FACULTY OF LAW

MUNI Law Working Paper Series
David Kosař & Radim Polčák, Co-Editors in Chief

MUNI Law Working Paper 2016.01

Tomáš Ledvinka

BRONISLAW MALINOWSKI AND THE ANTHROPOLOGY OF LAW

Guest paper

June 2016/ Červen 2016

Masaryk university * Law Faculty * Brno * Czech Republic
MUNI Law Working Paper Series can be found at:
http://workingpapers.law.muni.cz/content/en/issues/

MUNI Law Working Paper Series
ISSN 2336-4947 (print)
ISSN 2336-4785 (online)
Copy Editor: Martin Bobák

Masarykova univerzita,
Právnická fakulta
Veveří 70, Brno 611 70
Česká republika

Abstract

This paper points out that a solid understanding of Bronislaw Malinowski's relationship to law should be founded on how it differs from both non-legal anthropology and jurisprudence. The reader is guided to the moment when the link between law, anthropology and exotic fieldwork became a fount of inspiration. With a slight retrospective bias, the main lines of research are described as being in favour of Malinowski. A closer look at native law through participant observation acts as a starting point for explaining how the ethnographer sees law within the seamless web of the foreign culture. The symmetrical treatment of law and science should help to illuminate the significance of Malinowski's anthropology of law for those anthropologists who are usually not concerned with law. Reciprocity is presented as a part of a much different idea than the definition of law or *kula*, and as a disconnecting factor in relation to conventional modern dualisms. As a key to understanding Malinowski's approach to native and European law the paper then discusses the unrecognised discoveries that are to be found underneath the hostile criticism of Malinowski and the misunderstood ironies expressed by Malinowski and which were made within the context of conflict between the Trobriand legal systems. Finally, the paper returns to the impact of Malinowski's methodological innovations, such as cross-cultural comparison and participant observation, on the anthropological ideas of law and legal comparisons.

Keywords
Malinowski; Legal Anthropology; Seamless Web; Reciprocity; Cross-cultural Comparison; Participant Observation; Conflict of Laws; Self-doubt; Suicide and Law

Suggested Citation:
Ledvinka, Tomáš 'Bronislaw Malinowski and the Anthropology of Law' (2016), MUNI Law Working Paper No. 2016.01, available at: http://www.law.muni.cz/dokumenty/35744.

Abstrakt

Tento článek zdůrazňuje, že správné porozumění vztahu Bronislawa Malinowského k právu by mělo být založeno na tom, jak je tento odlišný jak od neprávní antropologie, tak od právní vědy. Čtenář je přiveden do okamžiku, kdy se spojení mezi právem, antropologií a exotickým terénem stalo pramenem inspirace. Hlavní linie výzkumu jsou pak popisovány s lehkým retrospektivním zaujetím ve prospěch Malinowského. Bližší pohled na nativní právo prostřednictvím zúčastněného pozorování je využit jako východisko pro vysvětlení, jak etnograf vidí právo v rámci bezešvé sítě cizí kultury. Symetrické zacházení s právem a vědou by mělo následně pomoci osvětlit význam Malinowského právní antropologie pro ty antropology, kteří se nezabývají primárně právem. Reciprocita je představena jako součást docela jiné ideje, než je definice práva nebo *kula* a jako nástroj k odpojení od konvenčních moderních dualismů. Jako klíčem pro pochopení Malinowského přístupu k nativnímu a evropskému právu se tento článek dále zabývá nerozpoznanými objevy, jenž zůstaly skryty kvůli nepřátelským kritikám vůči Malinowskému a nepochopeny kvůli ironii, již Malinowski sám užíval, a které byly učiněny v kontextu konfliktu mezi trobriandskými právní systémy. Závěrem se autor vrací k vlivu metodologických inovací Malinowského, jako je mezikulturní komparace a zúčastněné pozorování, na antropologické představy o právu a na právní komparace.

Klíčová slova
Malinowski; právní antropologie; bezešvá síť; reciprocita; mezikulturní komparace; zúčastněné pozorování; mezinárodní právo soukromé; sebereflexe; sebevražda a právo

Doporučená citace:
Ledvinka, Tomáš 'Bronislaw Malinowski and the Anthropology of Law' (2016), MUNI Law Working Paper No. 2016.01, dostupné z: http://www.law.muni.cz/dokumenty/35744.

Author Contact Details

Tomáš Ledvinka
Charles University, Faculty of Humanities
Prague, Czech republic

Email: tomas.led@seznam.cz

Kontakt na autora

Tomáš Ledvinka
Univerzita Karlova, Fakulta humanitních studií
Praha, Česká republika

Email: tomas.led@seznam.cz

BRONISLAW MALINOWSKI AND THE ANTHROPOLOGY OF LAW

Tomáš Ledvinka

1. Malinowski as a disciplinary Other

"Following Malinowski, we are soon 'paddling on the lagoon, watching the natives under the blazing sun at their garden work, following them through the patches of jungle; and . . . on the winding beaches and reefs, we shall learn about their [law].'" (Redfield 1948: vii) "The reader may be surprised to learn that he has met law on his placid trip on the lagoon; he may think he has not perceived it. However, he is assured that law in Malinowski's terms is there." (Hoebel 1954: 180) This remarkable but ingenuous connection between law and the tropical lagoon has changed how anthropology understands not only tropical "Others," but also law in general.[1] Though unusual enough to inspire a new anthropological approach for which a native canoe is just as relevant a legal and organisational principle as the constitution of modern states, this new situating of law was still too unintelligible for conventional jurisprudence, which is firmly entrenched within conventional disciplinary boundaries. It thus seems that although Malinowski's engagement with social and cultural anthropology reflects the success of a man who managed to synthesize two traditions – strictly empirical science with its first-hand observations and the various subjects of study of armchair anthropology – his engagement with law as an anthropological subject was somewhat out of focus and misrepresented by many. Such an impression is almost inevitable when going through the dozens of subsequent references to Malinowski and law. They could contain a legitimate criticism – one that perhaps comes from differing disciplinary perspectives, but unfortunately they can hardly help us to truly understand his main discoveries about law which have been overlooked until the present.

Since we are moving through a complicated terrain along a disciplinary border, we should distinguish at least three areas in which the topic of Malinowski and law should be relevant: jurisprudence (or legal science in the broader sense), non-legal anthropology, and in particular the anthropology of law. Jurisprudence's response to Malinowski was more than conservative. Although it has been suggested many times, for instance by Moore, that "this [Malinowski's] breadth of approach applied to a narrow field of observation seems particularly appropriate to the study of law and social change in complex societies," (Moore 2000: 55) legal scholars have

[1] For a complete overview of Malinowski's contributions to the anthropological studies of law see Hoebel (1954:177-8) or Schapera (1960)

often labelled Malinowski's studies as merely "exotic" or "historic" instead of "modern-day" or "proximate." Perhaps this was a by-product of the juristic treatment of law as if it were beyond analysis of culture and society. Although there has been a certain optimism concerning "the rapprochement between anthropology and jurisprudence" (Bohannan 1967: 47–8), in hindsight Moore was quite sceptical: "Malinowski's ideas suffered the common fate of many cultural innovations. When exported from anthropology and introduced into another discipline, jurisprudence, anthropological ideas were interpreted in ways that would disrupt pre-existing jurisprudential schemes as little as possible; they were selectively incorporated, but not used very creatively." (Moore 2000: 220) Also, an anthropology that does not take into account the ethnographic theorising of law has much in common with jurisprudence because it can use only the other channel at its disposal, the one by which legal (or rather, conventional juristic) understanding is uncritically transferred into anthropology's understanding of law. The avoidance of both Malinowski and later anthropology of law of the twentieth century thus returns anthropologists to the earlier disciplinary order between law (which was seen normatively) and culture (whose definition was changing at the time) – in other words, to a time before Malinowski, who was a cultural and disciplinary innovator and of course also the destroyer of the old scientific worldview. For many people, however, the nineteenth-century boundary between law and anthropology still functions as a constraint which keeps empirical science outside the gates of normativity.

For these reasons, I believe that our capacity for understanding Malinowski and the law increases if we see Malinowski as a disciplinary *Other* rather than as a disciplinary *same*. It has not been always recognised that Malinowski was simply not a jurist; he was very different from legal theoreticians. As a result, his work has not been successfully translated into legal theory. The question is whether such a translation is desirable or possible, for the gap remains: The gap between a single anthropologist whose unusual experience with law comes from his anthropological (rather than juristic) background and from his encounter with the law of a remote Melanesian society on the one hand, and thousands or rather millions of jurists educated in more or less the same way at modern law schools all around the world on the other hand. This gap can be also seen in terms of the disparity between the quality of first-hand research and the quantity of transmitted knowledge, or between anthropology's emphasis on experience and the juristic emphasis on apodictic contemplations (with many legal fictions as propositions). Malinowski should not be presented as a neutralized quasi-jurist. However, Malinowski's "legal" achievements are today subject to "disciplinary amnesia" (Engelund 2015: 270) not only in the legal sciences but also in the non-legal anthropology.

The anthropology of law, which connects both of those disciplinary traditions, has grown and matured since Malinowski's time, and so this discipline represents perhaps the only safe ground for an objective look back at his significance. In this field, Malinowski was considered one of the first to attempt to fill the "'legal' vacuum in the ethnological literature" (Pospíšil 1973: 537) – which had previously been the rule in anthropology – and he certainly was the first to analytically think about the law and legal comparisons with the assistance of participant observation. For this reason he is – alongside a small number of others including Karl Llewellyn and Leopold Pospíšil – an emblematic figure for the subsequent development of the anthropology of law. Within this disciplinary canon, we encounter basically three types of references to Malinowski – recognition of his significance (but without deeper reasoning), theoretical criticism (though usually unfair and misdirected), and empirical remarks that compare his conclusions about law to the conclusions made by the paper in question. The first approach can be illustrated through a few examples. According to Redfield, "[t]he road to the left has been recently opened with a great flourish by B. Malinowski (1926:1934)" (Redfield 1967: 3). Starr claimed that "Malinowski (1942:1246) pointed the way towards the empirical study of law by suggesting the ethnographer should not take too narrow a view, so that law is only equated

with 'law-breaking"' (Starr 1992: xxiv). Moore mentioned that "it was not until Malinowski's *Crime and Custom in Savage Society* (1926) that anything written on law by an anthropologist achieved a wide audience and raised serious theoretical questions" (Moore 2000: 218), and perhaps more generally Nader recognised Malinowski as the one who "broke ground with what today would be called multi-sited fieldwork, and scientific rigor." (Nader 2011: 214) One example of the second type of reference to Malinowski is criticism of the "overinclusiveness" of Malinowski's definition of law, as first uttered by Redfield (1967: 4) and perhaps most recently repeated by Donovan and Anderson (2003: 11–12). Malinowski's theory was seen also as "an outstanding example of the neglecting of the formal aspects of law" (de Jong 1948: 7), for he rejected "the importance of formal characteristics, especially of organised sanction." (Ibid.: 4). His concepts of law were accused of containing "various instances of inconsistency and contradiction." (Schapera 1960: 146) The last sort of reference to Malinowski is the rarest. Llewellyn and Hoebel (1941: 251, 266–7), for instance, compared the role of reciprocity in Cheyenne and Trobriand law. And Hoebel (1967: 187) later compared reciprocity among the Comanche to Trobriand reciprocity.

Josselin de Jong, a leading figure of Dutch anthropology at the time, offered still another view on Malinowski: "It seems very strange indeed that Malinowski while sharply criticising [the notion of savage law] did not realise that his own description of [Trobriand society] did not by any means refute the rejected view, but on the contrary confirmed it […] His own vision had become blurred and so, with regard to the central problem, we are left exactly where we are." (1948: 5-7) Malinowski indeed blurred the categories of law he used. But we should read this blurring as a theoretical implication for legal thought grounded in his fieldwork. The law of the Trobriand lagoons offered not only the gradual addition of new facts to existing knowledge, but also the gradual abandonment of entrenched legal categories. Malinowski's theoretical ideas of law can be thus seen as disconnecting factors (to borrow and modify the concept of private international law) on the road of anthropology's emancipation from normative science.

2. Lines of research

Malinowski followed "the generation of anthropologists working at the turn of the century, such as A. C. Haddon, William Rivers, C. G. Seligman and Baldwin Spencer, who made the first intensive field studies," (Nakai 1994: 22) and together with A. R. Radcliffe-Brown established "intense personal fieldwork" and "synchronic analysis" "as academic disciplines." (Ibid.) Although he had early followers such as Richards and his study of the subsistence lifestyle of the South-eastern Bantu, Hogbin and Wogeo land tenure, Wilson and the Nyakyusa legal system, and Schapera and Southern Bantu law (Hoebel 1951: 248), the theoretical implications of his innovative approach were only realized gradually during the turbulent years of legal anthropology after World War II. The synchronicity of this process and events in world history such as the Nuremberg trials and decolonisation that weakened conventional legal doctrines and entrenched legal categories lent his ideas relevance far beyond disciplinary boundaries.

Although Malinowski was not the only anthropologist to study native law at the time, his liberation from the conventional legal dualisms of Western vs. Savage, civil vs. criminal, substantive vs. processual, public vs. private, or secular vs. religious was unique and remains unrecognised to this day. This paper looks at Malinowski's early liberation from established ways of thinking about law and tries to show that it was an implicit crucible for later legal anthropologists. However, in retrospect it may be difficult to distinguish which ideas in Malinowski's work were undeveloped seeds that provided inspiration for later enquiries, and which can be justly ascribed to Malinowski himself. Some lines of research can be associated with his name to varying degrees. First, there is the line of research that describes law as a native

knowledge that can be identified through the classical anthropology of law (Llewellyn, K. & E. Hoebel 1941; Pospíšil 1958; Bohannan 1957; Gluckmann 1955; Nader 1990; Offner 1983; French 1995; Rosen 1989). Then there are ethnographic studies of unofficial law in so-called state societies (Abel 1982; Conley & O'Barr 1990; Greenhouse, Yngvesson & Engel 1994). A third example are studies of the sociocultural context of modern official law, which can be found in the whole body of the sociology of law that is concerned with the sociological aspects of law (for instance Macaulay 1963, 1995; Conley and O'Barr 1997). Fourth are recent ethnographies of Western official law itself (Latour 2010; Riles 2011), and fifth comes that line of research linking the study of non-modern legal systems and other forms of social control with similar studies of the West. And finally there is the inter-cultural comparative treatment of legal systems, which is broader than comparative law in the strict sense and which, with a few exceptions, is mostly found alongside the previous examples (Pospíšil 1971; Gluckmann 2012).

At least, all these lines of research follow Malinowski's initial impetus and engage in a far-reaching transformation of the anthropological understanding of law. This transformation could also be seen in this way: when studying savage law, modern law, religious law, or customary law, we should simply erase the modifier so that we are left with just the concept of law. This aspect of Malinowski's approach was deployed by Hutchins (1980). His half-legal and half-cognitive ethnography was an empirical re-examination of the legal dimension of *Coral Gardens and Their Magic* (1935), with a focus on land tenure. Hutchins saw cultural and legal systems as an embodiment of a certain logic of inference situated within specific mental and material settings. In his study, Hutchins realised that a major problem in understanding the real differences between legal systems and thoughts is that "much of discourse is composed of syllogisms in which one or more premises are left unstated" and that ethnographically informed research can provide us with "the premises missing from the discourse itself." The task thus is to specify "the premises on which the inferences are based" (Hutchins 1979: 14). If we read Hutchins carefully, we realise that the missing premises also include legal rules on the basis of which actors make their decisions. Therefore, if we do not know the laws of a certain culture or its beliefs about the world,[2] then the characterisation of legal thinking as being fundamentally "rational or irrational, concrete or abstract, affective and integrative or rational and analytical, textual or oral" (Hutchins 1981: 481) is probably highly deceptive. Hutchins expressed this notion in his own way: "while Trobrianders' beliefs about the world are, in some domains, very different from our own beliefs, it is unwarranted to infer from a difference in content that the way Trobrianders reason about what they believe is substantially different from the way we reason about what we believe" (Hutchins 1979: 16). Hutchins's rethinking of *Coral Gardens*' legal dimension as "a missing cultural premise" within Malinowski's transcriptions of religious narratives and magic formulas demonstrates the significance of Malinowski's own attempts at abandoning certain aspects of modern legal thought that cannot be applied in foreign cultural environment.

3. Too broad, too narrow or rather law within the seamless web of the foreign culture?

It would be imprecise to say, however, that Malinowski simply denied the conventional legal dualisms of the time. A more correct assessment would be to say that his own methodology, employed in the study of his ethnographic field, acted as a disconnecting factor. If taken to its logical conclusion, the anthropological deployment of the imperative of exact empirical proof (as embodied by the method of participant observation) clearly demonstrates that conventional

[2] The concept of "belief about the world", applied in relation to Malinowski's ethnographies, can be compared with Yan Thomas's concept of *fictio legis* (1995) which shares in this respect the "essence" of certainty-making in empirically uncertain situations.

legal dualisms are useless in ethnographic fieldwork (despite legal theory's claims of general applicability), because it sticks to "our" legal practices and "our" legal institutions. The appearance of general applicability thus remains valid only if a modern legal theory maintains its distance from the legal systems of the Other. The conventional legal dualisms that many social scientists considered universally applicable in 19th- and early 20th-century anthropology were also simply too connected to the central governments, courts, codes and constables – leading them to implicitly claim that every culture must possess the same sorts of courts, codes and constables as modern culture. The way in which the legal dualisms were constructed made these modern legal attributes universal and thus, eo ipso, legitimate – and by correlation, any law that did not possess the same or at least very similar attributes was not recognised or only semi-recognised as Law. The ethnographer's focus was thus subject to this kind of hierarchization. As a result, the methodology that ultimately brought researchers closer to the studied populations helped to break up the old register of persons, things and practices classified under the heading of Law.

Indeed, traces and hints of the abandonment of conventional legal dualisms can be found throughout Malinowski's oeuvre. For instance, he claimed that economic *exchange* has a ceremonial form like a ritual, and also defined *litigation* in terms of exchange (Malinowski 1926: 60). The clear definitions of economic and legal phenomena that can be easily identified in our own culture failed when applied in a different foreign setting. For the ethnographic observer, the legal boundaries and the boundaries between law and other cultural domains were blurred.[3] This is certainly one reason why, as Moore put it, Malinowski "never abstracted legal principles altogether from the social context in which they occurred" (Moore 2000: 133), and also a reason why Malinowski himself claimed that "[l]aw and order arise out of the very processes which they govern" (Malinowski 1926: 123). Sometimes it was very difficult to distinguish between a sentence and an agreement (a *verdict* and a *contract*) – "[i]n no case is there any definite sentence pronounced by a third party, and agreement is but seldom reached then and there." (Ibid.: 60) However, the ethnographer's cognitive difficulty involved in differentiating law from other things should not be automatically imposed on the natives themselves, who did so without difficulty (see Malinowski 1926: 74). These blurred boundaries included not only cases of law and economics, but affected literally everything. For instance, the line between law and war was one of the most porous. Malinowski writes, "[f]ighting, collective and organised, is a juridical mechanism for the adjustment of differences between the constituent groups of the same larger cultural unit" (Malinowski 1964: 261). It was only later that Pospíšil defined the line between law and feud using the distinction between intra- and inter-group behaviour (Pospíšil 1968). However, even such a demarcation should be understood as an analytical tool and not part of the real world. As we will see later in this paper, the new ethnographic *modus operandi* became a *ratio operandi* for Malinowski's attempts at achieving a new understanding of law. Certain basic concepts of our culture such as "rules" were not simply directly applicable in foreign cultures, and "to a careful reader it soon became obvious that Malinowski's rule has little in common with abstract rules (written or memorized)" (Pospíšil 1974: 8).

His natural inability as a non-native to discern law from other phenomena of social life "on the winding beaches and reefs" is perhaps demonstrated most radically in these two statements about law: "Law is the specific result of the configuration of obligations which makes it impossible for the native to shirk his responsibility without suffering for it in the future" (Malinowski 1926: 59), and: "The main province of law is in the social mechanism, which is to be found at the bottom of all the real obligations and covers a very vast portion of their custom, though by no means all of it, as we know" (Ibid.: 62). These definitions should be

[3] For an analytical distinction between law intermingled with exchange and the complete separation between law and exchange in the form of scale see Ledvinka (2012: 56–59).

interpreted neither to mean that authority (an equivalent to the Western court) is not a necessary attribute of law, nor that native law is exclusively some sort of "primitive international law" within which "[s]elf-help was therefore a normal procedure; in more serious cases, one can only appeal to one's kin, since one could not appeal to the Law or the State. Cases thus had to be settled ultimately by mutual agreement" (Singh Uberoi 1962: 7), which for Singh Uberoi means that "internal conflicts do exist [...] they are underground; and the Law, such as it is, knows them not." (1962: 85) Contrary to this deceptive interpretation, Malinowski was certainly well aware that the link between law and authority is very close and direct and that it could appear in significantly different forms. For example he was familiar with the work of his student Reo Fortune, *Sorcerers of Dobu* (1932), for which he wrote a preface and which he called "a triumph of the Functional Method" (1932: xviii). This student of Malinowski also wrote that "[t]he other tai sinabwadi, big men, of the village took no part but listen quietly ... [for] i guguia, he is laying down the law. There was complete silence, no reply or repartee, although obviously one or two persons and a small party of sympathisers were seething in revolt and being most severely tongue-lashed. Such a man as Alo can take risks in public admonishing. (…) Alo was the greatest magician – that is to say, governor and administrator of the native law." (Fortune 1932: 83–5) Therefore, the later statement that "[t]he principle of authority comes into being from the beginnings of humankind" (Malinowski 1944: 248) should not be seen as inconsistent with his previous thought, but as compatible with it. Although Malinowski's understanding of law develops over time, it should not be thus divided into stages, as was suggested by Leach (1960), as his later ideas are fully consistent with his earlier views and his other thoughts.

Malinowski's theoretical answer to the cognitive dissonance between our categories of law and other domains of culture (both between and within), was as new as the thoroughness of the entire methodology based on participant observation. Malinowski chose to pursue an understanding of law that was somewhere between an excessively narrow, culturally determined definition of law (Hobhouse 1915, Tylor 1871) and an excessively broad, culturally deterministic definition (Lowie 1920, Hartland 1924).[4] *Crime and Custom in Savage Society* described more than clearly that, in those instances of native relations when no authority is directly present, "legal machinery" (Ibid.: 54-5) was understood as a combination of authority and other human agents, rituals and other supporting factors such as status artefacts, savage money, and mental objects as forces of magic (Ibid. 86).[5] This is completely misunderstood by critics of Malinowski's definition of law as overly inclusive, a criticism that was surely not based on a sympathetic reading. His appeal for understanding law in broader terms than just the courts and police does not automatically mean that we must consider "all the complicated and varying considerations of personal motivations" (Redfield 1967: 4). It is nevertheless true that later only Llewellyn, Hoebel and Pospíšil proposed a theoretical separation of law and custom as analytical categories, and that this aspect of the anthropological understanding of law was not a guiding feature of Malinowski's work. But this failure can be considered a minor detail in his shifting of all legal thought from a juristic to an anthropological modus.

Malinowski demonstrated that *law* as observed in an exotic location no longer resides within fixed boundaries, within fortified domains built from the inside out by jurisprudence with "our" legal practices and materiality as an implicit backdrop, but that it can be rediscovered within a seamless web of associations with other aspects of the foreign culture. Malinowski and all anthropology of law that followed this line of research are thus situated in this dissonant ground between our own modern legal categories and those of native "jurists", as both of them are built from the inside out. Since it approaches the law of the Other from the outside, the anthropology of law thus attempts to reconcile this direction of study with a theoretical understanding of law. The notion of "the existence of interconnected institutions" (Moore 2000: 11) thus seems to be

[4] See Malinowski (1926: 9–16).
[5] Cf. Pekala & Stiepen (2012).

a perfect tool for re-directing theoretical thinking about legal worlds. From this point of view, it is clear that the only scholars who see any inconsistencies in Malinowski's thinking about law are those who do not recognise that, within the foreign culture, law is situated within a seamless web, not pre-divided by modern legal dualisms. In *Argonauts of the Western Pacific*, the deployment of the new methodology forced Malinowski to disrupt any direct linear connection between law and text, i.e., to deny the concept of law as something written. The older concern of ethnographic fieldwork had been to give the chaos of exotic social life a clear and firm scientific order. It preferred a "codification" of living knowledge, rather than trying to understand its dynamics. Because this older approach often confused law with the regularities of other foreign cultural phenomena, another decisive step by Malinowski (one that changed ethnography's method of inquiry and its relationship to power) was to disconnect law from code and text. But where Law could be found, if not in written laws. Malinowski answers bluntly: "these things, though crystallised and set, are nowhere formulated. There is no written or explicitly expressed code of laws, and their whole tribal tradition, the whole structure of their society, are embodied in the most elusive of all materials; the human being." (Malinowski 1922: 10–11) That was a step from research as codification towards the study of sociocultural dynamics, which includes the legal dimension.

Malinowski was nevertheless fully aware that the researcher himself necessarily engages in some sort of codification during research. He also knew that the researcher might insert consistency or logic, and that it is not necessarily the same consistency that can be found in the native point of view (Malinowski 1922: 10). He definitely did not mean to pretend that native law is "a consistent body of rules", as Seagle (1937) said of him. There was always an awareness that anthropological research can act as a transformative medium and that native law as a well-composed logical and consistent system may well be the "professional product" of the researcher (Moore 2000: 11). However, this awareness should not be understood as an argument for disputing the inherent logic and rationality of native legal systems. On the contrary, for the ethnographic observer it is the unknown logic (and its missing premises) that confuses him. In many cases, however, references to traditional and customary law within political struggles for independence can be read as a sort of cargo cult of modern law or its contra-culture (Bauman's term), which might lead (and often does) to achieving politically independent legalities. [6]

In this vein, we may speculate that while the modifiers "social and cultural" (when applied to anthropology) indicate for Malinowski that an ethnographic field has not yet been divided up according to pre-existing modern propositions, Malinowski preferred the term "biological" over "natural" and "psychological" over "individual", probably because in certain cases the observed subject was too tightly bound to the standpoint of the observer, biologist or psychologist. Malinowski rejected rationality as a dividing line both between a rational law of nature (natural law) and an irrational law of culture (positive law) and between a rational law of culture (Western law) and an irrational law of nature (savage law). However, the rejection of rationality as a dividing line between modern law and the law of the Other has not left a vacuum. As I will demonstrate later, it was replaced by another factor – reciprocity. During Malinowski's time, anthropology was still playing an unfortunate role in European expansion by helping to transform the legal systems of the Other into static and controllable units for the purposes of administration and social control. Malinowski's approach "was not concerned with reconstructing the pre-contact social systems and cultures, nor was it concerned with policy and administration. Research was to focus on the temporary changes that were occurring [...] to understand better ways in which these are being affected by the new influences [and the] tendencies towards new grouping and the formation of new social bonds"

[6] See Ledvinka (2016).

(Chanock 2000: v). There was a clear shift from the standpoint of the observer to the standpoint of the observed.

4. Law and Science

Since Malinowski used the method of participant observation in the context of a non-literate society, his anthropology had to treat law as a form of native knowledge, a sort of ethno-law. As with ethno-science, law proved itself to be a native tool as necessary for survival as navigation was for the *Argonauts* – and its shortcomings could be no less dangerous. Perhaps even more than navigation, the native law studied by Malinowski could be seen today as another form of lost knowledge that is vanishing along with the disappearing worlds of Melanesia and other remote cultures all around the world.[7] This concept of law shifted from written statutes to applied knowledge resulting from the employment of intense personal fieldwork for studying law, and is very significant from the perspective of disciplinary histories. Before Malinowski, the legal and scientific dimension of non-modern cultures was not recognised or only semi-recognised; Durkheim and some other 19th-century thinkers established a link between magic and religion on the one hand and criminal and primitive law on the other hand as a proposition for the further study of those domains. The treatment of law as knowledge would have been seen as a huge divergence from this arrangement of norms and facts which strictly separated religious from secular and rational from irrational of the time. The complexity of ethno-law claimed by Malinowski thus significantly shook the proposition that (real) law – more specifically, civil law – was reserved for the West or the North, while custom was reserved for the South or East, just as science belonged to the West and magic to the rest of the world.[8] There was a certain symmetry between the nineteenth-century ethnographic treatment of law and its treatment of science, as both were considered rational and Western. Malinowski was therefore certainly aware of the necessity to take the same kind of approach to custom, law and social control as he had attempted with magic, science and religion (Malinowski 1948, Tambiah 1992). Since these areas are closely linked, they are difficult to identify in a foreign culture. Outlining each area's respective function should be represented as a kind of provisional trick for how to distinguish them during fieldwork, when the researcher was detached from the categories of his or her own culture (since they were not of any help in the field) but not yet sufficiently attached to the native point of view.

In this process there are at least two compatible but seemingly contradictory steps whose incomprehension can lead us astray, as happened to some researchers. First, Malinowski placed law on an equal footing with other areas of culture and society such as religion, economy and kinship etc., as, in his view, law also deserved an autonomous analytical category within anthropological theory. Second, he nevertheless realised that law should not be treated as a delicate, special or even privileged field of study that required an autonomous methodology that would be fundamentally separated from participant-observation methodology. Since law, like navigation, is native knowledge, it is nothing special and can be studied using the same methodology as any other area of social life. From the viewpoint of social science, law should not be interpreted exclusively by juristic theology, which can sometimes take the form of legal science or jurisprudence, for this juristic theology must be studied as a part of law just as religious studies researches both religions and their theologies. These two steps thus result in two detachments in our understanding of law: (1) from the juristic claim that "our law" is a privileged supra-empirical entity that can be studied only by jurisprudence and legal theory as a special scientific field, and (2) from the idea that the "law of the Other" is immersed in customs and other aspects of culture (analytically inseparable from non-legal normativity) such as magic or *kula*. Malinowski

[7] See, e.g., White and Kâwika Tengan (2001)
[8] Cf., e.g., Scott (2011)

thus directed anthropologists towards examining the widely held belief that modern law is characterised by (secular) rationality. Precisely this practice, which describes other cultures' entire legal systems merely in terms of the sacred while ignoring much of their profane normativity, is thus implicitly abandoned.[9]

Among the Trobrianders, Malinowski thus found that law was distinct from other areas of life, but modern guideposts did not help with its identification there. At the same time, getting a picture of the native understanding of law was a desirable but almost utopian goal. The possibility of an anthropological approach that might be able to exist somewhere between "our" law and the law of the Other was based on two facts – there are no longer any uncontaminated native legal systems and the real problem is the transition between native and "modern" systems. Further, because native legal understanding contains bias just as much as our own juristic understanding, accepting it uncritically without anthropology to act as a mediator would only lead to the accumulation of legal biases, but not to an understanding of them. If Malinowski could live in one legal system and then effortlessly go to live in another, there would be no need for the social science of law. In reality this crossing between cultural and legal environments remains very difficult, especially when the differences are enormous. The act of moving from one legal system to another can feel brutal, drastic and inhumane (Malinowski 1926: 94–8). For this reason, when studying law in the ethnographic field, it is necessary to work from a position between legal systems and disciplines.

5. Reciprocity as a disconnecting factor

One of Malinowski's tools for managing the anthropologist's sense of being in-between was the later frequently misunderstood concept of reciprocity. However, when reading through the half-dozen critics and interpreters of Malinowski, followed by a reading of his work on law itself, the reader cannot avoid but feel the sheer discrepancy between Malinowski's writing and that of his critics when it comes to the significance of reciprocity within law. Some of his critics use the concept of reciprocity as a weapon against Malinowski, claiming (wrongly) that he considered reciprocity the main attribute of law and that it is the foundation for his definition of law.[10] If we listen to Pospíšil, whose criticism is among the fairest, we encounter Malinowski's fallacy of "superrational behaviour," which meant that "the mechanism of reciprocity [itself] exercises control over the behaviour" (Pospíšil 1974: 30). Pospíšil's interpretation is explicitly founded on the postulate that Malinowski (1934: 30–42) pursued "a single criterion of law that would constitute its essence" (Pospíšil 1974: 29–30) – which he found in reciprocity. However, Malinowski neither offered an explicit definition of law that was connected directly and exclusively to reciprocity, nor did he hint at such a direct link. On the contrary, together with systematic incidence, publicity and ambition, reciprocity is considered to be only one of "the main factors in the binding machinery of primitive law." (Malinowski 1926: 68) If we were to be fair, in this vein we would have to say that, for example, ambition is a defining feature of law. But what would that mean?

The source of confusion in this critique is twofold. As Pospíšil expressed elsewhere, he was trying to find a workable analytical definition of law using a procedural rather than a substantive

[9] The practice was later conceptualised as "the danger of double selection." (Tambiah 1990: 92)

[10] Hoebel's criticism (1954: 180-4), for example, condensates previous misconceptions (especially Seagle's) and provides heavily false picture of Malinowski's anthropology of law. His statements that Malinowski's fieldwork was "placid trip on the lagoon," that the role of reciprocity was exaggerated by Malinowski whereas sanction and coercive force was largely underestimated, or that primitive law was defined by Malinowski merely in terms of civil law and reciprocity, are simply incorrect. However, Hoebel's (1954) and Seagle's (1937) criticisms contain some inspiring moments, their main arguments against Malinowski are not anymore acceptable today.

basis. It nevertheless remains unclear whether Malinowski related reciprocity to the procedural or substantive part of legal systems. It seems that the dividing line between those two areas was never without dispute. The second, and perhaps more important thing, is that reciprocity played an entirely different role in the definition of law than it did as the main attribute of law. It is associated with Malinowski's requirement to search not only for an equivalent to criminal law, but also for an equivalent to civil law within the seamless web of the native legal-cultural system, and thus to dramatically extend the scope of cross-cultural comparisons when compared to earlier ethnography. This extension helped to liberate the anthropological understanding of law from the fractured authenticity of earlier ethnography and resulted from a yearning for a more solidly founded analytical starting point. It is well known today that the early ethnography of the 19th and early 20th century received ideological support and an organisational basis from colonialism (Nakai 1994: 22). Today, law (as divided into Savage and modern) is also widely recognised as having been a key factor in the era's European expansion (Haldar 2007: 4; Mommsen and Moor 1992). In this context it was undesirable for early ethnographers to search for an equivalent to civil law or to even consider civil law comparable to "primitive" law.

Why? According to the doctrine of international law, sovereignty over territory considered *terra nullius* may be acquired through occupation. There is a corresponding doctrine of civil law that ownership over things which are *rēs nullius* may be acquired through appropriation. If we apply our archaeological imagination to travel into the past, we will find a time – certainly much earlier than the 19th or early 20th century – when everything that is currently in some recognised form of ownership belonged to nobody, but this was not the case during the colonial era. The establishment of certain land as terra nullius (and thus also of the things within this land as rēs nullius) has always been a complicated long-term half-legal/half-scientific operation, based on findings that certainly differed enormously from the native point of view held by those who lived in this "no man's land." The desirable colonial description of a terra nullius would thus be a place with no equivalents to European civil law but whose legal system differs from European legal systems in certain fundamental respects. The limits of such an approach soon become clear, for anthropological descriptions of "archaic law" in the no man's land or in other targets of colonial desire were sometimes paradoxical. While early ethnographers were looking for an equivalent to Western criminal law, they found its counterpart: vengeance. To understand why vengeance as a mechanism of repression can be seen as a counterpart to Western criminal law, it should be noted that for a long time modern criminal law was exclusively dominated by the idea of crime as a breach of abstract order. The idea that a crime can be primarily understood as a breach of the relationship between perpetrator and victim came first with the recent return of the repressed (in Western legal science) concept of restorative justice and victims' rights, which has once more blurred the line between the civil and the criminal in modern culture.[11] The modus operandi of vengeance found by early ethnographers was based on reciprocity between the group (family, clan, sub-clan etc.) of the victim and the group of the perpetrator and struck them as essentially private. In many non-modern cultures, vengeance could even be avoided through the strange notion of *blood money*, which resembles a civil law institution much more than one from criminal law. In terms of modern law, it is analogous to applying compensation under civil law to cases of murder.

Whereas ethnographers and jurists can easily distinguish between criminal and civil legal institutions in their own culture, they are often very uncertain when doing so in a foreign context. The conventional way of distinguishing between civil and criminal law is to consider criminal law a rigid ultima ratio that sets the sinful individual against the sacred domain of *ordre public*, while in civil law it is primarily up to the parties to decide on the adequacy between the worth of each promise and the sanction for its breach. By comparison, the reciprocity found throughout the equivalents of the main branches of modern law in Trobriand society was a contributing factor to

[11] See, e.g., Visinger (2012).

ethnographers' decision to no longer distinguish between civil law as reserved for moderns and criminal law as reserved for the "Savage." Similarly, the less famous concept of "publicity inherent in the structure of their society" (Malinowski 1926: 58) can be considered a hidden element in both public and private law, because its factual distribution throughout the various branches of law blurs the dividing lines found in Trobriand law and consequently in modern law as well.

If there is no direct link between law and reciprocity, should we not rather see reciprocity as an inter-group (and thus extra-legal) phenomenon that intensively influences the shape of intra-group legal rules and their enforcement? In fact, Malinowski speaks of reciprocity in this way as well: "Each community has therefore a weapon for the enforcement of its rights; reciprocity." (Malinowski 1926: 23) He also emphasizes that law involves "a whole system of mutualities" and "chains of reciprocities" (Ibid.). These indicators led us away from Pospíšil's understanding that reciprocity lies between two individuals. Although reciprocity may concern the individual obligations between persons from different communities, Malinowski pointed out that it is also a complex relation between communities and their legal systems. Although reciprocity is described as a "constraint" (Ibid.: 28) or "force" (Ibid.: 29), there are some hints that, rather than being merely inter-individual, reciprocity is more appropriately considered both an inter-group and an inter-individual phenomenon. Reciprocity is also described as both "artificially, culturally created dependence" (Ibid.: 28) as well as "the give-and-take principle." (Ibid.: 47) Reciprocity thus cannot be considered a universal attribute of law; it is certainly not the factor that makes law legal.[12] It can be embodied in law or re-established by law, and in some cases law can banish it as well.

6. The conflict of legal systems and Malinowski's unrecognised discoveries

For a complex understanding of "law in Malinowski's terms" (Hoebel 1954: 180) it is necessary to consider how reciprocity is actually situated within inter-tribal relationships. If reading *about* Malinowski's views of law will soon set readers against him, a reading *of* Malinowski himself may come as a great surprise. Although the critical atmosphere surrounding Malinowski resulted from an aversion towards some of his most uncritical disciples – Hoebel called them "Malinowskiites" (1951: 247) – and their more or less dogmatic adoption of his ideas – "Malinowskiism" (Ibid.) – he himself was mostly respected as an original thinker and sincere fieldworker. Nevertheless, we encounter both fair and unfair criticism. While Pospíšil's criticism is among the most fair, Seagle (1937) and Hoebel (1954) criticise Malinowski for ideas that he would never have agreed with. Hoebel's evaluation of Malinowski's *Crime and Custom in Savage Society* (1926) is a fine example: Hoebel claims that the first part of the book (on anthropological definitions of law) is "climaxed midway," while the subsequent last half of the book is "a patchwork of instances of disorders […] that ruffle the idyllic reciprocal tranquillity of the islands." (1954: 182) In fact, the paper on the definition of law is an attempt at linking the book's first part (which critically evaluated several older anthropological studies of law in the light of Malinowski's Trobriand fieldwork) with its last part on significant discoveries regarding Trobriand law.

By comparison, Pospíšil recognised Malinowski's ideas, alongside those of Gierke, Max Weber and several others, as a milestone on the road towards the anthropological theory of a multiplicity of legal systems (later known also as legal pluralism or the theory of legal levels). According to Pospíšil, Malinowski did not see the answer that was lying right under his nose: two parallel

[12] Cf. Hoebel who assumed the opposite opinion claiming that „[t]hey are all bound together in reciprocity. This makes it legal in Malinowski's view, for any undue chiselling by the one side will lead the other to withhold its services" (1954: 180).

systems of law within one society. Pospíšil pointed out that "Malinowski also failed to conceptualise multiple legal systems within the same society and link them to the pertinent social structure." (Pospíšil 1974: 102) This criticism of Pospíšil is inspiring and incomplete at the same time. Malinowski was at least ready to recognise a multiplicity of legal systems, as is clear from his early writing in which he mentioned, for instance, that "[t]he fifty-three states and territories with radically different legal systems and consequently different social problems offer an excellent field of observation and experimentation to the sociologist. The lack of religious, political and legal unity, and the partial lack of national unity, and their separation from historical tradition and routine, makes it possible to raise many questions about the practice of legislation." (2006: 265) Such a surprising understanding of American law fits perfectly into the later theory of the multiplicity of legal systems (Pospíšil 1971: 97–126) and was a part of Malinowski's thinking even before he conducted his fieldwork on the Trobriands. The question thus is why Malinowski did not recognise the existence of multiple native legal systems when he was at least theoretically ready to see the possibility. The answer is simple. He in fact recognised it very explicitly: "The law of these natives consists on the contrary of a number of more or less independent systems, only partially adjusted to one another… [the systems] can also trespass beyond its legitimate boundaries" (Malinowski 1926: 100). Malinowski clearly saw "the law of these natives" as a configuration of "systems," except that not all of them were legal. Pospíšil's focus is thus on the degree of their legality, on a scale ranging from an absence of law to the existence of undepreciated law. I would nevertheless emphasize that the more important part of his criticism has remained unrecognised: It is true that Malinowski carelessly mixed together far too many small yet decisive scientific steps in a very short text. There is one thing that Malinowski very much confused. Some "classificatory rule" (Ibid. 113) preferred one legal system (Mother-Right) over another (Father-Love), thus leading him to the conclusion that one should be considered "strict law" and the other "legalised usage" (Ibid. 121, 123). This was possible only because his thinking process was influenced by another factor – Malinowski used the distinction between legal ideal and sociological reality (the difference between abstract rule and the manner in which it is enforced) in order to explain the difference between the two legal systems. This difference can be described as a legality or illegality only if we adopt the *exclusive perspective* of one of the legal systems (that are present in the given situation) which does not recognise the legality of the other legal system(s).

As a result, it was not difficult to mistake the distinction between legal ideal and sociological reality for a distinction between two legal systems. However, neither Malinowski nor Pospíšil recognised that the discovery of "systems of law in conflict" (Ibid.: 100) was much more complex, and that it had theoretical implications beyond the recognition of a multiplicity of legal systems. Malinowski namely provides us with an explanation of why he cared about a native equivalent of the distinctive branch of law, the private international law of the natives, which is useful in some respects: "The study of the mechanism of such conflicts between legal principles, whether overt or masked, is extremely instructive and it reveals to us the very nature of the social fabric in a primitive tribe" (Ibid.). Malinowski speaks about the "classificatory principle of kinship", which is distinct from both legal systems (called "Mother-Right" and "Father-Love") and which, along with Mother-Right, "is associated with the totemic system, by which all human beings fall into four clans, subdivided further into an irregular number of sub-clans" (Ibid.: 113). This principle therefore does not directly belong to any of the mentioned legal systems; instead, "kinship" is an equivalent of the modern *connecting factor* (a concept found in the theory of private international law), which helps Trobriand legal authority to resolve the question of which legal system to apply to cases involving people from different Trobriand subgroups.[13] This rare and specific kind of legal conflict, one that was more than just a common legal dispute among people from the same social group, attracted Malinowski's attention. Since anthropologists usually acknowledge neither the domain of private international

[13] For more details about modern connecting factors in conflict of laws, see, e.g. Currie (1959)

law in general nor its concept of connecting factors in particular, this is just to point out that the knowledge of this modern branch of law would help to truly understand Malinowski's ethnographic conclusions about Trobriand law and the role of reciprocity within it. We cannot continue to neglect those discoveries by Malinowski just because they have not been widely intelligible among anthropologists.[14]

When Malinowski writes about the "law's perfection" (1926: 5) as a part of modern bias, he means that the idea of a single harmonic legal system prevented ethnographers from gaining an authentic understanding of native law – which, as Pospíšil recognised, was heterogeneous. Although Pospíšil identified a large number of legal systems in Malinowski's field, he overlooked several other aspects of the Trobriand legal enigma that I would like to point out here. First, it was eventually recognised that Malinowski explicitly wrote about three legal systems – two native and one European – not as a matter of comparison, but because they were all present in his ethnographic field. Second, they were in conflict with one another because of incompatible legal principles. Third, there were two types of solutions to these conflicts: either according to the "classificatory rule" or through "delegalisation." Although delegalisation of the law of the Other is in certain respects antithetical to the approach of private international law, which views legal systems as equals of sorts, it could be also be seen as a solution to the conflict between the legal principles of the Trobriand system and the modern system. Malinowski thus identified the Trobriand equivalent of modern private international law, as well as a way of escaping the fact that Trobriand legal systems really exist. There are thus two approaches to the problem of assimilating to a legal system other than the one that we grew up in: Spatial re-location and a voluntary ritual of transition from one to the other, on the one hand, and the mechanical application of our law onto foreign society, accompanied by the complete denial of the existence of native law, on the other. Whereas native legal systems contain "methodical systems of evasion" (Malinowski 1926: 99) such as cross-cousin marriage (Ibid.: 110) that might reconcile individual personality with the shock of a legal transition, the European legal system does not admit (as a consequence of its denial of the law of the Other) that such a transition may be dramatic at all. Malinowski's point lies in the comparison between these two solutions to conflicting legal systems. He emphasises that an individual's transition from one Trobriand legal system to another is dramatic enough to result in *suicide*. Malinowski indeed perceived suicide by jumping from a palm tree as an attempt at escaping the implications of the law (Ibid.: 94–8). If this happens within a culture that we as outsiders view as homogenous, just imagine the disastrous impact of applying foreign laws onto native societies based on the assumption that they have no law (delegalisation).

While Malinowski described in detail the "classificatory rule" of the Trobrianders' private international law, along with its consequences for the natives and for the unity of the clan (Ibid.: 112), concluding that "unity exists on one side, but is combined on the other with a thorough-going differentiation," (Ibid.: 115–6), his description of the equivalent phenomenon in European law (Ibid.: 106), which I have called delegalization, is sheer and cryptic: "The rash, haphazard, unscientific application of our morals, laws, and customs to native societies, and the destruction of native law, quasi-legal machinery and instruments of power leads only to anarchy and moral atrophy and in the long run to the extinction of culture and race." (Ibid.: 93) Thus, Malinowski's anthropology is not just "the science of the sense of humour" (2015: 301) – the comparative conclusion made it also the science of bitter irony, thus changing the meaning of the words in the title of his main "legal" book, *Crime and Custom in Savage Society*: whose crime and custom is it, and who defines it (European legal authorities or one of the Trobriand legal authorities). Is it not an act of complicity to assume that a particular society of Others has no law (or has only customs) if doing so leads to suicides, even if only as an unintentional consequence?

[14] However, the issue goes even beyond social science as private international law's concepts (including reciprocity) are not notorieties even among non-specialized jurists.

7. Cross-cultural comparison as a by-product

Although Malinowski did not apply the early comparative approach, his focus on the conflict of legal systems implies that comparison was not entirely insignificant. Instead, it was re-assembled within ethnographic fieldwork and played significant role in defining law according to his terms. First and foremost, Malinowski constantly and systematically tried to detach his readers from what he called "the trend of general bias" (Ibid.: 57–58), which could be read as an encrypted reference to the way in which careless ethnographers inserted modern legal dualisms into their observations or conclusions. As mentioned above, this trend was embodied by the "absolute rigidity of criminal law" (Ibid.: 57) and the "corresponding denial of the possibility of civil law" (Ibid.: 56) within the "comparative studies of law" (Ibid.). Although Malinowski considered criminal law to be "falsely connected with the problem of 'government' and 'central authority'" (Ibid.: 66), contrary to Hoebel's claim that Malinowski had a "definite distaste for forces of social coercion" (Hoebel 1954: 181), this quote can only be interpreted to mean that Malinowski was calling for research into *not only* criminal law *but also* civil law equivalents.[15] At the same time, he ensured that anthropology's internal expansion of intercultural comparisons onto other branches of law would go along with its external expansion onto all legal systems irrespective of their (religious, political, ethnical, economic etc.) qualities – i.e., including Trobriand law as well. This step had two implications.

Since Malinowski made his comparison while partly situated within the native's social and cultural predicament, the primary message is that the anthropological comparison of legal systems cannot take place in a vacuum but stems from the context of law as well as from what the ethnographer would define as law at first glance. The conflict of legal systems that Malinowski witnessed first-hand among the Trobrianders prevented him from ignoring these seemingly extra-legal realities in his theoretical considerations. The early comparativists,[16] who played an important role in establishing anthropology and comparative law, refrained from studying the conflict of legal principles. Even today conventional comparative-law scholars ignore the context of laws, which they treat as isolated units. For anthropologists, however, the treatment of legal systems as autonomous, comparable entities is an delusion, even if it this is how comparative lawyers actually work. Nevertheless, the autonomy of the compared legal units suggests that there is a great distance or an impervious border between them in the real world as well. Malinowski's study of the Trobriand legal microcosm demonstrated that at least this early comparative suggestion is highly misleading, and so his consideration of context changed what was being compared. Laws (in the strict sense of comparative law) were replaced by the problems into which the law had become embroiled, such as the nature of the Oedipus complex (1926; 1927), the contrast between the norms of sexual practice in the Trobriand Islands and in Europe (1929), and the application of foreign law (Trobriand and European) within different contexts (1926). Malinowski's comparison, however fragmentary, was not shallow. He studied the impact of foreign law both on the lives of individuals and on the unity of society. Clearly, the search for equivalents to modern branches of law in native culture and the problems of applying foreign laws to native populations are deeply interconnected. Malinowski was thus not far from making "cross-cultural comparisons for the public good." (Fox & Gingrich 2002: 3)

---

[15] However, Malinowski made contradictory statements about the relationship between reciprocity and Trobriand society. While "society is based on the principle of legal status," (Malinowski 1926: 46), "the division into totemic clans is characterized by reciprocity" (Ibid.: 47). This could be considered a clear departure from Maine's theory that law developed from status to contract (1873). If this interpretation is correct, than native law could be a combination of both forms (legal status and exchange), thus refuting the evolutionary divide between law founded on status (archaic) and law founded on contract (modern). However, both status and reciprocity are things that "must be arranged." (Malinowski 1926: 46) The detachment from the categories, dualisms, dichotomies and binary oppositions found in juristic thinking could not be more complete.

[16] They were named by Malinowski (1926: 2-3) himself; "Bachofen, Post, Bernhoft, Kohler and the other writers grouped round the Zeitschrift fur vergleichende Rechtswissenschaft."

If the concept of reciprocity is seen as a disconnecting factor in liberating anthropological thought from the narrow scope of modern legal dualisms, it should be no surprise that Weiner sees reciprocity as "a Western cultural construction." (1992: 17) Indeed, Malinowski's comparison was to certain degree one-directional and thus incomplete. He attempted to make the native law of the Trobriand Islands intelligible to Western academia, and the concepts of reciprocity, publicity, and civil or criminal law should be understood as points of reference for audiences located on one side of this comparison. It is nearly impossible to find an equivalent translation of modern law or legal thought for native peoples. Reciprocity should thus be seen not as a construct but rather as an empirical example of *similarity* (though unfortunately somewhat de-contextualised) that helped establish a comparative connection between modern law and the law of Others. Nevertheless, Malinowski's decontextualisation is acceptable if we consider the discipline's stage of development at the time. At the same time, however, it is necessary to conclude that whereas "[t]he comparative method and ethnographic fieldwork in the classic structural-functional Malinowskian sense are traditionally seen as opposed to each other" (Peacock 2002: 46–47), Malinowski himself freely intermingled the two. Comparison was neither suspect nor impossible for him, nor did he refrain from relying on the research of others. Whereas Nader claims that "[h]e was not a comparativist; he let his ethnography speak about Us, more or less *implicit* observations, whether he wrote about law and order, magic, science, and religion, or sexuality," (Nader 2011: 214) it would be more precise to say that he was not an *early* comparativist. He differed from them radically because his comparisons, perhaps one of the most persuasive distinctive features of his anthropology, were synchronous and thus disconnected from evolutionary schemes. Such synchronous, problem-oriented intercultural comparisons clearly demonstrate that, whereas evolutionary theory requires comparative studies, anthropological comparisons do not require evolutionary models.[17] The true difference between early comparisons and Malinowski's comparison was that Malinowski transformed comparison from a principal method into a principal conclusion of research. It was not the main stated aim of his ethnography, however, but rather a by-product. The tensions between ethnographic research conducted in a small community, though treated as a microcosm of a larger (e.g. Trobriand) cultural entity, and the risky procedure of intercultural comparison were not unambiguously resolved in favour of the former, nor the later. The problem-oriented approach did not allow for such an escape; instead, intensive personal fieldwork "created a new object of ethnographic study, which might prove to be related to similar institutions elsewhere." (Kuper 2002: 161) In this vein, Mauss – building primarily also on *Argonauts of the Western Pacific* – created the most influential anthropological comparison ever written (1925).

8. Participant observation and the law of natives

The character of the anthropologist, jurist, ethnographer or sociologist can hardly be considered as given. Instead, it must be constantly built up against the other academic identities, as their mutual differences are rather subtle. The disciplinary traditions share much in common, and thus what really matters is the configuration of those common elements and how they recast reality "through a mysterious transformation wrought by science" (Geertz 1967) into specific disciplinary outputs. For this reason it is necessary to be more careful when assessing Malinowski's place in time. As was mentioned above (in the section entitled "Lines of research"), Malinowski did not invent participant observation, but he placed this method before all others to form the core of anthropological methodology. This shift does not imply an absolute denial of other methodologies, but rather involves their reconfiguration – as with cross-cultural comparison, which newly appeared among the final research conclusions, or practices employed by comparative lawyers, which can be newly seen as a part of the ethnographic field embedded

[17] Cf., e.g., Wolf (2002:116)

within the conflict of legal systems. These elements have not disappeared. They are simply not among the principal methods of social anthropology.

Nevertheless, it was participant observation that benefited Malinowski the most , not only "in spite of his personal torments or because of them" (Geertz 1967) but also because it removed him from the legal theories found in various disciplines at the time – not because their leading proponents were thousands of miles away, but because their theoretical confidence (which would have influenced Malinowski at home) was replaced by the empirical facts about law that Malinowski himself detected so relentlessly in the field. Not only did these empirical facts affect Malinowski's knowledge, but one might say that they also changed his character or identity. Such are the implications of applying the participant observation method. Geertz poses an important question in this respect; ""Truly,' [Malinowski] says in the concluding sentence of the diary, 'I lack real character.' Perhaps; but it rather depends on what is meant by character" (Geertz 1967).[18] I would develop this idea further to suggest that personal character can also include legal identity (or rather, legal bias), which the ethnographer must overcome in the field.

Unfortunately this well-documented moment of transition from the normative attitude of earlier ethnography and legal theory towards the reflexive attitude of modern social and cultural anthropology has yet to be properly incorporated into our historical understanding of the evolution of the anthropology of law. Nevertheless, it is clear that the modern legal dualisms, which were a part of ethnographer's "home identity," were found to be inapplicable in the ethnographic field, and this was a direct result of the use of participant-observation methodologies that "were meant to allow the ethnographer to 'grasp the native's point of view, his relation to life, to realize his vision of the world' (Malinowski [1922] 1984: 25)" (Nader 2011: 214). This method made the earlier normative confidence appear inauthentic, since its schemes, postulates and propositions suddenly lacked any integrative central core in the new field of participant ethnography. It could be thus said that the abandonment of modern legal dualisms resulted in the partial loss of the ethnographer's original "home character," that the character did not pass the test of applying the participant observation method. Nevertheless, this "loss" must be considered an inevitable price for "underscoring the scientificity of ethnography by outlining three methodological tenets of research: […] attention to the imponderabilia of actual life and observed behaviour, and the recording of spoken statements indicating the mentality of native thought" (Nader 2011: 214).

Ethnographers had some difficulty handling this moment in the evolution of anthropological studies. They felt it as a tragic failure and continued to take the self-doubt generated by the disparity between theoretical beliefs and new empirical facts to the extreme, without noticing that this moment could be understood as a "zero-point", a true opportunity for the researcher to develop an entirely new disciplinary character by learning how to operate in a constantly changing and unpredictable environment, in a situation of constant cognitive dissonance. The footing that might save anthropology can be found in a cross-disciplinary or diachronic comparison with the disciplinary past before the use of participant observation. The introduction of this method had a progressive impact on the configuration of self-doubt. Before, the legal or anthropological scholar's self-doubt was concerned with the correspondence between the real world and his theoretical armchair thinking, but with Malinowski self-doubt was related to finding a "rapport" between the native's point of view and that of the ethnographer when both are in the same place at the same time, in the field. Sometimes, this leads to absurd situations in which an ethnographer questions participant observation as an "illusion" because he or she is not "fully equipped with the native eye" (Nakai 1994: 25–27). Such extreme soul-searching appears absurd when contrasted with today's eminent legal scholars who never even

[18] Geertz is referring to Malinowski (1967: 298)

imagined the possibility of a dissonance between legal dualisms and the outside legal world. Nor do they ever consider the relationship between legal science's confidence and its proximity to the views held within the centre of power.[19] While ethnographers realize that there is practically no such thing as an "uncontaminated native," most jurists have never read a single ethnographic or anthropological account about themselves over the ethnographer's shoulder. Although it is primarily the textual discipline of jurisprudence that goes back and forth between reading and writing, it is in fact ethnography that is concerned with the alleged predominance of writing over fieldwork. A cross-disciplinary comparison between social and legal science would thus provide some footing for those who are anthropologists only from within.

The anthropology of law also developed from the moment when anthropologists lost their original theoretical confidence by broadening the temporal and spatial limits for normative diversity. This was a small but decisive step, in which Malinowski played important part, and anthropology gathered a mass of new knowledge that generated empirically-based certainty, however limited in scope. Therefore, it makes no sense to understand the loss of the original dualistic identity as a failure and to use this view as a weapon for undermining the established authority of anthropology, for this opens the door to comparatively antiquated disciplines whose confidence comes rather from the low degree of self-doubt resulting from their greater isolation from the field (or its inaccessibility via conventional methods). The empirical authority of anthropology, the Malinowskian "I" of the participant observer, is a demanding but utterly desirable ideal in comparison with other disciplines' methods. From the perspective of cross-disciplinary comparison it can be hardly seen as a ghost of the colonial past. It is its clear opposite.

9. Conclusion

Firstly, I suggested that Malinowski be seen as a disciplinary Other, as it would diminish his significance to see him merely as a quasi-jurist. It was later found that although Malinowski was truly a disciplinary Other, different from legal scholars, he was more practically oriented than most jurists. His coordination of rigorous social science with cultural sensitivity brought very practical results. His research pointed out that the strict application of knowledge claiming to be universal or global can have drastic impacts without further knowledge of the specific context in which the conflict between legal systems takes place. Second, I proposed that several lines of research have been inspired wholly or in part by Malinowski's legal anthropology because he established law as an autonomous field of study (though one that was interconnected with other parts of culture) and because he insisted that even the official law of developed countries must be studied using the same methodology as the one he applied in his study of Trobriand legal systems. Third, I suggested that this new methodology based on participant observation helped to liberate anthropology from the categories and dichotomies associated with modern legal dualisms, for they cannot be applied in a situation where the researcher sees law as contained within the seamless web of the foreign culture. Fourth, I proposed that anthropologists take seriously Malinowski's suggestion that the distribution of law between the West and the rest must be treated in the same way as science, because they are both situated in the same way within Western cosmology as tokens of rationality. Fifth, I suggested detaching the concept of reciprocity from Malinowski's definition of law, because however significant it may be (as suggested implicitly by Malinowski himself) it is just one principle among many. Reciprocity as a defining attribute of civil law played another role in liberating anthropology from an excessively narrow understanding of law, but as a *legal* principle it was not too broad to affect the average person (to use an inappropriate legal metaphor). It helped to extend the scope

[19] For research in this field, see for instance the concepts of state science and nomad science in Deleuze & Guattari (2010: 19).

of commensurability in the way that Savage law can contain equivalents to all branches of modern law (albeit differently distributed), and made it possible to compare both European law with Trobriand law, i.e., with any non-modern legal system. Sixth, the relationship between suicide and the conflict of laws was used to emphasize the significance of Malinowski's still unrecognised discoveries related to native legal systems and their conflicting mutual relations, especially the "private international law of the natives," which is related to three different legal orders at least. Instead of being opposites, in Malinowski's study of law, ethnographic fieldwork and cross-cultural comparison were reassembled as a principal method and a principal research result. Seventh, participant observation was seen as a method capable of studying not only the cultural and social aspects of native law, but also the native legal systems themselves and their mutual conflicts, in which reciprocity played an important part. This was found as Malinowski's unrecognised starting point for the study of native legal dynamics, which helped him to avoid engaging in the codification that would freeze native "customs."

While studying the law of "disappearing worlds," Malinowski aimed to completely break free from the original division between normativity and facticity in order to master an entirely new discipline – an anthropology that would also study native law alongside the other domains of the foreign culture. Through his study of foreign cultures from Mailu to Kiriwina, he helped to establish another unique, no less exotic culture: the disciplinary culture of social and cultural anthropology, equipped to operate in spite of cognitive dissonances between differing normativities. The legal sciences of modern states could take this point into consideration and try once again to examine their own discipline's (academic) norms instead of forcing Malinowski's ideas on law back into the rigid framework of legal dualisms, which was clearly the tendency of several of Malinowski's critics. At the very least, by learning anthropology as a foreign language jurists could free themselves from their legal and disciplinary bias. And instead of translating their own juristic or legalistic language into that of the anthropologist or vice versa, it would be more useful for them to realise that the Malinowskian anthropological study of law can illuminate possible links between local or specific legal practices, institutions or artefacts and the general objective knowledge of legal sciences, which are usually obfuscated by the way legal theory intermingles those local and specific legal elements into an abstract, universalistic and apodictic language of legal science. This is not an easy task, for it has become clear that to travel with Malinowski may provide many of different experiences, but it will be far from a "placid trip" into "the idyllic reciprocal tranquillity of the islands."

Bibliography

- Abel, Richard (ed.). 1982. *The Politics of Informal Justice*. New York: Academic Press.
- Bohannan, Paul. 1957. *Justice and judgment among the Tiv*. London, New York: Oxford University Press.
- Bohannan, Paul. 1967. "Differing Realms of the law." In *Law and warfare: studies in the anthropology of conflict,* edited by Paul Bohannan, 43–50. Austin: University of Texas Press.
- Chanock, Martin. 2000. "New Introduction." In *Law as process: an anthropological approach* by Sally Moore: 1–31. Münster: LIT Verlag Münster.
- Conley, John and William O'Barr. 1990. *Rules versus Relationships: The Ethnography of Legal Discourse*. Chicago: University of Chicago Press.

- Conley, John and William O'Barr.1997. "Crime and Custom in Corporate Society: A Cultural Perspective on Corporate Misconduct." *Law and Contemporary Problems* (60): 5-22.
- Currie, Brainerd. 1959. "Notes on Methods and objectives in Conflict of Laws." *Duke Law Journal* (2): 171–181.
- Deleuze, Gilles and Félix Guattari. 2010. *Nomadology: The War Machine*. Seattle: Wormwood Distribution.
- Donovan, James and H. Edwin Anderson, III. 2003. *Anthropology & Law*. New York: Berghan Books, 2003.
- Engelund, Harri. 2015. "Law, law everywhere." *Hau: Journal of Ethnographic Theory* 5 (3): 267–271.
- Fortune, Reo. [1932] 2013. *Sorcerers of Dobu: The Social Anthropology of the Dobu Islanders of the Western Pacific*. London: Routledge.
- Fox, Richard and Andre Gingrich. 2002. "Introduction." In *Anthropology, by Comparison*, edited by Richard G. Fox and Andre Gingrich: 1–24. London: Routledge.
- French, Rebecca. 1995. *The Golden Yoke: the Legal Cosmology of Buddhist Tibet*. Ithaca: Cornell University Press.
- Geertz, Clifford. 1967. "Under the Mosquito Net." *The New York Review of Books* 9 (4): September 14.
- Gluckmann, Max. 1955. *The Judicial Process among the Barotse of Northern Rhodesia*. Manchester: Manchester University Press.
- Gluckmann, Max. 2012. *Politics, Law and Ritual in Tribal Society*. Chicago: Aldine Transaction.
- Greenhouse, Carol, Barbara Yngvesson and David Engel. 1994. *Law and Community in Three American Towns*. Ithaca: Cornell University Press.
- Haldar, Piyel. 2008. *Law, Orientalism and Postcolonialism: The Jurisdiction of the Lotus-Eaters*. London: Routledge-Cavendish.
- Hartland, Edwin. 1924. *Primitive law*. London: Methuen & Co. ltd.
- Hobhouse, Leonard. 1915. *Morals in evolution: a study in comparative ethics*. New York: H. Holt.
- Hoebel, Edward. 1951. "Review of Ralph Piddington, *An Introduction to Social Anthropology (Volume One)*." *American Anthropologist* 53 (2): 246-248.
- Hoebel, Edward. 1954. *The Law of Primitive Man: A Study in Comparative Legal Dynamics*. Cambridge: Harvard University Press.
- Hoebel, Edward. 1967. "Law-Ways of the Comanche Indians." In *Law and warfare: studies in the anthropology of conflict*, edited by Paul Bohannan, 183–294. Austin: University of Texas Press.
- Hutchins, Edwin. [1979] 1981. "Reasoning in Trobriand discourse." In R. Casson (ed.), *Language, culture, and cognition: Anthropological perspectives*, edited by R. Casson: 481–489 New York: MacMillan.

- Hutchins, Edwin. 1980. *Culture and Inference*. Cambridge: Harvard University Press.
- Josselin de Jong, Jan. *1948*. *"Customary Law: A Confusing Fiction*." In *Koninklijke Vereeniging Indisch Institut* 80 (29): 3-8.
- Kuper, Adam. 2002. "Comparison and contextualization: reflections on South Africa." In *Anthropology, by Comparison,* edited by Richard G. Fox and Andre Gingrich: 143–166. London: Routledge.
- Latour, Bruno. 2002. *La fabrique du droit. Une ethnographie du Conseil d'État*. Paris: La Découverte.
- Leach, Edmund. [1957] 1960. "The Epistemological Background to Malinowski's Empiricism." In *Man and Culture: An Evaluation of the Work of Bronislaw Malinowski,* edited by Raymond Firth: 119–138. London: Routledge & Kegan Paul Limited.
- Ledvinka, Tomas. 2012. "Cultural determination of jurisprudence and the anthropology of law." In *Towards an anthropology of the legal field: Critiques and case studies* by Tomas Ledvinka, Katerina Varhanik-Wildova et all. 50-63. Prague: Fakulta humanitních studií Univerzity Karlovy v Praze.
- Ledvinka, Tomas. 2016. "Subaltern Law: Legal Technology of Making the Law of the Other." In *Non-humans in Social Science, Vol. 3*, edited by Marco Stella, Petr Gibas, Karolina Pauknerova. Cerveny Kostelec: Pavel Mervart.
- Llewellyn, Karl and Edward Hoebel. 1941. *The Cheyenne way: conflict and case law in primitive jurisprudence*. Norman: University of Oklahoma Press.
- Lowie, Robert. 1920. *Primitive Society*. New York: Boni and Liveright.
- Macaulay, Steward.1963. "Non-Contractual Relations in Business." *American Sociological Review* 28 (1): 55-67.
- Macaulay, Steward. 1995. "Crime and Custom in Business Society." *Journal of Law and Society* 22: 248-258.
- Maine, Henry. 1873. *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*. London: Henry Holt & Co.
- Malinowski, Bronislaw. 1922. *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagos of Melanesian New Guinea*. London: Routledge and Kegan Paul.
- Malinowski, Bronislaw. 1926. *Crime and custom in savage society*. New York: Harcourt, Brace & Co.
- Malinowski, Bronislaw. 1927. *Sex and Repression in Savage Society*. London: Kegan Paul, Trench, Trubner & Co.
- Malinowski, Bronislaw. 1929. *The Sexual Life of Savages in North-Western Melanesia. An Ethnographic Account of Courtship, Marriage, and Family Life among the Natives of the Trobriand Islands, British New Guinea*. New York: Eugenics Pub. Co.
- Malinowski, Bronislaw. [1932] 2013. "Preface." In *Sorcerers of Dobu: The social anthropology of the Dobu Islanders of the Western Pacific*, by Reo Fortune: xvii–xxx. London: Routledge.

- Malinowski, Bronislaw. [1934] 1961. "Introduction." In *Law and Order in Polynesia*, by H. I. Hogbin: xvii–xxii. Hamden: The Shoe String Press.
- Malinowski, Bronislaw. 1935. *Coral Gardens and Their Magic*. London: Allen & Unwin.
- Malinowski, Bronislaw. 1944. *Freedom and Civilisation*. New York: Roy Publishers.
- Malinowski, Bronislaw. 1948. *Magic, Science and Religion and Other Essays*. Boston: Beacon Press.
- Malinowski, Bronislaw. 1964. "An Anthropological Analysis of War." In *War: studies from psychology, sociology, anthropology,* edited by Leon Bramson and George W. Goethals: 245 –268. New York: Basic Books.
- Malinowski, Bronislaw. 1967. *A Diary in the Strict Sense of the Term*. Stanford: Stanford University Press.
- Malinowski, Bronislaw. 2006. *The Early Writings of Bronislaw Malinowski,* edited by Robert J. Thornton and Peter Skalnik. Cambridge: Cambridge University Press.
- Malinowski, Bronislaw. 2015. "Anthropology is the science of the sense of humour: An introduction to Julius Lips' *The savage hits back, or the white man through native*." *Hau: Journal of Ethnographic Theory* 5 (3): 301–303
- Mauss, Marcel. [1925] 1973. "Essai sur le don. Forme et raison de l'échange dans les sociétés archaïques." In *Sociologie et Anthropologie*, by Marcel Mauss: 149-279. Paris: Presses universitaires de France.
- Mommsen, Theodor and J. A. de Moor. 1991. *European expansion and law: the encounter of European and indigenous law in 19th- and 20th-century Africa and Asia*. Oxford, New York: Berg.
- Moore, Sally. 2000. *Law as process: an anthropological approach*. Münster: LIT Verlag Münster.
- Nader, Laura. 1990. *Harmony ideology: justice and control in a Zapotec mountain village*. Stanford: Stanford University Press.
- Nader, Laura. 1996. *Naked science: anthropological inquiry into boundaries, power and knowledge*. New York: Routledge.
- Nader, Laura. 2011. "Ethnography as theory." *Hau: Journal of Ethnographic Theory* 1 (1): 211–219.
- Nakai, Asako. 1994. "The Ethnographic Unconscious: Malinowski and the Freudian Text." **大学院英文学研究会,リーディング**. **第**14**号**, 1994 (10.28): 22-35.
- Offner, Jerome. 1983. *Law and politics in Aztec Texcoco*. Cambridge, New York: Cambridge University Press.
- Peacock, James. 2002. "Action comparison: efforts towards a global and comparative yet local and active anthropology." In *Anthropology, by Comparison* edited by Richard G. Fox and Andre Gingrich: 44–69. London: Routledge.
- Pekala, Mateusz and Mateusz Stepien. 2012. "The relation between law and magic: Preliminary Remarks." In *Towards an anthropology of the legal field: Critiques and case studies* by Tomas Ledvinka, Katerina Varhanik-Wildova et all. 24-34. Prague: Fakulta humanitních studií Univerzity Karlovy v Praze.

- Pospíšil, Leopold. 1958. *Kapauku Papuans and their law*. New Haven: Yale University Press.
- Pospíšil, Leopold. 1968. "Feud." In *The International Encyclopaedia of the Social Sciences,* edited by David L. Sills and Robert K. Merton: 390–392. New York: The MacMillan Company and the Free Press.
- Pospíšil, Leopold. [1971] 1974. *Anthropology of law. A Comparative Theory*. New York: Harper and Row.
- Pospíšil, Leopold. 1973. "E. Adamson Hoebel and the Anthropology of Law." In *Law & Society Review* 7 (4): 537-560.
- Rosen, Lawrence. 1989. *The Anthropology of Justice: Law as Culture in Islamic society*. New York, Cambridge: Cambridge University Press.
- Redfield, Robert. 1948. "Introduction." In *Magic, Science and Religion, and Other Essays,* by Bronislaw Malinowski: vii–xi. Boston: Beacon Press.
- Redfield, Robert. 1967. "Introduction." In *Law and Warfare: Studies in the Anthropology of Conflict* edited by Paul Bohannan: 2–16. Austin: University of Texas Press.
- Riles, Annelise. 2011. *Collateral knowledge: Legal reasoning in the global financial markets*. London. University of Chicago Press.
- Scott, Colin. 2011. "Science for the West, myth for the rest?" In *The Postcolonial Science and Technology Studies Reader,* edited by Sandra G. Harding: 175–197. Durham: Duke University Press.
- Seagle, William. 1937. "Primitive Law and Professor Malinowski." *American Anthropologist* 39 (2): 275–290.
- Schapera, Isaac. [1957] 1960. "Malinowski's theories of law." In *Man and Culture: An Evaluation of the Work of Bronislaw Malinowski,* edited by Raymond Firth: 139–156. London: Routledge & Kegan Paul Limited.
- Singh Uberoi, J. P. 1962. *Politics of the Kula Ring: An Analysis of the Findings of Bronislaw Malinowski*. Manchester: Manchester University Press.
- Starr, June. 1992. *Law as Metaphor: From Islamic Courts to the Palace of Justice*. Albany: State University of New York Press.
- Tambiah, Stanley. 1990. *Magic, Science and Religion and the Scope of Rationality*. Cambridge: Cambridge University Press.
- Thomas, Yan. 1995. "Fictio legis: L'empire de la fiction romaine et ses limites médiévales." *Droits* 21 (July): 17-63.
- Tylor, Edward. 1871. *Primitive culture: researches into the development of mythology, philosophy, religion, art, and custom*. London: J. Murray.
- Visinger, Radek. 2012. "Anthropological Legitimisation of Restorative Justice." In *Towards an anthropology of the legal field: Critiques and case studies* by Tomas Ledvinka, Katerina Varhanik-Wildova et all. 35-49. Prague: Fakulta humanitních studií Univerzity Karlovy v Praze.
- Weiner, Annette. 1992. *Inalienable Possessions: The Paradox of Keeping-While-Giving*. Berkeley: University of California Press.

- White Geoffrey and Tu Kâwika Tengan. 2001. "Disappearing worlds: Anthropology and cultural studies in Hawai'i and the Pacific." *Contemporary Pacific* 13 (2): 381-414.

* * *