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## ANTHROPOLOGY & LAW AS TWO SIBLING RIVALS

***Abstract** - This lecture discusses the relationship between two academic disciplines, law and anthropology, and suggests that the optimal relationship is, on the one hand, competitive and conflictual, and on the other hand, mutually respectful and supportive - something like the relationship between two sibling rivals. The conflictual aspects of this relationship derive from the different orientations of the two fields - instrumental for law, speculative for anthropology - and the fact that anthropology, based on long-term ethnography, often challenges and subverts law's claims to distinctive authority. The positive aspects of the relationship build on the possibilities that each field can genuinely assist the other, as anthropological understanding can be extremely useful to lawyers, while lawyers are often the legal system's most astute observers and critics, and thus can provide anthropologists with invaluable insights into the actual operations of legal systems. These points are illustrated through references to the author's fieldwork in Palestine and legal practice experience in the United States.*

***Key words** - law, anthropology, legal anthropology, ethnography.*

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I have been asked today<sup>1</sup> to offer my perspective on the relationship between the two fields of law and anthropology, and in particular, to suggest what anthropological approaches to law have to offer law. This could mean many things, but my main focus will be at the level of academic discourse about law. By “academic discourse” I simply mean how we conceptualize, analyze and discuss law as academicians striving to understand legal phenomena. In other words, then, I will be primarily addressing how insights and methodologies derived from anthropology can be applied to legal phenomena and, hopefully, of course, advance our understanding of them. As I will soon explain, I would see the ideal relationship between the two fields to be modeled after that of two sibling rivals.

At another related but distinct level, the question “what can anthropology offer law?” could be answered with a discussion of the ways in which anthropology could inform the training of lawyers for professional practice. This is a question in which I do have interest: indeed, my daily routine involves the training of lawyers for professional practice in the state of California, where I teach in a postgraduate law faculty (all formal study of law in the U.S. follows graduation from a four year college or university with a BA in some other field, followed by three years of post-graduate study in a law school, in which law is virtually the exclusive topic of study). But I do not have time to address both levels fully today, so I will confine myself primarily to the first level, that of academic discourse. But please ask me questions about anthropology and the training of lawyers in the discussion to follow my talk if you are curious about that topic.

There is a third possibility that could be discussed today, and that would involve what law has to offer anthropology. I do have some thoughts on this issue, and I will expound on them briefly now before returning to my main topic. The reason for keeping this a brief digression is that I suspect that the observations I am about to share may be specific to the U.S. legal environment, and for that reason, may not be of great relevance here. So here are a few quick thoughts on what law can offer anthropology, at least as I have witnessed these two fields operating in the United States. For at least these next few minutes, please assume that I am speaking solely about law and anthropology in the U.S.

To put it briefly, my impression is that what law has to offer anthropology is not so much substantive as it is formal. In other words, it is not so much that legal ideas or insights will inform anthropological theory, nor change

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how anthropologists think about the world or their field. It is, instead, how law presents itself to the world, particularly, via pedagogy, to students, and generally, in hewing to a form of professionalism, to the public. Having studied in both fields and having taught in both fields, in law faculties and in social sciences faculties, it is my strong sense that law invests much more - that is to say, thinks about, discusses, writes and holds conferences - on pedagogy. Law professors, in my experience, are much more deliberate and strive much harder to present their material effectively to law students than do professors of anthropology, and perhaps professors of other fields in the humanities. As a result, quite frankly, they appear to me to be more successful in the classroom than my anthropology colleagues (realizing, of course, that “success” can be difficult to measure). This stems, I think, from two interrelated facts: first, that there is a significant performative aspect to the practice of law, which begins to be modeled in the classroom; second, there is by now a long-established tradition of vibrant legal pedagogy, to which all law students - and thus virtually all future law professors - are witnesses during their formative years in law school.

A second virtue that anthropologists could learn from lawyers is a commitment to professionalism. Professionalism, of course, can mean many things, and can vary from one profession to another. Let me try to illustrate what I mean with a concrete example. Last week I was watching CNN television news as I was exercising in the morning. The first story covered was the alleged murder by South African track athlete Oscar Pistorius of his girlfriend Reeva Steenkamp. The news anchor briefly introduced the story and then began to question two on-screen experts, both of whom were U.S. lawyers. Both were well-dressed, well-spoken and were able to distill complex foreign legal proceedings into relatively comprehensible, everyday English. The next story involved a very large woman who had been denied a massage at a massage parlor in the state of Colorado on the ground that she was so heavy that she might cause the massage table to collapse! The anchor kept the two legal experts on for this story as well. Both legal experts agreed relatively quickly that there were no real legal issues involved, that is, that the masseuse had not violated any legal duty owed the poor woman. But they - the legal experts - nonetheless proceeded to opine what a bad decision the masseuse had made from a business standpoint, and how 110 kilos (the approximate weight of this woman) was actually quite normal these days, and what an affront it was to obese people that this woman was denied a massage. Note that few of these observations drew on any form of legal expertise at all. Now, just this sort of drill - lawyers opining on things both legal and non-legal - happen on a daily basis, if not multiple times each day in the U.S. news media. Most news organizations have stables of

legal experts to whom they regularly turn, and some have full-time “legal affairs” staff people who often are trained in law.

It was on my mind that I would soon be visiting Brazil and speaking on this topic today, so this news segment doubtless struck me in a particular way. Among other things it caused me to search my memory for when I had last seen an anthropologist appearing as an expert commentator on a U.S. news program. I had to concede that I could not recall one such example - ever! Certainly this is not because anthropologists would not bring valuable insights to viewing audiences. I’m willing to bet, for example, that an anthropologist who studies contemporary South Africa, or gender violence, or cultural perceptions of body form could have shed at least as much light on the Pistorius case or that of the heavy woman from Colorado as did the two legal experts, who, after all, were not students of South African law, and certainly knew no more about obesity than the average television viewer!

Why do lawyers get the call to offer opinions on things legal and non-legal, then, while anthropologists, and possibly other social scientists who have at least as much to say, do not? Well, it would be foolish to ignore what this example says about the particular cultural authority of law in my society - indeed, this authority is almost surely the principal reason for the preeminence of lawyers and law professors over anthropologists and other social scientists as public intellectuals in the United States. I can’t help but think that if anthropologists could bring themselves to dress professionally, at least on occasion, and strive to translate anthropological insights into language that is comprehensible to a non-specialist audience, then their unique wisdom would gain much wider appreciation. The world, or at least my society, would be a better place if that were so.

There are other aspects of professionalism in law that anthropology could afford to emulate, but this digression has already been lengthy. However, there is one more preliminary point I must make before taking up my main theme, the relationship between law and anthropology as two sibling rivals. That concerns the definition of anthropology. After all, it is not really possible to discuss a relationship between two fields without having a grasp of their disciplinary boundaries. While I believe that the disciplinary boundaries of law remain relatively clear, that is less so, it seems to me, of anthropology. At one time, of course, anthropology was the social science of the non-Western European world, and therefore was defined, at least in part, by the object of its study. However, at least as of the pioneering work of Bronislaw Malinowski, who approximately 100 years ago traveled from England to the Trobriand Islands, off the coast of Australia, and

spent several years there studying Trobriand society, anthropology has also been defined by a distinctive methodology, or means of generating knowledge: long-term ethnographic field work. For reasons that need not distract us now, anthropology is no longer clearly differentiated from other social sciences by its object of study. Beginning nearly five decades ago, anthropology “came home” - that is, began to be employed in the study of Western as well as non-Western societies - while other disciplines, such as sociology, began to look at societies that once had been the exclusive concern of anthropologists. In a sense, we have encroached on the territory of other disciplines and they have reciprocated. Another important and positive shift is the trend, led in part by my old friend and colleague Professor Roberto Kant de Lima, for anthropologists from Brazil and other countries that were the focus of anthropology in the past to study the United States and other societies of the “Global North.”

What does remain as distinctive to anthropology and therefore defines it, at least for the time being, is the continuing reliance on long-term ethnography as our principal source of data. I say “for the time being” in recognition of the growing popularity within the North American legal academy of what is referred to as “empirical studies,” which to date primarily means the adaptation of quantitative sociological methodologies to legal phenomenon, although there are some academics who are beginning to rely on anthropological tools as well. Long term ethnography, of course, generally means spending a considerable period of time - typically at least one year, and sometimes two or more years - in close observation of some human group, whether a geographically defined community, an occupational sector, a religious sect, or something else - and endeavoring to understand how it operates, both in its own perception and as viewed from the outside. There was a time when we, anthropologists, aspired to be, or imagined ourselves as, “participant observers” in these groups. With a little more sophistication we have realized that we can rarely, if ever, truly “participate” as fully as the people we are studying, nor do we hover over the community as unseen observers. Rather we become part of the social reality we are examining and by our very presence alone transform it. This is, of course, a form of participation but not in the sense to which earlier anthropologists aspired.

Other data-gathering techniques are their virtues, but long-term ethnography is not only unique to anthropology. It is also uniquely fruitful, yielding insights and producing data that would probably not be produced by any other means. There is much that occurs in human relations even in the digital age that is “off the grid,” so to speak - meaning that it is never

registered or recorded anywhere, and exists only as unofficial practice or belief. Some events or practices may be rare, or annual, and one would only have a chance to witness them by persisting in the field long enough for a year or more to pass. Some practices involve deliberate deception, and their meaning would completely elude an observer not privy to their secret logic.

For example: when I was in law practice as a deputy public defender in San Francisco in the late 1980's and early 1990's, defending indigent or poor defendants against criminal charges, there was a term for a variety of different practices we called "winkies." In my culture, and possibly in Brazil as well, to noticeably wink one's eye several times is to signal others that what follows - whether words or deeds - is not the truth, and may even be its opposite. I first learned this term when I was in a judge's chambers witnessing another attorney negotiate a plea disposition (most criminal cases in California and throughout the U.S. are resolved by what we call "plea bargaining," in which the defendant gives up a right to trial, and pleads guilty to a case in return for a lighter sentence) involving two co-defendants who were husband and wife. The man was on parole (a period of conditional liberty that follows a prison sentence, during which the parolee can be sent back to prison for new crimes or for other violations of parole conditions), and, for his new offense, would surely be sent back to prison by his parole officer, if not by the court on the new offense itself. The husband's attorney, at his client's instructions, therefore offered that his client would plead guilty as long as charges against his wife were dismissed. The parties all agreed to this offer, and then moved to open court to put the guilty plea of the man and dismissal of the charges against his wife on the formal court record.

In California and elsewhere, when a defendant pleads guilty, the court is required to go through a colloquy or questioning of the defendant to ascertain that the plea and attendant waiver of trial rights is "knowing, voluntary and intelligent" (to quote from the U.S. Supreme Court case that established the requirement). When a co-defendant enters a guilty plea, California law requires the colloquy to include an additional question to make sure that the co-defendant's will has not been overborne by threats from or promises to the other co-defendant, and is pleading guilty only because he or she is, in fact, guilty. Remember that the very essence of the deal that had just been negotiated in the judge's chambers was that the husband would plead guilty on the promise that the woman would be set free. When the judge reached the part of the colloquy concerning threats or promises, all the parties, including the judge, were grinning

from ear-to-ear at their joint conspiracy to defraud the record! Of course, the words recorded by the court recorder looked exactly like any other plea, and captured nothing of the smiles and other signs as to what was really happening in that case. I could offer you many other examples of “winkies,” but the simple point here is that a historian, for example - an increasing number of historians use court records as windows into past social history - or any other social scientist who examined the formal record wouldn't have had the slightest idea what had happened in court that day. I only knew because I was there, observing closely, like a good anthropologist does.

Forgive me this lengthy digression. So what do I mean by saying that the model for a healthy relationship between these two disciplines is a sibling rivalry? Two things, principally: first, I mean that the relationship should be contentious, or characterized somewhat by conflict. But second, the relationship should also be loving or at least mutually appreciative. Let me explain both elements, the contentious and the loving or mutually appreciative.

First, why contentious? Earlier I said that anthropology is no longer helpfully defined by the object of its study. That is true also when the anthropological lens are trained on law. Legal anthropologists are not all of one mind, and we do not all study the same things. Some of us, like lawyers, examine only texts. Lawyers, however, would focus on the content of the text - on its words and structure - and would try to understand a text's internal logic. Anthropologists are certainly interested in those things. But usually we are seeking to go further, to go beyond the mere content of a text. Brinkley Messick is an anthropologist at Columbia University in New York who wrote an excellent book entitled “The Calligraphic State,” which examines legal texts from Yemen, the country at the southern perimeter of the Arabian Peninsula. He analyzes not just the actual texts, but also their form, which is spiral and very unique, and tries to relate the form of these texts to their content. A lawyer would not do that.

Many of us legal anthropologists try to go beyond written laws in other ways, and want to understand how law operates in social context, or in social reality. Law as it exists in books is fine, but one anthropological perspective on law is that it really exists only “in process,” that is, as it unfolds in actual human transactions such as the resolution of disputes. Law, to be fully understood then, has to be studied as it is in fact, and not only as it ought to be according to formal legal doctrine. Anthropologists thus develop an intimate knowledge of law as it exists in human life, and its dark secrets (like “winkies!”), and all the ways it fails to live up to its



lofty pretensions. We are ones, like the nagging younger brother or sister, to hold up a mirror to law and say, “No, look: this is how you really are.”

Let me offer two illustrations drawn from my own ethnographic experiences, one from Palestine, the other from the U.S. Both examples deal in different ways with notions of “custom” and “customary law.” I will start with the example from Palestine, which comes from my ethnographic research for my doctoral dissertation, conducted over fourteen months in 1984-85, in the Israeli-occupied West Bank.

The focus of my research was the Palestinian legal profession and the impact on it of Israeli occupation, which was then only in its second decade. I employed a variety of data-gathering techniques, including surveying and interviewing lawyers, judges, clients and other key officials, accompanying lawyers through their daily rounds of court, observing court room proceedings, attending out of court meetings between lawyers and officials, and more. It was clear from early on that the Palestinian legal profession was suffering a kind of crisis, and that this crisis, in turn, stemmed in large part from the public’s diminished trust in the civil court system in which the lawyers specialized. I would be happy to elaborate on the reasons for the decline in the stature of the civil courts in discussion, but for now, trust me that this decline was steep and severe, and deeply undermined the position of lawyers, whose claim to special expertise - essentially the product they offered to the public - was precisely in this considerably degraded civil court system. What good is knowledge of the operations of a court system that fails to accomplish society’s important work? It became clear to me, however, that I could not fully gauge the position of the courts and the lawyers dependent on them without having some awareness of the alternatives that citizens had for resolving legal disputes.

It was for that reason that I had done some interviewing of individuals engaged in what is called in Palestine “al-qada’ al-’asha’iri, which roughly translates as “tribal adjudication.” Al-qada’ al-’asha’iri is a system of dispute resolution that is informal, or perhaps more accurately, unofficial - that is, it is mostly independent of state authority - that reputedly has been in existence for centuries but originated in Palestine’s Bedouin communities. Palestinian Bedouins, who are still an identifiable sub-group within Palestinian society today, are primarily livestock breeders (and secondarily smugglers) who migrate seasonally within a defined territory, generally at the margins of permanently settled communities. Many Palestinians still resort to al-qada’ al-’asha’iri to resolve disputes, especially those involving insults to honor or personal injuries. You could say, then, that tribal adjudication was a kind of competitor to the civil court system, as it siphoned at



least some cases that could have been resolved in the formal court system. I met with several trial judges, learned something about the details of their elaborate ceremonies and procedures, and also about their laws for compensation for particular kinds of wrongs or harms. All of these, I was told, stemmed from the shari'a, or Islamic law. The judges were very emphatic about the Islamic origins of their jurisprudence, which they claimed, had been observed for centuries. It was clear to me that the conformity to Islamic law was an important legitimating device for the tribal judges.

One day I was interviewing a young and very bright Palestinian lawyer in Hebron, a large Palestinian city in the Southern West Bank, a little over an hour's drive from Jerusalem. While the purpose of my interview had nothing to do with al-qada al-asha'iri, I was explaining my research to my prospective interviewee and happened to mention that I had done some work on tribal adjudication to provide a fuller context for my study of the legal profession. The young lawyer then mentioned that one of his uncles was a tribal judge. I inquired further and learned, in fact, that the lawyer's uncle was, in fact, one of the highest-ranking tribal judges in the entire West Bank! The lawyer told me that he was quite close to his uncle, and that they talked quite frequently. Intrigued, of course, I asked what they talked about, and the lawyer said "law." I explored further, learned that the uncle regularly queried his nephew for how his cases would be resolved under the formal law of the civil courts.

Why would he do this? You may remember that I described tribal adjudication as "mostly independent" of the formal court system. Here I must tell you of a crucial point of articulation between the two systems. Under Jordanian procedural law, which was then prevailing in the West Bank civil courts, a "sulha" or settlement reached via tribal adjudication could be enforced through the execution department of the civil courts if it conformed with civil law. Civil court judges were authorized to review the sulha for conformity, and deem it either worthy of enforcement or not. Needless to say, enforceability of judgment is a significant asset. As it turned out, then, to my shock, the uncle - all under the rubric of customary Islamic law and invoking traditions that supposedly extended for centuries - was milking his nephew for contemporary legal principles, then modifying his judgments to conform to them so as not to lose the competitive advantage of enforceability through the civil execution department! Thus contemporary legal principles that had nothing to do with shari'a or other purportedly traditional law were infiltrating the system of tribal adjudication under the label "customary." Needless to say, this experience forever altered my perception of the meaning of "customary law."

Now let me turn to my second example, which derives from my time practicing as a deputy public defender for the City and County of San Francisco in the late 1980's and early 1990's. As I said, this example also bears on our understandings of "custom" and more particularly "customary law." Now if you were to ask an American lawyer or law professor about customary law in U.S. they would almost surely say "There is no such thing." The image that they would portray would be of a highly-formalized system. If you asked them about legal procedure, they would point you in the direction of writings - the penal code, for example, or appellate court decisions interpreting particular legal principles and/or applying them to distinct factual situations.

After approximately one year handling misdemeanor cases - relatively minor offenses that, in the State of California, can be punished by no more than one year in jail - I had been promoted to work on felonies - more serious offenses, of course, bearing punishments greater than a year in jail. Felony procedures in California differ somewhat from misdemeanor procedures, most notably in that there is a preliminary hearing in a felony case while there is none in misdemeanors. A preliminary hearing, often abbreviated as a "PX," is a hearing before a judge in which witnesses to an alleged crime are called to testify, whereupon the prosecutor has the burden of establishing probable cause that a crime was committed, and that the charged defendant committed the crime. Probable cause is a relatively low standard, so prosecutors typically do not put all their witnesses on the stand, and defendants are almost always "held to answer" - that is, required to face a full jury trial. Most felony defendants - particularly public defender clients, who are by definition poor - are held in custody, unable to make bail, and are outfitted in highly distinctive, readily identifiable flaming orange clothing (this, of course, is to aid in their identification and recapture if they should escape into the public).

I was handling a robber case in which identity was a significant issue. In other words, the facts suggested that misidentification could be a viable defense in the case. I was reading through the case file in the presence of a more senior attorney, and it was beginning to dawn on me how totally unfair it would be when, in the midst of the PX, the prosecutor would ask the witness, "Mr. X, do you see in the courtroom today the man who robbed you on such and such a date?" Identification of the defendant is a necessary part of every PX, so I knew this question would be coming. Needless to say, my client would be the only person in the courtroom at that time dressed in a neon orange jump suit! I knew also that this question would have been preceded by a series of questions about the perpetrator's

appearance, during which time the defendant would be seated in obvious view of the witness - who might very well base that description not on the original events, but on the appearance of the defendant in the courtroom that day.

I was musing about how to overcome this dilemma when the senior attorney advised: "Do a Green motion." I, of course, asked: "What's a Green motion?" She then explained to me that a "Green motion" - which took its name from an appellate court case entitled *People v. Green* - was a motion to allow the defendant to remain in the holding cell off of the court room, and thus out of view of the witness, until after the witness had provided a description of the perpetrator. This would ensure that the witness's testimony regarding identity would not be influenced by the vision of the defendant sitting there in the courtroom in his unmistakable jail clothing.

So I asked further: "Is there anything else I need to argue?" So the attorney instructed: "When you make your Green motion, the prosecutor is going to say: Your Honor, you should deny this motion because the counsel has failed to make a line-up motion" (a line up motion is a request to conduct a corporeal line-up, in which the defendant is placed with six or eight other individuals of like appearance and the witness, usually behind a one-way mirror, is asked to pick out the perpetrator). Of course I asked: "And how do I respond?" My senior lawyer friend said: "Just say that it would violate due process not to grant your motion, and the judge will grant it."

So I went to court, followed my friend's instructions, and things went exactly as she predicted, in every respect. I made my motion, the prosecutor responded almost verbatim as forecast, then I responded, and the court, indeed, granted my motion. That was great!

I was a reasonably diligent lawyer, and some weeks or months later, it occurred to me that I ought to have a little better understanding of *People v. Green* if I was going to be citing it as authority in court. So I read the case for the first time. Too my utter amazement, there was nothing in the case that mandated the exchange we had conducted in court! All the case really stood for was that it was not inconsistent with due process for a court to sequester a defendant during the identity testimony portion of a preliminary hearing. Under the case a judge had broad discretion to authorize or deny such a defense request. There was absolutely nothing in the opinion at all about any requirement that the defense should make a motion for a corporeal line-up before it could make the motion for sequestration (a Green motion).

Where had these procedural principles come from? Frankly, I can only speculate. My guess is that at some point in the past a defense attorney must have made a sequestration motion citing *People v. Green*, to which a prosecutor responded with the argument concerning a line-up. The defense attorney must have then argued due process, after which a judge accepted that argument and ruled accordingly. This ruling must have been discussed between judges, prosecutors and defense attorneys - even in a large city like San Francisco, the criminal justice community is relatively small and insular, and everybody shares knowledge and ideas, especially with their lateral colleagues. Over time, what might have begun as an agreement on what constituted a “good practice” hardened into a perception that “this was the law.” By the time I came along with my case, these principles had become sufficiently formalized and accepted within the Hall of Justice in San Francisco that my lawyer friend could precisely instruct me on how to invoke them and to predict with certainty the outcome.

Later, when I left practice and began teaching and preparing students to practice in other San Francisco Bay Area jurisdictions, I learned that procedures in adjacent counties differed considerably regarding this and other situations, what I think could be fairly called “customs” or “customary law.” Some counties had no such thing as a “Green motion,” while others had an equivalent motion that was called a “chalkboard motion” - because, instead of the defendant being sequestered in the holding cell, a rolling chalkboard would be wheeled out and placed between the witness stand and the defendant, thereby concealing the defendant. This, of course, is all within the State of California, in one of its largest and most prominent cities, just miles from Silicon Valley and the center of the high-tech industry.

Now, what is demonstrated in these two examples? Well, certainly not that West Bank tribal adjudication and criminal procedures in the State of California are the same, even if they are not as categorically distinct as practitioners within them might ask you to believe. Despite the existence of pockets of orally-transmitted customary law within a highly formalized legal system like California’s, and the persistence of customary law - or at least what is called customary law - in tribal adjudication in the West Bank, these two systems conceive of and legitimate themselves in different, if not opposite, ways. California lawyers construe the system in which they operate as modern, rational and formalistic - in short, on the denial of or break with custom - while tribal judges think of, and present their systems as resting on timeless traditions, even while the legal principles they actually implement may have completely contemporary and exogenous origins. Note, however, that both systems legitimate themselves by appearing to

depersonalize legal decision-making, and to construe it as mandated by some authority higher than the actual judges who are hearing the cases.

The California example seems to suggest that even in highly developed formal legal systems, replete with a penal code that runs to some 2,000 pages, and with sophisticated means of recordation and internal communications, laws can only be so determinate. That is, in a large scale system like California's, a state with 58 counties and a population of 38 million persons, it is difficult if not impossible for formal, written law to account for every situation that functionaries on the ground - judges, prosecutors and defense lawyers - will face. Thus at some level procedures and practices are necessarily adapted to specific, local circumstances, causing regional variation within a system that appears, formally and on the face of things, to be uniform. The Palestinian example, meanwhile, obviously demonstrates "customary law" is not always so "customary."

Both examples demonstrate the value of long-term ethnography, and particularly, the role of serendipity in anthropological research. The insight I gained about the California legal system only came about after I had been practicing for more than a year, and then only because I happened to handle the kind of case in which a Green motion could be made, and happened to discuss it with a particularly knowledgeable insider. Likewise, the interview of the young Palestinian lawyer that led to such insights on the system of tribal adjudication came about toward the end of my research. My interview with him was perhaps the fortieth I had done during my research, and, as I said, learning about tribal adjudication was the furthest thing from my mind when I went to interview him that day. Had I not tried to explain the context of my research to the lawyer, I would never have learned of his relationship with his uncle, the tribal judge. In a sense, then, I was lucky. Or, another way of viewing it, is that I was an anthropologist engaged in long-term ethnography, and we who adopt that methodology make our luck by our persistence in the field. The longer one spends immersed in the field, the greater the odds become that one will "chance" upon an important insight.

The examples also both illustrate that the way insiders rationalize and defend something - in this case, a legal system and its associated norms and practices - is not always fully accurate. Had I only spoken to tribal judges in the West Bank, and been exposed only to their claims of adhering to timeless tradition, I would have remained clueless to the subtle legal transformations that their system was undergoing as a consequence of its articulation with the civil court system. It can take time, exposure to multiple perspectives on a phenomenon, and sometimes direct observation by the researcher

him or herself, to penetrate beyond the image speakers present of that phenomenon to arrive at an understanding of its deeper complexities.

Now let me turn to why the relationship between law and anthropology should be loving, or at least mutually appreciative. To put it briefly, lawyers should love us for the kinds of insights we can bring regarding the system in which they work, which can, on occasion, be very useful. Imagine, for example, if you were an attorney - let's say a prosecutor, considering the example we have before us - and you were opposing a defense lawyer who had made a Green motion. Wouldn't it be useful to be able to share with the court that the defense lawyer's arguments were based on a discretionary oral tradition, rather than mandated by established case law? And that instead of having to follow this local tradition, the judge was free to exercise his or her discretion, and to deny the motion, just as other judges did in surrounding Bay Area counties?

Likewise anthropologists should love, or at least appreciate, lawyers. Why? Well, first of all, lawyers are tremendously acute observers of their own circumstances, and thus make fantastic informants. Who, after all, helped me learn about a Green motion? It was a practicing lawyer. Of course she didn't think of it in anthropological terms like I did, but without her guidance I would have known nothing of the practice at all. Of course, lawyers have no choice but to be acute observers of the folk ways of their profession, because their actual livelihoods and professional success depend on it. We (and now I am speaking as an anthropologist) also must appreciate lawyers and understand that their differences in perspective from social scientists in part stem from the fact that the objectives of their knowledge are different from ours. Lawyers will never be anthropologists, and will never view things quite as anthropologists do, not because they are stupid - they are, quite the opposite, often extremely astute - but because the purpose of their knowledge is instrumental and action-oriented, while the objective of anthropologists, most of the time, is understanding for its own sake. Lawyers seek a form of knowledge that will help them operate effectively on behalf of their clients in the legal system. In doing so, a certain level of what an anthropologist might call "misunderstanding" is almost an occupational necessity for lawyers.

Why do I say this? Can it really be true that lawyers must be partially deceived about the nature of law and what they do in practice in order to do it well? Well, the way professions operate is, by definition, monopolizing and then selling a specialized form of knowledge to a broader and supposedly unknowing or uneducated public. This is true of all professions, whether we speak of lawyers, engineers, doctors or others. The degrees we display

in our offices, and our membership in professional guilds, often gained by passing stringent examinations or periods of extended apprenticeship, are like warrants of our mastery of this specialized knowledge. We sell this product with more verve, excitement and commitment when we fully believe in it ourselves. Think of it: if you were selling a car that had been perfectly maintained, don't you think your enthusiasm would be communicated to the buyer? It is, of course, harder for an individual professional to sell this product if he or she lacks sincere belief in its value.

For better or for worse, what anthropologists often have to tell lawyers is either "law is not so special" - that is, the kind of logic or knowledge that is employed in law is not so distinct from that which is employed in other fields, or that "formal law doesn't tell the whole story" as we saw in the Green motion example. Either way, these assertions are fundamentally subversive of the legal profession and their claims to privilege, because we are saying that whatever the lawyers' specialized knowledge is, that is not the true logic by which the legal system operates. So anthropologists, at our best, can make lawyers profoundly uncomfortable, and it is in their professional genetic make-up to reject our claims.

In fact, I think many lawyers - at least practicing ones - live a kind of schizophrenia. They spout about law, especially to outsiders, whether jurors, family members, visiting foreign dignitaries and the like, and tout the virtues of the formal legal system. For example, a judge in whose court I tried a number of cases would always incant to jurors at the end of the trial "Our jury system may not be perfect, but it is the best system known to man, and thank you, ladies and gentlemen of the jury, for your participation in this keystone of American democracy." Now, perhaps I am naive, but I doubt this judge would have been able to say this repeatedly to jurors without some sincere belief in its truth. At some time, lawyers know very well through daily practice that the way the system actually functions is far different than it is formally depicted.

So what do you do when you find out that your sister or your brother is schizophrenic - and will be so for life? In other words, that there is no realistic hope for redemption? Do you excommunicate that person, or expel him or her from the family? Of course not! You lovingly and patiently tolerate your sibling as best you can. And so it should be for anthropologists and their lawyer kin. Likewise, if you are a lawyer, what do you do with this younger sibling, who is like a gadfly, buzzing about and challenging your assumptions, poking holes in your pretensions, and generally making life miserable? The same! You lovingly tolerate him or her, and put up with nuisance. Thus is my optimistic or perhaps aspirational view



of the relationship between law and anthropology. It is one in which we are permanently locked in dispute. But I fully expect, out of this dialectic, discoveries and insights that will advance both fields, and even, perhaps, a certain amount of entertainment.

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