

## FOREWORD

That the twenty-first year of the Journal's publication should commence with a Special Number in honour of Professor Isaac Schapera gives particular pleasure to the Editors. Schapera's work in the field of anthropology has already been acknowledged by his anthropological colleagues through two *Festschriften*<sup>1</sup>—an unusual and richly deserved distinction. But the picture would be incomplete if the lawyers did not add their praise. Not only has some of his most important research been in the field of law; but his interests there have been close to those of lawyers. There are good reasons, too, why his work should be celebrated in this Journal. He was a member of the small group (the rest of whom were lawyers) based on the University of London, who were originally responsible for launching and promoting it. Thereafter, he served with distinction on the Editorial Committee of the Journal, to the first volume of which he contributed a seminal article "The sources of law in Tswana tribal courts: legislation and precedent".<sup>2</sup> His association with us continues, for we are delighted to be publishing another paper by him in our next number.

Schapera's writing is too well known to require advertisement here; but it is appropriate that we should say something of those parts of it from which lawyers have most directly profited. Inevitably we must begin with *A Handbook of Tswana Law and Custom* (1938). This work, which was prepared at the request of the Bechuanaland Administration, was designed ". . . to place on record, for the information and guidance of Government officials and of the Tswana themselves, the traditional and modern laws and related customs of the Tswana Tribes".<sup>3</sup> It was a landmark in several senses. First, it illustrated strikingly how anthropological research could provide something of immediate practical value in the territory where it was conducted; the fact that well-thumbed copies of the *Handbook* can be found in administrative offices and court rooms all over Botswana today speaks for itself. Secondly, it set new standards in the clarity and precision with which recorded rules were expressed. Many books modelled on the *Handbook* have followed it; but none have surpassed it in this respect. Thirdly, there are the research methods on the basis of which it was compiled. The rules which Schapera presented were derived from actual disputes which he recorded, as well as from idealised statements of informants as to the content of *mekgwa le melao ya Setswana*. The use of case histories may seem commonplace now; but in 1938 this represented a novel strategy.

We must also mention Schapera's interest in legislation, which resulted in several articles and two monographs: *Tribal Legislation among the Tswana of the Bechuanaland Protectorate* (1943); and *Tribal Innovators: Tswana Chiefs and Social Change 1795-1940* (1970). These major works, directed at legislative processes in traditional African societies with centralised political organisation, are without rival. It is likely that they will remain so, as societies like the Tswana ones which Schapera observed have now lost even the qualified autonomy which they enjoyed when he was in the field, and the opportunity to record such legislative activity has thus passed.

Schapera's work on contract in preliterate societies, and several other meticulous empirical studies, could be dwelt on too. However, alongside

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<sup>1</sup> M. Fortes and S. Patterson (ed.), *Studies in African Social Anthropology*, London, 1975; W. Shack and P. Cohen (ed.), *Politics in Leadership*, Oxford, forthcoming.

<sup>2</sup> [1957] J.A.L. 150.

<sup>3</sup> At p. xxv.

these we should also remember his valuable contributions to legal theory in such works as *Government and Politics in Tribal Societies* (1956), and in his essay entitled "Malinowski's Theories of Law" (1957).<sup>4</sup> In the latter he introduced some much-needed clarity in discussing anthropological definitions of law and legal institutions. Again, his paper "Tswana Legal Maxims" (1966)<sup>5</sup> seems certain to attract new attention given the growing contemporary concern with linguistic features of legal processes.

The essays we publish here are, other than Allott's, all by anthropologists or lawyers who have recently completed field studies in Botswana or Lesotho, and each is concerned with some topic which Schapera himself pioneered. We make no apology for the fact that in producing this number of a legal Journal we have called upon four anthropologists to help us, because, from the very beginning it was intended that the Journal should provide a forum equally open to the two disciplines of law and anthropology; and the contributions made by anthropologists to the Journal testify to this. However, there has in the past sometimes been a lack of mutual sympathy and understanding and we would welcome still closer collaboration. Happily there are widespread signs that the barriers are disappearing; Schap himself has done more than anyone to break them down.

THE EDITORS

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<sup>4</sup> In R. Firth (ed.), *Man and Culture: An Evaluation of the Work of Malinowski*, London.

<sup>5</sup> 1966 37 *Africa* 121-134.