

E.A.B. van Rouveroy van Nieuwaal, A la Recherche de la Justice: quelques aspects du droit matrimonial et de la justice du Juge de Paix et du Chef Supérieur des Anufòm à Mango dans le Nord du Togo. Leiden: Afrika-Studiecentrum, 1976. 268 pp.\*

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The Anufòm (or Chokossi, in English) are a people in north-western Togo and northeastern Ghana. Until the various publications of the van Rouveroys,<sup>1</sup> they had hardly received the anthropological attention which the intrinsic interest of their social/political and legal system warrants. The present book treats Anufòm matrimonial law and its administration by the Court of the Paramount Chief of the Anufòm, on the one hand, and by the Tribunal Coutumier de Première Instance (the lowest level of the Togolese national judicial system) on the other hand.

It is an interesting and important book, and I hope by this review to call it to the attention of potential readers who might otherwise have missed it. In the 1950s and 1960s anthropological field work concerning African law produced an effusion of writing which contributed enormously--in data and in theory--to the increasing sophistication of the general sociology of law, which was also taking place at that time. That writing seemed then to be the first bloom of a new era--or at least it did to me, suffering from a naiveté that I think was widely shared. In retrospect, it now looks more like the last intellectual bloom of the dying colonial era. For many reasons, the post-independence period is less hospitable to such work. The van Rouveroys are among the few still writing in the tradition. The special value this gives to their book is not merely an expression of nostalgia. The legal phenomena they study and report are quite different from those of the earlier period: the legal context is now that of an independent African state. Legal policy and personnel, politics, power relations, the economy--all have changed. Different people manipulate the various legal systems, and with new objectives. Last, but certainly not least, the political and social conditions of field research are transformed. This last is very important: just as earlier writings had to be read with the field researcher's special relationship to the colonial administration in the back of one's mind, so must the van Rouveroys' writings be read with the politics of present-day Togo, and the delicate position of a foreign researcher in that context, in the back of one's mind--a point to which I will return shortly.

The book begins with an extensive discussion of the position of customary law in the national legal system of Togo. Both substantively and procedurally customary law is distinctly disfavored: substantively, because national policy derives from the twin ideas that legal uniformity is desirable and that French legal conceptions are superior to customary ones; procedurally, because the only formal competence accorded to customary tribunals is that of "conciliation" (although, as the book abundantly demonstrates, at least the customary tribunal studied here was in fact responsible

for the bulk of civil adjudication in its area), and furthermore because the position of the tribunals of the national legal system charged with the administration of customary law is a distinctly inferior one.

The book's most important contributions fall under four heads: (1) an account of the social/political system of the Anufòm and its history; (2) a statement of the substantive content of Anufòm matrimonial law; (3) a description of the operation, and especially the style of legal reasoning, of the Court of the Paramount Chief; and (4) an analysis of the practical operation of the dual legal system (customary and "modern": chief's Court and Tribunal Coutumier) which administer Anufòm matrimonial law. After indicating in a few general words what is to be found in the book concerning these topics, I shall air some methodological reservations, and then conclude by putting a "quaere" next to the author's views on the subject of legal reform.

The Anufòm proper came to their present location from the Ivory Coast sometime during the 18th century.<sup>2</sup> The armed band which made that journey consisted of three classes: commoners (ngyem), the original Akan population of Anò in Ivory Coast whence the Anufòm set out; nobles (donzom), of Mandé origin; and Moslem councillors of the donzom (karamòm), of Dyula origin. Before setting out, the donzom and karamòm concluded a formal pact which still governs their relations: the karamòm agreed to furnish advisory assistance to the donzom in political and military affairs while themselves abjuring any political ambition, and the donzom agreed to protect the karamòm and not to meddle in their legal and religious affairs. At that time, the ngyem and most of the donzom were not Moslem; in recent years all of the latter, and most of the former who live in the town, have converted, but it is only among the karamòm that Islamic law has an important influence.

When they arrived at their present town, N'zara (formerly Sansanné-Mango), the Paramount Chief and his commanders divided up the land, and the commanders in turn distributed land to their donzo allies and to the karamòm and ngye lineages with whom they were associated. The right to inhabit land still resides with the original lineages (now seven or eight generations deep) who came from Anò. Starting from N'zara, the Anufòm gradually conquered a substantial surrounding area and made the existing peoples tributary. At the end of the last century the Germans put an end to Anufòm pillaging and subordination of these peoples, and it is only since that time that the Anufòm have had to engage in extensive agriculture themselves. This change has required many of them to leave N'zara for the countryside, although each lineage has retained a seat in N'zara.

This history is responsible for a social/political class structure common in West Africa.<sup>3</sup> The autochthonous population, a heterogeneous group about which little or nothing is known, was conquered long ago by a militarily active group but retains a special religious relationship to the land<sup>4</sup> which is respected by the conquerors. Otherwise, the indigenes are held in political subordination (despite

the colonial "liberation"). The politically organized and dominant group traces its ancestry back to the conquerors. Great differences of language, law, social organization, etc., are typical, although usually submerged under the supremacy of the dominant group.<sup>5</sup> The Anufòm are especially interesting because the political/religious/ethnic/linguistic/economic class structure of their society is so articulated: Three distinct classes among the Anufòm themselves are superimposed on a fourth class composed of the autochthonous population.<sup>6</sup>

Geography is relatively unimportant to the social and political structure of the Anufòm (their village chiefs were apparently offered up to satisfy colonial ideas of local government).<sup>7</sup> Their social and political system is composed of corporate patrilineages which trace their ancestry to the original settlers. Headship of a lineage depends roughly speaking upon seniority. The few general political offices are filled by particular lineages or in some cases by a more or less regular rotation among several lineages. Otherwise, politics consists of inter-lineage alliances which are, in the main, created, maintained, and expressed through intermarriage. This brings me to the second major topic of the book.<sup>8</sup>

The exogamous unit is not the maximal lineage, but a segment of three to four generations (the ngyem are most strict and the karamòm least). The basic principle of Anufòm marriage law is reciprocity: the lineage (and lineage segment) which gives a woman in marriage to another lineage (or segment) is entitled to a woman in return; there is no concept of bridewealth-of an exchange of goods and services for a woman. The greater part of Anufòm marriage law consists of the working out, in detail, of the implications of this principle.<sup>9</sup> Intra-lineage marriage seems to be a function of social class (the ngyem favoring it more than the other classes) and of the economic and political resources of a lineage within a given class. Furthermore, donzom and karamòm do not marry their daughters to ngyem (thus the value of alliance with another class, even if one-sided, is an exception to the principle of reciprocity). These basic facts underscore the connection of marriage with political structure. Similar considerations of political alliance underlie marriage strategy within a lineage.

The requirement of reciprocity is strictest among the ngyem, where the obligation to return a woman is a legally-enforceable debt. There, the central importance of the system of exchange of women to the whole Anufòm system of social solidarity and social control is most plainly manifest. The rules of exogamy, succession,<sup>10</sup> etc., taken as a whole, make it very important that a man return a woman to the lineage (segment) from which he received a wife, and at the same time virtually impossible that he fulfill this obligation without the assistance of at least his own lineage segment. In fact, the obligation is thought ultimately to be that of his lineage (segment). Such complete interdependence with respect to so critical a matter is a power lever upon individual behavior. The Anufòm, being politically organized, have other levers as well. But in general their matrimonial law nicely illustrates the principle that

explanations for conforming behavior--and hence for the fact that various dispute-settlement and social control institutions "work" (among "modern" as well as "primitive" peoples)--is to be sought first, at least, in the practical consequences of non-conformity rather than in any blind subordination to custom and rule.<sup>11</sup>

The Anufò judicial institution described in the book is the Court of the Paramount Chief. During the German colonial period (1884-1914) chiefs in Togo had a recognized legal competence in civil and in some penal matters. The French abolished the latter completely and left the chiefs only a power of "conciliation" in civil matters. From the point of view of the national legal system, therefore, the Court of the Paramount Chief is below the bottom of the judicial hierarchy. From the point of view of the Anufòm themselves, it is the top of their judicial hierarchy and has a largely appellate jurisdiction.

Taking the Anufò point of view first: a case should begin with the head of the smallest social group that contains both parties.<sup>12</sup> Parties from the same lineage (segment) should first approach the common lineage (segment) head in their village or, if they live in different villages, in the district of N'zara where their lineage has its seat. From there, the case should work its way in one or two steps up to the Court of the Paramount Chief. Parties from different lineages (but of the same class) should go first to the head of the village or canton in which both reside, and thence through one or two steps to the Court of the Paramount Chief. (When different classes are involved, a party of a higher class will probably not submit to the jurisdiction of a village or canton head of a lower class.) In short, by the time the Paramount Chief sees a case, it has usually acquired a considerable procedural history.

The Anufòm themselves distinguish between what the Paramount Chief does--"judging"--and the "conciliation" that takes place at lower levels of their hierarchy. The sociologically-inclined observer would certainly have to agree with their characterization of the Court of the Paramount Chief. It is a highly formal<sup>13</sup> tribunal (constant membership; distinct procedural rules; substantial fees; fixed sessions; special courtroom; etc.). It possesses high authority, for it can enforce the attendance of parties and witnesses, and compliance with its judgments, by sanctions that include civil imprisonment.<sup>14</sup> It is rather legalistic, reasoning in terms of, and giving judgment according to, distinctively legal rules; because it is ultimately bound to give effect to those rules it seems rather more legalistic than Barotse courts,<sup>15</sup> but in its emphasis on exploring all possibilities of compromise it seems rather less legalistic than those of the Basoga<sup>16</sup> (although, unlike the latter, it does employ an explicit doctrine of precedent).<sup>17</sup> Like the Barotse courts, it devotes a good deal of attention to moral instruction, lecturing the parties on their obligations and on proper conduct.<sup>18</sup>

The lowest tribunal of the national judicial system, charged with cases that involve only customary law, is the Tribunal Coutumier de Première Instance. Its judges come from southern Togo; their

ethnic background is therefore quite different from that of the Anufòm, and they do not speak any of the local languages. Since administrative policy requires their frequent transfer, they are never able to overcome these two major barriers to comprehension. Their legal education in France and their Christian religious training bias them—in the author's view—against customary family law in general and Anufò legal ideas in particular. They do sit with local assessors, but these apparently play a very subordinate role.

Despite all these alienating features, the Tribunal Coutumier, in contrast with the Court of the Paramount Chief, possesses two characteristics that may be attractive to the potential Anufò litigant.<sup>19</sup> First, its fees are trivial, while those of the Court of the Paramount Chief are considerable. Second, it possesses, and exercises, the power to declare provisions of customary law void as contrary to public policy. There thus arise differences in the substantive law applied by the two courts, two of which are of special interest: the Tribunal Coutumier enforces the right of women to freedom in the choice of their spouses, and it compels—on dissolution of an engagement—the return of pre-marital prestations when an engagement is dissolved. Since either party can, in effect, cause a case to go to the Tribunal Coutumier, the Court of the Paramount Chief would be in a weak position, other things being equal.<sup>20</sup> The "customary" law administered in the Chief's court has in fact changed markedly in the direction of a greater resemblance to that administered in the Tribunal Coutumier.<sup>21</sup> Nonetheless, the distribution of cases by subject-matter in the two tribunals is rather different: three quarters of the cases before the Tribunal Coutumier involve matrimonial matters, but only half of those before the Chief's court. The author interprets this situation as involving intelligent selection by litigants of a favorable tribunal and an intelligent response by the Chief's Court which stands to lose business unless it brings substantive law more or less into line with that of the other tribunal. There is certainly no reason to doubt that this is going on, though one might have liked some more quantitative data in support of the hypothesis. "Forum shopping" is too commonly alleged to characterize dual legal systems to leave the matter to supposition and the post-hoc rationalizations of participants.<sup>22</sup>

That last remark is addressed to an example of one of the book's pervasive weaknesses—a weakness it shares with many other anthropological studies of legal phenomena. There are almost no numbers here, and the few that are presented are so meager that they hardly add to one's understanding. While much of the book, especially the accounts of cases in the Chief's court, conveys a sense of thorough comprehension, it is the sort of comprehension one expects from the participants themselves. Indeed, the book's analysis generally consists in reporting what participants themselves say about the operation of the system. By the end, the reader feels almost prepared to argue points of Anufò law with the Anufòm. This is certainly a valuable contribution, but it means that the book is to a certain extent more a work of Anufò law than one about Anufò law.<sup>23</sup> The Anufòm are probably as confused and mistaken about their law as the participants in "modern" legal systems, and it would hardly occur to anyone seriously interested in explaining the working of

one of the latter systems to content himself, more or less, with listening to what lawyers, judges and laymen say about it. Perhaps, if one carefully counted what happens in Anufò cases, one would find that the assumption that the Chief's court is more conservative than the Tribunal Coutumier in matters involving the emancipation of women is just as incorrect as a lot of similar assumptions about "modern" legal systems. That result is probably unlikely, but we can not know, for sure, given the non-statistical approach taken in the book.

Another weakness of the book lies in its failure to place the tribunals described, and the law they administer, in appropriate context. Although the cases and discussion concern only the Anufòm, one discovers in the appendix that only about half of the cases before either tribunal involve Anufò litigants. The cases heard by each tribunal have a substantial procedural history, but the earlier stages (and, in particular, what substantive law is applied at those stages) is left almost entirely obscure. The karamòm handle their own litigation--how? There are indications in the book that the higher classes are systematically privileged, at least in the Chief's court. Is this so, and what are the consequences?<sup>24</sup> In short, while one comes away from the book with a sense that one understands the operation of the institutions described, and the law in the cases discussed, one lacks a clear grasp of how that law and those tribunals fit into the whole social structure. Nor is the Anufòm legal system placed in a context of its similarities with and differences from other legal systems--nor the dual system in N'zara in a context of other dual systems. This makes it hard to distinguish what is distinctive from what is commonplace, and what needs explaining from what has already long since been explained. I have tried to indicate in the footnotes some of the comparisons that struck me as potentially interesting, but in most cases one needs to know more about the situation in N'zara to be able to assess whether a difference or a similarity really exists. It seems to me that one would have understood the phenomena described better, and thereby have learned more about law in general, had the author approached his research in a more explicitly and systematically comparative way. I know that he disagrees with me on this point and believes that careful registration of what is going on must precede comparison and theory-building. I agree that it is useless and boring to engage in theory-building far removed from what is actually going on, or to practice comparative law on a superficial and formal (and therefore usually ideological) level. On the other hand, careful registration requires the use of concepts, which must necessarily be applicable to more than one situation. The author himself uses concepts like "law," "court," "right," "duty," etc., without discussion. All I am suggesting is that more systematic attention to this pre-empirical foundation would, in my opinion, enrich his field research and made the reports of his findings more interesting and useful.

The absence of explicit attention to the categories used to describe and analyze Anufò law leads to some of my specific difficulties with the book. For example, the concept of a legal

"rule" is for me very problematic. I feel uneasy about the "rules" of Anufò law which the author reports because I do not know exactly what he means by that concept.<sup>25</sup> What the law "is" is always a rather subtle matter, and especially so in a social and political situation as complex and rapidly changing as this one. Nowhere does the author pose the fundamental question of how one would decide what Anufò law is on a given question. I wonder how many of the "rules" reported are really little more than ideals--and perhaps the ideals of only some part of the population. The author himself raises this question with respect to one supposed rule--that before the arrival of Europeans a woman could not refuse to marry the man to whom she had been betrothed--but he does so only once, so far as I can see, and only as an ad hoc argument in support of his general contention that the position of women was not all that bad in un-reconstructed Anufò law.<sup>26</sup> I think the same question should be systematically asked of all the other supposed "rules" (e.g., "a man has the right to take what he wants from the goods of his mother's brother," p. 122). At the very least one would want to know what actually happens when such "rules" are breached.

In addition to the danger of elevating someone's ideals into legal "rules," there is also the danger of regarding the normative aspect of a legal system as consisting solely of "rules."<sup>27</sup> In that case, any change in a "rule" must be attributed entirely to pressure from outside the legal system. The author makes this mistake, I believe, with respect to a woman's right to refuse to marry a man selected for her. One gathers that before the arrival of a colonial administration, the rule was that a woman had no such right, but her wishes should be considered in selecting a husband for her. Now, under the influence of the Tribunal Coutumier, the Chief's Court does recognize a woman's legal right to refuse. The author seems to regard this as a case of imposed legal change, but the situation seems to me more complex than that. One would not want to confuse this change with the adoption of an entirely foreign norm. What has to be explained is not the appearance of a new norm, but the reinstitutionalization of a moral norm as a legal norm.<sup>28</sup> Once the question is put that way, one might wonder whether the influence of competition from the Tribunal Coutumier was a necessary factor. The suppression of violent self-help by the colonial powers, and later by the Togolese government, and the concomitant increase in mobility possible for an unhappy wife and her lover, might suffice to explain the change.<sup>29</sup>

Finally, I would like to express some doubts concerning two general views about legal reform which recur frequently in the book. I say "general ideas," because no specific proposals are advanced. What I question, therefore, is more a suggested inclination toward certain policies than anything more concrete. And I speak of doubts, rather than disagreement, for two reasons: because my own views are very ambivalent, and because so are the author's, as he repeatedly makes plain. The differences between us, in the end, are probably not great, but the issues are important and worth some discussion here.

In general terms, then, the author's views are that customary law, and customary courts, are being too much pushed aside, and even under, by imported French law and a legal structure of "modern" courts. My first doubt concerns the adequacy of the basis from which the author derives his critical assessment of Togolese national policy. The Anufòm may have an appropriate substantive law and well-functioning legal institutions (by whatever standard one chooses to assess these things), but one has no reason to suppose that this situation is representative of Togo as a whole. In fact, the author notes that in a nearby region the weakness of the traditional authorities is associated with much greater use of the Tribunal Coutumier.<sup>30</sup> Secondly, the author does not discuss the standards against which he is assessing contemporary Togolese policy. I assume he believes that preservation of Anufò (and other) customary law and explicit recognition of the Court of the Paramount Chief as a judicial institution would have some desirable consequences, but I do not know what those are supposed to be. I share his doubt about the validity of the instrumental arguments commonly made to justify the suppression of customary law and customary tribunals in the name of "national unity" and "economic development." But I see no more reason to believe his side of the debate. Is there any evidence for the assertion that law is significant independent variable one way or the other? My guess is that important causal factors must be sought elsewhere, and that the characteristics of the legal system, whatever they may be, are at most marginal-and mainly should be regarded as effects, or as ideological superstructure, rather than as causes.

The author speaks with a confusing voice when he objects to the imposition of imported law on the Anufòm: It is hard to separate the strands of anthropologist, cultural romantic, Togolese nationalist, Anufò apologist, and expiator of the guilt of European colonial rule. It seems to me impossible for one whose primary identification in the book is as an anthropologist, to have anything other than ambivalent views. That area of the world has never known anything other than the imposition of foreign legal ideas: the Anufò legal system is itself such an imposition, to some extent. Imposition of foreign law is as African as millet beer. Furthermore, this particular imposition must, on the whole, have been regarded as a liberation by the non-Anufò majority of the population; and however hard the author tries to make the position of women in Anufò matrimonial law seem not utterly intolerable, the female half of the population looks like a pretty clear beneficiary from the imposition of French legal ideas.<sup>31</sup> Granted, the values implicit in that last sentence are, in a certain sense, "western"; what values underlie the author's contrary position, and what special claim do they have? As far as one can tell, "Anufò values" are at best the values of the male half of the Anufò half of the population. I should emphasize that I am not arguing in favor of imposition of "modern" law on the Anufòm, or anyone else; I am just wondering why I need to be against it, either. Such impositions are facts, and rather common ones, too, though they seem to vary considerably in degree (the former English colonies being more hospitable to customary law than the former French colonies). As an empirical variable, the



imposition of western law calls for scientific study of its causes and effects--for explanation. Evaluation, in a book like the present one, seems to me superfluous and confusing.<sup>32</sup>

If the author wants the hundred flowers of substantive law to continue blooming (and I, sharing some of the intertwined strands of value and perspective mentioned above, do too), he also--rather paradoxically, it seems to me--seems to favor a unified system of judicial institutions. He argues for the integration of the courts of the Chiefs into the national judicial system. Following Holleman<sup>33</sup> and others, he describes an all-too-familiar picture of traditional political officials caught between their responsibility to the population from whom they derive their authority, and their responsibility to the modern state which "recognizes" them and incorporates them into its local government administration. This is the dilemma of "indirect rule": the attempt to co-opt existing political authority corrupts the basis of that authority. By a process of reasoning which, I confess, altogether escapes me, it is thought that official recognition of the judicial authority of the chiefs is an appropriate response to this dilemma. I should have thought, on the contrary, that it will add one more corrupting factor. What does the Paramount Chief himself think about the idea that his court's judgments would be reviewable on appeal? Apparently he regards it as offensive to his dignity (p. 217). Does he want his judgment enforceable by the agents of the national legal system? Apparently not, since he tends not to use the informal relations he already has with the local police, realizing that to do so would be to undermine his authority among the Anufom. Holleman is quoted with apparent agreement as arguing that non-recognition "tends to screen off this world of living folk law...and...inhibits the very chances of law reformers to direct its successful evolution towards a more uniform and integrated part of an emerging national legal system."<sup>34</sup> But isn't protection from pressures toward uniformity and "modernity" just what the author, elsewhere in the book, seems to want? In short, it seems to me that it is not the present position of the Paramount Chief in the Togolese legal system which shows how "dominant Western legal ideas still are in post-colonial Togo" (p. 227). It is rather Holleman's proposal which betrays the influence of the distinctively French idea that there is something intrinsically desirable in a single, orderly, centrally-controlled, bureaucratic legal system,<sup>35</sup> and of the more generally western belief that legal authority entails adjudication according to rules which produces decisions enforced by the state.<sup>36</sup> I am at a loss to understand why accommodation to these Western tendencies toward compulsive tidiness (often dignified as "rationality"), and reference of all questions of legal authority to the physical coercion of the nation state, would be an improvement on the rather messy state of affairs which the author describes, in which, on the whole, authority must support itself on considerations other than brute force and must therefore keep within the bounds of what is generally tolerable to the parties who come before it. I expect that Togo, like most of the rest of the world, will acquire a unified, centralized, and jealously exclusive legal system backed by police soon enough, but I do not know why we should want to see that process hurried along.

Perhaps the preceding paragraph is uncharitable to the author for two reasons. First, it is not clear whether he fully agrees with Holleman. Second, I have the impression that the political context of his work in Togo made it impossible for him to discuss some of his concrete objections to the existing state of affairs. It is possible to interpret the idea of "recognition" of customary tribunals in a sense less specific than that of Holleman. Such an interpretation would not entail incorporation into the national judicial system, but rather recognition of the fact that customary tribunals exist, that they do useful work, and that their work is every bit as "legal" in character as that of the national courts. "Recognition," in this sense, would be expressed in three sorts of policies. First, not trying, directly or indirectly, to stamp them out or to discourage their use; taking care to avoid acts which might have unintended deleterious consequences for them; and, just as importantly, not striving to call them into being artificially; (cf. the experience of "chiefs" implanted by "indirect rulers" in stateless societies). Second, affording them support when that can be done without implicating the government in what they do and without threatening their autonomous authority (some guidelines for the subtle policy required might be found in the experience of various legal systems with church-state relations). Third, manipulating either the customary tribunals, or the existence of a dual judicial system, for ulterior political ends. If such policies are what the author means by "recognition,"<sup>37</sup> then he and I agree completely-- although I would have to say that, so far as I can see, such a policy apparently lacks present political support, and any prospect of such support in the future, in the countries concerned, and is contrary to the general pattern of legal evolution in which these countries seem to be confined (for reasons which I assume are probably beyond the reach of political choice). I regard my own attraction to such a policy, therefore, as essentially sentimental and uninteresting.

As I indicated, there is a second reason why my rather acid scepticism about the author's desire to see the customary tribunals "recognized" might be uncharitable, even if he is read as favoring the abolition of the existing dual judicial system by incorporation of the customary tribunals. The reason is that those in control of the government may in fact be manipulating the dual system in order to promote their own interests and reward their supporters. As I remarked at the outset of this review, reports of anthropological field work have to be read with the authors' political auspices and constraints in the back of one's mind. I think that the question of the maintenance of a dual system may be a good example of that cautionary principle. One gathers that there are aspects of the situation in N'zara which the author did not feel free to discuss openly, and that apparent gaps--such as the lack of any substantial argument for abolition of the dual system--may derive from such an inhibition. I infer from the book that the main real argument is governmental abuse of that dual system. The basis for this inference is the way the author employs the forum-shopping argument against the existence of a dual legal system.<sup>38</sup> There is nothing intrinsically wrong with "the selective use of legal systems,"<sup>39</sup> and the author indicates as much at a number of places. Neverthe-

less, he suggests that some kinds of selective use-those involving some unspecified ulterior motive-are objectionable. When litigants manipulate tribunals and tribunals manipulate litigants for non-legal ends, he says, the protection of legal rights is called into question.<sup>40</sup> This argument only makes sense if "manipulation" means something more than simply seizing tactical advantages. Indeed, there is every indication that the author has in mind the use of the parallel tribunals for political power struggles but cannot quite afford to say so. If I am right in this, there is indeed a serious case to be made for abolition of the dual system, but with this reservation: do we have any reason to suppose that the dual system, as such, significantly worsens the situation?<sup>41</sup>

Political auspices and constraints may also lie at the base of another curious aspect of the author's argument. He attributes blame for the pressure toward substantive unification to a purely ideological source, the influence of French ideas on Togolese lawyers and politicians. The entire discussion takes place on the level of manifest purposes only. What are the latent functions of unification? One supposes they are many, including the power which such unification puts into the hands of the educated ruling elite to amass wealth at the expense of the rural population. In an article which discusses at greater length one of the cases set forth in this book, the author shows how "modern" devices such as the registration of interests in land and land use reform can be manipulated by unscrupulous persons with political connections to wrest land away from those with traditional rights in it.<sup>42</sup> A state of affairs that may well be attributable to the crassest of material interests, is discussed in the present book as if its primary explanation lay in the realm of abstract legal ideas. I tend to think that those ideas have relatively little autonomous force, and function primarily as an ideological rationalization (which is, itself, a rather complex affair).<sup>43</sup> One sees the anthropologist, nevertheless, forced by the demands of tact to take the manifest level of rationalization at face value.<sup>44</sup>

One must remain sceptical about any answer to the questions I have raised in these last few pages. In the author's words (after having confessed to a certain preference for the Chief's court), "Cependant, qu'on soit prudent" (p. 229). That counsel applies with equal force to any criticisms of the author's position which I have aired here. In any event, these questions of Togolese legal reform are not the most interesting or important parts of the book. What is important and interesting is the author's account of the Anufom, their matrimonial law, and its application, I should therefore like to end this review in commending the book, especially on those grounds, to the interested reader.

## NOTES

\*I should like to acknowledge with gratitude the help which I received from Dr. van Rouveroy van Nieuwaal in the preparation of this review. His critical reading of and detailed comments upon an earlier draft helped me to avoid several misinterpretations and mistakes. As is obvious from the review itself, he does not agree with much of what I write, and he is in no sense responsible for any of it. Mr. S.O. Gyandoh, Jr., also gave me the benefit of some critical suggestions.

1. See, especially, E.A.B. van Rouveroy van Nieuwaal, "La Justice Coutumière au Nord-Togo," Recueil Penant, 1976 (no. 751); idem, "Qui Terre A Guerre A: Disparité Entre le Droit Foncier Modern et le Droit Foncier Coutumier à N'zara au Nord-Togo," Recueil Penant, 1977 (forthcoming) (contains a more extended discussion of one of the cases, no. 8, discussed in the present book); idem, with A.E. van Rouveroy van Nieuwaal-Baerends, "To Claim or Not to Claim, Changing Views about the Restitution of Marital Payments among the Anufòm in North Togo," 12 African Law Studies (1975) (also in S. Roberts (ed.), New Directions in Family Law in Africa (forthcoming); idem, Ti Anufò, un Coup d'Oeil Sur la Société des Anufòm au Nord-Togo (Hasselt-Leiden, 1976); idem, Bases Juridiques du droit Coutumier au Togo à Partir de L'Époque Allemande jusqu'à Présent (Leiden, Afrika-Studiecentrum, 1977) (contains a very extensive review of German, French, and Togolese policy and legislation concerning customary law in Togo, with extensive references to the literature). In addition, they have made three films about the Anufòm: Mbambim (1973), a portrait of the head of a family; Musulmans à Mango (1974), concerning some aspects of Islam; and Sherea (1975), concerning the Court of the Paramount Chief.
2. The source for most of this history of the Anufòm is various copies of a document in Arabic written shortly after the arrival of the Anufòm in N'zara (see p. 25). An essentially similar account was recorded by R. Rattray: The Tribes of the Ashanti Hinterland 113 (1932).
3. It is hard to account for statements like that of J. van Velsen ("Procedural Informality, Reconciliation, and False Comparisons," in M. Gluckman, ed., Ideas and Procedures in African Customary Law 138 (1969)) that "with notable exceptions such as Rwanda, there are [in traditional African societies] no classes or categories with critically opposed economic or political interests, and there is a great degree of homogeneity in cultural values." The authors of such statements must be unfamiliar with West Africa.
4. The author is vague about the traditional figure primarily responsible for this relationship, but he sounds strikingly similar to the tendana (with many variant spellings, depending on author and society), or Earth-Priest, common to many nearby peoples. See, e.g., Rattray, note 2 above, p. xi, and index

under "Priest-King"; M. Fortes, The Dynamics of Clanship among the Tallensi (1969), esp. p. 197 n. 1; J. Goody, The Social Organization of the LoWiili (1967); D. Tait, The Konkomba of Northern Ghana (1961); M. Manoukian, Tribes of the Northern Territories of the Gold Coast (1952). I believe that in states founded on conquest, it is typical that the office of tendana and its special ritual relation to the earth is left more or less untouched. See Rattray, above, at pp. xii ff. (generally), pp. 457 ff. (Mamprusi), p. 516 (Gonja); Goody, "Circulating Succession among the Gonja," in J. Goody (ed.), Succession to High Office 144 (1966); M. Staniland, The Lions of Dagbon: Political Change in Northern Ghana 3-4, 14-16 (1975).

5. The Anufòm, in these respects, are reminiscent of the Gonja in Ghana. See Goody, "Circulating Succession among the Gonja," note 4 above. Compare M.G. Smith, Government in Zazzau (1960); Staniland, note 4 above.
6. The picture is actually rather more complex than this, for there also used to be slaves, who now hold a subordinate position in ngyem lineages; the autochthonous population is heterogeneous; etc.

I should emphasize that the use of the concept "class" is my own: van Rouveroy does not use it, perhaps wisely. I mean it only in the rough way van Velsen does, note 3 above. One might prefer to think of the autochthonous population as a subject people rather than a class. It is worth asking, in that context, how many traditional Western "classes" have their roots in analogous circumstances of conquest and subjugation.

7. Compare Rattray, note 2 above, at p. xvi:

When the First Englishman appeared on the scene [in the Northern Territories of the then Cold Coast].... after our custom he demanded to see the King, who was required to produce water, firewood, and carriers. Now, the tribal rulers, the Ten'dama, who were old aristocrats in their own way, and had moreover seen what had generally been the fate of their fraternity, who had appeared before the officials of other Continental powers in these parts, kept aloof and in the background. Some wholly unimportant, and often worthless individual (from the local standpoint), was thrust forward to confront the strangers. Often he was a slave or descendant of a slave, sometimes he was the village bastard, sometimes the only man in the village with a loin-cloth. Each and all of the above have actually figured from time to time among our European-made African aristocracy in these parts.

Rattray goes on to explain how, from such un auspicious beginnings, these indirect-rule "chiefs" went on to acquire

substantial authority and power, eventually supplanting the former indigenous authorities.

9. The material discussed in the foregoing paragraphs comes primarily from pages 25 ff. and 96 ff.
10. See also "To Claim or Not to Claim....," note 1 above, for an extensive description of this body of law.
10. Succession among the Anufò is not very clearly described. It seems to be basically patrilineal. However, children do have important rights in the patrilineage of their mother, as well as in their own. And there are a few hints of the existence of a matrilineal principle (see, e.g., p. 116). A combination of different principles would not be at all surprising, given the situation among nearby peoples; and from what is known about peoples with similar ethnic-class structures in the region one might predict that the mix of principles is rather different at the different levels of Anufò society. Compare Staniland, note 4 above, pp. 14-15.
11. The material discussed in the foregoing paragraphs comes primarily from pages 100-01, 118-19, and 125 ff.
12. Similarly, when the corporate responsibility of one lineage to another has been established, the Chief's Court leaves to the head of the lineage concerned the question of responsibility within his lineage.
13. See Schwartz, "Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements," 63 Yale Law Journal 471 (1954).
14. The Chief himself says that his Court conciliates (p. 65). This difference in perspective between ruler and ruled is probably a common one. In the case of the Anufòm, the Chief's conception of himself as a non-authoritarian conciliator may also derive from his knowledge that Togolese national law allows nothing else.
15. See M. Gluckman, The Judicial Process Among the Barotse of Northern Rhodesia (2nd ed., 1967).
16. See L. Fallers, Law Without Precedent (1969). Such judgments are difficult: van Rouveroy suggests (p. 89) that the reason there is little discussion by the members of the Court of the background of the parties and of the conflict is that everyone knows all of this already. The Anufò criterion of legal relevance is thus left somewhat obscure.
17. See, e.g., pp. 77, 88. Although the Chief's Court is generally less legalistic than the Tribunal Coutumier, in one case--where the Chief had difficult personal and political relations with one of the parties, who was also a karamòm--

the Chief made every effort to narrow the issues as much as possible, and it was the Tribunal Coutumier, to which the case subsequently went, which "considered the case in its totality and tried to straighten out the situation" (p. 213). This is a nice example of Fallers' thesis (note 16 above, p. 111) that one of the important functions of legalism is to protect the judge from involvement in "a welter of blame and counter-blame-with all the moral ambiguity that is present in any situation of interpersonal conflict." Apparently, the more the tribunal is morally compromised, the more legalistically it behaves.

18. The material discussed in the foregoing paragraphs comes primarily from pages 61-92, 187, 213.
19. The Tribunal Coutumier also enjoys some nominal advantages (from the point of view of the national legal system)-compulsory process, enforceable judgements, etc.-but in practice the Chief's Court seems to be at least as effective.
20. Other things are not equal in many cases, of course. The author discusses extensively the sorts of ad hoc reasons parties may have for preferring one tribunal to the other (see the cases described in Ch. VI). He also suggests a number of familiar reasons (which taken together, are cultural distance) why Anufòm may prefer the Chief's Court (pp. 220-22). There are probably similar reasons why others (young people with some formal education; non-Anufòm; etc.) prefer the Tribunal Coutumier.
21. See pp. 215-16. See also "To Claim or Not to Claim...." note 1 above, on this accomodation by the Chief's Court. See Collier, "Political Leadership and Legal Change in Zinacantan," 11 Law & Society Rev. 131 (1976), for an interesting analysis of a comparable accomodation in Mexico.
22. The material discussed in the foregoing paragraphs comes primarily from Chs. II and VI, pp. 220-22, and appendices A and B.

Anufò litigants actually have a choice of three tribunals for customary law cases. The national judicial system offers them both the Tribunal Coutumier de Première Instance and the Tribunal de Droit Moderne de Première Instance, and either party can insist that the case be heard by the latter court (which does not, however, entail the application of a different substantive law). The latter court also has appellate jurisdiction over the Tribunal Coutumier de Première Instance (see pp. 41-48). The author states that the Anufòm are unaware of the possibility of taking cases to the Tribunal de Droit Moderne. Exactly why this court is not used is not made clear.

23. Cf. Abel, "Law Books and Books About Law," 26 Stanford Law Review 175 (1973).

24. See cases 6 (pp. 194-200) and 8 (pp. 206-14) for examples of the influence of class differences on the behavior of the Chief's Court. (Differences of political status also affect that behavior--see p. 90.) D. Black, The Behavior of Law (1976), suggests the probable utility of a systematic examination of the effects of the variable of social stratification.
25. The author rarely uses the word "rule" itself, preferring cognate words such as "right" and "duty" (e.g., p. 153--reporting a number of "duties" of a wife); but the logical structure of the propositions he reports seems to be that of rules. Cf. Dworkin, "The Model of Rules," 35 U. Chicago L. Rev. 14 (1967).

26. P. 241. The general thesis is stated on pp. 227-28; it hardly seems consistent with earlier observations in the book, e.g., p. 106.

For a general discussion of the relationship between research method and the aspects of law which it uncovers, see Abel, "Customary Laws of Wrongs in Kenya: an Essay in Research Method," 17 American Journal of Comparative Law 573 (1969).

27. See Dworkin, note 25 above; Dworkin, "Hard Cases," 88 Harvard Law Review 1057 (1975).
28. See Bohannan, "The Differing Realms of the Law," 67 Am. Anthropologist no. 6, pt. 2 (1965).
29. Compare Smith, "Idda and Secondary Marriage among the Northern Kadara," in Gluckman, note 3 above, for discussion of the effects, and lack of effects, of an analogous legal imposition.
30. P. 227. The author appears to assume that this greater use caused the weakness of the Chief. The opposite causal relation seems more likely to me.
31. It seems to me that the author is caught in a dilemma here: either the change has been small (women never really were forced into marriage) in which case there has been little imposition of foreign legal ideas; or the change was great, in which case the antecedent situation was pretty awful.
32. Confusion, for the reader at least, resides in expressions like "social reality" in contexts such as this: "the decisions of the Tribunal Coutumier do not accord with social reality" (paraphrasing p. 229).
33. J.F. Holleman, Chief, Council and Commissioner (1969), quoted on p. 223. The Paramount Chief's own description of the weakness of his position is quoted on p. 61. The Togolese government's intervention in and manipulation of chieftaincy disputes--typical of national governments wherever chieftaincy



is important-is briefly described on p. 62. Compare L. Fallers, Bantu Bureaucracy: A Century of Political Evolution among the Basoga of Uganda (1965).

34. Holleman, "Trouble-Cases and Trouble-Less Cases in the Study of Customary Law and Legal Reform," 7 Law & Society Review 602 (1973).
35. Ironically, a few pages after he seems to favor the unification of the Togolese judicial system, the author uses an argument against the unification of Togolese substantive law that nicely captures my doubt concerning either sort of unification (p. 231)

What this [opinion of the Togolese national legislator that legal uniformity should be the object of law reform] basically represents is indoctrination of Togolese lawyers with Western legal ideas. During his studies, oriented toward French law, he is thoroughly educated in the systematic arrangement of French law, French legal ideas, French procedures, and the jargon which is used to characterize them. He learns that the law is arranged according to an impeccable system, subdivided into certain categories, and above all that the law of a nation should constitute a unity. Into his head has been drummed the notion that legal diversity is something detestable....

36. There are a number of other reservations one might have about incorporation of the chiefs into the national judicial system: (1) There is the problem of bias and corruption-the author tends to minimize this, but even in the case of what may be assumed to be a rather extraordinary Paramount Chief, the author's research shows that the problem is a real one (see, e.g., pp. 213, 229); bias and corruption is built into "indirect rule" (and the consequent partial insulation of chiefs from traditional political control) and the circumstance of rapid economic change. Cf. M. Owusu, Uses and Abuses of Political Power (1970); K. Busia, The Position of the Chief in the Modern Political System of Ashanti (1951), esp. p. 151. (2) Over half the population in the area is not Anufò-are they to be subject to Anufò law and judges? (Cf. p. 229, where the author doubts the Chief's ability, as a donzo, always to do justice to ngye litigants.) (3) The original compact between donzom and karamom precludes the Chief's Court from meddling in the latter's litigation. (4) Anufò law is likely to become less flexible if administered by a "modern" judicial system, and potentially nasty problems which can now be handled, for example, by flexibility in the assignment of people to lineages (see pp. 157-58), will tend to get decided "by the rules." Cf. Sawyerr, "The 'Choice of Law' Approach and the Application of Law in Ghana," 9 Univ. of Ghana Law Journal 173 (1972); Griffiths, "On Teaching Law in Ghana," 21 N.Y.U. Law Center Bulletin (1974), no. 1, at pp. 7-8.

The author observes, in support of his argument, that it is not novel: traditional authorities were incorporated into the colonial Indonesian legal system in 1935 (see p. 226). The same integration took place, in various forms, throughout British Africa. It would have contributed importantly to the author's position had he analyzed the outcome of those earlier experiments. At least in Africa, I have the impression that integration was not ultimately regarded as a resounding success. The judicial authority of chiefs in ordinary civil cases has long since been abolished in countries such as Ghana (which has retained a modernized form of chiefly jurisdiction only for matters "relating to chieftaincy" - see Chieftaincy Act, 1971 (Act 370)).

37. A number of things the author says do make this alternative interpretation difficult: for example, his suggestion that what he has in mind involves judgments enforceable by agents of the national legal system (p. 224).
38. See also p. 223, for discussion (albeit only in terms of demands on the Chief's time!) of the way in which the government holds traditional authorities on a tight political rein.
39. See R.E.S. Tanner, The Selective Use of Legal Systems in East Africa (Uppsala, Scand, Inst. of African Studies, 1970).
40. See p. 219. This argument is made somewhat more explicitly in "Qui Terre A Guerre A," note 1 above.
41. In case 8 (pp. 206-14), despite the plaintiff's successful selective use of the two systems, the defendant looked as if he would be likely to make good his claim in the end (to land to which he had no customary right whatever, as plaintiff had established) through government intervention to override customary law. See "Qui Terre A Guerre A," note 1 above.
42. "Qui Terre A Guerre A," notes 1 and 41 above. Compare Starr & Pool, "The Impact of a Legal Revolution in Rural Turkey," 8 Law & Society Rev. 533, 536 (1974) for a comparable anecdote.
43. Compare Pozen, Legal Choices for State Enterprises (1976). Another instance of legal "modernization," its reflection in legal ideology, and the reality of legally-enforced redistribution of wealth in favor of the politically powerful which underlay it, is described in E.P. Thompson, Whigs and Hunters (1975).
44. The ideas discussed in the preceding paragraphs are set forth, primarily, in Ch. VII.