

THE PROBLEM OF VALUES IN THE ANALYSIS OF POLITICAL ORDER  
Myths of Tribal Society and Liberal Democracy

A review essay on Elizabeth Colson, Tradition and Contract: The Problem of Order. Chicago: Aldine, 1974. xi + 140 pp. \$6.95.

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I. Introduction

The capacity of social science to give us knowledge about human behavior--knowledge that is not contingent upon our prior acceptance of certain ultimate values--has long been the subject of heated debate. Many may feel that the controversy has been unduly prolonged, that we should now seek its quietus and move on to more fruitful endeavors. But the issue will not be dismissed. For upon it turns the propriety of listening to social scientists when they present their findings and recommendations, and of guiding our future conduct by what we learn. Elizabeth Colson's recent book, Tradition and Contract: The Problem of Order, raises the problem in acute form. She asks, and seeks to answer, the "well-worn" question, what are "the advantages and disadvantages of living under authority?" (p. 4) Can science provide us with an answer--one that commands assent because it has been empirically verified (or more accurately, has survived all attempts at falsification)? Or does the problem belong to moral or political philosophy--so that all we can do is clarify our untestable moral or political presuppositions, and then reason from them? Clearly, the weight of the scholar's words turns on this issue.

It is conventional to begin this debate over whether social science is "value free" with the concession that the choice and definition of problems to be investigated does rest upon ultimately untestable presuppositions. Colson chooses to study authority. Someone who believes that hunger, or equality, or grammar, or natural beauty are more important is entitled to ignore her answer on the ground that the problem itself is not interesting. Having granted this, the proponents of value-free social science permit no further deviations from the scientific ideal (see, e.g., Black, 1972a, 1972b). All propositions, from the most specific, isolated observation to the most overarching general theory, are capable of being verified by procedures that are independent of any value orientation.

It is this latter contention I wish to explore through a critical review of Tradition and Contract. Are statements at all levels of abstraction subject to verification in the same way and to the same degree? The temperature of a fluid, the average wages of a community--these data are clearly measurable, and propositions that relate them to comparable variables

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are readily tested. But as theories become more abstract, whether in the natural or the social sciences, can we--do we--perform the same operations when we claim to test them? Can we test empirically a proposition of the form: living under authority has advantages (or disadvantages)?

Elizabeth Colson's book consists of four lectures presented in a series commemorating Lewis Henry Morgan. In making the obligatory obeisance to this founder of American anthropology (a rather empty gesture of piety, since Morgan's political ideas seem naive, dated, and unoriginal), she offers us a revealing glimpse of a radically different relationship between theory and data, one that is fundamentally non-scientific. Although we lack detailed information about the intellectual influences that shaped Morgan's political theories, it is clear that he shared the dominant nineteenth century American ideology, drawn in turn from earlier British philosophy.

*Morgan, then, wrote from an intellectual tradition derived from Locke. This tradition rested upon the theory of the social contract and stated that governments were created by contract and were bound by the contract that created them. Morgan was confirmed in his assumption that governmental forms were created by rational choice when he came to know Eli Parker and other Iroquois. These men and women described to him the nature of their former political system and attributed its origins to an agreement to form a league for the purpose of outlawing vengeance, and regulating relationships among the member nations, for the purpose of securing peace, as well as enabling them to "resist the pressure of contiguous nations."*  
(p. 12)

Thus Morgan believed that the political order did, and should, rest upon a social contract, and readily found confirmation for this belief in his ethnological research. (That such is not the only possible interpretation of the Iroquois polity is emphasized by Colson, who cites Anthony Wallace's view that the League was a revitalization movement responding to the charismatic leadership of Hiawatha.) (pp. 12-13) Morgan's method is one which we associate more commonly with works of the creative imagination. Charles Citrine, the protagonist of Saul Bellow's novel, "Humboldt's Gift," invokes Valéry to describe his own creative process: "'Trouve avant de chercher.' This finding before seeking was my special gift." (1975:73)<sup>1</sup> But the imaginative process of finding before seeking does not compel our assent in the same way that a scientific experiment does; at most, we may be persuaded that the author's insight corresponds to something we have sensed ourselves, if only dimly. The question, then, is whether "Tradition and Contract"--or indeed any attempt to raise comparable questions--is a work of science or imagination.

Colson's central concerns are the sources of order under different social structures and an evaluation of those forms of order. I have no quarrel with this choice, since I argued above that we cannot demonstrate

the priority of one problem over another, and in any case I share Colson's interest.<sup>2</sup> But we may gain some understanding of her endeavor if we speculate briefly about why she chose that problem and defined it in that fashion. Colson has taught at Berkeley for many years, and it seems clear from her brief references (e.g., pp. 1, 8) that she found the student activism of the late 1960s unpleasant and disturbing. Students were rejecting much of the structure of contemporary American society, and calling for radical change. Furthermore, they frequently did so in the name of tradition--a tradition they sought to locate in the tribal societies described by anthropologists.<sup>3</sup> Since Colson is the author of many outstanding studies of tribal society it must have been distressing to see students legitimate their attacks with a misreading of the anthropological literature (where they were not simply ignorant of it). The question posed by her (perhaps because it was posed to her) thus became, which is preferable: the contemporary social order which she, with Morgan, characterized as contractual--order under authority; or the traditional social order resting on consensus--order without authority?

## II. Tradition: Consensus in a Society of Equals

An obvious preliminary to such an evaluation is a description of the alternative forms of social order. Colson begins her analysis with those traditional societies that lack central authority.<sup>4</sup> What holds them together? One possibility would be that they do not hold--things fall apart--they exhibit the Hobbesian war of all against all or, in social structures organized into opposed lineage segments, perpetual feuding.<sup>5</sup> As Colson reads the ethnographic evidence, neither of these occurs. (p. 42) But why is chaos not endemic? One reason may be that societies lacking central authority tend to be technologically simple, to require large quantities of labor for the production of food, and to lie near the margin of survival; an increase in the death rate, especially among the able-bodied males, might threaten social suicide.<sup>6</sup> Indeed, Colson suggests that it is this realization of the awful consequences of engaging in violence against other groups, thereby inviting retaliation, that produces social order. Similarly, social sanctions imposed for lesser infractions committed within the group--beating, maiming, slavery, expulsion, execution--were extremely potent forces for order despite the fact--perhaps because of the fact--that they were rarely employed.<sup>7</sup>

I find both lines of argument unpersuasive, simply on the basis of reflection about our own society. The formal apparatus of social control in western nations--the criminal law--possesses exactly those same characteristics: draconian sanctions of death or lengthy imprisonment that are hardly ever imposed in their full rigor. Our experience unfortunately suggests that this is one of the least effective means of inducing behavioral conformity.<sup>8</sup> The other premise--that people sacrifice their immediate, personal, interests in order to insure the ultimate survival of society--seems even less plausible; routine behavior just does not display that degree of self-consciousness and altruism; people sacrifice for themselves and their immediate kin, but rarely for abstractions like society. I am more convinced by another limited function Colson attributes to the formal, organized penal sanctions she finds even in societies lacking authority: that of ridding the group of those rare individuals who prove to be incorrigible recidivists.<sup>9</sup> At the same time, it is regrettable that Colson overlooks a second function of such punitive acts--the Durkheimian function of reinforcing internalized restraints against deviance.<sup>10</sup> Ironically, the efficacy of punishment in

maintaining mechanical solidarity through internalized norms appears to be inversely proportional to the frequency with which such punishment must be inflicted.<sup>11</sup> Hence formal penal sanctions can only explain a small part of the order in traditional societies.

A second possible source of order might be the absence of causes for disorder: "quarrels may be few because people have little to quarrel about when they have few possessions, lead much the same kind of life, and are on much the same level." (p. 43) Conflict need not be avoided, for it is rarely experienced. Colson completely rejects such a conclusion:

*It is almost certainly false to assume . . . that people who have few possessions are inclined to place little value on what they have or that they give willingly simply because they give graciously. My own reading of ethnography . . . suggests rather that property is valued, that people are very much aware that possessions give rise to envy, and that they are fearful of the consequences of envy. (p. 44)*

Of course, there is considerable truth in this. My own research on disputes in the primary courts of Kenya confirms the fact that subsistence agriculture and relative material equality is not inconsistent with a high level of interpersonal hostility expressed in litigation about petty theft, insult, assault, arson, seduction, adultery, etc. (Abel 1969-70). Indeed, societies undifferentiated in terms of wealth or power attribute greater importance to name, reputation, proper behavior, style (e.g., Gluckman, 1963a; Bailey, 1971; Peristiany, 1965; Marshall, 1976).<sup>12</sup> Studies of utopian communities, including the communes of contemporary American history, also reveal that dispute is endemic (e.g., Carden, 1969; Zablocki, 1971; Spiro, 1970; Houriet, 1971).

But this truth is only partial, for it fails to distinguish different kinds of conflict. In relatively homogeneous societies conflict may be pervasive, but it is also interpersonal. It originates in the grievance of one individual against another, and does not become a conflict between categories or groups. True, the aggrieved individual may seek allies, thereby enlarging the scope of the controversy. But there are structural limits upon this process. First, the potential allies of one contestant tend to be the potential allies of the other, and are therefore more likely to serve as peacemakers.<sup>13</sup> To the extent that this is precluded by the principle of strict segmentary opposition (e.g., Evans-Pritchard, 1940), two other constraints arise. The size of the group one contestant can mobilize without including persons with divided loyalties will increase with the social distance separating the adversaries; but the further they are separated, the less likely they are to interact, and thus to conflict in the first place (e.g., Peters, 1967). Hence the larger the potential conflict, the more infrequent it will be.<sup>14</sup> Furthermore, as the opposed groups increase in size, conflict between them poses greater threats to each; members of the group not intimately involved will therefore exert pressure on the contestants to resolve their differences and avoid serious injury to the group. Finally, the very social distance that allows group conflict to expand also facilitates a graceful retreat through fission or

disassociation of the contending groups (e.g., Van Velsen, 1964; Wilson, 1951; Turner, 1957); indeed, it is difficult to sustain intense conflict with a distant antagonist one rarely encounters.

What is absent in such societies is not conflict per se but a particular form of conflict produced by gross inequalities of wealth and power associated with relatively stable social groupings.<sup>15</sup> When such inequalities are present, controversies between individual members of different groups tend to be transmuted into conflict between the groups themselves.<sup>16</sup> Furthermore, there are fewer pressures to mitigate the conflict: one group has little to lose (and no other way to gain what it covets); the other has everything to lose, but can insulate itself from the direct consequences of the conflict.<sup>17</sup> These conditions, which arise only with gross inequality, do demand completely different mechanisms of social control--mechanisms that are not found in societies without authority.

Colson is concerned to show that all societies exhibit pervasive conflict of a similar kind and intensity<sup>18</sup> as a preliminary to arguing that what distinguishes societies without authority is individual self-restraint: "There is 'peace in the feud' . . . but it is a peace based on the prevention of the first act rather than the force which leads to the final settlement." (p. 43)

*(P)eople appear to regard life in a society approaching anarchy as a test of personal restraint, calling for the control of impulse and the natural man to prevent the breakdown of order and the outbreak of open violence or attack by sorcerers. An absence of external controls calls for the development of internal controls and a recognition that one cannot afford to act out spontaneous emotion. (38)*

Were it true that, absent authority, order could be achieved only by severe emotional inhibition, anarchy would certainly become far less attractive, at least to the children of the sixties, with their emphasis on spontaneity and expressiveness. But the ethnographic literature is far too inconsistent to support Colson's contention, and to my mind tends to refute it. Many societies lacking central authority exhibit very high levels of overt conflict--insults, gossip, politicking, ritual fights, competitive display, sorcery and witchcraft and accusations of both, etc.<sup>19</sup> The same appears to be true of many contemporary utopian communities.<sup>20</sup> Indeed, I would go further and argue that traditional societies both require and allow the open expression of emotion and conflict: require it, because repressed conflict threatens to disrupt cooperation between persons who are economic, ritual, and political partners as well as social intimates, and to reach levels where it can no longer be contained in the absence of centralized government; allow it by offering numerous informal occasions for the expression of grievance with the assurance that neither party will be harshly punished for what he has done and that hostilities will not escalate out of control.<sup>21</sup> Colson's generalization, ironically, seems more accurate for contemporary western societies, where the very overabundance of external controls seems to require, and to secure, internal restraint: require it, because the formal institutions are always operating with a case overload,

and are poorly adapted to deal with interpersonal grievance; secure it by making those institutions inaccessible and fearsome, and by offering the alternative of exit from the conflicted relationship or lumping the grievance (see Felstiner, 1974).<sup>22</sup>

If, contra Colson, traditional societies are troubled by endemic low-grade quarrels, although they are spared the disruptions of group conflict intensified by gross inequality, what does explain the existence of social order in the absence of central authority?

*Since the time of Malinowski and Mauss, it has been common to describe human societies as governed by the principle of reciprocity: i.e., because they see the advantages to be gained through cooperation with their fellows and recognize that they can extract their due only if they fulfill their obligations. (p. 45)*

Without gainsaying this generalization, Colson offers a number of criticisms and elaborations. First, she finds the notion of reciprocity unduly saccharine, and urges that "we also recognize that it depends on a fear of penalties as well as a hope of reward." (p. 46) I agree completely: indeed, the whole notion of a reward implies the possibility of withholding it, which is a penalty. It is this contradictory character that renders absurd utopian efforts to construct a society governed by rewards alone--such as B.F. Skinner's Walden Two (1948) (see also Kincade, 1973). Yet despite their relativistic nature, positive and negative sanctions do differ, and societies vary in the extent to which they stress one or the other.

Colson's second qualification is far more significant. If reciprocity were an adequate social cement, no other would be needed. Some social scientists go so far as to argue that it is adequate; the more extreme representatives of the Chicago school of economics claim that an unfettered market creates the ideal form of social order, which other influences can only distort. But Colson reminds us that reciprocity does not operate in a vacuum, and by itself cannot produce social order: "A collection of individualists freely negotiating with each other and regarding all aspects of their relationship as open to negotiation does not make a moral community or require law." (p. 51) What are the other requirements? First, there must be standards that define the acts that give rise to reciprocal obligations, and the nature and extent of the obligations they generate.<sup>23</sup> These standards, whether they are called customs, laws, usages, or "normative rules," reduce ambiguity and thus conflict. (pp. 51-52) They also serve to simplify the alternative behaviors open to members of the society, presenting them with a manageable menu of choices instead of the chaos of infinite possibilities.

Second, these standards must be supported by "public opinion": "the action is assessed by bystanders who may have no immediate interest in the advantage gained by any of the contenders or actors but who do have a concern for the possible impact upon the general tenor of their own lives and so provide an ultimate court of appeal." (p. 51)<sup>24</sup> Thus failure to perform an obligation produces the threat not only that the particular obligee will refuse to reciprocate in the future, but also that others in the society will refrain from entering into reciprocal relationships with the

defaulter because he has gained a reputation as a welsher. An example of this generalized social sanction can be found in the custom in some African societies that an individual who has frequently been divorced finds it increasingly difficult to enter new marriages and members of his or her lineage may also be shunned as potential mates (e.g., Winter, 1965; see generally Radcliffe-Brown, 1950).

For the diffuse sanction of public opinion to be operative, several additional conditions have to be met. These have been worked out most thoroughly by Richard Schwartz (1954), in an article that applies equally well to traditional tribal societies, although it is grounded in a description of the social order of the kibbutz.<sup>25</sup> With the aid of illustrative examples, Schwartz argues that what he calls "informal control" depends on rapid, frequent, and accurate communication of knowledge of the default to a significant proportion of the society; the ability of those who obtain such knowledge to withhold benefits from the defaulter, and their desire to do so; the magnitude of these benefits; and the capacity of others to learn vicariously from this experience (1954:476).

A third requirement of an effective system of reciprocal obligation is strict limitation on the possibility of exit from the relationship (Felstiner, 1974; Hirschman, 1970). Colson recognizes this but, strangely, treats it as a disadvantage: "Their problem (the Tonga's), and that of many other people in small face-to-face communities, lies in the fact that they cannot easily terminate a relationship if the return is unsatisfactory...." (p. 50) But to see this as a "problem" is to import into tribal society peculiarly western values of mobility and independence. For it is precisely the difficulty--even the impossibility--of extricating oneself from a relationship that gives force to the withholding of reciprocal performance. If a party could exit at little or no cost, reciprocity would lose its influence. The inhibitions on exit are threefold: the multiplicity of the ties that bind the parties together, making it very expensive to terminate the relationship; the threat that others, aware of the exit, will refrain from forming relationships with the party in the future; and the restraints on mobility in a society where roles are ascribed so that it is difficult to establish a relationship with a stranger.<sup>26</sup>

Finally, Colson argues that obligations must be enforced by more than the desire for reciprocity supported by the diffuse social sanctions of avoidance and disapprobation--they must be backed by the threat of sorcery. After describing in detail an instance of Tonga hospitality, Colson concludes that such behavior cannot be explained by traditions of generosity bolstered by reciprocal expectations; rather, the Tonga believe "that given the impossibility of knowing whether someone had the power to injure you, each request should be treated as though it came from someone who might be dangerous." (p. 49) I have several difficulties with this conclusion. First, it appears to illustrate the recurrent, but unwarranted, anthropological eagerness to generalize from single instances--to conclude, prematurely, that all the world is like the Nuer, or the Trobriand Islanders--or the Tonga.<sup>27</sup> Second, it is plagued by a circularity common to functional explanations: reciprocity is asserted to be inadequate to maintain behavioral conformity; the existence of sorcery in the society requires an explanation; sorcery is explained as the necessary supplement to reciprocity; that it is necessary demonstrates the inadequacies of reciprocity by itself. Yet reciprocity functions in societies that do not believe in sorcery<sup>28</sup> and the

threat of sorcery occurs between individuals who share no reciprocal obligations.<sup>29</sup> It may be that sorcery is a necessary concomitant of reciprocity--its dark side, a projection of the anger of the obligee and the guilt of the obligor following default (see, e.g., Middleton and Winter, 1963) just as gratitude and a sense of duty fulfilled follow performance--but this linkage has to be demonstrated, not just posited, and is almost certainly more complex and contingent.<sup>30</sup>

Colson's generalizations are further shaken when we try to apply them to pastoralists. Pastoral societies offer many of the best documented instances of the absence of centralized authority. But they are hardly anarchic. Though feuding occurs, it is strictly regulated and causes few deaths. This cannot be explained by the imposition or threat of penal sanctions, for these do not exist. Nor do the requirements for effective reciprocity appear to be met. Persons interact infrequently, thus hindering the development of agreed standards of behavior. High mobility permits ready exit from relationships, exit which is also less costly because of the greater independence of pastoral life. Low population density and high mobility allow the defaulter to hide from the diffuse social sanctions of public opinion. And the fear of sorcery not only is less pronounced and pervasive than in agricultural communities but is rarely focused on the defaulter to move him to conform. Yet despite this, pastoral societies exhibit just as high a degree of behavioral regularity, and are often notable for their displays of hospitality (e.g., Gulliver, 1955; Spencer, 1965; Lewis, 1961; Kennett, 1968; Monod, 1975). How can this be explained? A number of factors may contribute. Because pastoralists typically live in desert or semi-desert areas, they are closer to the margin of survival than agriculturalists; therefore what appears to us to be altruistic behavior may, to them, be mere short-term self-interest. Second, pastoralism is associated with a highly developed sense of personal honor--a reputation attained by generosity and jealously protected from detractors, by violence if necessary. We may understand this cultural trait as expressing competitive impulses in a society where there are few visible signs of status comparable to the farms, houses, and tenants of settled agriculturalists. Finally, it may be that pastoral societies are in fact able to tolerate more disorder, outside the boundaries of the extended family or minimal lineage, because mobility permits avoidance as a response to potential conflict.

This brief, and necessarily superficial, overview of "traditional" order should at least suggest that the absence of authority does not produce a single type of society but many diverse forms of order, each consisting of a different combination of such varied elements as: reciprocity; kinds and levels of conflict;<sup>31</sup> crosscutting or parallel, multiplex or simplex relationships; public opinion; avoidance or exit; sorcery; violence; varying forms of ecological adaptation; degrees of economic security and independence; and various cultural traits. The need, therefore, is not to engage in more typological construction, and especially not to reduce the world to dichotomies, but to refine our understanding of the interaction of these constituents of social order.

Furthermore, recognition of the complexity underlying the abstraction of "traditional" order should also make us skeptical about the way in which Colson formulated her original question--the "advantages and disadvantages" of living under, or without, authority. Societies are not

presented with those polar alternatives, but rather with an infinite number of combinations of the numerous sources of social order. Yet even were we to put aside these objections to the way the question is framed, I still would be unconvinced by Colson's answer. In order to explain my skepticism we must return to the problems I posed at the beginning of this essay--the possibility of scientific generalizations at the level of abstraction of whole societies and, further, of deducing the value of a social order from its description.

Colson clearly believes that both are possible. She advances her description of societies without authority as a scientific statement; and she views her evaluative conclusion as obvious and logically necessary. We can gain a clearer understanding of her approach if we see it as part of a longstanding debate about the overall qualities, and value, of tribal society. The founders of anthropology in the late nineteenth century were given to ready generalizations about the societies they observed or read about--generalizations that can be summarized in the phrase "custom is king" (Dudley Buxton, 1936). They depicted the inhabitants of tribal societies as savages, endowed with a qualitatively different mentality, engaging in quasi-instinctual behavior, and governed by unquestioned custom. This image clearly contrasted unfavorably with the intelligence and freedom of western man, which contemporary bourgeois individualism both idealized and exaggerated. Largely in reaction Malinowski wrote "Crime and Custom in Savage Society" (1926), in which he portrayed the Trobriand Islanders as autonomous individuals pursuing enlightened self-interest, intellectually curious, technologically proficient, at one with their environment. This version of "savage society" compares very favorably with the urban industrial west. It is therefore not surprising that such an idealized alternative should have been embraced by contemporary western youth dissatisfied with their own society. Colson, in turn, is anxious to rebut this image, by emphasizing certain other elements of traditional society: fear, inhibition, sorcery, the occasional imposition of draconian sanctions, and the extreme conformity.

Each of the strands in the above debate is a good example of "finding before seeking." Whole societies are so complex that any attempt to characterize them is inevitably going to involve gross oversimplification. The choice of what elements to include and to emphasize inevitably reflects the scholar's prior values. Hence the conclusion--that the society has advantages or disadvantages--is no more than a reiteration of those values, dressed up in different clothes.

Not only does Colson's conclusion fail to carry conviction with those who reject her initial value premises, there are additional objections to her concentration upon the disadvantages of societies without authority. First, there is the experience of "traditional" societies themselves, living without authority in apparent contentment. To this Colson replies: "We cannot assume that men in such societies have confused what is with what ought to be or that they have wished to be what they were." (p. 90) Agreed. But elsewhere she violates her own strictures by deriving a "should be" from historical "was": "The ease with which colonial administrations established themselves in some parts of Africa and New Guinea . . . may well be due to a comparable desire for an overriding authority to ensure the public peace and provide a better mechanism for settling disputes than one based on threat and counterthreat." (p. 64). Colson cannot have it both ways. If the

pre-colonial status quo is no evidence that order without authority was desirable, neither can the passive acceptance of colonialism be taken as evidence that authoritative order is desirable. Furthermore, the memories of elders about the old days--whether they are seen as "good" through the clouds of romantic nostalgia, or as bad with the hindsight of the newly westernized--are a very dangerous kind of evidence.

The second troublesome datum for Colson's verdict on "traditional" society is the new utopians--those advocates of a return to the tribal community whose rhetoric may have furnished an important goad to the writing of this book. Her rejoinder, at first sight, appears convincing: "Communes and other alternative communities find their safety in the existence of the state and its ability to maintain the public peace." (p. 89) That is, they may display the trappings of "traditional" society--but their rejection of authority is predicated upon the paramount authority of the state, which offers a protective cocoon for their (impliedly infantile) rebellion. But this insight conceals another, that tends to offset its significance. Traditional societies lacking central authority also were protected from external enemies by the physical isolation resulting from relatively low population densities, the maintenance of no-man's lands separating them from potentially hostile groups (see, e.g., Levine, 1959; Wilson, 1961), undeveloped transport technologies, and avoidance of groups with different cultures and language. In the contemporary west, such physical isolation is not available; but the power of the state can create something of a functional equivalent.<sup>32</sup>

Colson also quarrels with the inaccuracy of the image of traditional society that utopians advance: "We have distilled, from our discomfort with what we are, a vision of the innocent and contented savage, living in simple amity with his fellows." (p. 90) But this objection is off the mark. If the utopian vision were offered as a description of reality, Colson's complaint would be wholly justified. But if it is advanced as an ideal, it is no less compelling because it fails to accord fully with the reality of any given society. Ideals are, by definition, abstractions from, or combinations of, reality.

The problem Colson posed--the advantages and disadvantages of society without authority--has no scientific answer. The gap between description and evaluation is ultimately unbridgeable, no matter whether the bridge being constructed is "objective" description of the society, the evaluations volunteered by its inhabitants, or the ideals of outsiders.

### III. Contract: Authority Limited by Rules

In Colson's schematization of types of social order the anti-thesis of "egalitarian societies . . . having minimal or diffuse governmental institutions" is "centralized administration having formal institutions for the maintenance of law and order." (p. 61) What are the characteristics of the latter, and what are their advantages and disadvantages? Before answering that question it is important to note that anthropologists rarely ask it (but see, e.g., Fallers, 1973; Gutkind, 1974; Southall, 1973). Colson should be commended for directing anthropological attention toward the nation state, which everywhere surrounds and impinges upon the tribal societies that too frequently are viewed as isolated entities. But if anthropologists are to make a real contribution to our understanding of the

nation state they will have to subject it to the same critical tools they use in analyzing the tribal village: participant-observation; skepticism about folk concepts; the scrupulous separation of political myth from political reality (cf. Arnold, 1935; Edelman, 1964; Scheingold, 1974). Has she done so successfully?

Colson, like Morgan, grounds the legitimacy of the contemporary nation--particularly that of the new African states--upon eighteenth century notions of social contract, especially the Hobbesian view of the state as the only alternative to the war of all against all:

*We cannot understand the history of the colonial period, or indeed the history of our own time, if we do not understand that people may be prepared to accept authority, even though they find it both threatening and frustrating, because they see it as the guarantor of an overarching security which they value or as promising a security that is lacking. (p. 67)*

Thus the centralized state provides security against violence and sorcery (a statement of fact), and that security outweighs the attendant costs (a statement of value). Is the statement of fact true? Clearly not. It is the flimsiest of political myths, designed to prop up and justify states that daily commit mass violations against the most fundamental rights of individual security. No one could argue otherwise who has even a passing acquaintance with the recent history of such countries as Kenya, Uganda, the Sudan, Nigeria, Zaire, Chad, Mali, Ethiopia, Rwanda, Malawi, or Zanzibar--the list has hardly any end (see, e.g., Decalo)<sup>33</sup> And to the acts of violence and exploitation deliberately committed by politicians, administrators, police, and military one must add the extraordinary increase in crime in urban areas, living conditions in the cities, the insecurity caused by high unemployment, the physiological and psychological violence done to people who work in factories or mines, or as servants, and the threats arising from the rapid social and cultural change encouraged by the state.<sup>34</sup> Even if a limited physical security is guaranteed, do its advantages outweigh the disadvantages? Only if you happen to be one of the privileged whose security is enhanced at the expense of greater insecurity for the rest. The racist regimes of Rhodesia and South Africa justify themselves as guarantors of security, yet Colson certainly would not find such a rationalization acceptable. Why should it be any more persuasive when the elite is black rather than white? Colson appears to confuse the security of the state with the security of the individual.

A second characteristic that Colson attributes to centralized states, and by which she justifies them, is the increased mobility they allow their inhabitants: "citizens who were once members of small parochial units move about the country more freely than ever before." (p. 8; see also p. 71) As a statement of fact, that is a very partial truth. Mobility is not only a function of security but also a function of wealth, education, and westernization, which are very unequally distributed among the population. Furthermore, in order to preserve the very "security" described above, many states have drastically restricted mobility. Even without such restrictions, Africans have frequently adopted patterns of migration by which they recreate tribal enclaves outside their homeland--in the cities,

on plantations, at the mines, etc. (e.g., Southall and Gutkind, 1951; Vincent, 1976; Ross, 1973, 1975; Cohen, 1969, 1974). This should hardly surprise an anthropologist from America, where repeated ghettoization--of migrants from Southern, Central, and Eastern Europe, emancipated Blacks, Mexicans, other Latin Americans, Asians, even the indigenous Indian population--has been a dominant theme of two hundred years of history (e.g., Glazer and Moynihan, 1970). Africans, apparently, are not convinced by Colson's claim that the nation state is just, universalistic, blind to tribal differences.<sup>35</sup> And again, they seem to me to have a more accurate perception of contemporary history--which includes massacres of Ibo in Nigeria, Tutsi in Rwanda, Arabs in Zanzibar, southerners in the Sudan, etc. Nor, were Colson successful in establishing mobility as a fact, would that fact necessarily constitute an advantage. Surely some attention must be paid to the reasons for moving. Labor migrants who have been dispossessed of their land, forced into wage employment by the imposition of taxes, or seduced into seeking work by an artificially created demand for market goods (see, e.g., Leys, 1974; Harbeson, 1973), are no more likely to sing the praises of the new African nations than were the American Blacks and poor whites who moved to northern cities for industrial jobs, or the Okies who fled the dust bowl, disposed to eulogize America; or are contemporary Portuguese, Spaniards, Turks, Greeks, Yugoslavs, Algerians, etc., whose northward migration in search of wage labor constitutes one of the largest such movements in history, eager to acclaim the new Europe (Berger, 1975). Increased mobility, whatever its source, is not a self-evident or universal, or ultimate value. It is not inconceivable that a person would prefer to remain at home in his community than become a stranger in the world. I am not purporting to refute Colson's decision to value mobility but only to show that she has made such a decision--a value judgment--and is no longer engaged in scientific description and analysis.

A third quality imputed to the new nations is a more universalistic form of justice, insulated from politics, a rule of law not of men, a law that is no respecter of persons. Let me deal separately with each of the arguments by which Colson reaches this conclusion. First, she contends that, however much the indigenous population may have criticized the colonial courts, "their general utility . . . was still recognized," and she cites examples of court use by the Nuer, Tiv, Arusha, Lugbara, and Tonga. (p. 70) Though I do not dispute this evidence, it is impressionistic in the extreme. I have attempted to collect statistics on changing patterns of local court use in Kenya during the half century from the government's recognition of traditional councils of elders in the 1920s to the contemporary District Magistrate's Courts. After a steady, if gradual, increase in litigation rates (holding population constant) there is a marked decline, in some cases very rapid (Abel, 1969-70, 1979b, 1979c). Although the statistics require more refined analysis (by tribe, locality, period, etc.) they cast considerable doubt on Colson's conclusions. More importantly, they demonstrate the kind of data by which those conclusions must be tested, data that differ significantly from the ahistorical snapshot produced by the ethnographic fieldworker.

Second, Colson states that the new courts are less subject to bias than were traditional institutions.

*Although they (the litigants) recognize that court members are likely to favor local*

*people against strangers, they know they are not completely at the mercy of only one court because it is part of a larger system. They can appeal a decision, and the reputation of the court is a matter that concerns its members who can be discharged or penalized for blatant bias. Bias is the easier to perceive because the courts are expected to give judgment based on the merits of each case and not on the merits of those involved in the dispute--a feature distinguishing them from the old methods of social control . . . . (p. 71)*

It is hard to know where to begin the task of separating political myth from political reality in the above description (its mythic nature is strongly suggested by the complete lack of supporting evidence). Colson almost gives the game away when she acknowledges that the new courts discriminate against strangers--a form of injustice wholly absent in traditional societies where the very structure of judicial institutions precluded the exercise of jurisdiction over strangers. Does she save her point by arguing that bias is now easier to perceive and to sanction? No, for that argument is a classic example of myth mistaken for reality: "(C)ourts are expected to give judgment based on the merits of each case. . . ." (my italics) Do they? I have read thousands of judgments in the local courts of Kenya, and descriptions of those rendered by courts in other African countries. They typically consist of a single sentence: we find for plaintiff (or defendant). Even when more extensive reasons are given, those tend to conceal, not reveal, the grounds of the judgment.<sup>36</sup> Some anthropologists have gone even further, dismissing the entire record as a rationalization fabricated to justify the decision of the court, a record that is sometimes written only when external review is threatened (Beidelman, 1961). And were bias visible, would such a review be an effective form of control? "(M)embers . . . can be discharged or penalized for blatant bias." (my italics) Are they? I know of few instances during fifty years of Kenya history. Not because litigants never allege bias; on the contrary, I have read hundreds of appeals from local courts to appeals tribunals or District Officers and the vast majority complain about bias. Yet the appeals are rarely allowed, and certainly nothing is done to penalize the judge.<sup>37</sup>

Finally, Colson argues that the new national courts are insulated from political pressures, with the result that they are more accessible and therefore encourage the parties to settle.

*The Tonga point out that if they have a grievance they now can go directly to the court; they need not spend time convincing kinsmen that the matter is sufficiently important to make it worth running the risks inherent in the confrontation that takes place when two sets of supporters face each other in a local hearing or moot. For that matter, people no longer need to be so concerned to ingratiate themselves with their*

*kin in the hope of future support and they are  
freer to refuse to give their own support. (p. 71)*

I thought that the first of these delusions had adequately been laid to rest.<sup>38</sup> The dichotomy between political competition and legal adjudication, originally introduced into the anthropological literature by Gulliver (1963: 297-98), has since been substantially qualified by him (1969), and also criticized by J.A. Barnes (1969), Sally Falk Moore (1970), Nancy Tanner, (1970), and myself (1973), among others. There is now ample evidence--American and European (e.g., Griffith, 1977) as well as African--that courts are political institutions which, if they disregard political reality, can have only limited effect. Law cannot be purified of politics; if politics is banished from decision-making, it will insinuate itself into the enforcement process.<sup>39</sup> Colson's second point is ambiguous, at the very least.

*Men and women can also sometimes  
extract an acknowledgment of their  
claims simply by threatening to go to  
court because opponents want to be spared  
a long walk, the ordeal of questioning,  
and the possibility of a court fine, as  
well as an unfavorable decision. Settle-  
ment of disputes within a neighborhood is  
easier than before and less likely to  
mobilize contending factions. (pp. 71-2)*

I tend to agree that the introduction of courts with coercive powers encourages out-of-court settlement (see, e.g., Collier, 1973; Hunt and Hunt, 1969). But this occurs because access is limited, not expanded. Coercive institutions inevitably become less accessible--increased power always leads to other modes of differentiation, specialization, and bureaucratization with a consequent increase in formality, costs, etc. (See Abel, 1973). At the same time, the coercive powers of the formal institutions undermine the authority of traditional, consensual, institutions. I therefore believe that the long-run consequence of introducing courts into traditional society is to erode extra-judicial institutions of dispute settlement, restrict judicial access to a privileged few, and thus drive most of the population to "lump it"--to choose avoidance as the "solution" to disputes. (See, Felstiner, 1974; Hirschman, 1970; Christie, 1978) Thus where Colson contends that "claims which previously would have been suppressed to avoid a conflict are now allowed to surface" (p. 72), I perceive just the contrary--an increase in dispute suppression.

If the advantages Colson attributes to the national courts seem illusory on closer scrutiny, what of their disadvantages? Those appear to have been overlooked. Colson downplays what has recently been called the "dark face of law"<sup>40</sup>--an unfortunate underemphasis in light of the dissatisfaction rapidly emerging within western nations (see Abel, 1979a) about those very same legal institutions the colonial regimes imposed upon Africa. Lacking the space for a full analysis of this critical issue, let me simply state the argument baldly, without any attempt to provide the necessary evidence. A formal legal system that adjudicates claims according to general principles gives systematic advantage to those who possess superior wealth, power, social status, literacy, etc. (cf. Galanter, 1974). The historical record amply bears this out. Land "adjudication" in Kenya has helped to

transform patterns of landholding in that society from highly egalitarian to grossly inegalitarian; the President alone is alleged to control over a million acres, and other government officials have only slightly smaller estates. (See Sorrenson, 1967; Harbeson, 1973; Leys, 1974; Hall, 1975).<sup>41</sup> The enforcement of commercial transactions, especially loans secured by realty, had a similar result in the colonial courts of Burma (see Furnivall, 1956). Recent critiques of the American legal system have shown how differential access to lawyers, differential recognition of social problems as legal, and differences in the size and structure of litigants, tend to insure that "the 'haves' come out ahead" (Galanter, 1974; see also Carlin et.al, 1967; Mayhew and Reiss, 1969). And these injustices arise even when justice is truly blind; if the corruption rampant in Africa--and in many developing countries elsewhere--is acknowledged in the analysis, the disadvantages of coercive courts become even more difficult to ignore.<sup>42</sup>

Colson's last argument in justification of the new nations of Africa is their contribution to material progress. Their citizens look to them "to provide schools and medical services and to ensure the economic growth that will provide the jobs through which they hope to obtain the material things the western world now takes for granted." (p. 8) This kind of rhetoric would have been thoroughly acceptable in 1960, during the hopeful days of the early Kennedy administration. But in a work of scholarship published in 1974 it seems woefully dated, more akin to the self-justifying propaganda emanating from the information bureaux of contemporary authoritarian regimes. The developing countries (with the exception of those fortunate enough to possess large deposits of natural resources) have become materially poorer relative to the western world during the last fifteen years. And within most developing nations (especially those "blessed" with natural resources), the gap between the elite and the masses has widened, often to the absolute, as well as the relative, detriment of the latter (see, e.g., Chaliand, 1977; Oxaal et al., 1975; Arrighi and Saul, 1973). Schools, in many instances, are only open to those with the money to pay for them; but even free education is strictly rationed, and it also generates a growing body of school leavers who cannot find jobs commensurate with their skills and expectations. Medical services have extended life expectancy without reducing the birth rate, producing a rapid increase in population which not only strains food resources but transforms an increase in gross national product into a decrease in per capita GNP. Economic growth does not create development but underdevelopment, in which the number of salaried jobs in the export sector of the dual economy remains constant or actually diminishes because the multinationals, which dominate it, prefer capital intensive operations (Leys, 1974; Arrighi and Saul, 1972; McHenry, 1976; Good, 1976; Weeks, 1971). Even in the west it is now recognized that the expansion of public services, as well as the growth of the private sector, confer proportionately greater benefits on those who are already advantaged (see, e.g., Cook et al., 1975). It is no longer tolerable to justify everything in the name of aggregate economic expansion without looking at who gets what. Like "security" and "justice," "economic growth" is undubitably a boon to those who obtain its benefits--but what about those who do not, or who suffer an absolute loss in the process?

In presenting Colson's description of "centralized administration having formal institutions for the maintenance of law and order," I have necessarily revealed her own evaluation of that mode of social order. The evidence truly does speak for itself because it is not evidence but

political myth: ideology rather than reality, formal attributes rather than processes or outcomes, the part (the elite) for the whole. Should the picture still fail to prove attractive to western eyes (perhaps jaundiced by their own experience of the institutions being touted), Colson also offers the testimony of Africans themselves:

*men may see governments as providing services for them, services which they cannot see themselves capable of providing and, if necessary, they are prepared to pay the cost of that service. (p. 67)*

It is an argument strangely reminiscent of the hypothetical social contract. Progress occurs because men, maximizing individual self-interest, also maximize the social good: "Morgan's belief that societies change because men seek to better their lot and to find solutions to the evils of their condition may be less foolish than it appeared to be. . . ." (p. 62) But where eighteenth century thinkers posited men seeking protection from the anarchy, inherent in the state of nature, contemporary anthropology adds the incentives of material goods and social services. Yet how do we know that, because men now live in nation states, they chose to do so? Colson appeals to history for proof:

*The ease with which colonial administrations established themselves in some parts of Africa and New Guinea, with a minimal deployment of force, may well be due to a comparable desire for an overriding authority to ensure the public peace and provide a better mechanism for settling disputes than one based on threat and counter-threat. (p. 64; and see pp. 65-69)*

This leap from fact to value judgment depends on the most egregious error in anthropology, if also the most common--ethnocentrism. What appears to be a "minimal deployment of force" to the western anthropologist--a few police with guns--may well have been overwhelming to the technologically impoverished populations of Africa, or New Guinea.<sup>43</sup> And as for the "desire for an overriding authority"--isn't this just a projection of Colson's own desires--an instance of what Radcliffe-Brown ridiculed as "if-I-were-a-horse" methodology.<sup>44</sup> That a western anthropologist would feel lost in a tribal society without the security of overriding authority is understandable. But what evidence is there that members of such a society feel similar needs? None.

The problem with Colson's social contract, as with Locke's, and Morgan's, is that it is a fiction. No one was ever presented with the alternatives of traditional order and centralized authority. Therefore, we can never know what an individual, much less a society, might choose. The contract is simply another political myth, offered to justify the imposition of colonial rule and, more recently, to legitimate independent governments.

#### IV. Conclusion

What lessons may we derive from Colson's attempt to examine "the advantages and disadvantages of living under authority"? In particular,

does her discussion justify the claim of anthropology to offer new, more scientific insights into that issue--for, as she acknowledges, "political philosophers have dealt with it from the time of Aristotle, and no doubt before that." (p. 4) For me, her efforts illustrate the difficulty--indeed, I hesitate at the edge of saying the impossibility--of divorcing social description from social evaluation. At least where the phenomena being described are total societies--where the question is egalitarian consensus versus centralized authority--we inevitably see what we look for. As an illustration of this contention (though hardly a proof), compare Colson's view of the two forms of social order with that of the utopians she criticizes, and with my own portrayal. One can hardly believe we are looking at the same data. And, of course, we are not. Where the phenomenon is so large and complex, selectivity must be exercised and cannot but be influenced by the values of the observer. "Trouve avant de chercher" is a principle of social science as well as of the creative imagination. And Colson explicitly acknowledges this:

*I have long since learned, during the three decades in which I have continued to revisit the Tonga of Zambia and followed their development, that when I place high value on certain aspects of Tonga life, I am responding to my own philosophy and appreciation of the problems of my own American society and not necessarily seeing through Tonga eyes. Institutions and principles which I regard as integral to the working of their order, may be regarded by them as necessary evils or be debated as to their relevance or desirability. (pp. 62-3)*

If description imports evaluation, a necessary corollary is that description cannot then constitute a value-free basis for judgments of desirability, the weighing of advantages and disadvantages. If Colson's descriptions of traditional order or of the modern nation seem fundamentally erroneous to me, I am not going to be persuaded by her ethical conclusions. Indeed, it is hardly an exaggeration to see her descriptions--or mine, for that matter--as little more than a pseudo-scientific smokescreen that conceals the way in which political judgment derives directly from political premise.

If the "ought" cannot be deduced from the "is" (in part because there never was an "is," but only the same "ought" in another guise), we are not helped to make that leap by the testimony of others. When Colson confronts her utopian adversaries with the claim that tribesmen prefer the nation state, they can legitimately retort that they would prefer the tribal community. From an ethical perspective, twenty million Frenchmen can be wrong. Furthermore, the preferred testimony is inherently suspect. It is difficult, perhaps impossible, to know what a man values in his society, why he lives that way rather than another--this is the unavoidable problem of subjectivity in social science.<sup>45</sup> Even were this obstacle overcome, it would not be permissible to view society as the sum of individual choices. Much as some Americans may cherish the image of Vietnamese "voting with their feet" for Saigon rather than Hanoi, or admonish dissidents to "love it or leave it," to belong to a society is not necessarily to love it, nor does

the emigré hate everything about his homeland or give total allegiance to his place of exile.

That description and evaluation are indissolubly linked is not a reason to forsake either but only a warning that they should not be confused. This caution must be addressed most forcefully to social scientists and their readers, for there is a real danger that both professionals and laypersons may be lulled into relaxing their critical faculties by the claim of science to objectivity. It is ironic that such a reminder should be necessary, since social science can take considerable credit for increasing our awareness of the role of myth in political life. Malinowski's identification of myth as the "charter" of tribal government is one example. Political scientists have devoted substantial energy to identifying and analyzing mythic forms of legitimation--for instance, traditional, charismatic, and rational authority (see Weber, 1947, 1954). And Colson is certainly right to point out that when American students and teachers in the 1960s invoked "a vision of some kind of extended family unit or small face-to-face community lacking formal offices" as the model for political society, they were also creating a myth (p. 1). Yet despite this awareness of the myths that others embrace, we are often singularly blind to our own. Thus Daniel Bell (1965) could proclaim "an end to ideology" at the height of the cold war, when the myths of liberal democracy and of the internal communist menace were never more potent, nor more constricting of our vision. And Colson can offer a "description" of contemporary African society that is almost a caricature:

*Much of the population of the Central and East African cities is composed of young people who have tasted the personal freedoms associated with an escape from the immediate presence of their kin and allies into the anonymity of city life. They have been able to explore new experiences and follow their own desires as they never could at home. . . . they appear to be willing to subject themselves and their children to new restraints in a search for security. They are attempting to create stable local communities within the cities where tradition can again become binding upon themselves and their fellows, and where informal social controls based upon the value of reputation will again operate. They are also looking to the legislature and the courts to develop a common body of law encompassing everyone, without respect to ethnic affiliation, and impartially administered by agents who are servants of the wider community rather than of any special segments within it.*

*. . . .*  
*(T)hey do not want to live again in a world without a complex role structure, without free mobility, and highly developed economic*

*institutions, without courts impartial at least by definition and other institutions of a developed governmental system designed to ensure a flow of goods and services and to maintain the public peace. (pp. 111, 113)*

For each partial truth (or myth) a contradictory, if equally partial, truth (or myth) can be substituted. The inhabitants of Africa's cities have not been drawn by the promise of freedom but driven by the loss or overcrowding of their traditional lands, by a yearning for consumer goods artificially stimulated through mass advertising and conspicuous display by the elite. Freedom from kin is freedom to experience desires, not to fulfill them. Africans have not accepted restraints willingly but have been subjected to the constraints of scarcity and the domination of authoritarian rule. They have not sought stable local communities, but have been driven into ghettos by prejudice and economic stratification (Gulliver, 1969; Parkin, 1969). The social controls they experience there will not be informal, relatively noncoercive, governed by traditional standards of behavior, and based on reputation, but violent, regulated by standards that are heterogeneous, uncertain, and rapidly changing, and based on political influence and economic corruption. They have neither faith nor interest in a legislature they know will be subject to tribal influence and bribery. More often than not, there will be no legislature, for the military rules the majority of African countries today. And where parliament persists in name it is rarely more than a puppet, ratifying (or perhaps vainly protesting against) the actions of an executive that has long since placed itself above democratic notions of popular responsibility. For today's Africans the "complex role structure" has already congealed into classes, of which the lowest is also the largest. Mobility is not free but extremely expensive, and far beyond the grasp of most. The "highly developed economic institutions" belong to the other half of the dual economy, dominated by the multinational corporations that exploit Africans but over which they have no control. Courts are impartial only "by definition," in reality they favor those who have the resources to manipulate them. Goods and services may flow around them (often on their backs) but not to them. The "public peace" is too often the peace of the grave.

During a panel on law at a recent meeting of the American Anthropological Association one speaker complained that American society rarely sought the opinions of anthropologists on questions of social reform, preferring to appeal to sociologists, political scientists, economists, and psychologists. My response then was that anthropologists tended to concern themselves with situations that appeared exotic, remote, and peripheral to westerners. Elizabeth Colson has acquitted herself of any such charge. Not only has she analyzed the structure of tribal societies in their pre-colonial environment, the usual focus of anthropology, but she has also examined contemporary African nations. Yet--and this is the second principal lesson to be learned from her book--she has avoided one pitfall only to be trapped by another. She looks at political reality through the distorting lens of the liberal democratic myth. If anthropology is not to be trivialized as the reiteration of accepted truths in social scientific language it has to focus the same critical spotlight on western ideology that has been used to penetrate alien societies (cf. Asad, 1967; Hymes, 1973; Kuper, 1974). And though it is admirable that anthropologists are now turning from the tribal village to the nation state,

this new perspective may already be anachronistic. For what happens in Africa today is so thoroughly affected by international entities--multinational corporations, the great powers, international organizations--that only a world view may be sufficient to permit full understanding. If anthropology fails to mature in these ways present scholarship may obsolesce, just as earlier ethnography is suspect:

*(O)ne of the reasons why anthropologists are now questioned in many parts of the world where we have worked . . . (is that) the people we describe come to read our books and say that we have valued them for the wrong reasons. (p. 63)*

In an era of widespread literacy and rapid change, such critical scrutiny will be increasingly prompt and severe.

#### NOTES

1. Colin Turnbull, describing the experience of beginning an anthropological field trip, writes:

*As far as academic expectations went, I had neither any specific hopes nor any specific fears, and this was as it should be. It is too easy to go into a field situation expecting or hoping to find this or that, for invariably you come out having found what you wanted. Selectivity can do great things in blinding one to a wider reality. (1972:30)*

Nevertheless, it is clear that he went to study the Ik of Uganda expecting to find social relations similar to those he had experienced among the Mbuti pygmies of the Ituri forest (1961; 1965) and it took a great deal to disillusion him.

2. Ralf Dahrendorf remarks (1968), with surprise and some criticism, on the fact that sociologists have almost universally defined their problem as the existence of order rather than asking why there isn't more disorder. In this sense Colson's conservatism is simply an expression of the pervasive conservatism of contemporary sociology.
3. Colson contrasts American Indians, who resisted centralized authority in the name of legality although they were traditionalists and not legalists, with Africans, who resisted that authority in the name of tradition, though they were legalists and not traditionalists. The ex-

planation for this apparent contradiction seems to me to be the characteristics of the dominant cultures. Indians had to couch their appeal in terms of the legality that the American government claimed to respect, and which was enshrined in a written constitution and a procedure for judicial review; Africans similarly had to speak to English traditions. Minorities and other oppressed groups in the United States continue to appeal to legality. What is interesting is that mainstream Americans pay them the reverse compliment, emphasizing tradition. Communes call themselves tribes, create rituals, even justify drug use by reference to native Americans. More recently, the elite of the legal system have begun to express yearnings for a tribal informality.

4. Of course, many African, and other traditional, societies do have central authority--e.g., the Lozi, Nupe, Ashanti, Yoruba, Zulu, the intralacustrine Bantu kingdoms--but the critical question for political anthropology has always been what holds together those societies that lack the kind of authority with which westerners are familiar from their own history. This was a preoccupation of some of the founders of anthropology, for instance Malinowski; it is a recurrent theme of the seminal collection by Fortes and Evans-Pritchard (1940), and of the fieldwork of each of those editors (e.g., Fortes, 1945, 1949; Evans-Pritchard, 1940); and it was even proclaimed in the title of a subsequent collection, "Tribes Without Rulers" (Middleton and Tait, 1958).
5. It is striking, and in contrast with Colson's view, that the Nigerian novelist Chinua Achebe (1958) borrowed this phrase from Yeats to describe the new state of Nigeria, or at least the influence of modernity upon African society, and not to describe tribal society. Furthermore, he did so at a time when Nigeria was the showcase democracy of Africa, certainly the kind of example Colson would have given of order through contract, had she given more examples.

Another possible approach is to see order and disorder in tension in all societies. Max Gluckman does so by entitling one of his books "Custom and Conflict" (1955); Paul Bohannan appears to agree by entitling his selection of readings "Law and Warfare" (1967).

6. Thus the presence of order in all existing societies could be seen as evidence that chaos leads to extinction. This is rather like Malinowski's crude functionalism, which derived the necessity for all social traits from their mere existence. But societies do not die out, they change, and therefore it is virtually impossible to test a proposition that says order is essential. Doris Lessing gives a stark description of a society changing (1975), although the change may be experienced by its members as a kind of death. Even Colin Turnbull's portrayal of a dying society (1972) shows that some members, at least, were able to adapt to new conditions.
7. Indeed, they may never have been employed. It appears to be a generic characteristic of the older generation, who naturally constitute most informants for anthropologists, to exaggerate how awful things were when they were young. I have always found the schedules of excruciating punishments recorded by anthropologists and administrators during the colonial era inherently implausible. And Martin Chanock offers a cogent

account of the political reasons elders may have had for concocting gruesome punishments.

8. All the evidence indicates that social control through general deterrence--the exemplary infliction of punishment--is a failure. All criminologists acknowledge that there has been a dramatic increase in crime in western societies in recent years (e.g., Radzinowicz and King, 1977). It hardly seems a coincidence that there has been a simultaneous decrease in the incidence of specific deterrence, and especially of informal sanctions for deviance, and an increasing reliance on general deterrence. Nor has deterrence been any more effective in preventing war. The doctrine of massive retaliation was promptly followed by two major wars between the United States and the Soviet Union (in Korea and Vietnam), and endless wars in which the great powers did not confront each other so directly. Finally, to leap to the opposite end of the continuum, it is recognized that the worst kind of parenting is that which threatens dreadful sanctions but never imposes them.

9. A fallback position for those who would justify imprisonment as deterrence is that at least incarceration prevents inmates from committing crimes on the people outside the prison (though it creates increased risk for those inside).

The power to expel incorrigibles is clearly the minimum condition of social life. Even the most utopian of intentional communities generally invokes it--the kibbutzim for instance (see, e.g., Shapiro, 1976). Those American communes of the 1960s that declined to set any rules about entrance or exit were shortlived.

10. See, e.g., Durkheim (1947). Indeed, an argument can be made that the primary function of general deterrence is to assert the horror that the punisher feels at discovering within himself desires to commit similar acts.

11. This is part of the reason why a regime of general deterrence tends to escalate its sanctions; as each sanction becomes more common it loses its terror.

12. In class or stratified societies the same kind of competition for place occurs within a class or stratum, as evidenced by such phenomena as refinements of style in pre-industrial Europe, or conspicuous consumption in industrial America.

13. The best treatment in this is Colson's own essay, (1953); see also Kopytoff (1961); Gluckman (1955). This tends to be insured by the rules of exogamy, which are sometimes explicitly paraphrased: "we marry those we fight." Indeed, this is thought to be one of the functions of those rules (see, e.g., Fortes, 1969; Fox, 1967).

14. Unfortunately, the converse also seems to be true: the more infrequent the conflict, because the further apart the parties, the more aggressive and unrestrained the behavior. All societies have norms establishing graduated levels of hostility that can be expressed to ever more distant people: words for immediate kin, non-deadly weapons for those to whom some relationship is recognized, deadly weapons against

strangers (who are generally viewed as non-persons). Ethologists like Lorenz (1963) have generalized from observations about animals to argue that such patterns serve to distribute human beings across the land in such a way as to maximize utilization of food and other resources (but see Storrs, 1968). But the technology of modern warfare may have undermined this function, since the enemy is not only a stranger but generally invisible, and the weapons used no longer kill individuals but can destroy entire societies.

15. For the purpose of this analysis it does not seem necessary to offer a precise definition of class; however it might be defined, few of these societies have anything resembling class differences.
16. Every interaction between members of different groups can become an occasion for the expression of all of the tensions inherent in the entire relationship. This may explain, in part, the tendency of city dwellers to preserve a carapace of indifference in their daily contacts with strangers.
17. It does so ideologically by denying that conflict exists; hence the violent antipathy to ideologies that assert the existence, indeed the inevitability, of conflict, whether as a political doctrine (communist parties) or as scholarly theory (academic marxism). It also employs intermediaries to contain, and even to offer a vicarious outlet for, that conflict, i.e., the police.
18. One of the many problems with this approach is that it ignores the unit of analysis. Even within a given society the "problem of order" is solved differently within the nuclear family and within the maximal lineage.
19. A number of collections offer numerous illustrations, e.g., Bohannan (1967); Mead (1961); Hoebel (1954); Cohen and Middleton (1967).
20. As indicated by the slogans of the 1960s in general, and of its communes in particular: up-front, let it all hang out. Other, more structured, intentional communities also encouraged the expression of hostility, e.g., the Bruderhof (Zablocki, 1971) and Oneida (Carden, 1969).
21. This is dangerously close to the hyperfunctionalism of Gluckmann (1955; 196b; but see Norbeck, 1963), which stresses the integrative functions of conflict; such a view has eminent precursors (e.g., Simmel, 1955; Coser, 1956). But the fact that some conflict may be integrative does not mean that all conflict must be.
22. Furthermore, in an unequal society, the aggrieved is more often a subordinate who is afraid to, and unable to, assert his grievance. Indeed, he may not even recognize that he has a grievance, especially since his superordinate denies that he has any reason to feel aggrieved (see, e.g., Best and Andreasen, 1977).
23. Standards must antedate entry into a reciprocal relationship: they are necessary to establish that there ought to be some return for value given, and indeed what constitutes value itself.

24. Again, Colson appears to overlook the symbolic functions served when the audience participates in judgment: on a societal level, members of the audience assert the wrongness of the behavior of at least some of the parties, and implicitly their own moral superiority; on an intrapsychic level, the auditor asserts what he "ought" to do against what he himself might want to do.
25. This article does not appear to be well-known among anthropologists of law, perhaps because it was written by a sociologist and published in a law journal.
26. Mobility, though limited, still exists. Members of tribal societies always have some other options for residence, arising out of the multiplicity of affinal, cognatic, clan, blood brotherhood, trading partner, and other ties. Nevertheless, the post-tribal situation is qualitatively different. The single most important change attributable to colonial rule may be the creation of cities, which offer an escape from tribal relationships.
27. This is another aspect of the anthropologist's insistence that the people he or she studies--his or her people--are somehow unique, untranslatable into any other culture, and also an exception to every theoretical generalization ever advanced. They are that, of course, just as they can be data from which to build, or by which to test, generalizations; it just depends on which you want to do.
28. For instance American (e.g., Macaulay, 1963) or Polish (e.g., Kurczewski and Frieske, 1977). On the other hand, both of those societies have courts possessed of coercive powers, which may constitute a functional equivalent to sorcery.
29. Colson concedes this (p. 112); I have records of cases from the primary courts of Mombasa involving sorcery between persons who have no reciprocal obligations. In rural Kenya, as well, accusations of sorcery seemed to reflect fears of resentment, resentment often stimulated by the growing inequality of wealth, status, and power. Cf. Field (1960).
30. For instance, other societies ground support for reciprocity in beliefs in ghosts, ancestors, and gods, and in informal social sanctions.
31. Even within a society different groups tolerate different levels of conflict and demand different levels of order. Mary Douglas (1970: Chap. 2) has built upon the sociolinguistic theories of Basil Bernstein to draw these distinctions; anyone who has sat in a doctor's waiting room and observed lower class parents anxiously discipline their children and upper class parents just as anxiously strive to appear unconcerned about the behavior of their children will know what I mean.
32. The power of the state is not used covertly as a source of order in contemporary utopian societies. It is generally viewed as a betrayal of the communal principle to invoke the power of the state, and indeed there is often a conspiracy of silence to prevent state interference in the internal affairs of the community (e.g., Shapiro, 1976).

33. One of the most startling examples of selective vision is Colson's criticism of Jacob Black, who had argued that the nomads of Luristan, in Iran, accepted the rule of the central government because they were forced to do so:

*It does not appear to have occurred to him that men may see governments as providing services for them, services which they cannot see themselves capable of providing and, if necessary, they are prepared to pay the cost of that service,*  
(p. 67)

To see the nomads as freely exchanging their autonomy in exchange for the "services" rendered by the dictatorship of the current Shah of Iran is truly extraordinary.

34. Rising crime levels are documented in Clinard and Abbott (1973), Clifford (1974), and Sesay (1977). Slum housing is described in Mbithi and Barnes (1975) and Hake (1977). And the total experience of "acculturation" is graphically portrayed both in non-fiction, e.g., Turnbull (1968), and in fiction, e.g., Achebe, Soyinka, Mphahlele, Nguugi.
35. Nor are Americans, or why else the survival, and contemporary intensification, of loyalties to ethnic and other sub-national sub-groups.
36. I have argued that the reasoning of the court can be understood by analyzing the entire pattern of question and answer that constitutes the court hearing (1969-70). But this is very different from a reasoned judgment in which the court is required to justify its decision explicitly.
37. An appellant must state a ground for his appeal. Bias is generally not viewed as an adequate ground. Furthermore, bias is more difficult to perceive because litigants find it increasingly difficult to follow and understand the proceedings in westernized courts. In addition, costs are imposed to discourage "frivolous" appeals. Finally, the central government, by asserting a monopoly over the judicial function, has made it harder for the dissatisfied litigant to seek review. In tribal society, by contrast, the litigant often has several potential fora competing for jurisdiction over his case, and he is able to play them off against each other. See generally Phillips (1945); Barnett (1965); Robinson Commission (1961); Brooke Commission (1952, 1953); Korsah Commission (1951); DuBow (1973); Spalding et al. (1969).
38. The asserted separation of law and politics was one of the principal betes noires of the legal realists. Their jurisprudential insights were made the basis for empirical investigation, largely the research associated with the school of "jurimetrics." This point of view has been so thoroughly accepted as to permeate the standard texts on the subject (see, e.g., Goldman and Jahnige, 1971).
39. Each time the United States Supreme Court has made a decision on a topic that was politically so hot the legislature had studiously avoided responsibility acute problems of enforcement ensued, for

instance in the areas of desegregation, reapportionment, church and state, etc.

40. See, e.g., Trubek and Galanter (1974). Colson does acknowledge some of these drawbacks (p.69).
41. Land litigation on the American frontier had a similar result, see, e.g., Friedman (1973). And land reform efforts in other countries, e.g., Mexico (Hunt and Hunt, 1969) and India (e.g., Kidder, 1971) have been little more successful in achieving a meaningful redistribution.
42. Colson does acknowledge the existence of corruption (p. 72).
43. The colonial conquest is obviously far more complicated than either of these accounts suggests. The intentions of Europeans were often misrepresented, and in any case misunderstood. They were treated as guests in the expectation that they would act as guests. When they began to act as rulers it was usually too late to object. Furthermore, the attributes of late colonial rule--land seizures, wage wage labor, large white settler populations--could hardly be anticipated when that rule was first established. Finally, there was considerable resistance to colonial rule, which is only now being documented.
44. Quoted in Gluckman (1965:2).
45. Cf. Winch (1958, 1964). Furthermore, every society to some extent seeks to legitimate itself in the eyes of its inhabitants, thereby creating the problem of "false" consciousness.

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