.

#### 7. RECENT TRENDS IN GERMAN LEGAL ETHNOLOGY

Some of the monographs contributed to the project of the Frühgeschichte des Eigentums just mentioned were based on ethnographic fieldwork of the authors themselves, such as those of Ertle (1971b), E. W. Müller (1958), and Odermann (1957). Yet even these few articles, apart from Ertle's doctoral thesis on the property rights of the Cape Nguni, were mere by-products of ethnographic research that was mainly directed to other concerns. There has been, to my knowledge, no ethnographic fieldwork performed by any German student that has aimed exclusively or even primarily to elucidate legal phenomena. (My own ethnographic fieldwork among the Bulsa in Northern Ghana is still in the process of publication; it, also, deals only partly with legal matters.) The work of present-day German ethnographers shows very little concern with the legal aspects of society.

On the theoretical side as well German legal ethnology has produced almost nothing in recent years. Müller (1962:55-64), in his report to the Sixth International Congress of Comparative Law, discussed certain fundamental questions of the applicability of Euro-American legal terms, but he has, as far as I know, never further developed his short, yet important contribution to a seemingly interminable discussion. I myself have published a contribution to an interdisciplinary conference on legal sociology that was directed by Werner Maihofer (Saarbrücken) and Helmut

Schelsky (Münster) in 1968. In this article I summarized certain aspects of the functions of law in primitive societies (Schott, 1970). I differentiated between primary and secondary functions of law and divided the former into functions of social order and of social control. In a final section I tried to say something on the institutionalisation of legal functions.

My own work is especially concerned with the legal relevance of the Weltanschauung, especially with the religious ideas that influence the legal concepts and practices of people past and present (see Schott, 1960). I also dealt with this topic in my paper on "The Trivial and the Transcendental: Some Aspects of African Traditional Law with Special Reference to the Bulsa in Northern Ghana" (Schott, 1980a). In other articles I have tried to show the connection between historical consciousness and legal concepts (see Schott, 1961; 1968a:184-186; 199:151ff.) and the relations between vengeance, legal, and supernatural sanctions (see Schott, 1981) and between law and anarchy (Schott, 1979).

E. W. Müller (1961) has written about modern changes in African land law based partly on his own experiences during two years' fieldwork in Zaire (Müller, 1958). Ertle has treated a similar topic with respect to South Africa, and the present author has reported on conflicts between traditional and modern administration of justice among the Bulsa of northern Ghana (Schott, 1978; 1980c and d). In another article I have dealt with the connections between law and modern developments in Africa (Schott, 1980b). In this connection the important contributions of the German sociologist Gerd Spittler on modern developments in African law and administration should also be mentioned; Spittler has done intensive fieldwork on these topics, especially in Niger (see Spittler, 1973; 1980a; 1980b). Among recent trends in German legal ethnology and related disciplines there has, thus, been an interest in present-day problems of legal change.

Compared with the work done in other countries, such as the United Kingdom, France, the United States or even the Netherlands, the German efforts in the field of legal ethnology or anthropology of law are trifling. We can only repeat the deep regret which Trimborn expressed as far back as in 1951, that a field of research in which German scholars once enjoyed an international reputation had become almost completely barren and neglected even before the last war.

The present generation of German students of ethnology seems to be terrified of "law and order" and therefore shrinks back from a subject that smacks of it, such as legal anthropology or ethnology. Yet there is hardly any subject in the whole field of ethnology that has more connections with all other realms of



culture, since law concerns all aspects of life. And, what is more, it is of immediate importance to the people in many developing countries today who are torn between "traditional" and "modern" laws and who are helpless in situations where their inherited rights to their lands are not recognized or are threatened, where their families are disrupted because of conflicts over inheritance laws that have become meaningless in a new economic and political situation, where governments are unsure whether to codify traditional ideas of law and justice--to name only a few of the problems that cry, in the interest of the people concerned, for thorough investigations in many countries of the world. Why do German ethnologists keep aloof from these urgent tasks?

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