

# CORRECTIONS OF A REAPPRAISAL OF LEOPOLD POSPISIL

Leopold Pospisil

“The one duty we owe to history is to rewrite it.” So Oscar Wilde in the motto of Mark Ryan Goodale’s article (1998) concerned with reappraisal of my theory of law. In my lifetime history has been rewritten several times by various political movements (Nazi, Fascist, Communist, and others) by authors belonging to various ethnic groups, or preachers of various political or philosophical movements. Rewriting history has always meant changing it to fit fashionable trends of thought of a political, religious or scientific nature, usually destroying its objective requirement. History can be either corrected or amended but not rewritten, if it should retain its essential nature. Accordingly my intention is not to rewrite but to correct or amend Goodale’s article.

First, there is a discrepancy between the article’s title and its contents. How can one claim to do justice to my work if of my 16 books and about 80 articles one limits himself to only two books and one article?

Second, because of this limitation Goodale assumes that my legal theory was published for the first time in 1958. It was actually presented already in 1952 and 1956 in its essential form, which includes my ideas on what is now called ‘legal pluralism’.

Third, again because of his limitation to three of my works he claims that I do not quote enough exact native statements. Plenty of quotations he would have found in my other works. But why should I ‘let the natives speak’ when in my first book (1958) I had to cover their law, analyze 176 cases of disputes, and also present the reader with a general outline of the Kapauku culture, while in the other book (*Anthropology of Law*, 1971) I used Kapauku law only as an exemplification of my general legal theory. In the two works I have presented and analyzed all pertinent native concepts (contradicting thus the contention of Moore (1989) and

© Copyright 2001 – Leopold Pospisil

## CORRECTIONS OF A REAPPRAISAL OF LEOPOLD POSPISIL

Leopold Pospisil

---

Nader (1989) who maintain that one can properly analyze a people's law without the native concepts), and only then abstracted from the data the pertinent theoretical generalizations. After all the two books are not publications of my field notes. But, strangely enough, Goodale himself presents one of my lengthy quotes of the natives in his article (1998: 142). While reading these statements of his, I would have been very interested to see how he presents his fieldwork. Unfortunately I could not find any reference to his published work in his bibliography.

Fourth, there is a basic confusion between my concept of what is now called legal pluralism (my original label was 'multiplicity of legal systems') and 'theirs', meaning those of others who, about 26 years after my original publications, picked up the idea, and started to present their versions of the nature of legal pluralism. I have never tried to present a 'model' of legal pluralism applicable cross culturally. Since I have explicitly stated in many of my publications that legal pluralism reflects the various structures of the societies and their subgroups, and since the variations of social structures are enormous, there cannot be a 'model' with universal applicability, no matter whether Moore (1978), Griffiths (1986), Smith (1974), Santos (1995) and Goodale (1998), and other followers of this erroneous trend of thought (of Levi-Staussean influence) so maintain. As the history of science teaches us, science is not democratic. One man can be right and the multitude of learned men wrong (as is shown by the cases of Einstein, Galileo, Darwin, Bruno, Wegener and Ohm, to name just a few). Therefore, to argue that so many contemporary legal pluralists are model builders is for the real science of law irrelevant. It would have been very instructive if Goodale had presented some of his fieldwork material and shown us how his 'model', or any other 'model' works. What some of these authors mistake for 'my model', which appears pyramidal and hierarchical, is nothing but a reflection of the Kapauku societal structure with its subgroups. Strangely enough Goodale expresses quite clearly my position on legal pluralism in attributing to me the view that, "in any given society there will be a discrete legal system corresponding to each subgroup within the society" (1998: 130). He does not appreciate my exact data in my early publications and praises my late work dealing with the analysis of the later colonial influence of western civilization upon the Kapauku. Of course, this analysis could be hardly possible without my early exact and empirical work, which Goodale somehow has not even realized.

Goodale correctly criticizes Moore (1978: 17-18) for her attempt to diminish the value of my work on legal pluralism (over 20 years earlier than her publication) by claiming that I followed Weber in this respect. Actually I read Weber after I had written up my ideas on legal pluralism in 1952 and 1956 (which neither Moore nor Goodale mention). I gave Weber credit in my work for a possible

suggestion of a pluralistic approach. In 1958, having been attacked by lawyers and social scientists for my heretical claim of multiplicity of legal systems in human societies, I desperately tried to find any suggestion of such possibility I could, and Weber was good and suggestive. But in my search I stumbled upon Gierke (1868), who is the real giant in the discovery of legal pluralism. His work is not burdened with any fashionable ‘model’ building, as are Ehrlich’s (1913) and those of the modern legal pluralists. The real stimulus to my concept of legal pluralism came from the remarks of Llewellyn and Hoebel (1961: 28). Although they talked about “by-law-stuff” and “sub-law-stuff”, not wanting to break with the then prevailing monolithic idea of a single legal system in a given society, their remarks were illuminating. I have broken with the tradition and demonstrated empirically on the Kapauku the existence of multiple legal systems in a relatively small confederacy of lineages. I did not speculate or only theorize.

Another unfortunate mistake of Goodale is to accept the work of Zake (1962), who thought that the only way to be nonethnocentric and ‘scientific’ was to analyze native legal systems only in the folk concepts and ideas of the people studied. In this contention he is on the extreme opposite side from Moore (1989) and Nader (1989), who claim that one can analyze the native law without knowing the native concepts (Starr and Collier 1989: 20). The truth lies in between these two extremes: between Zake’s solipsism which uses only the folk categories, thus making comparative scientific study of law impossible, and Moore and Nader’s detachment from consideration of the native concepts, which makes the study ethnocentrically biased. Both types of concepts, those of the natives and the analytical concepts of science, are essential in the understanding of law, and as a matter of fact of any part of culture, as was excellently discussed by Paul Bohannan (1957: 4-5). Strangely enough, Zake, having been Bohannan’s student, partially ignored his work, or simply misunderstood it. In my critique of ethnocentrism I go as far as to consider unreliable the data of ethnologists who did not speak the language of the people they studied. All my PhD students had to know the native tongues, and the use of a lingua franca and interpreters were not acceptable.

Although Goodale valiantly defends my work against the obviously tendentious attacks of Comaroff and Roberts (1981), which I have regarded as not worthy of my reply, he misses the major flaw in their critique. Their claim that my theory of law focuses on ‘rules’ is diametrically opposed to what I had written already in 1954 in my PhD dissertation, published as *Kapauku Papuans and their Law* (1956). In that monograph I present 176 legal cases with the main argument of my theory, that law (*jus*) is not a system of rules (*leges*) but principles abstracted from legal decisions and which are actually enforced. Although it seems that Comaroff and Roberts have not read my book carefully, my impression is that their

## CORRECTIONS OF A REAPPRAISAL OF LEOPOLD POSPISIL

Leopold Pospisil

---

comments reflect their ignorance of the fact that the English term 'law' does not distinguish, as most other languages do, between *leges* (rules, statutes) and *jus* (law proper). As many commentators on my theory of law have correctly recognized, I, like Llewellyn, Hoebel, Holmes, Gluckman and others, have accepted American Legal Realism (that centers upon decisions rather than rules) as correct.

A final comment: As Goodale says,

It is not easy to say why Pospisil's work has not received the fuller appreciation that it merits. Throughout his work he consistently states his position in a way that is rigorous, self-assured, and lacking in the kind of guardedness that one might expect to follow naturally from scholarly contentions that must always remain somewhat provisional. Perhaps his style proved alienating to some. (Goodale 1998: 143)

That I am not quoted and appreciated by American anthropologists is not due to my style. Margaret Mead, Karl Marx, Marvin Harris, and many others, whose writings were even more self-assured and lacking in guardedness, and whose conclusions are even less 'provisional' than mine, have had significant following in the American academia. It is rather my insistence on the scholar's knowledge of the language and culture of the people studied, and my insistence that an ethnologist may not study a culture of his own to avoid ethnocentric bias, that antagonized a great number of those who failed to learn the native tongue, using a lingua franca and interpreters, or who avoided all the linguistic problems by studying their own cultures. Indeed, my critique of those who follow fashionable '-isms', be it Marxists (who somehow vanished from the field after the internal collapse of the Soviet Union), interpretists, postmodernists, evolutionists, and all the other disciples and followers of their illustrious past or contemporary mentors of the various -isms, alienated many. How many American anthropologists does that leave to appreciate my work? True science needs independently thinking scholars and not disciples of academic ancestors, no matter how illustrious. And I would like to stress again that true science is not democratic. A single scientist can be right and the multitude of his colleagues, often ridiculing him or her, can be wrong. Their general agreement plays no role in the advancement of our scientific knowledge.

### References

BOHANNAN, Paul

1957 *Justice and Judgement Among the Tiv*. Oxford: Oxford University Press for the International African Institute.

COMAROFF, John L. and Simon ROBERTS

1981 *Rules and Processes: the Cultural Logic of Dispute in an African Context*. Chicago and London: University of Chicago Press.

EHRlich, Eugen

1913 *Grundlegung der Soziologie des Rechts*. Tübingen: J.C.B. Mohr.

GIERKE, Otto von

1868 *Das Deutsche Genossenschaftsrecht*. Berlin: Wiedmann.

GOODALE, Mark Ryan

1998 'Leopold Pospisil: A Critical Reappraisal.' *Journal of Legal Pluralism* 40: 123-149.

GRIFFITHS, John

1986 'What is Legal Pluralism?' *Journal of Legal Pluralism* 24: 1-55.

LLEWELLYN, Karl N. and E. Adamson HOEBEL

1961 *The Cheyenne Way*, 2<sup>nd</sup> ed. Norman: University of Oklahoma Press. (1<sup>st</sup> ed. 1941)

MOORE, Sally F.

1978 *Law as Process: An Anthropological Approach*. London: Routledge & Kegan Paul.

1989 'History and the redefinition of custom on Kilimanjaro.' Pp. 277-301 in June Starr and Jane Collier (eds.), *History and Power in the Study of Law: New Directions in Legal Anthropology*. Ithaca and London: Cornell University Press.

NADER, LAURA

1989 'The crown, the colonists, and the course of Zapotec village law.' Pp. 320-344 in June Starr and Jane Collier (eds.), *History and Power in the Study of Law: New Directions in Legal Anthropology*. Ithaca and London: Cornell University Press.

POSPISIL, Leopold

1952 *Nature of Law*. Microfilmed Master's Thesis, University of Oregon.

1956 'The nature of law.' *Transactions of the New York Academy of Sciences (Series II)* 18: 746-755.

1958 *Kapauku Papuans and Their Law*, Yale University Publications in Anthropology no. 54. New Haven: Yale University Press.

1971 *Anthropology of Law: A Comparative Theory*. New York: Harper and Row.

SMITH, M.G.

1974 *Corporations and Society*. Duckworth, London.

SANTOS, Boaventura de Sousa

CORRECTIONS OF A REAPPRAISAL OF LEOPOLD POSPISIL

Leopold Pospisil

---

1995 *Toward a New Common Sense: Law, Science and Politics in Paradigmatic Transition*. New York: Routledge.

STARR, June, and Jane COLLIER

1989 'Introduction: dialogues in legal anthropology.' Pp. 1-28 in June Starr and Jane Collier (eds.), *History and Power in the Study of Law: New Directions in Legal Anthropology*. Ithaca and London: Cornell University Press.

ZAKE, S.J.L.

1962 *Approaches to the Study of Legal Systems in Preiterate Societies*. PhD dissertation, Department of Anthropology, Northwest University, Evanston.