

SCAPE-GOAT AND MAGIC CHARM

LAW IN DEVELOPMENT THEORY AND PRACTICE¹

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“We must view with profound respect the infinite capacity of the human mind to resist the introduction of useful knowledge”. (Thomas Raynesford Lounsbury, quoted in D. Macarov, *Work and Welfare - The Unholy Alliance*, 1980: 203.)

1 INTRODUCTION

Ever since I first read the above aperçu I have been thinking of it in relation to law-related planning and analysis of social and economic change in developing countries. Law-related development planning - and there is little development policy and implementation which does not involve law - but also large parts of what goes under the name of development theory, seem to prove the above statement. The idea of legal engineering, of achieving social and economic change through government law, still ranks foremost in the arsenal of development techniques. Law, as “desired situation projected into the future” (F. von Benda-Beckmann 1983a), is used as a magic charm. The lawmaker seeks to capture desired economic or social conditions, and the practice supposed to lead towards them, in normative terms,

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and leaves the rest to law enforcement, or expressed more generally, to the implementation of policy.²

If projects fail, law is an easy scape-goat. Sometimes this role is given to state law, particularly if the law in question had been made by a previous government. As a consequence, new law has to be enacted, better law, a more powerful magic charm, usually with no more success. Another explanation for the failure of state law-based projects is that state law does not fit with local laws and customs. Social scientists, legal anthropologists in particular, tend to blame this upon the legal planning of state governments, which do not take sufficient account of local law. For governments and development planners it is usually local law and customs - traditional law or adat - which are framed as the scape-goat. The assumption that local law hinders development and that modern, western law is a prerequisite for development is one of the most deeply rooted ideas which informs development planning. It continues to inform development planning despite the fact that it has been repeatedly shown that a) the large-scale introduction of so-called western law has led to deteriorating social and economic conditions of the majority of the rural population rather than to development; while b) local law can be sufficiently flexible in its adaptation to social and economic changes.

In short, basic ideas about the function of state law and traditional law have repeatedly turned out to be mistaken. Yet this useful knowledge, although quite widely disseminated, somehow does not seem to be acceptable and hardly ever is accepted as a point of departure for policy making and project planning.

For those interested in development studies it is not sufficient to stand still and marvel at the capacity of development planners to resist the introduction of useful knowledge. We must try to understand it. If we examine the assumptions mentioned so far we see one common strand: Both the magic charm and the scape-goat vision of law are based upon structuralist-functionalist assumptions, the idea that legal structures and norms directly cause or determine action and its consequences. These assumptions underlying the introduction of state law as a tool of development have been criticized by many social scientists, in relation to development policy, to the law and

2 For a description and critical analysis of such idea see Trubek and Galanter 1974; Moore 1973; Merryman 1977; Griffiths 1978; Snyder 1980; Greenberg 1980; Fitzpatrick 1980; F. von Benda-Beckmann 1983a.

development movement, and in social theory.³ These critiques, however, have largely been directed against the assumptions underlying to state law policy. They have not been systematically extended to the analysis of the social significance of traditional law: Legal anthropologists have criticized legalistic interpretations of customary law and have pointed out that customary legal notions are quite different from - for instance more negotiable and flexible-western law.⁴ This has been used as an argument for the adaptability of traditional laws to changing economic and social conditions. There is also a growing number of analyses showing how local legal notions have been transformed by their interpretation in western bureaucratic courts, and it has even been asserted that customary law was created by colonial state agencies.⁵ But the failure of state law and projects based upon state law has often been explained in terms of their lack of fit with local law. Thus the structuralist notion here is similar to that held by state bureaucrats. It is only the scape-goat which is different.

In contemporary social theory the dominance of structuralist-functionalist thinking has largely been broken, first by theories (over)emphasizing action/interaction, and in more recent times by more sophisticated theories aiming at the integration of actor-oriented and structural analyses (such as Giddens 1976, 1979). Critical assessments of structuralist-functionalist theories have quite convincingly established that structuralist theories and assumptions are "wrong" in the sense that they do not offer an empirically plausible or valid description, analysis or explanation of social action. But while theorists have aimed at substituting more adequate models in which action and structure are logically related, allowing for a better analysis of social action, they have ignored the fact that structural-functionalism is not only an (inadequate) scientific model but also an important folk-model in the social groups which they study. Elimination of structuralist assumptions from theoretical models has obscured their continued empirical existence and social significance. If we want to get rid of them we must analyse the social processes in

3 See Long 1989; Giddens 1976; Abel 1980; Grace and Wilkinson 1978; Nelken 1985; and the authors mentioned in note 2.

4 See Van Vollenhoven 1909; Gluckman 1972; K. von Benda-Beckmann 1982; F. von Benda-Beckmann 1979; Woodman 1985.

5 See Chanock 1978; Snyder 1981; K. von Benda-Beckmann 1982 1984; F. and K. von Benda-Beckmann 1985; Woodman 1985; See also the recent special issue of the *Journal of African Law* (28, 1984) on the transformation of African customary law.

which they are maintained: we must analyse "the structuration of structuralist rules", to paraphrase Giddens. We must not only examine them in terms of their theoretical validity but also as social practice.

In social practice, these assumptions are found embodied in legal regulations and development plans, in the decisions of judges and administrators, and in processes of interaction between representatives of the state and local populations. This "fact" seems to validate the assumptions held by development planners. This is why such assumptions can be maintained in the face of so much adverse literature. They may be "wrong" scientifically, they may be misleading analysis, but they are not completely without a basis in experience.

As I shall try to show in this paper, the scape-goating of traditional law as responsible for the failure of development projects is largely based upon a vicious circle in which the existence of structuralist legal notions provides the empirical basis for the misconstrual of their social significance and for the maintenance of such misconstruals, as a result of which new structuralist legal notions are generated. In this circle, the interaction between villagers and those development agents who come into direct contact with them⁶ has an important, but largely neglected place. I shall therefore be mainly concerned with the ways in which villagers through direct and personal experience are confronted with the normative structures of development policies and projects - through the statements and actions of administrative officers, extension officers, teachers, judges, agricultural officers etc. - and vice versa how bureaucrats are confronted with the villagers' law. This interaction setting is not the only one, and may not even be the most important one in which the normative elements of development policy and projects become involved in people's behaviour (see F. von Benda-Beckmann et al. 1989); nor is it the only one in which legalistic notions of law are generated and maintained. Collier (1976) and Quarles van Ufford (1987), for instance, have shown that local leaders play a central role as mediators between the bureaucracy of the state and villagers, and between state and village legal models. But for the purposes of my argument differentiating between a local population and its leaders is not crucial. It is not my aim to generalize comprehensively on such interactions. I shall focus selectively upon the more unpleasant

6 These local level bureaucrats are what Lipsky calls "street level bureaucrats: public service workers who interact with citizens in the course of their jobs, and who have substantial discretion in the execution of their work" (1980: 3).

encounters in which villagers do not comply with local bureaucrats' directives. My reason for this selective treatment is that it is in these situations that the role of traditional law becomes problematic, and that the structuralistic interpretations and the scape-goating of traditional law are produced and maintained. One reason for this, and this is the main point I shall emphasize in this contribution, is that in these interaction-settings villagers themselves present a legalistic model of traditional law.

I shall first briefly sketch how law is involved in development policy and projects. Thereafter I shall turn to those normative models which are in fact confronted with each other in the interaction between development bureaucrats and villagers. On this basis I shall then show how the scape-goating of traditional law is generated and maintained. In conclusion I shall spell out some implications of my analysis for socio-legal research methodology.

2 THE NORMATIVE STRUCTURES OF DEVELOPMENT PROJECTS

In all contemporary societies salient elements of state policy have to be formulated in terms of law, be this the state budget in the Netherlands or in Indonesia, land reform in Latin American states, family reform in African or Asian states, etc. Small-scale development projects are also framed in legal terms, although usually at the lower level of provincial, district or village regulations and other legal instructions. International or bilateral development projects are also based upon legal structures: inter-governmental agreements, administrative arrangements, plans of operations and the frameworks for implementation and management of projects are laid down in legal terms.

All development projects aim at some change, in other words, they ask of people to change their behaviour, in the hope that that changed behaviour will lead to desired social, economic or political consequences. People are asked to have their land registered, to marry monogamously, to apply for credit, to use fertilizer, to plant cash crops, to practise birth control, to praise the government and to pay taxes. These development activities are rationalized and justified in terms of models (see Allott 1980: 168). These models consist roughly of two components: 1) structures of institutional organization and action which provide options or directives for the activities of bureaucrats or villagers (the latter usually being the "target group"), or for joint activities of both; and 2) rationalizations

and justifications of these behavioural structures in terms of their supposed social consequences. The models are normative, in their behavioural programme, their goals and their underlying legitimation. In other words, development projects have the form of law.

The involvement of law in development planning and practice is no coincidence; neither is it a matter of conscious choice. It is largely a matter of political necessity and logic. Development, however way we define it, implies change. In as much as government agencies engage in development planning and implementation, they aim at changing behaviour. In other words, they try to exercise power. This exercise of power has to be justified and in contemporary secular and complex societies whose governments operate on the basis of democratic ideologies, state law is the primary source of legitimation for the exercise of power by or in the name of state agencies. This need to employ the legal form is particularly urgent since the domains of social life in which behavioural changes are envisaged are already subject to normative rules and principles. Most development projects, whatever their scale, thus affect the existing normative framework in which people live in a double manner. They usually introduce new law, and, whether they do that or not, they affect the existing normative ordering in the domains of social action to which they are addressed.

The villagers are confronted with such normative development models through many channels of communication, through the mass media, through gossip and hearsay, and through their direct interaction with development bureaucrats. In general it can be said that in the course of transmission from the context in which the plans and projects were originally generated, to these local level bureaucrats who are engaged in the implementation, the original models of these projects undergo a series of reinterpretations, translations, or transformations, by different actors and in different social settings (see Moore 1973; Collier 1976; Quarles van Ufford 1987; Long 1989). The actual model with which villagers become confronted is the one communicated to them at the point of contact, usually thus in the interactive context in which development bureaucrats tell them what the plans mean. This local version of state law or policy often has little if anything to do with whatever plans, laws and policies have been made on higher levels of political decision making. Okoth-Ogendo (1984: 80) gives the following summary account of how state agricultural policy in Kenya was transformed through the conduct of farm level communication in general and of the substantive form in which legal phenomena finally reached the farmer in particular.

Firstly, most of them [bureaucrats] preferred to communicate to the farmer either by propaganda or through sanctions. In the former case they would simply exhort peasants to heed government policies, advice, and programmes and to obey the law of the land. In the latter case peasants were simply prosecuted for violations of legal rules to which they couldn't possibly have had any access. This was particularly evident in the area of agricultural marketing and land management. The principle was of course that knowledge of the law was presumed.

Also in Botswana (Werbner 1986) and Tanzania (Thoden van Velzen 1977; Williams 1982) government policies in interaction with villagers are regularly transformed into propaganda or into direct demands for villager's behaviour, both of which are different from the original model of the policy or project. Writing about the Tribal Land Boards in Botswana, Werbner states that state officials in their implementation of the new land law "work by rule of thumb; and they have to make up the rules and procedures that they need, somewhat at hoc, as they go along, in allocation resources in the name of a government policy..." (1980: 133).

Villagers thus are confronted with local versions of state development law which often have nothing to do with the original version. Their reaction to the local bureaucrats' demands or decisions depends on how they interpret that local and not the original version. These interpretations, as well as the ensuing behaviour, are related to and conditioned by the institutional context and the system of relationships in which the villagers live, the other rules and procedures which they consider to be relevant for their activities, and the consequences to be expected from the behavioural options they consider (see Moore 1973). Within this context, the villagers' interpretation of what the local versions of government law and policy mean for themselves is strongly coloured by their perception of local bureaucrats and their way of dealing with the law. Villagers tend to be "legal realists" and strongly actor oriented. Of course, the local bureaucrats' version of state law and policy is not the same thing as the local bureaucrats' actions. Villagers can make that distinction and so should we. But in deciding what to do in response to the bureaucrats' demands, villagers concern themselves with what, according to their experience and expectation, the model - that is,

what the bureaucrats say about it - will mean in practice.⁷ They tend to identify the state's models with what the local bureaucrats do.

In those situations in which villagers do not want to follow the bureaucrats' instructions, the images villagers have of local level bureaucrats are not very favourable.⁸ At the risk of exaggerating slightly, it may be said that they regard local level bureaucrats as arrogant dummies. Dummies, since local level bureaucrats often do not seem to know what they are talking about. In village cultures where verbal skills are highly valued, the uneasy rhetoric or imperative jargon of bureaucrats is ridiculous and repulsive (see Thoden van Velzen 1977; Werbner 1980). Bureaucrats often do not know the local cultures of the people whom they are supposed to "develop", and what they say about it, distorted as it will be to fit their bureaucratic rhetoric, is often felt to be offensive and stupid (see also Dove 1986). And when villagers listen to bureaucrats propagating development policy and state ideology, when they explain what they, the villagers, should do and why, and to what all this would lead, the villagers will easily find the bureaucrats cynical or stupid. Will joining a state regulated cooperative lead to the improvement of the economic position of the poor? Will social justice be achieved? Will registration of land rights increase legal security? Who, with a minimum of intelligence, could ever seriously believe such empty phrases? Also, villagers resent the arrogance of bureaucratic power which is not based upon knowledge and skill but on the power of the state and what state officials consider to be state law. They resent the arrogance of people who will not work with their hands anymore, who won't lift a finger when work is to be done, yet exhort them to work harder; who ride around on scooters or in cars and have villagers come on foot to their offices in vain (see Thoden van Velzen 1977).

7 The villagers' way of thinking is very much actor oriented anyway. They are socialized in their own normative system in which the dominant way of thought is that models, standards and prescriptions are given real meaning in the social processes in which these models are realized, and not so much through abstract formulations (see K. von Benda-Beckmann 1984). I have described this for villagers' reactions to the Indonesian governments' land registration programme in F. von Benda-Beckmann (1986a).

8 For particularly vivid illustrations see Thoden van Velzen 1977. For further examples see also the essays collected in Quarles van Ufford 1987 and MacAndrews 1986.

At the point of contact, in sum, the versions of state law relevant in the interaction process thus are what local level bureaucrats state the model to be and the villagers' interpretations of these statements (cf. Lipsky 1980; Moore 1973; K. von Benda-Beckmann 1984; Werbner 1980; Thoden van Velzen 1977). The result often bears only a distant resemblance to what a development planner envisaged in a capital city far away from the local scene where policy is to be implemented.

3 THE VILLAGERS' LAW

If we look at the versions of local law which the villagers present in their interaction with local level bureaucrats, we can observe that these also often differ from their local law in other interaction settings. Here, too, we have to do with reinterpretations and transformations of law. Let me try to illustrate this with an example from Minangkabau, based upon my own field experience (see F. von Benda-Beckmann 1979).

1. What do Minangkabau villagers think and say when they are confronted with the demands of the government to have their rice land registered, their adat rights converted to state law rights, and to make and keep written genealogies of the persons entitled to land, all in the interest of modernization, legal certainty, and economic progress? They say that registration is contrary to adat; that their adat does not allow for individualized, ownership-like rights, and that adat prohibits the sale of land, certainly if this is lineage land, *harato pusako*.

This is, indeed, the version of Minangkabau adat as it has been reproduced in oral transmission and in literature, both by foreign observers and by Minangkabau writers themselves. But it is an over-idealized and "old fashioned" version of adat (law), different from current adat in the sense of the body of rules and principles which govern Minangkabau behaviour in land matters (in as much as behaviour is at all governed by rules). In daily village life one can observe forms of social practice which are regarded as valid and legitimate in terms of adat: Individualized and ownership-like rights to *harato pusako* are regarded as legitimate under certain conditions. Land is pledged validly under other conditions than those laid down by classical adat. *Pusako*-land is sold occasionally, and may be validly sold if all people concerned agree to the sale. Registration is certainly unknown in adat, but so are many other new developments which the Minangkabau gladly incorporate in village life and adat. Genealogies are orally transmitted, kept in many lineages, sometimes

also written down, and are considered to be very important in land matters.

2. Villagers present their adat (law) in legalistic terms. They argue that, since they are bound by adat prescriptions, they cannot act differently from the way they do. Their behaviour, their non-compliance with the bureaucrats' demands, can be shown to follow logically from the binding force of adat rules.

But this legalistic model of adat which villagers bring into the interaction with the bureaucrats is not their usual model. As has been noted by various scholars of adat law, their normative system is much more complex, flexible and negotiable than peasants make bureaucrats believe. It leaves room for a variety of behavioural alternatives (see K. von Benda-Beckmann 1982, 1984; F. von Benda-Beckmann 1979). That the application of adat rules and principles to a concrete situation depends on the circumstances of the concrete case, *tergantung situasi dan kondisi*, has become proverbial.

Why should the Minangkabau represent their adat in old-fashioned and legalistic terms? If they presented their own contemporary model of adat to the bureaucrats, it would be clear to everyone that Minangkabau adat does not provide strong reasons for not registering land. And this is what Minangkabau want to avoid, for *they do not want to register land*. They do not want to be ordered about. And in order to rationalize and justify their refusal to register land, they resuscitate an old fashioned and legalistic version of adat.⁹ This model is used in the interaction because it is the only way in which they can account for their behaviour in an acceptable way. They could scarcely say what they really feel about the matter of registration. What, for example, would the reaction of the district head or the governor be, if the villagers said what they think:

Honourable sir, this matter of land registration that you keep pressing us to do, is something which we do not want to have anything to do with. So please stop nagging. Land affairs are none of your concern and we never asked for state laws concerning land. Besides we are afraid that land registration is just another trick of the government to have us pay more taxes. With which you will finance the transmigration of Javanese to Sumatra. No, thank you. And the registration

9 Spiertz (1986) has given an interesting description of the strategic use of old legal notions in a dispute between villagers, administrative officials and the management of a hotel in Bali.

process is quite different from what you have told us. It costs much more than you said and than the government promised in its cheap registration programme. The land registration officers will not come to our village unless we pay them travel costs and other so-called administrative fees. And talking about legal certainty: perhaps you were joking, sir. The registrations which have been made so far were in secret. They only served goals which could not be pursued in public, to cheat people out of their inheritance rights.

I believe that most Minangkabau villagers react inwardly like this when they think of registration; at least they did so when we were doing research there 14 years ago. But if they addressed local bureaucrats like this, they would be asking for trouble. It is much safer to deflect the bureaucrats' anger at their law. Then you may be told that you are backward, that your law is not recognized anymore by the state, and that it is not conducive to development...but the chance that you will be denounced as a saboteur or a subversive element is small. And this makes quite a difference.

The local level bureaucrats, like the villagers, interpret the villagers' law in the context of their own system of relationships and expectations (cf. Lipsky 1980). In their case, too, their perception of the local law is coloured by their view of the villagers. Again at the risk of some exaggeration, they see villagers as hypocritical opportunists. They see them as opportunistic since they observe the villagers' efforts to take as much advantage as possible of them (or of the state which they represent) without seriously assuming the concomitant obligations. People want credit but will avoid paying it back. People want new roads and bridges but do not want to join a cooperative effort in building them. People want schools but do not want to pay school fees. Etc.,etc. Villagers are regarded as hypocritical since they shield themselves behind their own culture, their folk law, their world view, when they do not, or do not want to, follow the bureaucrats' advice or instructions; yet they constantly deviate from it when it suits them. They play the adat law purist, yet are the first to run to the police to have a conflict settled. They will publicly reprimand fellow villagers for invoking the state court and go there the next day themselves. They nod in agreement when the district head or governor elaborates on the necessities of land registration and conversion of customary rights, and praise him and the head of state for their wise development policy. But back in the village they decry the government's efforts to change their land law, denounce its repugnance and inconsistencies with their local law and advise people to refrain from registering their land. Yet they may be

the first ones to have their land registered, albeit secretly (for more illustration from Minangkabau, see F. von Benda-Beckmann 1979; K. von Benda-Beckmann 1984).

4 TRADITIONAL LAW AS SCAPE-GOAT

We see how the idea that traditional law keeps villagers from acting in compliance with the development bureaucrats' demands and therefore can justly be blamed for failed development efforts is produced or maintained in local-level interaction. Local bureaucrats are confronted with a specific version of adat law and react to it. They see their attempts to implement policy frustrated by behaviour which is rationalized and justified in terms of adat law. They are therefore likely to regard folk law as an impediment to development. The *reasons* given by villagers thus are regarded as *causes*. The villagers' rationalizations and justifications of behaviour are seen as motivations, motivations of a strongly normative, even coercive character.

This view is often reinforced in other interaction settings. Research, and the communication of research results, can have such an effect, if description and analysis are informed by structuralist assumptions. Researchers analyse the state laws concerning land and the local legal system. They conclude that there are many differences between these, that some contradictions are really irreconcilable, that the state law does not fit into the patterns of the villagers' law. And they can produce relevant evidence for this. From there it is only a small step to *explaining* the villagers' non-compliance with state regulations in terms of these contradictions. If a researcher stays longer, he will discover that quite frequently people do not behave according to the - idealized - rules which have been stated in interviews or which have been pronounced in decisions of local authorities. He is then likely to construe his observations in terms of the discrepancy between ideal law and social practice and to conclude that the adat law is not "in force" anymore.

Both these insights from research are gladly taken up by bureaucrats, for social science reinforces their own view and appears to tell them that local law can be abolished on two counts: a) it is inimical to development, and b) it is not even taken seriously by the people themselves, who are just ... hypocritical opportunists. So both villagers and researchers provide the bureaucrats with a rationalization and justification for their, the bureaucrats', failure to implement the registration programme, and simultaneously, for exerting

more pressure on the peasants. Thus development bureaucrats, if called upon to explain their inability to implement development projects, can deflect any serious critique of their own shortcomings, or those of the policy they advocate, or of the procedures which they follow, and direct it at this transformed version of the villagers' model of adat.

These are, I think, the basic mechanisms through which the idea that local cultural and legal systems hinder development are maintained. And we can see that it is not just stupidity or simple ethnocentrism on the part of development planners which gives rise to this idea. The villagers themselves actively contribute to its maintenance.

5 METHODOLOGICAL IMPLICATIONS

The discussion so far and a few brief illustrations show us that in the interaction between local level bureaucrats and villagers models of government and local traditional law are involved which differ in their content and structure from those produced and maintained in other interaction settings.

1. The basic message of my discussion for research directed at the involvement of law in social practice consequently is the need to contextualize, to look at different interaction settings in which normative conceptions are produced and maintained. This means that one must not generalize from observations in any single (type of) interaction setting (F. von Benda-Beckmann 1984; Schaareman 1985). Any social scientific research into law and its significance in social life which looks for "the" law or "the effective law or adat" is futile because it sets out from the incorrect assumption that law exists and can be described and analysed independently of context - or, what amounts to the same thing, that it is the same in all contexts. For this reason alone, reliance on key informants and questionnaire surveys is as unacceptable as a sole research method as are the casuistic approaches which have dominated socio-legal studies for a long time (for earlier critiques see among others Gluckman 1973; Holleman 1973). Validity or effectiveness in one context, or in one respect, says in itself nothing about validity and effectiveness in other contexts. To refer to one of our findings from our research into Minangkabau village law in the 1970s: The adat of consensual decision making (*musyawarah untuk mupakat*) may no longer be strong enough to ensure that valid decisions are actually achieved in villagers' problems. But it may still be strong enough to prevent any

other form of decision making to be accepted as valid and practicable by villagers (see in particular K. von Benda-Beckmann 1981, 1984). Conclusions based only on one or the other of these observations are distortive, and administrative measures based upon such conclusions will fail.

The importance of context helps to illuminate fundamental difference in approach between social scientific research into law and the methodologies adopted by legal scholars, advocates and judges. The latter are concerned with a different enterprise: Bound by legal rules which prescribe that they must base their decisions upon "the" correct law, they are required to make a choice of one correct law and to identify its source(s), that is, the interaction settings in which this true law is generated and maintained. Such an approach is incompatible with a socio-legal approach aimed at discovering the existence and social significance of legal rules "in many contexts" (See Galanter 1981; F. von Benda-Beckmann 1983b, 1984; Griffiths 1986). Any attempt to fuse legal science and social science can only work to the detriment of both. This fundamental incompatibility was clearly recognized by Ter Haar (1937) who postulated a clear distinction between the science of adat (private) law on the one hand and anthropological approaches to adat law on the other.

2. The discussion also shows that we must distinguish more sharply the *modes* in which legal rules and procedures are involved in human action as a "language of interaction" (Fuller 1978).

We have seen that the interaction partners use law, with more or less explicit reference to a particular legal model, in order to account for their behaviour, in order to rationalize and justify their demands or their unwillingness to comply with the demands made by others. Law - a particular model of law - becomes "a weapon in social conflict" (Turk 1976), a strategic resource employed in the interaction.¹⁰ As such, it is important to both state bureaucrats and villagers. The one can use it to legitimate his demands, the other his refusal to comply with these demands. In the same sense it is, on a more general level, important to state governments or other development agents who have to frame their development policy in legal terms. In all these cases, the behaviour and objectives con-

10 The "use of law", is of course, not confined to the rationalization and justification of action. It also covers the use of legally structured instrumentalities such as transaction forms or dispute settlement institutions, see F. von Benda-Beckmann 1983b.

cerned must be represented as following logically from, or at least being in conformity with, the norms with which they are legitimated. In other words, the legal models involved imply a causative, deterministic character of law.

In such models of law, we can observe a transformation of the logical structure of legal propositions which is familiar from court procedures and judgements. In the interaction between local bureaucrats and villagers the conditional "if-then" structure of general legal rules is transformed into what I have called "concrete law" (F. von Benda-Beckmann 1979: 31, 32), into a reasoned, causal "as-therefore" proposition in which concrete consequences are derived from general rules. If an observer generalizes on the basis of observed instances such concrete law, the prescriptive character of the "as-therefore" rationalization is introduced into the "if-then" structure of general rules (F. von Benda-Beckmann 1979: 37). As a consequence, the flexibility and openness characteristic of much law, and local traditional law in particular, is lost, and the stereotype of prescriptive law is maintained. As I have pointed out earlier (1979: 37; 1986b: 100), this is one important reason why concepts or definitions of law based upon court decisions, or more in general on sanctioning behaviour, have little value for a socio-legal methodology.

The mode of law involvement as resource in interaction is quite different from one in which legal rules are regarded as "influences" or "determinants" of behaviour, as sources of motivation or guidance for specific activities. As Moore (1978: 210) has pointed out with respect to dispute settlement decisions, and as I have here shown for quite different interaction settings, the reasons given for behaviour (decisions) must not be confused with its underlying causes.¹¹ In the situation I have discussed, people can be said to orient their behaviour toward a given model of law. But the model of law thus employed is not identical with the ones which they take as guidelines when they make up their minds how to act, in the same or in other

11 Even Comaroff and Roberts (1981) who have presented us with the perhaps most sophisticated analysis the problematic relationship between *of* rules and outcomes in dispute settlement procedures ultimately situate these two modes of law involvement - which they call the "apparent dualism in Tswana Law" (1981: 239) - along a one-dimensional continuum (1981: 238, 241), which only indicates variations in the degree to which the arguments of disputing parties and deciding judges are *seen to be* "norm-governed" (see 1981: 239, 241).

interaction-settings such as everyday land transactions. In such other contexts their considerations and strategies are usually motivated and directed by a multitude of quite different factors, which constrain the formation of goals pursued in their behavioural projects. Law usually is just one, and often not even the most important of these factors.

3. Failure to distinguish the different modes of law involvement can be especially misleading in situations of overt legal pluralism. In these situations actors are usually identified with the legal subsystem which they use in their argumentation. When causes for or influences on their behaviour are looked for in law, attention therefore tends to be directed toward the actors' 'own' law. But if people, villagers and bureaucrats alike, take account of law when making up their minds, they are usually influenced by the *whole of their normative universe*, out of which they select those aspects which they deem to be relevant points of orientation in a specific situation (see F. von Benda-Beckmann 1983b; K. von Benda-Beckmann 1984). They may consider not only non-legal factors but elements from their whole legal universe, including notions of adat, state law, and Islamic law in arriving at their behavioural goals and strategies. For the villagers, the bureaucrats' model, as they interpret it, is usually a quite important point of orientation, albeit not in way that development bureaucrats want them to. If and when people refuse to apply for credit, or to register their land, or to join a cooperative, they *do* take into consideration the bureaucrats' model. This model often does not appeal to them very much, but even so may it well be their primary source of (negative) motivation. Thus the villagers' behaviour may be influenced much more by the normative structures of state regulations or development projects than by their adat law, even where they use adat to rationalize and justify their behaviour. In those cases in which they do not wish to comply with development agents' directives it usually is not adat law which hinders development, and it is not modernity or development as such which villagers oppose: it is mainly development as propagated by arrogant dummies.

REFERENCES

- ABEL, R.
1980 'Redirecting social studies of law.' *Law and Society Review* 14: 805-829.
- ALLOTT, A.N.
1980 *The Limits of Law*. London: Butterworths.
- BENDA-BECKMANN, F. von
1979 *Property in Social Continuity*. The Hague: M.Nijhoff.
1983 *Op zoek naar het kleinere euvel in de jungle van het rechtsp pluralisme*. Inaugural lecture, Agricultural University, Wageningen.
1983 'Why law does not behave: critical and constructive reflections on the social scientific perception of the social significance of law.' Pages 233-262 in H. Finkler (comp.), *Proceedings of the XIth ICAES Congress, Vancouver*. Ottawa.
1984 'Law out of context: a comment on the creation of traditional law discussion.' *Journal of African Law* 28: 28-33.
1986a 'Leegstaande luchtkastelen: Over de pathologie van grondenrechtshervorming in ontwikkelingslanden.' Pages 91-109 in W. Brussaard et al (ed.), *Recht in ontwikkeling: tien agrarisch-rechtelijke opstellen*. Deventer: Kluwer.
1986b 'Anthropology and comparative law.' Pages 90-109 in K.von Benda-Beckmann and F. Strijbosch (eds.), *Anthropology of Law in the Netherlands*. Dordrecht: Foris.
- BENDA-BECKMANN, F. von et al.
1989 'Interfaces or janusfaces: A critical appraisal of the interface approach in development sociology from a socio-legal perspective.' Pages 205-220 in N. Long (ed.), *Encounters at the Interface*. Wageningen: Pudoc.
- BENDA-BECKMANN, K. von
1981 'Forum shopping and shopping forums.' *Journal of Legal Pluralism* 19: 117-159.
1982 'Traditional values in a non-traditional context.' *Indonesia Circle* 28: 39-50.
1984 *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau*. Dordrecht: Foris.
- BENDA-BECKMANN, F. and K. von
1984 'Transformation and change in Minangkabau adat.' Pages 149-176 in K. von Benda-Beckmann, *The Broken Stairways to Consensus*. Dordrecht, Foris.

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- 1988 'Adat and religion in Minangkabau and Ambon.' Pages 195-212 in H. Claessen and D. Moyer (eds.), *Time Past, Time Present, Time Future: Perspectives on Indonesian Culture*. Dordrecht: Foris.
- CHANOCK, M.
1978 'Neo-traditionalism and customary law in Malawi.' *African Law Studies* 16: 180-191.
- COLLIER, J.
1976 'Political leadership and legal change in Zinacantan.' *Law and Society Review* 11: 131-163.
- COMAROFF, J.L. and S. ROBERTS
1981 *Rules and Processes: The Cultural Logic of Dispute in an African Context*. Chicago and London: The University of Chicago.
- DOVE, M.R.
1986 'The ideology of agricultural development in Indonesia.' Pages 221-247 in C. MacAndrews (ed.), *Central Government and Local Development in Indonesia*. Singapore: Oxford University Press.
- FITZPATRICK, P.
1980 'Law, modernization and mystification.' In S. Spitzer (ed.), *Research in Law and Sociology* 3: 161-178.
- FULLER, L.L.
1978 'Law and Human Interaction.' Pages 59-89 in H.M. Johnson (ed.), *Social Systems and Legal Process*. San Francisco: Sage Publications.
- GIDDENS, A.
1976 *New Rules of Sociological Method*. London: Hutchinson.
1979 *Central Problems in Social Theory*. London: Macmillan Press.
- GLUCKMAN, M.
1972 *Ideas in Barotse Jurisprudence*. Manchester: Manchester University Press.
1973 'The limitations of the case method.' *Law and Society Review* 7: 611-642.
- GRACE, C. and P. WILKINSON
1978 *Negotiating the Law*. London: Routledge and Kegan Paul.
- GREENBERG, D.
1980 'Law and development in the light of dependency theory.' In S. Spitzer (ed.), *Research in Law and Sociology* 3: 129-159.
- GRIFFITHS, J.
1978 *Is law important?* Inaugural lecture: Groningen.
1986 'What is legal pluralism?' *Journal of Legal Pluralism* 24: 1-55.

- HAAR, B. TER
1937 *Het adat-privaatrecht van Nederlandsch-Indië in wetenschap, praktijk en onderwijs.* Inaugural lecture, Batavia.
- HITCHCOCK, R.K.
1980 'Tradition, social justice and land reform in Central Botswana.' *Journal of African Law* 24: 1-34.
- HOLLEMAN, J.F.
1973 'Trouble-cases and trouble-less cases in the study of customary law and legal reform.' *Law and Society Review* 7: 585-610.
- LIPSKY, M.
1980 *Street Level Bureaucracy.* New York.
- LONG, N. (ed.)
1989 *Encounters at the Interface: A Perspective on Structural Discontinuity in Rural Development.* Wageningen: Pudoc.
- MACANDREWS, C. (ed.)
1986 *Central Government and Local Development in Indonesia, Singapore.* Oxford University Press.
- MACAROV, D.
1980 *Work and Welfare: The Unholy Alliance.* London: Sage Publications.
- MERRYMAN, J.H.
1977 'Comparative law and social change: On the origins, style, decline and revival of the law and development movement.' *American Journal of Comparative Law* 25: 457-491.
- MOORE, S.F.
1973 'Law and social change: the semi-autonomous social field as an appropriate field of study.' *Law and Society Review* 7: 719-746.
- NELKEN, D.
1985 'Legislation and its constraints: a case study of the British Rent Act.' Pages 70-86 in A. Podgorecki, C. Whelan and D. Khosla (eds.), *Legal Systems and Social Systems.* London: Croom Helm.
- OKOTH-OGENDO, H.W.O.
1984 'Development and the legal process in Kenya: an analysis of the role of law in rural development administration.' *International Journal of the Sociology of Law* 12: 59-83.
- QUARLES VAN UFFORD, Ph. (ed.)
1987 *Local Leadership and Programme Implementation in Indonesia.* Amsterdam: Free University Press.

SCHAAREMAN, D.

- 1986 'Context and the interpretation of adat rules in a Balinese village.' Pages 195-216 in K. v. Benda-Beckmann and F. Strijbosch (eds.), *Anthropology of Law in the Netherlands*. Dordrecht: Foris.

SNYDER, F.

- 1980 'Law and development in the light of dependency theory.' *Law and Society Review* 14: 723-804.
1981 'Colonialism and legal form: the creation of 'customary law' in Senegal.' *Journal of Legal Pluralism* 19: 49-92.

SPIERTZ, J.

- 1986 'Vreemde gasten: een casus uit Bali.' Pages 111-132 in W. Brussaard et al., *Recht in ontwikkeling: tien agrarisch-rechtelijke opstellen*. Deventer: Kluwer.

THODEN VAN VELZEN, H.U.E.

- 1977 'Staff, kulaks and peasants: a study of political field.' In L. Cliffe, J.S. Coleman and M. Doornbos (eds.), *Government and Rural Development in East Africa*. The Hague: Institute of Social Studies.

TRUBEK, D. and M. GALANTER

- 1974 'Scholars in self-estrangement: some reflections on the crisis in law and development studies in the United States.' *Wisconsin Law Review* 1974: 1062-1102.

TURK, A.T.

- 1976 'Law as a weapon in social conflict.' *Social Problems* 23: 276-291.

WERBNER, R.P.

- 1980 'The quasi-judicial and the experience of the absurd: eemaking land law in North-Eastern Botswana.' *Journal of African Law* 24: 131-150.

WILLIAMS, D.V.

- 1982 'State coercion against peasant farmers: the Tanzanian case.' *Journal of Legal Pluralism* 20: 95-127.

WOODMAN, G.R.

- 1985 'Customary law, state courts, and the notion of institutionalization of norms in Ghana and Nigeria.' Pages 143-166 in A.N. Allott and G.R. Woodman (eds.), *People's Law and State Law: The Bellagio Papers*. Dordrecht: Foris.