LEGAL PLURALISM IN SRI LANKAN SOCIETY

TOWARD A GENERAL THEORY OF NON-WESTERN LAW

Masaji Chiba

I. Introduction

1. From non-Western law to legal pluralism

What is non-Western law? This question has been regarded as if meaningless since the latter half of the nineteenth century. In reality, non-Western law has outwardly appeared to have been overwhelmed by transplanted Western law which was involuntarily imposed or voluntarily received. Non-Western law has been deprived, as a result, of the nature of 'law.' An exceptional minority of scholars who perceived its nature as 'a law' did not go so far beyond calling it, at first, 'ancient law' and then 'primitive law'.[1] Western law has been believed to be the authentic type of law with universal applicability. Accordingly, Western jurisprudence which has been charged with the mission to foster as well as justify Western law was also believed to be the universal, orthodox science of law not only by Western scholars but, in fact, by marginal non-Western scholars. (For details, see Chiba, 1989: ch.3)

During the following century, however, the believed-in universality of Western law and jurisprudence had to be crucially swayed two times by the revelation that their universality has, in reality, been accompanied by the cultural and social particularities embedded in Western history, in brief, 'relativizing of Western law and jurisprudence,' as I would call it. The first shock came from the legitimization of socialist law and jurisprudence in the new U.S.S.R after World War I and in the socialist countries which successively gained independence after

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1 Still other terms were used such as customary law, native law, local law, unwritten law, pre-literate law, etc.

World War II. The main reason for the shock was the occurrence of the socialist legal system and principles to have intended to reject the capitalist ones. The second shock came from the disclosure of legal pluralism existent in non-Western countries which had gained independence from colonial status after World War II. Truly, during a short period soon after gaining independence, 'unification' of indigenous law by state law transplanted from Western countries, along with economic development, was the most important target of the new nations. The target has been never abandoned, but the new state legal system was soon found inseparably permeated by and, therefore, coexisting with indigenous law so conspicuously that the concept of legal pluralism was needed (cf. Gilissen, 1972; Hooker, 1975; Jørgensen, 1982; Sack & Minchin, 1986; Griffiths, 1986; Merry, 1988; Chiba, 1989).

By way of contrast, 'primitive law' had increasingly attracted attention among anthropologists during the period before and after World War II because of the significance of its function in primitive societies of Oceanic islanders, African tribes and American Indians (cf. Malinowski, 1926; Hoebel,1954). Their empirical method was truly different from the normative one of the orthodox jurisprudence, but the perspectives of both disciplines were not so different in that they had the tendency to isolate law from the rest of the total culture in society. Their features were invitations for criticisms from two sides. Criticism from one side characterized non-Western law as traditional against modern Western law and insisted upon its modernization for the development of non-Western countries; but such an idea was recriticized before long as justifying Western ethnocentrism or imperialism in law (for a review of the discussion, see Chiba, 1989: ch.2). Criticism from the other side, starting from the concept of 'tribal law' which redefined primitive law as inseparably interconnected with the total phase of a tribal life (cf. Gluckman, 1965), reached the idea of 'legal pluralism' which observes non-Western law as comprising both transplanted state law and indigenous law but which puts emphasis on the latter in opposition to the ethnocentric Western view (cf. Marasinghe & Conklin, 1984; Allott & Woodman, 1985; Renteln, 1990).

2. *The concept of non-Western law*

Then, has the study of legal pluralism succeeded in representing the contemporary non-Western law correctly and clearly as it exists under its circumstances? The question might be answered 'yes,' when we look at the considerable amount of reliable data on the topic. Still, it may be duly answered 'no,' when we find the shortage of information and lack of theory of the existing

non-Western law in those data.[2] The following reasons may be given for such a negative answer.

Firstly, the concept of non-Western law accepted so far is not a substantial one which is constructed inductively from empirical data in variety, but rather an expedient one which is used to provisionally conceptualize all kinds of law other than Western law which the orthodox jurisprudence has taken for granted to be the only law. The concept of non-Western law in this inexact meaning is nothing more than a rudimentary operational one which is destined to be revised as researches present more and more meaningful data.

For this reason, its definition may vary according to the difference in research plans. For instance, to mention the second concept, some may define non-Western law as the state law of non-Western countries, individually or collectively. However, this is meaningless for our purpose, because our study is meaningful only when it treats the existing non-Western law as a whole which is pluralistically constructed of not only state law but other kinds of official law such as religious law or tribal law, and furthermore, unofficial law in various forms, whether supporting or conflicting with official law.

Thirdly, some others being aware of such facts define non-Western law as indigenous law of non-Western people, individually or collectively.[3] This definition is meaningful, because it focuses upon the existing non-Western law which has been unreasonably underrated in the study of law. Recent anthropological achievements have made a valuable contribution to revise the aforesaid operational definition. Still, contrary to our purpose, they tend to lack, by and large, the perspective of the interrelation and interaction between indigenous law and state law.

Thus comes the fourth definition: non-Western law as the 'working whole structure of law in non-Western countries,' individually or collectively. In this, the structure is fundamentally constructed by official law on the one hand, which, besides keynoting state law formally transplanted from Western law,

2 See, for instance, *Dictionnaire d'Eguilles*, 1988, which includes two items, 'pluralisme juridique' and 'pluralisme juridique (théorie anthropologique),' but never mentions empirical traits nor theoretical schemes of non-Western law.

3 Instead of indigenous law, other rubrics such as customary law, folk law, unofficial law, primitive law, etc. may be used, each with a different meaning as found when precisely examined but with a common nature being conceptually outlawed from state law.

includes religious law, tribal law, local law, family law, minority law, and the like, insofar as adopted in or authorized by state law, and by unofficial law on the other, which, originating as a rule in various indigenous sources, works with different functions such as supplementing, opposing, or undermining official law especially state law. Its variation in each country and theoretical formulation as a whole should be pursued by the study of legal pluralism.

3. Research project under consideration

In the late 1970's while Western specialists started to pursue the above fourth concept of non-Western law, I had an opportunity to be inspired for joining the pursuance of non-Western law at an international conference in 1975 I assisted to organize,[4] and then organized two research teams to explore non-Western law in pluralism, among others, Asian law, on which meaningful research had been lagging behind compared with African tribal law and American Indian law, and which I had felt obliged to try to attempt as an Asian. The basic aspiration for the projects was kindled by the following perception:

> Non-Western people have each cherished their indigenous law as integral part of their cultural heritage. During their long histories their law has on occasions encountered foreign law, whether voluntarily or not, and these encounters have led sometimes to peaceful assimilation and sometimes to destructive struggle between indigenous and foreign laws. The indigenous law may sometimes have failed to maintain itself, while at others it may have succeeded either by rejecting the foreign law or by adapting itself to conserve its cultural identity. Contemporary non-Western law is thus seen as one in a current state in an ongoing process of self-developing indigenous law whether successfully or not. Truly, the reception of Western law by non-Western countries in modern times is the most influential encounter of non-Western law with foreign law. However, it is still only one of many encounters in the long history of each non-Western law. (Chiba, 1986: v)

4 Annual meeting of the ISA Research Committee on Sociology of Law, Hakone, Japan, September, 1975. It adopted a topic on Asian and African law for the first time at the occasion of its first meeting in non-Western countries. For details, see Chiba, 1976.

The first project, in collaboration with specialists from each of six countries, aimed to present comparative features of the interaction between indigenous law and transplanted law in the countries characterized by traditional cultures originated in Asia: Sunni-Islamic Egypt, Shii-Islamic Iran, Hindu India, Buddhist Thailand, multi-religious Sri Lanka and Shintoist Japan, as well as to formulate the first theoretical scheme to apply to legal pluralism. Its final report was published in a book form (Chiba, 1986).

For the second project, in collaboration with ten Japanese specialists from law, anthropology and South-Asian studies, chose Sri Lanka in 1979 as their objective of the intensive survey. The reason for the choice was mainly that Sri Lanka has most complicated history of transplantation of foreign law, and that it is not so large a country which would be greatly beyond the capacity of our team. After a preparatory survey by four members in 1980, the team performed the main survey in the summer of 1982.[5] Data obtained from individual survey by some members before and after the main survey having been added, this project was finally completed in 1988 in a book written in Japanese.[6] The following sections of this paper are a summary of the book.

II. Whole structure of Sri Lankan law working officially or unofficially

1. Structure of the book and working hypotheses

The project had two purposes. The immediate purpose aimed to accurately observe the working structure of Sri Lankan law as a whole and correctly analyze its elemental factors into a theoretical system. The final purpose aimed to formulate a general theoretical scheme enough to accurately observe and correctly analyze the existing complexities of Asian law, with still further expectation of its applicability to Western law as well.

5 The expenses for the survey and publication of the results were granted mainly by Japanese Ministry of Education, Science and Culture.

6 *Suriranka no Tagen-teki Ho-taisei: Seioho no Ishoku to Koyuho no Taio* (Legal Pluralism in Sri Lanka: Transplantation of Western Law and Counteraction of Indigenous Law), edited by Masaji Chiba, Tokyo: Seibundo, 1988. I am grateful to the Sri Lankan people who kindly helped us carry on our project, including specialists in their law who gave us invaluable instruction (cf. Tambiah, 1950, 1968, 1972; Cooray, 1971; Nadaraja, 1972).

At the outset, the immediate purpose required us to critically examine our methodological standpoint to ensure that it was free from the Western bias which had been disclosed in recent related discussions. We adopted three specified approaches in consideration of the enlightening discussions. First, our main target of research should be indigenous law working in contemporary society rather than transplanted state law, because the former has, in general, not been treated in jurisprudence compared with the attention given much more to the latter. Of course, while it should be observed and conceptualized distinguishably from the transplanted law, it should not be isolated from the working structure as a whole together with the keynoting state law and other socio-cultural factors.

Second, the indigenous law should be identified in both domains, if existing in the working whole structure, that is, in official law as adopted in the transplanted legal system and in unofficial law as functioning in socio-cultural settings. This may be a new approach among the fellow researches on legal pluralism. The four Chapters 3 to 6 in Part I of the book are thus devoted to exploring indigenous law in the official system, and Chapters 7 to 10 to that in the unofficial settings.

Finally, such a working whole structure should be meaningfully understood only when observed as a result of the historical endeavors, struggles and achievements, including some bewilderments and failures, of the Sri Lankan people as the responsible socio-legal entity, not as a smooth nor agreeable result from the imposition of Western law. Chapters 1 and 2, in addition to scattered descriptions in other chapters, thus examine the cultural heritage of Sri Lankan Law.[7]

As was the case with the above immediate purpose, the final purpose required us to formulate two working hypotheses, because we could not find any reliable tool concepts and theoretical scheme available for our undertaking. Their nature should, firstly, enable us to accurately observe and correctly analyze legal pluralism, especially unofficial indigenous law, and secondly, be operational for and revisable by succeeding researches. They were as follows, although they were soon reformulated in the final stage of our research as described in the last paragraphs of this article.

One of the hypotheses was the 'three-level structure of law' which was to include in a whole system the other kinds of law which the orthodox jurisprudence had refused to regard as law in spite of their significant effects on

7 The above description is summarized from Section 1 on 'Purpose and Significance' of 'Introduction' by Chiba.

the working whole structure of law. 'Official law' was law authorized by the legitimate authority of a country, including state law and some of customary law such as religious law, tribal law and the like as far as authorized by the legitimate state law. 'Unofficial law' was such a law not officially authorized by the legitimate authority, but sanctioned in practice by the general consensus of a certain circle of people, causing a distinct influence upon the effectiveness of official law, positively or negatively. 'Legal postulate' was a value principle or system which specifically connected with and worked to justify a particular official or unofficial law.

The other, 'interaction between received law and indigenous law,' was to take serious consideration of the fateful encounter that non-Western law had to face. 'Indigenous law,' in a broad sense, was law originating in the native culture of a people and, in a narrow sense, law existing in the culture of a people prior to the reception of Western law in modern times. 'Received law' was broadly that which was received by a country from one or more foreign countries, and narrowly Western law received by non-Western countries in modern times. 'Interaction' includes both acceptance of foreign law by receiving countries and rejection or modification of it.[8]

The society chosen for our study in which the above working hypotheses are to be validated is an old island country well-known by the name of Ceylon in the region of Indian culture. The image of the gem island in the Indian Ocean or the native country of Ceylon tea may sound beautiful, but, in fact, the island was colonized by the West. The majority Theravada Buddhists and minority Hindus had founded dynasties respectively with scattered Muslims and Christians. The people finally gained independence in 1948 and adopted the native name of Sri Lanka for their state in 1972. Their future was hopeful, but in recent years especially since 1983, their national unity has been jeopardized by the so-called ethnic conflict. Such a history of the Sri Lankan people has developed in close connection with its large neighbor India in every phase of culture, society, economy and politics.[9]

8 The above, from Section 2 on 'Working Hypotheses' of 'Introduction'.

9 A brief summary of 'Outlines of Sri Lanka' in three sections: on cultural history by Yoshio Sugimoto, social characteristics by Yoshiko Taniguchi, and ethnic problems with relation to India by Teruji Suzuki.

2. Development of the pluralism seen from changing official law

Sri Lanka has been a typical multi-ethnic society. The aboriginal Veddhas had earlier been outrivaled by foreign ethnic groups who transmigrated from the Indian continent. One of them were the Dravidians represented by Tamils who brought in Hinduism, the caste system, and Hindu law. But, the Arians represented by the Sinhalese succeeded in establishing the first kingdom between the fifth and third centuries B.C. with the political idea of the 'region of the Buddhist King' founded on their Theravada Buddhism. The kingdom continued, with changes in dynasties, until it finally was subverted by the British power in 1818. In the course of their history, they developed their own legal system, which is called Kandyan law after the name of the last dynasty, the still remaining indigenous law of the Buddhist Sinhalese. On the other hand, the Tamils established an independent Jaffna Kingdom after new immigrants occupied the northern area between the thirteenth and fourteenth centuries. It was subverted by Portugal in 1619, but their own indigenous law of the Jaffna Tamils with some variations with the caste structure is known at present as *Tesavalamai* law after the name of the most popular one. Both of these indigenous laws were deprived of their official status after the Western invasion, but were never totally outlawed. They were frequently incorporated into the new systems transplanted from Western law. In fact, the colonial governments attempted to record them for selective adoption; and in this after the first (Portuguese) and the second (Dutch) failed, the third (British) succeeded. Both laws are truly of different origin and history, but they clearly belong commonly to the basic Indian culture legally represented by the Law of Manu which was also transplanted to other Theravada Buddhist countries like Thailand and Burma.[10]

Thus, the legal pluralism developed from that of indigenous laws to that of both indigenous laws and transplanted laws. After the Portuguese law left no significant influence, Dutch law, different at that time from the contemporary one, was so influential that its legacy was carried into the present law of libel, unjust enrichment and *fideicommissum*, now called Roman-Dutch law. Of this, some high ranking legal agents today often speak proudly of their contributions to the preservation of such an old law.[11] But, subsequently, British common law exerted deeper and wider influences such that Sri Lanka today is a representative common law country. Still, contemporary Sri Lankan law adopts various other laws of different origins, such as some Roman-Dutch law as well

10 From Chapter 1 on comparative features of traditional law by Ryuji Okudaira.

11 They share the proud role with South Africa.

as indigenous laws, not only Buddhist law among the Sinhalese and Hindu law among the Tamils, but also religious law among Muslims and Christians. This must show the unyielding socio-cultural tradition of the Ceylonese which was actively working under the British policy of indirect rule.[12]

With the national independence after World War II, such a tradition worked out manifestly as clearly seen in the transformation of the judicial system into one with more national features. For instance, traditional village courts which had been functioning among people were made official as the lowest Rural Court. The unique Conciliation Board instituted in 1958 was devised to realize popular justice by laymen. The importance of conciliation for the judicial procedure seemed increased in some procedures for various conflicts even after the suspension of the Conciliation Board in 1978. In the constitution of 1972, the movement for nationalization was symbolically declared in an article to specifically protect Buddhism,[13] and realistically secured by instituting their own Supreme Court instead of the preceding British Privy Council. Subsequently, the Constitution of 1978 adopted a de Gaulle style presidential government from a French system.[14]

The above Conciliation Board was, in fact, created and abolished in twenty years. Its life was complicated. Firstly, the reason for its institution was furnished by three conflicting camps demanding the revival of indigenous popular practice, transplantation of the Indian *Panchayat*, and transplantation of the popular court in socialist countries (cf. Tiruchelvam, 1986). The interest in socialism is worth noticing, for it was later developed into an overt constitutional policy with various social welfare measures in education, medicine and livelihood assistance. Then, its nature of deprofessionalization of the judicial process brought about opposing effects among people: it freed people from the foreign-made strict pressure of the judicial system, on the one hand, but it invited some confusion on national justice and negative criticism from lawyers, on the other. For the reason of these negative effects, it was abolished by the power of the de Gaulle style President.[15]

12 From Chapter 2 on transplantation of Western law by Takao Yamada.

13 It reads: The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha *Sasana,* while assuring to all religion the rights granted by Articles 10 and 14(I)(e) (freedom of religion - Chiba).

14 From Chapter 3 on the judicial system after independence by Nobuyuki Yasuda.

15 From Chapter 4 on the socialization of the judicial system attempted by the Conciliation Board by Teruji Suzuki.

Legal pluralism at present is much more conspicuous when various indigenous laws are found incorporated into the official state legal system. First, family law is legislated in accordance with its differentiation in the religious practices of marriage, divorce, matrimony and inheritance. Second, religious laws are also enjoying their autonomy. Buddhist law among Sinhalese is particularly protected by a constitutional article and accompanied by some legislations for *Sangha*, temples and their property, while Hindu law among the Tamils and Islamic law among Muslims are protected by established judicial precedents under the constitutional freedom of religion. Third, some local laws are adopted, too, because the above Buddhists and Hindus are largely living in localities and some special local practices are made official as in conciliation procedures.[16]

Such a pluralism is nothing but a result of the wisdom of the people to maintain their cultural identity, though with some failures. This is clearly seen by reviewing the judicial system working in actuality among people. The old Kandyan dynasty had authorized the indigenous village court called *gamsabhava*. The court was officialized under the later British rule after having been outlawed in earlier years. There was another quasi-judicial practice before and after independence, in which the official village headman kept the official record of unofficial hearings of conflicts between villagers. This practice and record seem to have been replaced by the new local administrators such as the Cultivation Officer who is entitled to manage agricultural conflicts.[17] Both official system and the unofficial are found here to have been inseparably connected.

3. Unofficial law composing the pluralism

In order to observe such influential unofficial law functioning in people's daily life, intensive surveys were conducted in several villages. One of them done of Beralapanatara, which is divided into two sub-villages, revealed a norm structure of a Sinhalese society. Among various norms contributing to the social integration of the village, both conventional and current norms are found conspicuously working independently or dependently. Of the conventional norms, there are two sets of basic importance. One is those of the villagers to maintain Buddhist temples and their activities: for instance, villagers are obliged to make offering to the temples, participate in the *poya* observances at the temples in all days of the full moon, and invite monks to their domestic events such as marriages, funerals, house-building, prayers for recovery from diseases, etc. In return for these obligations, they are privileged to cultivate paddies of the

16 From Chapter 5 on family law especially the Islamic by Michio Yuasa.
17 From Chapter 6 on the indigenous judicial system by Jinichi Okuyama.

temples or borrow money from the temples when needed, and participate in educational and cultural events at the temples. The other set of conventional norms is those related to the caste system, among them prohibition to select spouses and associate with people from different castes, though working latently. The current norms, originating in the official authority of the state, are working in different ways according to the different state functionaries in the village. Noticeable among them are regulations of the aforementioned Cultivation Officer for agricultural activities and the Rural Development Officer for the cooperative development of the village. Those and others are compoundedly contributing to the social integration of the village.[18]

Among those social norms, the most fundamental are those supposed to be originating in Buddhist law, except among the seven hundred Tamils working in isolated tea estates. There is historical evidence that the traditional Buddhist worship has long been offered not only to the Lord Buddha but to syncretized Hindu gods, local deities/demons and spirits, and that these practices are prevalent beyond differences in castes and localities. Most important among the norms of Buddhist origin may be the duty of the layman to offer meals and goods to the monks at the temple, unlike to the visiting mendicants in Thailand, in the hope of 'merit-making for happiness in the next world.' In contrast to such an unofficial law among people, the practices of *Sangha* and temples had been made official by the Kandyan dynasty and are protected by the present official law as seen by the aforementioned constitutional article and the prevailing national worship to the Temple of the Tooth in Kandy. Judging from the historical facts above, Buddhism has been generous enough to give the multi-religious people a national integration. However, considering the recent bloody and exhausting conflict between the Sinhalese and the Tamils since 1983, the Buddhist idea seems to be utilized, according to reliable observers, as a political ideology to forcibly realize an integration.[19]

Farmers composing the majority of the entire population have also unofficially developed some system of agricultural regulations for themselves, among which the most characteristic is one to self-control the water system for paddy farming especially in the Dry Zone, North-Eastern plains. In unidentified early times, farmers had created many tanks to reserve water and developed regulations to utilize them. With more water being required for post-war rural development, an ambitious project is under construction to introduce some water of the Mahaweli, the longest river on the island, to those areas mentioned above. Still, tank

18 From Chapter 7 on the social integration of a village by Motoyoshi Omori.

19 From Chapter 8 on traditional Buddhist practices by Yoshio Sugimoto.

irrigation obliges farmers to observe their practiced rights and duties to control utilization and administration of the water. The rights and duties are unofficial but perhaps more vital than official law to the farmers concerned.[20]

Finally, the social status of women composing another half of the population is discussed in respect to its traditionality in the recent trend toward modernization. Women laborers were chosen as the sample from two factories, traditional tea making and modern porcelain production, to validate the well-known rule that a positive will to work and ordered discipline by the laborer tend to decline under bad working conditions and alienated humanity in a rationalized system. The results obtained from both factories rather invalidated the rule, for the laborers are used to working hard in spite of unfavorable conditions. The reason is analyzed differently for each of the factories. The tea factory laborers are induced to work by the manifest or latent pressure of the family and caste structure, obedient attitudes toward authorities, and their own plans to earn money for their dowry. Among the porcelain factory laborers, however, the pressure of the caste is replaced by their desire to earn money for their families. The analysis gives evidence that contracts under official law together with the traditional duties under unofficial law gave a positive motivation to those women laborers to work.[21]

III. Conclusion

As stated above, the field survey of Sri Lankan law has disclosed its working structure as a whole. It is found forming a most complicated legal pluralism composed of both official law and unofficial law or else both indigenous law and transplanted law, under the guidance of some legal postulate such as the Buddhist, the socialist, and an unidentified one which has enabled such plural forms of law to work as Ceylonese/Sri Lankan law distinct from the others. Its invaluable contribution to our purpose is, we believe, that it has validated the basic idea of the two working hypotheses as well as invalidated some minor factors to be further reformulated. An attempt at the reformulation is finally described below.[22] (For further detail, see Chiba, 1989: ch. 12.)

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20 From Chapter 9 on the traditional practices of tank irrigation by Hisashi Nakamura.

21 From Chapter 10 on tradition and modernization among women by Yoshiko Taniguchi.

22 From Section 2 of 'Conclusion' by Chiba. (The Section 1 summarizes each Chapter.)

The initial two working hypotheses have been reorganized into a new theory called 'three dichotomies of law.' Its main structural variables are arranged into three different dichotomies, and integrated into a system by the basic postulative value called 'identity postulate of a legal culture,' which was first obtained from my other researches and then found in the data from this survey though not precisely. The new theory is formulated originally to apply to Asian situations, but extendedly to the other non-Western and to the Western as well.

The first dichotomy comprises, in relation to the different modes of the authority of legal sanction, *official law* vs. *unofficial law*, terms which are defined respectively as the "legal system and its components authorized by the legitimate authority of a country," and the "legal system and its components not officially authorized by any legitimate authority, but authorized in practice by the general consensus of a certain circle of people, whether within or beyond the bounds of a country, when they cause distinct influences upon the effectivity of official law, supplementing, opposing, modifying or even undermining any of the official laws, especially state law." While state law, "the official law of a political body called state," is truly typical of official laws, it is not, as too often taken for granted, the only one. In addition to their state law, many capitalistic and some socialistic countries in the world are also officially regulated by religious law, local law, family law, ethnic law and others often collectively called customary law.

The second dichotomy is the contrast of positive rules, or legal rules, with postulative values, or legal postulates. *Legal rules* are "the formalized verbal expression of particular legal regulations to designate special patterns of behavior," and *legal postulates* are "the particular values and ideas and their systems specifically connected with a particular law to ideationally found, justify and orient, or else supplement, criticize and revise the existing legal rules." Both the legal rules and legal postulates of a particular body of law coexist and co-function, as a rule, interactingly. Among the various modes of the interaction between the two, particularly to be noticed is the independent function of legal postulates when the supported legal rules have become outdated or disappeared: while they may be easily deserted from lack of a sound basis fortified by legal rules, legal postulates have the potential of reactivating outdated legal rules or even creating new legal rules to embody themselves.

The third dichotomy is especially serious to contemporary non-Western countries, though applicable to Western countries as well. It relates to the different origins of law in human society. The contrast here is *indigenous law*, broadly defined as "law originating in the native culture of a people" and narrowly as "the law existing in the indigenous culture of a non-Western people prior to their transplantation of modern Western law," in contrast to *transplanted*

law, broadly defined as "law transplanted by people from one or more foreign cultures" and narrowly as "the state law of a non-Western country transplanted from modern Western countries." It is noted that, as mentioned above, the contrast of indigenous law vs. transplanted law is a relative one to be exhibited differently with the degree of assimilation of foreign law, and that transplanted law may be typified by two types: that which is voluntarily received and that which is involuntarily imposed.

In sum, the law of an individual country may be accurately observed and analyzed in its working structure by the above analytical tool scheme of the three dichotomies of law. In other words, it may be elucidated as comprising different types of official law and unofficial law, each of which is constituted of legal rules and legal postulates as well as of indigenous law and transplanted law, received or imposed. The combination of the three dichotomies in reality vary from country to country. Such variations will exhibit diverse legal examples of the proportion of two polar variables in each dichotomy and transformation of those combinations and proportions with time, transformation which may result, in extreme cases, in the total replacement of a state's legal system.

Still, except in rare cases, people who have cherished their indigenous culture may preserve their legal culture through transformation of the combination and proportion of the three dichotomies. In so far as a legal culture is preserved, a "basic legal postulate for the people's cultural identity in law," which I would call the *identity postulate of a legal culture*, must be presupposed as functioning. It guides a people in choosing how to reformulate the whole structure of their law, among others, the combination of indigenous law and transplanted law, in order to maintain their cultural identity in law under changing circumstances.

In conclusion, the three dichotomies of law, comprised of official law vs. unofficial law, legal rules vs. legal postulates, and indigenous law vs. transplanted law, combined into a legal culture under the guidance of the identity postulate of a legal culture, is a useful analytical tool scheme for accurate observation and analysis of the working whole structure of law of a people, individually or comparatively. It awaits empirical verification and further theoretical elaboration.

References

ALLOTT, ANTONY N. & GORDON R. WOODMAN (EDS.)
1985 *People's Law and State Law: The Bellagio Papers*. Dordrecht, Holland/Cinnaminsion, U.S.A.: Foris Publications.

BERMAN, HAROLD J.
1983 *Law and Revolution: The Formation of the Western Legal Tradition.* Cambridge, Mass.: Harvard University Press.
CHIBA, MASAJI
1976 'The search for a theory of law: report of the symposium on theory in the sociology of law, Hakone, 1975,' in *Sociologia del diritto* 1976(1).
1984 ed., *Law and Culture in Sri Lanka: A Research Report on Asian Indigenous Law.* Tokyo: Research Group on Asian Indigenous Law.
1986 ed., *Asian Indigenous Law: In Interaction with Received Law.* London: KPI.
1989 *Legal Pluralism: Toward a General Theory through Japanese Legal Culture.* Tokyo: Tokai University Press.
COORAY, J.A.L.
1971 *An Introduction to the Legal System of Ceylon.* Colombo: Lake House Bookshop.
DICTIONNAIRE D'EGUILLES
1988 *Dictionnaire encyclopédique de théorie et de sociologie du droit.* Sous la direction de André-Jean Arnaud. Paris: L.G.D.J./Bruxelles: E. Story-Scientia.
GILISSEN, J. (ED.)
1972 *Le pluralisme juridique.* Bruxelles: l'Université Bruxelles.
GLUCKMAN, MAX
1965 *Politics, Law and Ritual in Tribal Society.* Chicago: Aldine.
GRIFFITHS, JOHN
1986 'What is legal pluralism?' *Journal of Legal Pluralism and Unofficial Law* 24: 1-55.
HOEBEL, E. ADAMSON
1954 *The Law of Primitive Man: A Study in Comparative Legal Dynamics.* Cambridge, Mass.: Harvard University Press.
HOOKER, M.B.
1975 *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws.* Oxford: Clarendon Press.
JØRGENSEN, STIG
1982 *Pluralis Juris: Toward a Relativistic Theory of Law.* Acta Jutlandica XLVI, Social Sciences Series 14, Aarhus: Aarhus University.
MALINOWSKI, B.K.
1926 *Crime and Custom in Savage Society.* London: Routledge & Kegan Paul.
MARASINGHE, M. LAKSHMAN, & WILLIAM E. CONKLIN (EDS.)
1984 *Essays on Third World Perspectives in Jurisprudence.* Singapore: Malayan Law Journal.
MERRY, SALLY ENGLE
1988 'Legal pluralism,' *Law and Society Review* 22, nr 5.

NADARAJA, T.
1972 *The Legal System of Ceylon in its Historical Setting*. Leiden: E.J. Brill.
RENTELN, ALISON D.
1990 *International Human Rights: Universalism versus Relativism*. Newbury Park: Sage Publications.
SACK, PETER, & E. MINCHIN (EDS.)
1986 *Legal Pluralism: Proceedings of the Canberra Law Workshop VII*. Canberra: Law Department, Research School of Social Sciences, Australian National University.
TAMBIAH, H.W.
1950 *The Laws and Customs of the Tamils of Jaffna*. Colombo: Times of Ceylon.
1968 *Sinhala Laws and Customs*. Colombo: Lake House Investment.
1972 *Principles of Ceylon Law*. Colombo: H.W. Cave.
TIRUCHELVAM, NEELAN
1986 'Competing ideologies of conflict resolution in Sri Lanka: a multi-religious society,' in Chiba, *Asian Indigenous Law: In Interaction with Received Law*. London: KPI.