Barbara E. Harrell-Bond and Emile A.B. van Rouveroy van Nieuwaal, ed., Disparity between Law and Social Reality in Africa. Kroniek van Afrika, 1975/1, new series No. 4. Leiden: Afrika Studiecentrum. 88 pp. $5.00.

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Kroniek van Afrika is a periodical of the Afrika-Studiecentrum in Leiden and is published three times a year, including two special issues on current topics. This slim volume on the disparity between law and social reality in Africa is the third special issue to appear; others discussed population growth and economic development (no. 1) and the press in Africa and Africa in the press (no. 3). In addition to an obituary of the late Professor Kwamena Bentsi-Enchill, this issue contains an introduction to its theme and six articles on aspects of law in Africa as well as an annotated bibliography of works on the disparity between law and social reality in Africa and a short book review. This note comments briefly on the introduction and each of the articles and makes some general observations on the way in which they treat the theme of the collection.

The introduction by Kurczewski and Podgorecki identifies the disparity between law and social reality as a standard topic in the sociology of law. Defining law as that part of social reality which comprises "the unified

experience of correlated rights and duties" (p. 4), the authors distinguish two facets of law as a social phenomenon, positive law and intuitive law. Positive law is "virtually analogous" to the "official law" used by courts and other state institutions. Intuitive law "obliges without reference to any outside element" and is "virtually analogous" to the "unofficial law" which is "used ... by an average citizen in his daily life" (p. 4). On the basis of these distinctions, Kurczewski and Podgorecki identify two types of disparity between law and social reality: (1) disparities between official and unofficial law, and (2) disparities between law and other social phenomena. In their opinion, the gap between the official and unofficial law is the major phenomenon faced in African societies.

Aspects of this phenomenon are described in subsequent papers. With one exception, each paper presents a dispute case or cases and other material from empirical research. Barbara Harrell-Bond describes a case in which a young cook-steward in Freetown, Sierra Leone, is unable to obtain any legal remedy for his wife's adultery. In Sierra Leone, customary law remains the personal law of those people defined as natives by national legislation, including the husband in this case, but no formal legislative provision exists for the administration of customary law in Freetown. Here, other attempts to settle the dispute by unofficial means proved ineffective. Ulrica Rijnsdorp reports a dispute concerning filiation in Bo, Sierra Leone, to illustrate the legal consequences of rapid social change when customary law rules are no longer appropriate and no new rules have yet been developed. Michael Lowy examines the way in which cases involving accusations of sorcery were decided by the Koforidua (Ghana) District Magistrate's Grade II Court in 1969. Punishable as a criminal offence under colonial legislation, sorcery had not been a crime in Ghana since the enactment of the 1960 Criminal Code, and Lowy seeks to show "how the withdrawal of the legal recognition of sorcery as an offence coupled with the activities of ... the legal profession, may serve to increase the use of shrines (for sorcery) quite apart from any increase in social tensions" (p. 44). Analyzing a complex dispute over land rights in North Togo, Emile van Rouveroy van Nieuwaal shows how the disparity between Anufo and national Togolese land law may be manipulated by parties of different social and economic status in the context of different legal institutions. Rionne Aig-Ojehomon-Ketting examines a marital dispute in Benin City, Nigeria, to illustrate the relationship between spouses married under the Marriage Act in an urban social situation characterized by changing expectations and values in family life. In the only article in French and not immediately based on empirical, case research, Raymond

Verdier shows how French legal writers during the colonial period, employing French legal categories in the African context, misunderstood the relationship between wife and husband in rural African communities. He argues that African law, especially in its historical aspects, can only be understood by approaching it on its own terms and through its own cultural categories. Concluding the volume, a brief annotated bibliography by Th. Gerold-Scheepers summarizes some of the literature on legal pluralism and the effects of social and political change on law in Africa.

As a whole, this volume of papers attests to the continuing contribution of the Afrika-Studiecentrum to African studies, most recently in the field of law, by sponsoring empirical research and publication of field research results. With the exception already mentioned, the papers present the direct fruits of empirical research, other findings from which are now being reported elsewhere.[1] Indeed, the description of actual disputes is the strongest point of the collection. Furthermore, each paper situates case material in its social context, so in most instances the reader is able to ascertain the social, economic, and political factors which presaged the dispute, influenced attempts at settlement, and shaped settlement processes as well as subsequent relationships among those involved. To mention one example, Harrell-Bond describes nine potential settlement agents brought into play in the adultery dispute she describes and indicates some of the factors influencing their effectiveness. In these respects, this collection provides extremely useful illustrations of some of the changes now occurring in African societies and their law.

As the Introduction implies, however, the purpose of the issue is not only to illustrate the disparity between law and social reality but also to contribute to our sociological understanding of the role of law in African countries. While necessarily based on empirical research, this requires in addition that the results of empirical research be firmly placed in a more general, theoretical framework, which identifies significant questions to be asked of the data and within which data may be interpreted and relationships explained. Unfortunately this collection of papers is rather weak in this theoretical respect, and I wish to make several points which suggest the reasons for this weakness and how the papers' theoretical contribution might have been enchanced.

First, despite the title of the volume, the papers do not share a clear, coherent theoretical focus. The Introduction points out some of the theoretical questions addressed by the papers, but, as its authors state, "(i)t

is the task of the reader to connect the above problems (discussed in the Introduction) with the issues raised by the authors in this collection" (p. 9). Since the papers vary widely in subject, theoretical sophistication and the extent to which they address theoretical issues, the task of the reader in this respect is a difficult one. In the absence of greater theoretical precision in the Introduction or more explicit attention to common theoretical questions in the papers, the theme of the volume - the disparity between law and reality - provides relatively little guidance for interpretation or explanation. As previous writers have pointed out, a disparity or gap between law and social behaviour is only to be expected; it would be surprising if the two coincided. The interesting theoretical questions lie, therefore, not in rediscovering the gap but in ascertaining and explaining the different "(relationships) ... within the configuration of elements which make up the legal system and the environing society."[2] Most of the papers in this collection address this latter question indirectly if at all, and at least one (Aig-Ojehomon-Ketting) merely rediscovers the gap by demonstrating "the disparity between statutory family law and the transitional state of marital relationships" in Nigeria (p. 60).

Second, although some papers do attempt to explain the changing relationships between aspects of the legal system and aspects of society, the data which they present does not always appear to support the conclusions drawn by their authors. Perhaps the most striking example is the paper by Michael Lowy on sorcery in Ghana. The data presented in the paper supports the author's conclusion that "the continued use of shrines is at least in part the consequence of an attempt to disregard them legislatively," assuming that, if legislation prohibiting sorcery were enacted, it would be enforced and serve as a deterrent; but it does not entirely support the conclusion that the law and its enforcement "may serve to increase the use of shrines quite apart from any increase in social tensions" (p. 44). The author is quite frank about the absence of quantitative data and the consequent difficulty in drawing unambiguous conclusions concerning the effects of the legal system, and indeed is to be congratulated for placing his material in a theoretical framework. However, the point would appear to be not that the legal system encourages sorcery but that it does nothing to prevent it. The theoretical aspects of this question might be more fruitfully addressed in terms of the notion of latent functions. Another example of a conclusion which is not entirely supported by the data presented in the paper is Harrell-Bond's recommendation that the Sierra Leone government establish legal insti-

tutions to administer customary law in the Western Area. Although the case for this recommendation is argued more fully and convincingly in another publication,[3] such a conclusion rests uneasily on the data presented here, since in the dispute she describes "the Headman's court was largely ineffective" (p. 20) and a number of other remedy agents existed to prevent the plaintiff from resorting to self-help.

A third, and related, comment is that the authors fail to draw out the theoretical implications of their material as fully as they might. Van Rouveroy van Nieuwaal's paper, for example, presents a fascinating account of a land dispute involving two different courts, several normative systems, and two parties linked by kinship yet separated by social status and economic interest. Nonetheless, his account, including the conclusion, is almost entirely descriptive, though it might have made fruitful use of other literature on the growth of the state bureaucracy as a class in Africa and its manipulation of the law. Three of the papers (Harrell-Bond, Rijnsdorp, Lowy) present cases involving relationships between landlord and tenant, but only Harrell-Bond accords more than passing reference to the conditions of extreme poverty and inadequate housing which afflict many urban Africans. Fuller attention to the economic context in which laws are enacted, communicated, and enforced would have enriched these as well as some of the other papers.

Another aspect of contemporary African legal systems which deserves more attention in the papers is the role of "customary law." Most of the papers describe norms backed by sanctions but not derived, in whole or in part, from the state legal system, and the Introduction stresses some of the practical difficulties resulting from legal pluralism. The authors refer to these norms variously as "unofficial law" (Kurczewski and Podgorecki), "customary law" (Harrell-Bond, Rijnsdorp, van Rouveroy van Nieuwaal, Aig-Ojehomon-Ketting), "Anufo land law" (van Rouveroy van Nieuwaal), or "le droit africain" (Verdier). Only Verdier (p. 75) appears to recognize the conceptual inadequacy of the term "customary law" as a theoretical construct, and none echo a Dutch anthropologist's plea in the 1940's[4] or refer to Faller's definition of customary law as "not so much a kind of law as a kind of legal situation which develops in imperial or quasi-imperial contexts ... in which dominant legal systems recognize and support the local law of politically subordinate communities."[5] It would be out of place here to attempt any reformulation of the concept of "customary law," but the various working notions employed in the papers, based on received European or state doctrinal definitions, are inadequate for any theoretical, socio-

logical conceptualization of legal pluralism or other relationships between law and aspects of social life.

One final comment concerns the bibliography (pp. 76-84). It present a number of interesting references to works on legal pluralism and law reform in Africa, primarily Ethiopia, and elsewhere and on the legal consequences of social and political changes in Africa. However, it suffers from an apparent lack of criteria for inclusion or exclusion, so the reader can only surmise as to why certain themes were chosen for concentration and why certain works were included and others excluded. Inexplicably, it omits reference to many relevant articles on Ethiopian law, several very useful publications by Daniel Lev and Nancy Tanner on Indonesia,[6] and the papers presented at a recent conference in England on social anthropology and law,[7] in which some contributors to this issue participated.

To put these criticisms into perspective, the prospective reader of the volume should recall that, in fact, it is largely a collection of papers which cluster around a general theme and were probably solicited on that basis. It is perhaps too much to expect of a periodical that, in addition to increasing our factual knowledge, as does this volume, it make a major contribution to our theoretical understanding. The papers in this collection present some extremely interesting empirical material and reports of field research in Africa and may be most helpful and stimulating to law teachers and students; I have already found some of them very useful in a course on Law and Development. One hopes, nonetheless, that the authors will bring their research results to bear more directly on some of the critical theoretical questions involved in the study of African law.

NOTES

1. Including African Law Studies: Barbara E. Harrell-Bond, "Legitimacy and the Politics of Status: An Abortive Legislative Change in Sierra Leone," 12 A.L.S. 21 (1975) and Emile van Rouveroy van Nieuwaal (with Els van Rouveroy van Nieuwaal), "To Claim or Not to Claim: Changing Views about the Restitution of Marriage Prestations among the Anufòm in Northern Togo," 12 A.L.S. 102 (1975).

2. Richard L. Abel, "Law Books and Books About Law," Review of Max Rheinstein, Marriage Stability, Divorce, and the Law (Chicago, University of Chicago Press, 1972), 26 Stanford Law Review 175, at 222 (1973).

3. Barbara E. Harrell-Bond and Ulrica Rijnsdorp, Family Law in Sierra Leone: A Research Report (1974).

4. J.P.B. de Josselin de Jong, "Customary Law" (A Confusing Fiction) (1948).

5. Lloyd A. Fallers, Law Without Precedent: Legal Ideas in Action in the Courts of Colonial Busoga 3 (1969).

6. Daniel S. Lev, "The Supreme Court and Adat Inheritance Law in Indonesia," 11 American Journal of Comparative Law 205 (1962); __________, "Judicial Institutions and Legal Culture in Indonesia," in C. Holt, ed., Culture & Politics in Indonesia 246-318 (1972); ______, Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions (1972); Nancy Tanner, "Disputing and the Genesis of Legal Principles: Examples from Minangkabau," 26 Southwestern Journal of Anthropology 375 (1970).

7. Association of Social Anthropologists, 1974 Conference on "Social Anthropology and Law," University of Keele, England, March 27-30, 1974. Some of these papers are being published in I. Hamnett, ed., Social Anthropology and Law (A.S.A. Monograph), in press.

Barbara E. Harrell-Bond and Ulrica Rijnsdorp (with contributions from J. Sanpha Koroma and L.C. Green), Family Law in Sierra Leone: a research report. Leiden: Afrika-Studiecentrum, 1975. viii & 144 pp. No price.