

## PRESIDENT'S MESSAGE

### TO AD HOEBEL - WITH THANKS

The *Law & Society Review* has never before dedicated an issue to a particular scholar. It is thoroughly appropriate that the first recipient of this honor be Professor E. Adamson Hoebel. As a person, a teacher, and a scholar, Professor Hoebel has played a major role in the development of research on law and society. Although he would not claim any such significance—indeed, because he would not—it is appropriate that our Law and Society Association do so for him.

His conception of legal institutions has helped a generation of social scientists to place law in its social and cultural context. As an ethnographer, he found himself fascinated by the social control system of the Comanche. By description rather than elaborate theory, he showed how Comanche controls fit within the rather anarchic culture of that warrior society. Moving from the Comanche to the Cheyenne, he noted the variation even between these two related Plains Indian tribes. In the Cheyenne culture, Hoebel showed with particular vividness the manner in which soldier societies arose to meet the functional requirements of a buffalo-hunting economy, and how these societies, once established, began to exercise broader functions of social control.

Hoebel thus directed our attention to the interrelationship among the parts of a society, seeing social control as inter-related with the rest of the society. He showed us how to dismiss the Malinowskian question—"What is LAW?"—in order to move into more fruitful, empirical inquiries. A generation of anthropologists—or was it two?—had devoted inordinate energy to the definitinal question originally propounded by Malinowski in his Trobriand Islands monograph, *Crime and Custom in Savage Society*. Malinowski's twin theses in that volume were that social control occurs in many forms, which is true, and that almost all of these forms deserve to be called law, which is not so much wrong as distracting. Hoebel finessed the problem of defining law by describing the control system in each society. He was not interested in forcing everyone to accept a single reliable line between law and non-legal control. He wanted us all to see that the fundamental elements of Western legal systems are found in varying degrees across the range of human societies. Nevertheless, he deftly characterized the core elements of a legal system:

*The really fundamental sine qua non of law in any society—primitive or civilized—is the legitimate use*

*of physical coercion by a socially authorized agent.*

(E.A. Hoebel, *The Law of Primitive Man*, 1954, at 26).

With such a concrete focus, he could then freely examine the manner in which the “legal” elements worked in any society.

In *The Law of Primitive Man*, he zestfully turned to that task. His description of the several societies are masterpieces of succinct ethnographic description derived from many sources. Whether summarizing his own ethnographic studies; relying on another anthropologist such as Barton, Rattray, or Malinowski; or piecing together a culture pattern such as the Eskimo from a number of accounts—he conveyed a vivid picture of each society as a living, believable group of people seeking to cope with their life conditions. Because one feels the reality of each society he describes, the legal system can be understood as a product and integral part of that society. As the accounts go on, the reader has a feeling of inevitability about the development of each legal system in its social context.

In comparing societies, Hoebel suggests an evolutionary process without imposing or proving it. His is no unilinear, one-factor theory. But he helps us to discern increasing differentiation in the legal system as the society becomes more stratified and specialized. In short, he throws open the evolutionary questions but warns of facile answers. His theoretical interests are too varied to permit a single-factor approach. He works with learning theory concepts, alludes to economic consideration, brings in value formulations. None of these theories is intended to be definitive, or rigorously testable. They are introduced, it seems, because they have helped Hoebel to understand legal systems and he hopes they might also help others.

Hoebel’s companionability in the search for knowledge was clear in his teaching as well. Except for extensive hearsay, I know this primarily from a summer institute led by Hoebel and Harold Berman at Harvard in 1956. It was the first of four SSRC Institutes in the area of law and social science. At the time, there may have been three dozen people in American sociology, anthropology, and behavioral political science who thought about legal systems at all. If so, half of them were in Cambridge that summer and we were treated to incredibly rich intellectual fare, including conversations with Hurst, Riesman, Gouldner, Llewellyn, and Mentschikoff. But the steady voice, then and later, that kept us concentrating on a common subject matter, trying to understand in every possible way, was the person to whom this issue is dedicated. For these reasons, it is a great pleasure to have a hand in dedicating this issue: To Ad Hoebel — with thanks from all of us.

**Richard D. Schwartz**