1-8-1986

Sex and Witchcraft, An Interdisciplinary, Jointly-Taught Course in Comparative Dispute Settlement

Peter Sevareid

Follow this and additional works at: http://scholar.valpo.edu/twls

Recommended Citation
Available at: http://scholar.valpo.edu/twls/vol5/iss1/8

This Article is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Third World Legal Studies by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.
SEX AND WITCHCRAFT, AN INTERDISCIPLINARY, JOINTLY-TAUGHT COURSE IN COMPARATIVE DISPUTE SETTLEMENT*

Peter Sevareid**

The spring term, 1988, marked the tenth consecutive year that three of us at Temple University, Philadelphia, have taught a course officially listed as "Comparative Law, Dispute Settlement," but known to a decade of students as "Sex and Witchcraft." Peter Rigby, Professor of Anthropology, Robert Kidder, Professor of Sociology, and I have given this course to a class of students from the three disciplines. Since the instructors are still on speaking terms—a rare event in academic life, since many of us still speak to each other, and perhaps why the course has worked for so long, is that all of us—though trained in three different disciplines—have the same scholarly interest in "law in action" and have all lived in the Third World and done field research in Third World legal systems. Peter Rigby was born in India of British parents and is now a citizen of Uganda. He was educated at the University of Cape Town, South Africa, and received his Ph.D. in Anthropology from Cambridge where he studied under anthropologists Meyer Fortes and Sir Edmund Leach. Before coming to Temple he taught at the University of Dar Es Salaam, Tanzania, and before that he was Senior Lecturer and Professor of Sociology and Social Anthropology at Makerere, Kampala, Uganda. In addition to articles, he has written two books: CATTLE AND KINSHIP AMONG THE GOGO: A SEMIPASTORAL SOCIETY OF CENTRAL TANZANIA, Cornell University Press, 1969; and PERSISTENT PASTORALISTS, NOMADIC SOCIETIES IN TRANSITION, Zed Books (London), 1985.

Bob Kidder did his doctoral research for Northwestern University in India in courts and law offices. He has recently done field work in Japan and has been editor of LAW AND SOCIETY REVIEW, an American journal of empirical legal research. He is also the author of a college text on the Sociology of Law which uses many examples drawn from our course, CONNECTING LAW AND SOCIETY: AN INTRODUCTION TO RESEARCH AND THEORY, Prentice-Hall, 1983.

After graduation from Georgetown University Law School and a short stint in a Washington law firm, I was sent by the International Legal Center to teach at the Kenya Institute of Administration. Since coming to Temple I have taught during summers at the University of Ghana and the University of Tel Aviv and I have also lived in a northern Liberian village studying customary law. I have written on African law and legal education.

A further reason our course has existed is that it is not one course but three. It is a joint course practically but not officially, de facto but not de jure. There are separate listings in the offerings of the Departments of Anthropology and Sociology and the School of Law. Each listing indicates as

---

* This article is based on remarks given at an INTWORLSA Workshop on "Teaching About 'Law' in the 'Development' of Third World Countries" held in Los Angeles, January 3rd, 1987.
** Professor of Law, Temple University School of Law.

1. Perhaps why we still speak to each other, and perhaps why the course has worked for so long, is that all of us—though trained in three different disciplines—have the same scholarly interest in "law in action" and have all lived in the Third World and done field research in Third World legal systems. Peter Rigby was born in India of British parents and is now a citizen of Uganda. He was educated at the University of Cape Town, South Africa, and received his Ph.D. in Anthropology from Cambridge where he studied under anthropologists Meyer Fortes and Sir Edmund Leach. Before coming to Temple he taught at the University of Dar Es Salaam, Tanzania, and before that he was Senior Lecturer and Professor of Sociology and Social Anthropology at Makerere, Kampala, Uganda. In addition to articles, he has written two books: CATTLE AND KINSHIP AMONG THE GOGO: A SEMIPASTORAL SOCIETY OF CENTRAL TANZANIA, Cornell University Press, 1969; and PERSISTENT PASTORALISTS, NOMADIC SOCIETIES IN TRANSITION, Zed Books (London), 1985.

Bob Kidder did his doctoral research for Northwestern University in India in courts and law offices. He has recently done field work in Japan and has been editor of LAW AND SOCIETY REVIEW, an American journal of empirical legal research. He is also the author of a college text on the Sociology of Law which uses many examples drawn from our course, CONNECTING LAW AND SOCIETY: AN INTRODUCTION TO RESEARCH AND THEORY, Prentice-Hall, 1983.

After graduation from Georgetown University Law School and a short stint in a Washington law firm, I was sent by the International Legal Center to teach at the Kenya Institute of Administration. Since coming to Temple I have taught during summers at the University of Ghana and the University of Tel Aviv and I have also lived in a northern Liberian village studying customary law. I have written on African law and legal education.

A further reason our course has existed is that it is not one course but three. It is a joint course practically but not officially, de facto but not de jure. There are separate listings in the offerings of the Departments of Anthropology and Sociology and the School of Law. Each listing indicates as
our graduates have told us at alumni gatherings that this course altered their thinking about the nature of the legal process, and since a majority of our course readings deal with changing peasant societies, a description of the course and our experiences with it may be of interest to readers of this issue of Third World Legal Studies.

The theme for this issue is the content and the pedagogical methodology of courses about "law" in the "development" of Third World countries. On one level our course is a survey of the literature by lawyers, anthropologists and sociologists on the way small-scale groups handle problems which would be dealt with by members of the legal profession in Western, industrialized countries. For example, we study the handling of a land dispute among the Warusha in Tanzania [Class 2] and watch a film of the compromise distribution of the meat of a hartebeeste by the !Kung (Bushmen) of Namibia (South West Africa) [Class 3]. The Appendix to this article is a listing of the materials used in our course. Although a majority of our class readings depict dispute settlement in the Third World, we do cover dispute settlement by autonomous groups within the First World [the Amish, Class 17, and Israeli kibbutzim, Class 9]. We also discuss alternative dispute resolution (ADR) in a California divorce lawyer's office [Class 20] and in an English lay magistrate's court [Class 24]. The California and English examples of ADR might be classified as informal dispute resolution by "nonautonomous" members of the dominant ethnic group of First World countries. Throughout the course, these various forms of informal dispute resolution are compared with the formal model of Western, court-dominated, adversarial litigation.

While on one level our course is a survey of the literature on comparative dispute settlement by small groups, on another it is about "law" in the "development" of Third World countries. At the outset the issues of "what is law?" and "what do we mean by development?" are raised. Class I begins with the film "Bitter Melons" about the /Gwi (Bushmen) of Botswana (then the Bechuanaland Protectorate). On first viewing it is
SEX AND WITCHCRAFT

the story of unclad little people who gather fruit, dig up roots, hunt game, sleep a lot under shade trees, and dance with their children in the emptiness of the scrub desert. Not a court house or an overdressed lawyer is in sight. Can there be any "law" here?

Our first class discussion brings out the fact that the conduct of the /Gwi is governed by norms. Their behavior is not as haphazard as it looks. For example, captured small animals need not be shared outside the nuclear family, but large game must be shared. This norm of behavior is a rule of "law" for the /Gwi. And if there is conflict about how different norms of meat distribution should operate, the larger community settles the dispute. Settlement is illustrated by a film in Class 3 about a related group, the !Kung, where the issue was which extended family had the right to the meat of a hartebeeste—the family of the hunter who shot and wounded the animal or the family of another hunter who found the carcass several days later. No courtroom is visible, but under a tree a group of men talk the matter through to an acceptable compromise.

Throughout the course we are trying to spot "law" and the "legal process" in the groups we watch or read about. Students, particularly

---

2. As the Appendix makes clear, we use many films and television tapes in the course. There is a rich library of visual materials on our subject and over the years we have found many that work well in class. Our students, children of the Television Age, respond well to visual materials.

The films and television tapes are a pleasant surprise for the law students in the class. They have recently become used to courses where the only "visual" aspect is the lecturer's expressionless face and where the reading materials come in either brown or blue covers and are without pictures. Anthropology and sociology students, on the other hand, are used to classes with films and television tapes and their texts are filled with pictures, sometimes even pictures in color. Many of the non-law students in our class had assumed before taking the course that law must be a "difficult" field of study because the texts they had seen were so visually plain.

Our most successful classes have been those where the reading before class tied directly to a film or a television tape. The Togo film "Sherea" in Class 9 is an example. The study guide gives a detailed summary of the case as well as extensive ethnographic background. Having read the study guide before class, students watch the film and this adds to and reinforces the reading. The class discussion which follows has always been one of our best, the collective visual experience of watching the film gives a common ground for discussion and also gives self-confidence for expressing their opinions to students from these three, very different disciplines.

When I first began to teach in Kenya our course materials were English law text books and our method of instruction was lecture. For Africans, straight from up-country mission schools, it was hard to relate to abstract legal principles applied to situations they had never encountered. How could they be expected to grasp the significance of "tortious liability" resulting when the door of a "tube station" closed too rapidly on a "top hat"? We began to use cases from the Kenya courts which the students read before class and we thus had a common ground, not for lecturing but for open discussion. A case in which a Landrover, driven by a man who had had too much Tusker beer, ran over the banana trees of the plaintiff's shamba (small farm) was a situation Kenya students could understand. (See my Teaching by the Socratic Method in Kenya, 2 KENYA INSTITUTE OF ADMIN.)
law students, assume that this should be easy to do. But they soon realize that it is a difficult task: it is a jurisprudential task. Beginning law students unconsciously accept a Natural or a Divine law jurisprudential philosophy. These hold (to oversimplify) that basic rules, basic notions of equity and fairness, apply to all men. A course in Comparative Dispute Settlement must be one that shows how these universal rules are applied by different cultures. The "legal process" of all societies must be one of applying "legal" rules ("law") based on universal metaphysical principles to specific disputes.

We have thus found that teaching about "law" in the development of Third World countries creates two questions, not just the one question, "what is law?" The first question is what is the structure, what is the process in a given society, for applying "legal" rules? The second question is whether the rules applied have any relevance outside the specific small group being studied, do the rules have any basis in forces that govern the behavior of all men? Even when we have successfully spotted the mechanism a particular group uses for solving conflicts that are similar to the conflicts dealt with by legal professionals in the West, the results reached,

J. 23 (1973).) In a similar way, study guides followed by films of the same cases give a common ground for discussion to interdisciplinary American students, many of whom have never been to the Third World.


4. A traditional approach to studying comparative legal systems, especially non-Western ones, is to define "law" and then, using that definition as a tool, to investigate other cultures. We have found it more effective to identify conflicts that are similar to the conflicts handled by lawyers in the West as our method of comparison than to try to agree upon a definition of "law." More than halfway through the course [Class 18], we read the "What is law?" chapter from our only text, E. Adamson Hoebel's *The Law of Primitive Man: A Study in Comparative Legal Dynamics* (1954, 1972). At the beginning of this chapter (p. 20) Hoebel quotes Max Radin: "Those of us who have learned humility have given over the attempt to define law." (Radin, *A Restatement of Hohfeld*, 51 Harv. L. R. 1145 (1938).) Despite Radin's warning, Hoebel goes on to define "law": "A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognized privilege of so acting." (p. 28). Such a definition contains the three essential elements for Hoebel of "privileged force, official authority, and regularity. . .that modern jurisprudence teaches us we must seek when we wish to identify law." (Id.)

We have found several things wrong with Hoebel's definition of "law." First, in leading up to his own definition, he attacked the definitions of "law" by others as too all inclusive, as being as applicable to "toilet training" as to law. (p.20) Why Hoebel's definition of "law" does not apply to "toilet training" escapes us. This surely is the type of definitional trap that Max Radin was talking about in the law review article cited by Hoebel. Second, Hoebel's definition centers more on law as "legal process" than on law as a body of "rules." For Hoebel a norm is "legal" if it is
the decisions in individual cases, often do not make sense to our students. The solutions are not "logical." The legal rules and the way they are applied in conflicts are not readily understood.

Students find that once we get more specific than vague notions of "fairness", the rules that are applied vary dramatically with each society. To use anthropological terminology, the rules applied to factually similar cases in two cultures will differ because the structure of the societies and the functions of their institutions differ. For example, take two cases involving sexual access to a wife. One case involves two brokers in a New York municipal bond office where one has had an affair with the other's wife. The second case involves frequent sex by one ilmuran (warrior) ultimately sanctioned by force. A process using force determines which of many rules are legal rules. But we have found that there are always two questions in studying comparative law: a question of law as process and a question of law as rules. Hoebel's definition forecloses the separate existence of law as a body of rules, i.e. as a body of abstract principles. Hoebel’s definition denies the possibility that there are rules relevant to the central issues in conflicts which exist but which will never be backed up by force.

And thirdly, we have found specific definitions of "law" so hopelessly culture-bound as to make them next to useless in a comparative course. The urge to define law is particularly Western. That urge is rooted in notions of progress (discussed below) and in a belief in the supremacy of "science." An example is the following from legal sociologist Donald Black: "[It is possible to have] a scientific analysis of legal life as a system of behavior. The ultimate contribution of this enterprise would be a general theory of law, a theory that would predict and explain every instance of legal behavior." (D. Black, The Boundaries of Legal Sociology, in The Social Organization of Law (D. Black & M. Mileski eds. 1973) emphasis in the original.) A definition of law thus becomes the tool whereby a general theory of law is found and used to predict every instance of legal behavior, however diverse the different cultures being studied. The three of us who have taught this course are very skeptical of the utility of definitions of law and of the validity of universal legal principles. If one social class has more wealth than another, legal behavior is often the same in very different cultures. But outside of similar legal outcomes when a society has more than one social class, we have found few generalizations about law that have held up cross-culturally. We agree with anthropologist Franz Boas (1858-1942) who, at the end of his long career, concluded that there was no hope of discovering general or particular laws akin to those of the physical sciences which could predict social behavior. "The phenomena of our science are so individualized, so exposed to outer accident, that no set of laws could explain them. . . . [I]t seems to be doubtful whether valid cultural laws can be found." (F. Boas, Race, Language and Culture 257 (1940).

5. The vague notions of "fairness" that I have in mind are close to Aristotle’s concept of justice as particular justice or fairness, specifically distributive justice. It does not involve rectificatory justice (procedural due process). See Philosophy of Law 333-7 (J. Feinberg & H. Gross, eds. 3rd ed. 1986). Unless one social class is manipulating the dispute settlement mechanism to its advantage [Classes 9, 10 and 11], we have seen few examples in our course of procedural due process violations. Once the norms are understood in the context of the culture of a particular society, the "trials" are "fair." Traditional societies are often models of procedural due process, no one is in a hurry: opposing parties get to speak their minds at length, and the case does not end until a consensus of the community is reached, until all are "satisfied." (See my A Post-coup Court in Nimba, 9 Liberian Stud. J. 93 (1980-81).)
On a general level both cases involve the question whether it is "fair" to have intercourse with another man's wife. More specifically, the issue in one case is how much; in the other, whether once is too much. The Ilparakuyo permit, even encourage, sexual access to a fellow ilmurran's wife or wives, provided such access is not abused. To understand this requires both a knowledge of Ilparakuyo norms and a theoretical framework with which to assess this knowledge.

6. The Ilparakuyo are a similar group to the Warusha in Class 2.

7. In teaching the course over the years we have found a marked difference in the approach to the "facts" of a case between law students on the one hand and sociology and anthropology students on the other. Initially law students are not skeptical about the presentation of facts. They are used to reading appellate court opinions and have been taught to concentrate their scrutiny on the opinion's reasoning, not on whether the facts are correct. Because they have an unconscious Divine or Natural Law jurisprudential philosophy, they believe that a properly operating legal system can achieve justice and fairness if it "logically" applies the appropriate value-free, universal legal rule to the "objective" facts of a case. (This is the Nineteenth Century "finding the law" approach.) Law students study the case materials in our course to see whether the dispute settler has reasoned in the appropriate syllogistic manner. They are thrown off balance when judges in a different culture do not reason syllogistically. Such reasoning and the result in a case are not "logical" for law students.

Law students are used to "legal reasoning" or "thinking like a lawyer." This form of reasoning, this mode of argument, is syllogistic. It comes in three parts - the major premise, the minor premise and the conclusion. "All men are mortal; Socrates is a man; therefore, Socrates is mortal." (In our example (to oversimplify): men commit adultery if they sleep with another man's wife; the municipal bond broker slept with his fellow's wife; therefore, the bond broker committed adultery.) Most commonly, "thinking like a lawyer" is reasoning by analogy from a parallel case or cases to the present, objective "facts." This reasoning is expressed in the syllogistic format. "[W]hat is ... involved is not logical deduction in the strict sense but the rational use of analogy, whereby a case is compared with like and unlike, so as to determine the 'proper' scope of a legal rule. No analogy is compelling in a purely logical sense as leading to a necessary conclusion; but as a practical matter human beings do reason by analogy, and find this in many instances a useful way of arriving at normative or practical decisions." (Lord Lloyd of Hampstead & M.D.A. Freeman, Lloyd's Introduction to Jurisprudence 1142 (5th Ed. 1985), emphasis in original.) "Like to like is probably the value norm most firmly rooted in the democratic society of today." (Id. at n. 12, quoting F. Schmidt, Scandinavian Studies in Law 195 (1957).

A basic question in our course is whether syllogistic reasoning, and the linking of like to like by analogy, is universal with all men or a particular thought pattern of the West. Some hold that it is universal: "The assumption that people in different cultures actually think differently in some inherent way is untenable. [T]he difference among traditions derives not from variance in inherent thinking patterns, but from differences in what is thought about. [T]here is no prima facie reason to abandon the hypothesis that the logical form of rationality is the same around the world. Rather, the divergence between cultures lies in the traditional concerns of rationality, and therefore, the experiences to which logic is applied." (Kasulis, Reference and symbol in Plato's Cratylus and Kukai's Shojijissogi, 32 Philosophy East and West 404-5 (1982), quoted in J.C. Smith & David N. Weissstub, The Western Idea of Law 7-9 (1983). Emphasis in original.) If the reasoning process is different in different cultures, then law students must not only learn different norms to understand

with the wife of another ilmurran of the Ilparakuyo Maasai of Tanzania.
One theoretical framework would be to apply Marxist theory to understand the culture of the Ilparakuyo. (Marxist theory is not the only framework we use in our course. We try out a number of jurisprudential theories.) An historical materialist analysis can explain this case and why the Maasai have successfully resisted the modernizing pressures of English colonial administrators, proselytizing missionaries and socialist development experts. Marx held that a people's culture, their philosophical beliefs and their behavioral customs, are determined by their economic base. Their mode of production, their way of obtaining the goods and services necessary to sustain life, determines how they relate to each other—the relations of production. The relationships between men and women are different in a pastoralist society from those in a capitalist one because the manner in which goods are produced is different. When the wealth of a society is generated by jointly-owned reproducing cattle, the ways in which men and women relate to each other are not the same as in a capitalist society where the means of production, land or a manufacturing business, are owned by one group and worked by another. In capitalist communities one class owns the means of production: another class works for a wage but does not own the results of its production, the fruits of its labor.

Marx held that capitalism would change into socialism and then into communism, just as feudalism in Europe had evolved into capitalism. He...
also speculated on the structures of societies prior to feudalism, called in the Marxist literature "pre-capitalist formations." Men had first been hunters and gatherers. Then they began to herd cattle and at a later time became cultivators. These early cultivators had a communal society not dominated by class conflict. For Marx this "Germanic mode of production" was not unlike the communist society he felt was historically inevitable after the fall of capitalism and the end of socialism. Because private ownership was limited or non-existent in the Germanic mode, people reacted to each other as equals because they shared the common fruits of production. There was no class conflict as all were of the same class. (Current research now holds that cultivators evolved after hunter-gatherers had become cultivators. It was at a later time that some cultivators became pastoralists, a specialized offshoot who traded their meat products for crops grown by neighboring subsistence farmers.)

Marx's speculations on pre-capitalist formations were contained in his notebooks and were not fully developed. These notebooks, the *Grundrisse*, were written in 1857 and 1858 but were first published in a limited edition only in 1939 and 1941, and a full edition was not available till 1953.8 Peter Rigby of our class maintains that, unfinished as it was, Marx's analysis was essentially correct in understanding how pastoralist society is structured and how pastoralists think about property and relate to each other.

The seeds of strife and class conflict arise when men spend their days working land and planting crops. To get more crops and therefore more wealth, each farmer needs more land to cultivate. When there is a scarcity of good land, each eyes the land of his neighbor as necessary for his own increased production. Competition ensues and with it notions of individual ownership and private property. Because the base of production is agriculture, a "superstructure" of politics and laws develops which in turn reinforces the structure of that society. It is the mode of production which determines the relations of production.

Pastoral society is different. Land for grazing is not scarce. Increased wealth comes from a healthy and actively reproducing herd. Alone, no one nuclear family can tend all their cattle and protect them from

---

8. The *Grundrisse* was published in a limited edition in two volumes in German by Foreign Language Publishers, Moscow. The first volume appeared in 1939 and the second in 1941. The first full edition was published in German by Dietz Verlag in Berlin in 1953. It was not until 1973 that Penguin Books, Baltimore, published a complete English translation by Martin Nicolaus. The subtitle was "Foundations of the Critique of Political Economy."
predators. It takes cooperation; it takes communal effort. The structure of Ilparakuyo society does have divisions of labor. Women milk and tend small animals such as sheep and goats. Boys tend young cattle. It is the mature ilmurray, the warriors, who herd cattle on nomadic journeys in search of grazing. The ilmurray are drawn from the whole society and are formed in groups called “age-sets.” Under the guidance of elders, the ilmurray are given charge of the main means of production for the Ilparakuyo, the reproducing cattle. Though each family will “own” individual cattle, such ownership is meaningless without the cooperation of the larger community. The superstructure of the base, the laws of the community, foster sharing among age-mates. An ilmurray has free use of the personal property of his age-mates—in modern Tanzania items like watches and sunglasses—even, if not abused, sexual access to an age-mate’s wife or wives.

Students cannot understand how the Ilparakuyo settle their disputes until students understand Ilparakuyo customs and laws. The Ilparakuyo notion of such a basic concept as private property is dissimilar to ours. Their laws are different because their mode of production, their means of gaining a livelihood, is different. Thus a theoretical framework, in this example a Marxist analysis, is necessary to understand the norms of a different culture. Armed with this theoretical understanding, students then can understand the norms of the culture and in turn understand why the results of a case that has factual similarities to a case in another culture came out differently. The age-mate abusing sexual access to his fellow’s wife will be treated in a different way in Ilparakuyo dispute settlement from the way the municipal bond broker who slept with his office-mate’s wife will be treated by an American court.

Besides the “what is law?” question, we deal extensively with the problem of law in the “development” of Third World countries. “What do we mean by development?” is a constant question. Our one text, Hoebel’s The Law of Primitive Man, equates “development” with “progress,” as indicated by its title. For Hoebel societies are “evolving” towards “greater complexity” and “higher” forms of law. “The trend of the law, like the trend of society and culture, has been one of steadily increasing complexity. The study of this process is the aim of the evolutionary method...” This has overtones of Social Darwinism. To Hoebel “[t]he society and legal life of the Ashanti [Class 10] are obviously...

9. Hoebel, supra note 4, at 289.
10. See generally, R. Hofstadter, Social Darwinism in American Thought (1944).
further evolved than those of the Eskimo [Class 5]." The Eskimo operate by "rudimentary law" in a society characterized as "primitive anarchy" while the Ashanti "stand on the threshold of civilization."

Hoebel's idea of progress has a counterpart in one of the theories of Law and Development, namely "legal engineering." This theory was described by Wolfgang Friedmann (when he wrote about the role and the function of lawyers in the Third World): "These countries have an overwhelming need for rapid social and economic change. Much of this must express itself in legal change in constitutions, statutes and administrative regulations." Once an efficient national system of public and private law is in place, the economy of these countries will "take off." This assumes that "law" and "legal systems" are essentially the same in all human societies. It assumes that if those in "primitive anarchy" would only operate their legal systems in the efficient way that the West has done, then they too will "stand on the threshold of civilization." They may even get rich.

We question the idea of progress from the first day of class. We read an article that maintains that the shift from hunter-gathering to plant cultivation was the worst mistake in the history of the human race. New evidence indicates that hunter-gatherers had better diets, lived longer and were more free of disease than cultivators. Hunter-gatherers had more leisure time because it took fewer hours to obtain a balanced diet of protein and other nutrients. They were less susceptible to mass diseases such as plague because they lived in scattered bands rather than grouped together in crowded settlements. Hunter-gatherers did not suffer bouts of mass starvation as did cultivators when a single staple such as potatoes or corn failed. With this new evidence in mind, can we say that hunter-gatherers today are less "progressive" than cultivators? Do they have "an overwhelming need for rapid social and economic change"? And are hunter-gatherers at a lower stage of "legal progress" than other societies?

We contrast the peaceful dispute resolution of the /Gwi and !Kung hunter-gatherers who live in the deserts of southern Africa [Classes 1 and

---

11. Hoebel, supra note 4, at 289.
12. Id. at 67 (capitalization changed).
13. Id. at 211.
3] with the lack of legal redress experienced by poor consumers of mass produced products in the United States. We do this when we view a television tape by Laura Nader [Class 19]. In the tape, buyers of faulty autos and washing machines are ignored by the manufacturers if the warranties have run out. And the relatively small price of the product does not justify invoking expensive litigation. We ask whether the "civilized" and highly "progressive" society of the U.S. really has a "higher" form of law than "primitive" peoples? At least in terms of access to legal process, it is doubtful whether societies have "evolved" to "higher," more "fair" procedures.

We also question whether two societies at the same "stage" of "development" necessarily have the same "laws" and the same "legal process." The violence of the Eskimo, who are hunters and who live in an equally harsh environment [Class 5] as that of the /Gwi and the !Kung, is contrasted with the peaceful dispute resolution of the latter groups. To us it is questionable whether similar sparse environments or similar modes of food production produce similar laws and legal systems. We make the same comparisons between the Albanians [Class 14] and the Amish [Class 17].

Besides dealing with issues of "progress" and "development," we also treat a number of other issues which I shall mention briefly. We question the whole notion of whether some societies and hence their legal systems are more "complex" than others. Are the "contract" rules of the Trobriand Islanders [Class 8] less intricate than the "deals" between American manufacturers and their dealers [Class 20]? Are there really differences in legal rules and the kinds of legal process in small societies where people deal with each other in many different capacities (societies with "multiplex" relationships) [Class 4] than in societies where people may encounter each other only once in a lifetime (societies with "simplex" relationships) [Class 24]? Another question is what effect do religious beliefs have on legal rules and the dispute settlement process [Classes 16, 17 and 27]? To what extent is litigation a form of entertainment and a substitute for limited warfare [Classes 5, 13, 14 and 15]? What happens when one society imposes its laws on another [Classes 9, 10, 11, 21, and 27]? And finally, what happens to rules and dispute resolution when a society has one class of citizens with more power than another class [Classes 11 and 26]?

I hope that I have demonstrated that Comparative Dispute Settlement is an infinitely rich subject. The longer we have taught this course, the more questions we have found. Over the years we have made changes in the course materials: some materials did not work well in class; others
have made in a stronger manner the points we wished to achieve. And good readings and films have been produced that were not in existence when we first began the course. Students often had mixed motives when they signed up for our course. Some literal-minded law students were looking for a course which conveniently fitted into their schedule between Remedies and Commercial Transactions. ("I don't see how Comanche wife-stealing rules will be on the Multi-State" [bar examination].) Some law students had once taken a course in Anthropology or Sociology and were still curious. Others had wanted a career in Art History but were settling for a specialty in shopping center leases and were seeking relief from the monotonous reading of American appellate cases. Some students in the College of Arts and Sciences were hoping that this course would show them what law school was like just in case a career as an academic anthropologist or sociologist did not work out. Whatever their initial reasons, many have told us after the course was over that we had fundamentally changed their view of law and the legal process, that a course which they had assumed would be the least "practical" ended up being very useful for law practice or whatever they did. It was useful because it gave them a new theoretical understanding. They had now formed their own conscious jurisprudential view of law and dispute settlement. As teachers, we could not ask for a better result.

APPENDIX

COMPARATIVE LAW: DISPUTE SETTLEMENT

Professors Robert Kidder, Peter Rigby and Peter Sevareid
Temple University
Departments of Anthropology and Sociology and the School of Law Joint Course

Readings

Required:
- Simon Roberts: Order and Dispute, An Introduction to Legal Anthropology (1979)
SEX AND WITCHCRAFT


CLASSES

1. Film: “Bitter Melons” (30 minutes) (Kalahari Bushmen); study guide to film (DER); and Jared Diamond, “The Worst Mistake in the History of the Human Race” (from Discover, 1987).


3. Films: “Meat Fight” (14 minutes) and “Argument About a Marriage” (18 minutes) (both films about Bushmen in Southwest Africa); study guides to both films (DER).


5. Film: Knud Rasmussen: “The Wedding of Palo” (72 minutes) (on the Eskimos); “The Eskimo: Rudimentary Law in Primitive Anarchy” (H: ch. 5).


8. “The Trobriand Islanders: Primitive Law as Seen by Bronislaw Malinowski” (Melanesia) (H: ch. 8).


15. Film: "Ax Fight" (30 minutes) (Yanomano Indians of Southern Venezuela); study guide to film (DER); and Louis Auchincloss short story "From Bed and Board" (from *Power of Attorney*, 1963).


17. Guest lecturer: John A. Hostetler (Temple Professor of Anthropology, Emeritus); film: Old Order Amish: A People of Preservation (30 minutes); selected readings from Hostetler: *Amish Society*, 1980.


23. Film: Courts and Councils: Dispute Settlement in India (30 minutes); film guide (from South Asian Area Center, University of Wisconsin - Madison); and Robert L. Kidder: "Courts and Conflict in an Indian City: A Study in Legal Impact" (from 11 Journal of Commonwealth Political Studies, 1973).


25. Guest Lecturer: Professor Jan Ting (Temple Law School); television tape: Chinese Theft Case (60 minutes); Victor H. Li: *Law Without


27. Film: A film by Peter Rigby of a Dispute Settler in a Trance in Kampala (Uganda); Barbara E. Harrell-Bond, “An Adultery Dispute with No Legal Remedy” (from “Special Issue on Disparity between Law and Social Reality in Africa,” Kroniek Van Afrika, 1975 (Afrika-Studiencentrum, Leiden) (Sierra Leone); and Peter Sevareid: “A Post-coup Court in Nimba” (from 9 Liberian Studies Journal 1980-81).