Savages Have No Crime!

Radcliffe-Brown on Social Sanctions and the Law

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Abstract: During 1931, Alfred Radcliffe-Brown gave a popular talk at Columbia University in New York. He maintained that, unlike in the West, savage societies – a term commonly used at the time – had no criminal class and had succeeded in enforcing conformity to social norms. In this article, I suggest that, despite its defects, the talk highlights central themes in Radcliffe-Brown's thinking about conformity, social sanctions and the law. Drawing on archival sources and on published material, I show how during fieldwork he observed the brutalities of colonial rule in the Andaman Islands, Western Australia and South Africa. I suggest that a critical awareness of how colonial law served as an ally of conquest forms an important sub-text in Radcliffe-Brown's writing on the effective manner in which Andaman Islanders maintained social order, Indigenous Australians settled disputes and African courts operated. His comparative, sociological approach, which was implicitly critical of Western societies, was a vital influence in the emergence of law as a topic of anthropological enquiry.

Keywords: Alfred Radcliffe-Brown, Andaman Islands, Australia, conformity, social sanctions, South Africa

During 1931 – when Herbert Hoover's prohibition laws were entrenched and the United States experienced an upsurge in violent gangsterism – Alfred Radcliffe-Brown gave a public talk at Columbia University. He did not refer directly to Hoover's laws, but compared the United States unfavourably to 'savage society' – a term commonly used at the time. 'Savage societies', he said, had no criminal class, and had succeeded in enforcing conformity to social norms, whereas the West had failed in so doing. The reason for their success lay not in their intellectual superiority, but in their strategy of solving problems by keeping them comparatively simple. He argued that 'savages' lived in small communities, where their lives were exposed to all and evil conduct was at once apparent. In Australia, elders prevented the development of

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law-breakers by eliminating anti-social youngsters before they grew up. Somehow, they ensured that the delinquents did not return from initiation ceremonies. Powerful religious sanctions also impelled obedience to 'tribal laws'. 'Savages' only passed such laws that everybody believed should be enforced. The entire community was interested in Indigenous trials and participated in enacting punishments. Punishment was justified by social indignation and enacted whilst people's emotions were hot and seething.

In the United States, Radcliffe-Brown said, adults grappled with the problem of converting delinquents into good citizens, and large numbers of people violated laws they did not believe in. Law-breakers had the support of powerful sections of the population. Whilst it was impossible to imitate 'savage life', he suggested, we could seek to adapt their principles to our way of living. The central need was for an informed, earnest, aroused and participating public. Once this was achieved, the problems of corrupt police and unscrupulous lawyers would solve themselves. American newspapers did spread social indignation, but when the trial was a long way from the commission of a crime, public interest dissipated. According to Radcliffe-Brown, we need to solve the problem of the remoteness of government and law if 'civilisation' was to survive. Unless the best brains stepped forward to accept this responsibility, he warned, 'the grandeur of our times will pass just as the glory of Rome'.

Largely forgotten today, the talk received some attention in the American press at the time, and was reprinted in its entirety in the Californian *Oakland Tribune* newspaper.[1] His argument falls short of the rigorous academic standards that often marked his work. Radcliffe-Brown uncritically used the derogative label of 'savage society' – possibly for dramatic effect. He subscribed to the view that social evolution implied the formation of broader and more complex social structures, which brought greater numbers of people into affective relations. Whereas an Australian tribe had only a few hundred members, Western civilisation moved towards the integration of the entire human race into a single community (Radcliffe-Brown 1930). But he described the division of the world into 'primitive' and 'civilised' peoples as mistaken. The term 'primitive', he wrote, described something at the very beginning of social life, and wrongfully implies that some existing societies had longer histories than others. It also does harm by its application to the most diverse types of social organisation (Radcliffe-Brown 1931). In the talk, Radcliffe-Brown is also inconsistent in his use of the concept of 'law'. Elsewhere, he carefully distinguishes between 'theoretical laws',

'legal rules' and 'socially sanctioned rules of behaviour'. The former is 'a general proposition, for which there is believed to be some empirical evidence, asserting some relation between phenomena or events. The typical example of a law of nature has always been the statement 'All men are mortal' (Radcliffe-Brown 1977: 49–50). Legal rules, on the other hand, refer to 'social control through organised legal sanctions by organised judicial authorities' (Radcliffe-Brown 1935a: 48).

Despite these defects, I suggest that the talk highlights central themes in Radcliffe-Brown's thinking about conformity, social sanctions and the law. In this article, I argue that he was convinced that compliance – that is, the regulation of conduct to compliance with the general social good – was less of a problem in small-scale societies than in the Western society. Drawing on archival sources and published material,[2] I show that during fieldwork he observed how Western law was an ally of colonial conquest, which led to the virtual extinction of Indigenous people in the Andaman Islands and in Western Australia. As such, a critical awareness of colonialism formed an important subtext to his writings on the more effective manner in which Andaman Islanders maintained social order and Australian Aboriginal people settled disputes. Later, whilst teaching social anthropology in Cape Town, Sydney, and Chicago, Radcliffe-Brown was vocal in his demands that cognisance be taken of Indigenous systems of morality and law. He used the idea of the 'savage society' as a utopian vision of social order, and as a means of highlighting the injustices of settler colonialism.

Fieldwork in the Andaman Islands and Western Australia, 1906–1912

It is hard to gauge when Radcliffe-Brown's interest in legal processes began. As student of moral and mental sciences at Cambridge University between 1901 and 1904, he entertained broad intellectual interests. But he was attracted to Montesquieu's assertion that there were general laws – that is, causes distinct from the accidental events of specific occasions – in the historical development of human societies. He was also inspired by Adam Smith's attempt to relate jurisprudence to the growing wealth of nations (Barnard 1992). But these interests were not pursued during his subsequent studies in anthropology at Cambridge (Stocking 1977).

During his fieldwork in the Andaman Islands (1906–1908) and in Western Australia (1910–1912), Radcliffe-Brown observed how legal

systems of the British administration of the Andaman Islands and the settler state of Australia worked to the detriment of local people. When he arrived at Port Blair, the Andaman Islands had been thoroughly colonised and 'assumed the contours of an open-air prison' (Weston 2008: 217). During 1858, the British government of India had established an offshore incarceration facility for sepoy mutineers and revolutionaries in town. Also confined to the prison were men convicted of murder, theft and unnatural offences. Sentences for the latter crime, a proxy for homosexuality, varied from ten years to life (Weston 2008: 218). By 1906, there were 14,496 prisoners. They worked in mills to produce coconut oil and suffered the most capricious punishments, such as public flogging. The Chief Commissioner of the Andaman and Nicobar Islands was also the superintendent of the prison and colonial settlement. The administrative officials, too, were exiles from Europe and the Indian mainland.

Between 1858 and 1901, the Indigenous Andaman population declined from about 5,500 people to only 1,559 (Brown 1932: 17). Confinement to encampments called Houses hastened the demise of the former hunting-and-gathering economy, and facilitated the spread of infectious diseases to which the islanders had no immunity (Tomas 1991: 81). Prison authorities supervised the Houses and could move orphaned children to nurseries, where they were forbidden any contact with Andamanese adults. Only the Jarawa, a rebellious Andaman group, remained outside, attacking work parties and robbing colonial gardens.

In this context, there was a definite interplay between incarceration and ethnography (Weston 2008). Colonial search parties – comprising prison officials, police and trackers – traced escaped convicts, children evading boarding facilities, and persons suffering from advanced syphilis. The very same parties also helped conduct censuses, locate ethnographic subjects and collect items of material culture, such as arrows and net bags. At first, Radcliffe-Brown confined his investigations to Port Blair. He later visited Rutland Island with the Assistant Conservator of Forests and travelled about with a 'bush police' unit. The unit was headed by a Hindustani convict called Jamander, and staffed by twenty Andamanese men.[3] On 12 September 1906, he left Port Blair for the North Andamans on RMIS Mayo with Jamander and a party of eight Andamanese boatmen. Then with an 80-foot canoe, they sailed from Interview Island in the North to Port Blair. Only during 1907 did he begin to do fieldwork, and it was in a previously unexplored location in the Northern Andamans.

Throughout his fieldwork, Radcliffe-Brown maintained cordial relations with the Commissioner. He was paid directly for his research by the Port Blair treasury, and secured rations for his research participants from the government. He nonetheless opposed brutal colonial practices, such as the incarceration of homosexuals. His discontent was clearly apparent in his introduction to *The Andaman Islanders* (1922). The decimation of local people by disease, he writes, 'has been the result of European occupation of the Islands' (1932: 17). He also understood the hostility of people, such as the Jarawa, as justifiable resistance. 'The Andamanese' he writes, 'have made a determined effort to oust invaders from their country' (1932: 10). The monograph shows great appreciation for the intricate social organisation of people often portrayed as 'a savage race of cannibals' in colonial discourses (1932: 6).[4]

Radcliffe-Brown sought to demonstrate how the Andamanese maintained an ordered social life without recourse to formal political and legal institutions. Unlike E. H. Man (1883: 85), Radcliffe-Brown saw chiefship as a colonial invention rather than an Indigenous institution. He observes that officers of the Andaman Houses appointed trustworthy men, called *raja*, as intermediaries with government (1922: 47). Traditionally, elders regulated the affairs of local groups. Although they received the best share of food, they had no power to punish. The islanders nonetheless had a keen sense of morality, and a well-developed social and ethical consciousness. Anti-social acts were sanctioned by social ridicule, and injured parties themselves avenged murder, theft and adultery.

He also considers the significance of rituals – such as those connected with birth, initiation, burials and peace-making – and myths as constructing and expressing social sentiments that provide a common psychological basis for social interaction. These sentiments compelled individuals to regulate their conduct to conform to general social need. Radcliffe-Brown observed that the simple act of weeping, so common to many rituals, called into existence tender emotions that established social bonds. Body decorations expressed the value of specific persons to the group. Likewise, the belief that certain objects possessed mystical power showed their contribution to social welfare. Far from being childish fantasies, he contends, legends and myths pertained to phenomena that profoundly affected people's social and moral lives. They expressed social categories and through relaying the deeds of heroic ancestors highlighted society's dependence on the past. Also, the personification of natural phenomena such as the monsoon and the portrayal of the

ancestors as animals such as the monitor lizard associated the social and natural orders.

In Western Australia, Radcliffe-Brown witnessed further brutalities. In 1827, James Stirling, a British naval officer, colonised the territory along the Swan River, and divided the land of Aboriginal people into farms for retired British soldiers. Seven years later, during the Pinjarra Massacre, armed settlers killed 100 Aboriginal people. The Aboriginal Act of 1905 made Chief Protectors in each state legal guardians of all Aboriginal and 'half-caste' children. The Protectors could separate children from their parents to be placed in custodial situations; order Aboriginal people to move camp from the vicinity of towns; and prohibit non-Aboriginal persons from entering their land. Only with their consent could Aboriginal people plead guilty in courts of law or marry European spouses.

Radcliffe-Brown did fieldwork with the consent of the Western Australian Agent General but worked independently of government. From October 1910 to December 1911, he travelled extensively through the north-western parts of the state to plot the distribution of cultural traits amongst its surviving Aboriginal population. But the effects of European overrule were only too apparent. He, the amateur ethnographer Daisy Bates and Cambridge biologist Grant Watson spent a few weeks recording information on kinship terms and marriage classes in the Sandstone district. One morning, a police posse entered their camp on horseback, firing rounds from their revolvers at Aboriginal dogs. The posse was in pursuit of men from Lake Darlot, whom they alleged had killed members of a rival group. Radcliffe-Brown told the police that their raid had effectively ruined his work. Then, when the posse departed, two suspects who had taken refuge with him emerged from the interior of his tent (Watson 1946). The posse also raided other camps and transported half-caste children and people with syphilis to prison.

From Sandstone, Radcliffe-Brown's party travelled to Bernier and Dorre Islands, where the West Australian government had established a lock-up hospital to isolate Aboriginal persons with venereal disease. This was done in fear that the disease might come back to the white population. Police used violent methods to gather diseased people, and chained them together by their necks to transport them to the islands. Of the 353 people admitted to the islands between 1908 and 1910, 76 died of the disease (Falkiner 2011: 126).

From mid-February 1911, Radcliffe-Brown, Watson and a Scandinavian chef, Olsen, travelled along semi-dry riverbeds between the Ashburton and Gascoyne Rivers, moving from pool to pool where

Aboriginal people gathered to spearfish and hunt. They also visited inland sheep stations. Here, Radcliffe-Brown observed the devastating effects of land expropriation and new diseases. He recorded only fifty survivors of the Baiong tribe and even fewer of the Naola tribe. On 5 April 1911, he told an audience at the Masonic Hall in Carnarvon why he thought Aboriginal people were dying out so rapidly:

> Their hunting grounds are being occupied as stations or goldfields, and the game on which they subsisted is necessarily diminished. Many of them are obliged to change their habits of life. Clothes, to which they are not used, and for which they have no need are given to them and weaken their lungs and skin. Many of them live on foods to which they are not accustomed. But the most important causes concern the introduction of new diseases.[5]

On 12 April, Radcliffe-Brown, Olsen and an Aboriginal interpreter headed north-west through the Ashburton for their final six-month stint of fieldwork. Here, Radcliffe-Brown observed that the numbers of Ngaluma had declined from about 300 people in 1864, to only 60 in 1910, largely due to smallpox.[6] There had been a similar decrease among the Kariera. Although settlers had been occupying their territory for fifty years, their attachment to their land had not been broken:

> At present day, natives are living on sheep stations that have been established in their tribal territories . . . The squatters [whites] made use of the natives as shepherds . . . they found it impossible to persuade a native to shepherd sheep anywhere except in his own country . . . Just as the country belonged to him, he belonged to it.[7]

Radcliffe-Brown records that the Panjima called white people *kuwuru*, meaning devil-devil.[8] Upon his return to England, he wrote a sixty-page entry on 'Australia' for the edited volume *Customs of the World* (1913). His entry makes no reference to colonial brutalities, but includes a brief section entitled 'War, Vengeance and Justice'. He deemed the social organisation amongst the Aboriginal people to be segmentary, and wrote that people settled disputes through duels with boomerangs or spears. In the case of punishment, a person was forced to stand whilst others threw spears at him or her.

Later, in a series of public lectures at the University of Birmingham, he said that anthropologists aimed to discover how Indigenous social institutions were a product of 'natural law'. He also reflected more generally on the topic of crime and punishment. Acts were deemed to be criminal when they offended all members of society. Punishment was not designed to reform the criminal, but rather to strengthen the

feelings on which the morality of society depended. A certain amount of crime therefore served positive social functions. Yet the proportion of crime may become so great as to be abnormal.[9]

Teaching anthropology in Cape Town and Sydney, 1920–1931

During his tenure at the Universities of Cape Town (1920–1925) and Sydney (1926–1931) Radcliffe-Brown often spoke out against the inequities of colonialism, and occasionally reflected on the merits of Indigenous law.

In South Africa, white minority rule was firmly entrenched. By 1919, few Africans held voting rights, and land alienation was extreme. Africans were legally prohibited from acquiring land outside native reserves, which comprised only 8 per cent of the country's land surface. Yet more than a million African labour tenants resided on white-owned farms, and over 200,000 African men worked on the Witwatersrand mines, which produced 40 per cent of the world's gold. Even larger numbers of African factory workers resided in rapidly growing urban slums and townships (Beinart 1994: 98). During the early 1920s, South Africa's Prime Minister, Jan Smuts, deployed military force to suppress an uprising by Africans at Bullhoek, the Bondelswarts Rebellion in Southwest Africa and a strike by white workers over the employment of African labourers in the mines.

In his inaugural lecture, Radcliffe-Brown proclaimed: 'Segregation is impossible'.[10] Conditions in South Africa had brought together widely different social types. 'We have to form, as it were, one whole society, incorporating them with ourselves'. This made it imperative to acknowledge Indigenous laws. Europeans, he said, often passed laws 'without bothering to ask whether they were in accordance with the dictates of the natives' consciousness'. In one case, a European court charged a woman who did away with her baby twins with infanticide. Yet, in doing so she acted in the belief that she saved her tribe from calamity. Natives often obeyed laws 'only because of their fear of the power of the white man'. In this situation, anthropology was vital for future guidance. 'We would not trust ourselves to a pilot who knew nothing about navigation, yet we trusted our government to people who, as a rule, had but the slightest knowledge of the laws which regulated the growth and change of the human society'.

To make anthropology relevant to broader concerns, he taught 'Bantu Customary Law' to both anthropology and law students. Isaac

Schapera's notes of his undergraduate lectures contain a large section on law.[11] These were based on broad reading of ethnographic material and show an earnest attempt to use Western legal constructs to illuminate Indigenous law and *vice versa*.

In lectures, Radcliffe-Brown outlined the difference between social and legal sanctions as means of enforcing social obligations. In 'primitive society', he identifies three types of legal sanctions: (i) punitive; (ii) restitutive; and those of (iii) delict. He postulates that systems of law might arise from procedures regarding delict and retaliation. Only individual retaliation existed in small-scale societies. This gave rise to limited vendettas in segmentary societies. When a man from segment A killed a man from segment B, a man from segment B retaliated by killing a man from segment A in return. With the rise of centralised authority, society retaliated against killings and developed substitutes to vengeance. As such, the law of delicts shifted to the law of torts (civil law) and the law of crime (penal law). Alternatively, he postulated, criminal procedures arose from reactions against the transgression of taboos that unleashed states of pollution. Authorities might, for example, expel someone who had committed incest from the village.

There were three different kinds of judicial authorities in sub-Saharan Africa. In the most democratic situation, among the Kikuyu, a council of elders, comprising all men of certain age grades, heard cases. Among the South African Bantu, chiefs, acting on the advice of councillors, legislated and arbitrated in disputes. And in a situation of sacred kingship, as among the Bushongo, the king was the supreme judge. He, too, might be assisted by specialist judges for cases concerning the use of sharp instruments, marriage, theft, suicide and witchcraft, and by a person who administered the poison oracle.

Murder, homicide, theft and adultery were treated as delicts with some recognition of torts. As an alternative to blood vengeance, the perpetrators might be required to compensate relatives for the slain person. In the case of accidental homicide, the Bathongo sent a girl to relatives of the deceased, and as soon as she bore a child in the name of the deceased man, she was free. Amongst the Kikuyu, payments serve both as compensation and punishment. The guilty person gave ten cows to the family of the deceased, an eleventh to his widow and a bull to the council of elders. They sacrificed the bull to purify him. This principle is also evident in the cases of theft and adultery, where the value compensated was always greater than the value taken. If a man had taken two cows, he repaid four to the person from whom he stole, and one to the chief.

A common feature of Bantu law was collective responsibility for delict and individual responsibility for crime. In cases of delict, the relative of a man and even the village headman might be ordered to pay compensation, and guilt attached not only to the killer, but also to everything related to the killing. Incest, offences against chiefs, and witchcraft were treated as crimes because they produced uncleanness. The sentiments of abhorrence that attached to incest explained why transgressors were sometimes put to death. Offences against chiefs and kings were judged harshly because misfortunes that affected them were also believed to affect others. In witchcraft, the culprit used mysterious forces, which normally enhanced social welfare, for malevolent purposes. Amongst the Kikuyu, all those who executed a witch had to be purified by a special elder before they could return to the village.

During 1923 and 1924, Radcliffe-Brown arranged vacation schools to provide missionaries and civil servants with training in native languages, customs and customary law. François Malan, a Cambridge law graduate who took charge of the day-to-day administration of the Native Affairs Department, gave the opening address of the second vacation school.[12] Malan made a passionate plea for the study of 'Native Law', and expressed sympathy for demands that government should recognise polygamous marriages and marriages constituted by bride-wealth.[13] Radcliffe-Brown also accepted invitations by M. T. Welsch, Chief Magistrate of the Transkei, to address white magistrates and African chiefs at the General Territorial Council on Anthropology and Customary Law.

Later during 1924, after J. B. M. Hertzog's National Party had defeated Jan Smuts' African South African Party during the national election, Radcliffe-Brown's orientation changed from critical engagement to protest. Hertzog's government enforced more complete racial segregation, adopted a 'civilised labour' policy that favoured the employment of white workers in state-run enterprises and sought to retribalise urban Africans. During 1925, Radcliffe-Brown did not organise a vacation school, but testified before the National Economic and Wage Commission.[14] He stated that Africans should be entitled to the same opportunities for progress as white citizens. White people had admitted natives – or in fact put them – into their economic system. As such, they deserved all the rights that belonged to it. He warned that, unless government made proper provision for Africans in town, it would facilitate the emergence of a large criminal class. 'There is only one place for the outcast in our civilisation and that is the ranks of the criminal' (1932: 22).

Radcliffe-Brown also argued for the recognition of the native's point of view in matters of law. In the past, he argued, thieves were required to compensate the sufferer, and adulterers the damaged husbands. 'Now the complainant goes to the police, the thief is imprisoned, and he gets nothing' (1932: 27). He also criticised the prosecution of African migrants who broke their labour contracts. 'The European lawyer has, with a singular lack of logic, treated the breaking of contract as a criminal offence'. Africans treat debt seriously, but 'no such thing as contract exists in Native Law. The native looks at the contract as a mysterious device on the part of the white man for getting the best out of him' (1932: 32). When asked whether the penal clause was necessary to protect the employer, Radcliffe-Brown replied: 'The employer seems to have adequate protection already'.

During his tenure at the University of Sydney, Radcliffe-Brown directly influenced the development of anthropology by overseeing the allocation of generous Australian National Research Council (ANRC) grants to fund fieldwork in Australia, New Guinea and the outlying Melanesian islands. He also embraced the role of a public intellectual, giving many public lectures and talks, in which he spoke out against the injustices perpetrated by Australian states. He consistently highlighted the refusal to recognise Aboriginal land rights, and the potential extinction of Indigenous people.

In May 1927, Radcliffe-Brown participated in a conference on the fate of Aboriginal people.[15] Participants condemned the disgraceful manner they had been treated by white Australians and the disregard of their welfare by the Australian government. He, himself, stated that Aboriginal people had strict and exact property laws and felt entitled to the cattle whites drove onto their land. The conference sent a delegation to meet Mr Marr, Australia's Minister of Home and Territories. They requested that he appoint a Royal Commission to enquire into matters such as punitive expeditions, the employment of Aboriginal workers by pastoralists, land rights and medical care.

In other talk, on 11 October 1928, he told the Australian Federation of Women Voters that colonial rule was to blame for the near extinction of Aboriginal people.[16] When Governor Philip first came to Australia in 1788, he said, there were 300,000 Aboriginal people – now there were only 60, 000. 'We alone are responsible for this reduction in less than half a century!', he said at a lunch-hour meeting of the Legacy Club. 'If you counted the Aborigines who had been shot by white and black police, I venture to say that they would number more than the present Aboriginal population of Australia'.[17]

During January 1930, he gave substantial input to a memorandum, sent by the Royal Anthropological Institute to James Scullin, recently elected Prime Minister of Australia, to request that control of Aboriginal protection be transferred from the states to the commonwealth.[18] But he cautioned that the present system in Central and Northern Australia had not proven more satisfactory. 'The last massacre of natives was by a policeman in federal service . . . and a far from impartial commission by the federal government justified him'.[19]

In a talk at Canberra, he criticised the entire colonial enterprise:

> The white races, and particularly members of the British Empire, have adopted the view that they have the right to take over immense areas of territory in Asia, Africa and Oceania; concerning in all many millions of inhabitants, and to impose upon the peoples of these countries many important changes of culture . . . How long the peoples of India and Africa will permit us to exercise control over their destinies, or how long we shall continue to think we have the right to do so, I don't know. (Radcliffe-Brown 1930: 4, 12)

At the same time, Radcliffe-Brown extolled the virtues of Indigenous social organisation. He commented that Aboriginal people 'were as intelligent as any race on earth'.[20] A school run exclusively for Aboriginal children by missionaries at Cape York regularly attained the highest grades in Queensland. Aboriginal people built a culture delicately adjusted to an inhospitable environment and discovered over 2,000 vegetable foods.[21] Their so-called 'superstitions' were in fact sacred beliefs of fundamental social importance. He also drew attention to their deep respect for elders and keen sense of justice. What was crucial to the maintenance of social order, he argued, was the absence of any clear distinction between moral law and natural law, as discovered by science. For example, Aboriginal people might attribute a drought to evil-doing within the community, which offended the spirits, and seek to control these through expiatory sacrifice.[22] He saw totemism as part of the process whereby humans constituted ritual relations with natural species. In segmentary societies, each segment had a specific relation with a particular natural species. In this way, people mapped nature onto social structure and *vice versa*. This gave social structure the status of permanence and inevitability (Radcliffe-Brown 1930, 1931a).

Chicago, Oxford and beyond, 1931–1955

At the University of Chicago, where Radcliffe-Brown was free from administrative responsibilities, and from the need to advertise anthropology to broader audiences, he could explore the topic of law at a more abstract and theoretical level. But he entered a society still in the grips of the Great Depression, where Herbert Hoover's conservative policies enhanced social discontent. Moreover, war clouds were gathering in Europe, as Adolph Hitler's fascist movement rose to power in Germany. In his popular talks, Radcliffe-Brown frequently painted a somewhat dystopian picture of contemporary society and made it clear that social evolution and technological advancement did not equal moral progress. In the talk described in the introductory section of this article, he warned against the failure of the American legal system and the rise of rampant crime. On 12 May 1932, he told his audience at the Chicago Women's Club that, in the age of invention and modern thought, family ties were being crushed by the rise of individualism. With this breaking down, he said, have come our social difficulties – divorce, insanity, suicide, selfishness and crime.[23] Radcliffe-Brown also spoke forcefully against racial ideologies. In September 1936, he told a conference organised by the Chicago Round Table for Jews and Christians that the doctrines of racial superiority and inferiority were myths. All inhabitants of civilised regions, he said, were the result of racial intermixture over many centuries.[24]

Radcliffe-Brown became embroiled in theoretical arguments with proponents of the Boasian tradition, who adopted an historical approach to the study of culture, and with Bronisław Malinowski, who began to analyse social institutions in terms of their utility with regard to meeting biological needs. In a paper entitled 'Patrilineal and Matrilineal Succession' (1935b), presented to a symposium of legal scholars, Radcliffe-Brown challenged the tendency of American anthropologists to de-emphasise the transmission of rights through descent. Amongst the Kariera, he argues, rights over people were more significant than those over property. Possessions such as weapons, tools and utensils were easily disposed of after death. However, men had clear rights *in personam* and *in rem* over their wives and children. Men could require them to perform certain obligations and were entitled to indemnity when they suffered injury. In legal terms, he argued, we can see the Kariera horde as a 'corporation' with an 'estate' (a collection of rights over persons and things). The horde jointly occupied and exploited a particular territory. Outsiders were not allowed to take animal,

vegetable and mineral products from the horde's territory without permission, and transgressors could be justifiably killed. The horde also had rights *in personam* and *in rem* over its members. Its members owed duties to it, and if they were killed, then the horde conceived of itself as having suffered injury. If a woman became widowed, or children were initiated, rights over them passed from the husband or father to the horde. This observation challenges the colonial concept of *terra nullius*, which posits that Indigenous Australians did not establish legal sovereignty over the land on which they lived. He shows that Aboriginal people had clear concepts of rights and ownership that were translatable into Western legal terms (Asch 2009).

The paper also challenges Western arrogance. Unlike many American scholars, he does not see a system of bilateral descent as it exists amongst the 'Teutonic' people of Europe, in which the child derives equal rights through the father and mother, as most common in human history. By contrast, Radcliffe-Brown asserts that unilineal (patrilineal or matrilineal) descent is necessary for an ordered political system. For social stability and continuity, it essential that rights are defined in such a way as to avoid possible conflicts of interest. In unilineal systems, property and status are transmitted along the same line and rights in *personam* and in *rem* are defined with greater precision and consistency than is possible in the case of bilateral descent.

Based in Chicago, Radcliffe-Brown (1933, 1934) wrote entries entitled 'Primitive Law' and 'Social Sanctions' for the *Encyclopaedia of the Social Sciences*. Again, he pointed to the congruence between 'primitive' and 'modern' legal precepts. In the first entry, he defines law as 'social control through organised legal sanctions' and makes a crucial distinction between laws of private and public delict. In the case of private delict, a person who suffered loss or injury appealed to judicial authority to decide upon the award of damages. Private delicts included killings, injuries, theft, adultery and failure to pay debts. In the case of public delicts, authorities sanctioned persons for deeds such as incest and witchcraft that offended moral sentiments of the entire community.

Many societies used customary procedures to regulate retaliation by aggrieved groups. In Australia, the injured party obtained satisfaction by throwing boomerangs at the culprit or by spearing him in the thigh. Among the Yubok of Northern California they negotiated for the payment of 'blood money'. But these procedures were not legal systems in the modern sense, because judicial authorities did not hear evidence and assess damages. The arbitration of disputes by elders in East Africa came closer to a legal system for private delicts. But they

left it to claimants to enforce their judgements. The elders could, however, pronounce curses against those who offend the entire community, execute witches or expel them from the district. Modern criminal and civil law, he argued, derived from procedures to deal with private and public delicts.

In the second entry, he (1934) formulates a typology of social sanctions that motivate individuals to regulate their conduct by the standards of the communities in which they lived. 'Consciousness', he writes, 'is the reflex of the individual to the sanctions of the community' (1934: 205). He distinguishes between four kinds of sanctions: (i) 'diffuse positive sanctions' are the public recognition of acts as pleasing to the gods, or as producing religious merit; (ii) 'organised positive sanctions' comprise the right to wear decorations and the award of honours, titles and monetary rewards; (iii) 'diffuse negative sanctions' are expressions of disapproval and the recognition of acts as producing states of sin, pollution or retribution in an afterlife; and, finally, (iv) 'organised negative sanctions' refer to procedures directed against those who engaged in disapproved behaviour. These might comprise exclusion from social life, the infliction of bodily harm, or penal sanctions. Radcliffe-Brown argued that to some extent diffuse sanctions controlled the conduct of warfare. More important than the effects of sanctions upon those to whom they are applied, he argued, were their general effects upon communities applying the sanctions. Sanctions were frequently a reaction against events that affect social integration, and they aim to restore social euphoria.

Malinowski (1934) points to the deficiencies of Radcliffe-Brown's approach. Radcliffe-Brown, he argues, wrongly assumes that, in societies with judicial authorities, law was always collectively and automatically enforced and that, in societies without these, social sanctions invariably supported customs. This approach broke down on several scores. First, we are not faced with communal states of consciousness, but rather with personal resentments, thwarted ambitions and jealousies. Second, it does not account for submission to custom in areas of behaviour outside political influence. Finally, he fails to distinguish between valid sanctioned customs and neutral ones that are regularly breached. Ultimately, Radcliffe-Brown falls prey to the stereotype of the 'automatically law-abiding native' (1934: xxiii–xxvii).

Malinowski's greater methodological individualism aims to recognise 'the living, palpitating, flesh and blood organisms of man which remains somewhere at the heart of every institution' (1934: xxxii). In *Crime and Custom in Savage Society* (1926), he argues that in the Trobriand

Islands it was the binding force of reciprocity, rather than social institutions such as courts and the police, which maintained social order. Different forms of reciprocity – such as exchanges of fish and yams, marital transactions and the mutual performance of mortuary feasts – gave rise to rights, obligations and prohibitions that constituted the essence of civil law. Whereas generosity as an exchange partner won prestige, the violation of reciprocity provoked social disapproval. Punishment often amounted to the exclusion from reciprocity. Malinowski cites the suicide of a young man who incurred the wrath of others for having engaged in incest, thereby precluding reciprocal marriage transactions. Rules, he argues, did not merely imply obligations, but also afforded privileges. Penalties for adultery were less important to marriage than the positive inducements offered by the mutuality of services.

Radcliffe-Brown responds that Malinowski misunderstood his position. He does not suppose that all social usages were maintained or that we should eliminate individual and biological elements from the analysis of culture (1935a: 47). But he professes not to know what Malinowski means when he writes that laws and customs are physiologically and psychologically sanctioned. But their most important difference lay in the use of words. By law, Malinowski means 'socially sanctioned rules of behaviour'. In terms of this view, the rule that one should not partake in mass without proper spiritual preparation was a law, since it was subject to spiritual sanction (1935a: 47). Instead, Radcliffe-Brown defines laws as rules of behaviour subject to legal sanctions by organised judicial authorities (1935a: 48). He would not disagree if Malinowski substituted 'sanctioned usage' for 'law'.

Radcliffe-Brown never again wrote about law. But in November 1946, shortly after his retirement from Oxford University, he gave four lectures entitled 'Law and Society' at the London School of Economics. In the first lecture,[25] Radcliffe-Brown explained that social anthropologists endeavoured to compare legal systems and study the social functions of law. It was easier to ascertain the problematic relations between 'law', 'justice' and 'force' in 'primitive societies'. Law referred to the formulas of actions that regulated wrongdoing and redress, justice to the punishment of wrongdoers and satisfaction of the injured party. These processes regularly diverged. In colonial situations, the African wanted justice but instead received the 'law of the white man'.

He disagreed with Charles Hughes (1928) that law is a statement of the circumstances in which public force is brought to bear on a man through the court. Modern criminal law relied on organised force administered by institutions such as the police. But judgements could also

be derived through arbitration courts, where force did not apply. In Europe, bodies of druids, and in Africa, councils of elders, indicated right and wrong without enforcing judgements. Here, public opinion served as a deterrent. In the Andaman Islands and Australia, injured parties voiced complaints to gain public support before resorting to self-help against wrongdoers.

Radcliffe-Brown also distinguishes between 'crime' and 'injury'. 'Crime' referred to deeds such as the breaking of taboos that negatively affect social well-being. Criminals were removed from the community. In ancient Greece, they were shamed and placed in 'prison cages' at public thoroughfares. 'Injury' referred to deeds such as theft and murder, which caused suffering to individuals or small groups. Radcliffe-Brown considers various means of settling injuries, satisfying the injured and indemnifying the wrongdoer. These include mediation, the return of a 'gift' of equivalent value and retaliation, as in European duels. He also points to the difference in individual and collective responsibility. An example of the latter is the bombardment of an entire village when a white man was killed by a native. These procedures aimed to restore breaches in group solidarity and deter future wrongdoing.

In his final lecture, Radcliffe-Brown contemplates how states came to police individual behaviour and punish murder. This is partly due to the weakening of the family. In South Africa, fathers received compensation for the death of unmarried women; husbands for those of married women; and chiefs for those of adult men. In old English law, homicide concerned the sibs, but later kings demanded compensation for the loss of subjects. City fathers also came to see bloodshed as polluting the city's religious beliefs, and punished wrongdoers to prevent further pollution. A criminal class emerged when punishments brought neither benefits nor losses to social groups. He argues that national law was the result of public opinion on a national scale, and that international law was only effective when public opinion guided the solidarity of international society.[26]

The Hidden Hand of Radcliffe-Brown

Radcliffe-Brown's lasting contribution the development of the anthropology of law is not to be found in his writings or in his talks, but rather in the work of students and mentees. His hidden hand is evident in the first ethnographic studies of the sanctions and courts in Polynesia,

native North America and Southern Africa. As chair of the Australian National Research Council, he supported Ian Hogbin's Master's dissertation on legal processes on the Solomon Islands. At the University of Chicago, he supervised the fieldwork of John Provinse amongst Plains Indians. Provinse (1937) distinguished between 'primary sanctions, that protected the interests of social groups, 'secondary sanctions', which protected those of individuals, and 'mixed sanctions.' He also includes valuable descriptive material on policing, punitive measures, and mechanisms to curb excessive individualism. In the classical study, *Handbook of Tswana Law and Custom* (1938), Isaac Schapera, Radcliffe-Brown's first graduate student, upholds his distinction between social and legal sanctions as imposed by Indigenous courts. Radcliffe-Brown (1938) praised the study as compiled with great skill and scholarly care. He argues that Schapera shows how anthropologists with adequate knowledge of law can make a more important contribution to the comparative study of law in Africa than lawyers in the service of African administration. Schapera possessed intricate knowledge of Tswana society and does not attempt to fit African procedures into our own rigid scheme of juridical conceptions.

Radcliffe-Brown's approach is also known through the work of Max Gluckman, with whom he entertained a lively correspondence before the publication of *The Judicial Process among the Barotse of Northern Rhodesia* (1955). During 1952, Gluckman wrote to Radcliffe-Brown[27] that the writing of his 'law book' had been delayed because he had become embroiled in deep legal and philosophical problems. 'I have expanded and clarified it since you read it'. He observed that Barotse litigants followed the same norms as judges: 'Another interesting point arises from the common belief (which you once stated to me) that Africans assume that a man is guilty unless he proves he is innocent'. Gluckman argues that this was because judges were not umpires of legal duels, as in England, but actively cross-examined witnesses: 'To cross-examine one has to act as if one believes that the accused or the witness is lying'. Finally, Gluckman suggested that the imprecision of legal concepts functioned to enable judges to cover a great variety of cases and a changing variety of circumstances.

Radcliffe-Brown replied[28] that he was delighted that Gluckman would deal adequately with the 'primitive law' after the confusion Malinowski had produced. He reaffirmed that the injunction 'Though shall do no murder' is a moral and religious rather than a legal rule. A legal rule refers to what should be done in judicial processes by constituted authorities. The legal rule in England is: 'If a person is accused

or suspected of murder he shall be arrested and brought before a judge and jury who will consider the evidence and if he is found guilty judgement to that effect shall be pronounced and he shall be condemned to be hanged'.

Gluckman was critical of Radcliffe-Brown. In a letter to Clyde Mitchell, he argued that the distinction between moral and legal rules was not always clear, and that Lozi courts indirectly influenced ethical rules. He also expressed trepidation that his approach might be 'a bit simplistic' because Radcliffe-Brown approved of it (Gordon 2018: 355). But Gluckman's (1955) use of the concept of the 'reasonable man' in Barotse jurisprudence resonates with Radcliffe-Brown's position on the translatability of legal concepts. In his debate with Paul Bohannan (1957, 1969), Gluckman (1969) argued that whilst Indigenous notions should be taken seriously, they were a starting point for their analysis, rather than an end in themselves. This argument too bears the imprint of Radcliffe-Brown's comparative project.

Conclusion

Contra popular assertions, the anthropology of law was not born from a simplistic attempt to justify and facilitate the implementation of indirect rule (Mamdami 2013). Radcliffe-Brown's contributions to this field were a sincere attempt to study conformity to the social good and social control in a broader, comparative framework. As we have seen, a critical awareness of the brutalities of colonial rule – in the Andaman Islands, Western Australia and South Africa – formed an important subtext to his work. This critique of colonialism and of the direction of social change was apparent in his argument at Columbia University that 'savage societies' dealt better with crime than technologically advanced nations such as the United States. In the same year, he voiced concern that the integration of people into larger, more complex social structures was conducive to excessive individualism, impersonal relations, moral unrest, increased neurosis and suicide, and revolutionary political movements (Radcliffe-Brown 1931b). His critique is often veiled, having being made at a time when anthropology lacked any stable institutional base in the universities and when researchers were compelled to rely upon colonial governments for their livelihood and for research funds (Kuklick 1991).

From the vantage point of the contemporary, Radcliffe-Brown's thinking often appears unnuanced, with an overemphasis on categorical

distinctions. But he did make an important contribution towards viewing conformity in a comparative sociological perspective, drawing on research conducted amongst small-scale systems in the Andaman Islands, segmentary ones in Australia and more centralised chiefly systems in sub-Saharan Africa. A notion of translatability, posited on a belief in an underlying unity of human thought and experience, was the hallmark of his approach. In South Africa, he argued that the recognition of Indigenous moral rules and legal precepts could make social processes somewhat beneficial for the colonial subjects. Also, he insisted that, although Indigenous Australian notions of ownership differed from Western ones, Aboriginal people's rights to land should be upheld by Australian courts. His message for those concerned with ensuring that individual behaviour conforms to the general social good is to see law as part of broader social structures, and recognise the impact of ritual, myth and general social sanctions, which lies well beyond the remit of legal systems on human conduct.

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Notes

1. 'Savages can teach us how to stamp out crime', *Oakland Tribune*, 8 November 1931, 6. See Appendix.

2. This article forms part of a larger biographical manuscript entitled *The Other Radcliffe-Brown: Journeys through the Colonial World, 1881–1955*. It is based on work in the manuscript sections of libraries at Cambridge University, Oxford University, the London School of Economics and Political Science, and the Universities of Cape Town, the Witwatersrand, Sydney and Chicago, as well as the Royal Anthropological Institute, the Pitt Rivers Museum and the South African National Archives in Pretoria. I wish to thank the staff of all these institutions, and Ray Abrahams, Andrew Bank, Jean la Fontaine, Rob Gordon, Adam Kuper, Herbert Lewis and Kath Weston for their assistance.

3. *Report on the Administration of the Andaman and Nicobar Islands and Penal Settlement at Port Blair and the Nicobars for 1906–1907*. Calcutta. Office of the Superintendent, Government Printing House, India, 41–42.

4. The *Local Gazetteer* (1907), an official publication, proclaimed that the Andaman Islanders lacked courage and physical vitality and displayed child-like intellect. Its authors ascribed high death rates to a diet too high in carbohydrates and to inherited racial characteristics. The latter included high body temperature, low resistance to sickness and injury, and low nerve development (38, 41, 45).

5. 'The Aborigines of Western Australia', *The Northern Times*, 8 April 1911, 5; *The Northern Times*, 15 April 1911, 2 and *The Northern Times*, 22 April 1911, 2.

6. File C33. Ngaluma Tribe (no date), Radcliffe-Brown Papers, Archives Section, University of Sydney.

7. File C23. Kariera Tribe (no date) and C.35 Kariera Tribe / Ngaluma Tribe (no date), Radcliffe-Brown Papers, Archives Section, University of Sydney.

8. File B3. Australian Languages (no date), Radcliffe-Brown Papers, University of Sydney.

9. 'The usefulness of crime and punishment', *The Birmingham Daily Post*, 21 November 1913.

10. 'Anthropology as a science: Its application to our native problems', *Cape Times* 25 August 1921, reprinted in Gordon (1990: 40).

11. Isaac Schapera. 1924. 'Notebook concerning anthropology lectures'. Schapera/4/2. Archives and Special Collections Library. London School of Economics and Political Science.

12. Malan was one of the most liberal members of Smuts' cabinet. Throughout his tenure, he defended the African franchise and occupational advancement, and sought to secure freehold rights for residents of the African townships (Kallaway 1974: 97).

13. 'Native laws and customs: Vacation course lectures, thoughtful address by Mr Malan', *The Cape Times*, 8 January 1924.

14. Economic and Wage Commission. Evidence. No. 44. Cape Town, 25 October 1925. South African National Archives, Schoeman Street, Pretoria.

15. See 'Fate of Aborigines: Sympathisers desire inquiry', *The Registrar*, 4 May 1927, 9; and 'Treatment of Aborigines: Startling allegations', *The Australian Worker*, 11 May 1927, 20.

16. 'Treatment of Aborigines: Blot on Australia's Escutcheon', *Richmond River Herald*, 9 November 1928, 8.

17. 'The Aborigine: Prof. Radcliffe-Brown's Address', *The Port Macquarie News and Hastings River Advocate*, 5 October 1929, 3.

18. Letter, Royal Anthropological Institute to Right Honourable James Scullin, Premier of the Commonwealth of Australia, January 1930. Archives of the Royal Anthropological Institute, London.

19. Letter, A. R. Radcliffe-Brown, University of Sydney, to John Myres, Royal Anthropological Institute, 31 December 1929. Archives of the Royal Anthropological Institute, London.

20. 'The Aborigines: Prof Radcliffe-Brown's address', *The Port Macquarie News and Hastings River Advocate*, 5 October 1929, 5.

21. 'The City of Sydney', *The Dubbo Liberal and Macquarie Advocate*, 29 July 1930, 6.

22. 'Primitive people: Spiritual beliefs', *The Sydney Morning Herald*, 24 May 1927, 10.

23. 'John Boettiger traces world's ills to decline of family life: Scientists watch rise of selfish era', *Chicago Tribune*, 12 May 1932, 1.

24. See 'Superior races believed myths', *The Rhinelander Daily News*, 3 September 1936; and 'Race is no key to intelligence', *The Oshkosh North Western*, 3 September 1936.

25. J. Peristiany, 'Law and society' (notes of Radcliffe-Brown's lectures), November 1946, Firth Papers, London School of Economics, Manuscripts Library.

26. The American prohibition is a rare example of sanctions based on moral rectitude. Here, sanctions were not backed by the entire public.

27. Letter, M. Gluckman to A. R. Radcliffe Brown, 29 December 1952, Max Gluckman Papers, Archives Section, Manchester University Library.

28. Letter, A. R. Radcliffe-Brown to M. Gluckman, 27 February 1953, Max Gluckman Papers, Archives Section, Manchester University Library.

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APPENDIX

Savages can teach us how to stamp out crime (1931)

A primitive savage village is perhaps the last place in the world where the average man might expect to learn how civilisation can stamp out crime. It seems the antithesis of modern living. There is no parallel night life or day life. No vice, no gangs, no underworld, no political machines, no grinding poverty or fabulous wealth. Yet it is the astonishing belief of Professor Radcliffe-Brown, the Australian sociologist, that in the villages untouched by the ways of the white man may be found the means and the methods by which twentieth-century civilisation should learn how to fight the criminal and enforce obedience to the law.

How can men who live in frail, thatched huts in a jungle clearing teach anything to the men who live in the great cities of steel and stone? How can the scientist learn the solution of one of the most complex social problems of today from folk who still live like the aborigines of yesterday?

'Savage communities have little trouble with crime', says the noted student who came to the United States to join the faculty of the University of Chicago this year. 'They have no criminal class. Peace and order are the aims of their society, as they are of ours. They succeed where our highly complicated and complex civilisation fails. If we understand how they succeed, perhaps we can learn to avoid failure.'

To begin with they live in small communities. It is possible for the headman, the council or the chief to exercise an effective social control over all the people. Their lives are exposed to each other, and evil conduct is at once apparent to all. Under such conditions it is not usually difficult to compel backsliding members of the town to behave not only from their fear of punishment, but also from social ostracism.

In Johannesburg a generation ago all servants were black men recruited from the tribes of native villages up country. Doors and windows were left unlocked. Money was unguarded. Nobody feared to leave five or fifty pounds on the table, because stealing by the native had never been known. Women surrounded themselves with the native men servants without exposing themselves to the slightest danger. The natives, remaining only temporarily in white employ, continued to be under the compulsion of the laws and the opinion of their own communities. But as soon as they cut themselves off permanently from the villages and attached themselves to Johannesburg, crimes against women and crimes against property slowly developed. Absent from the conscience of their own fellow tribesmen, they began to take a chance on violating and evading the white man's law.

A native who committed a serious crime which merited expulsion from the place where he was born became an outcast, a pariah. Driven from village to village as a friendless, hopeless man, there was nothing for him to do, but to die.

Also, savage communities attempted to prevent the development of lawbreakers by exterminating the anti-social member of the community before he grew up. Close watch was kept on the youngsters and when the elders took adolescent lads away for the tribal initiation ceremonies those marked by opinion of the leaders as 'delinquent' somehow did not come back.

Of course, our life is too complicated and too humane to take such a method of handling anti-social youth, but my point is that savage society has solved this problem in a way satisfactory to itself, whilst civilised nations, especially the United States, are now struggling with the problem of the delinquent child in an attempt to discover whether such black sheep can be converted into good citizens by care and treatment.

Added to the effective social control achieved through a small village where all the people are from the same stock and no alien problem exists, there is a powerful sanction of religion. Savages are firm believers. Because religion is indelibly stamped into the pattern of their lives, it is an important factor in impelling their obedience to the tribal laws. If they are tempted to challenge the opinion of their friends

and neighbours, they run up against a taboo in the religious teaching, and a man hesitates to offend the supernatural, as well as the secular authority.

The third fundamental factor in keeping crime out of savage communities is that they pass only such laws as everybody believes should be enforced. Such laws have the public opinion of the entire community behind them. The problem of compelling large numbers of people to obey laws they do not believe in does not exist and therefore there is no law-breaking which has the open or covert support of a powerful section of the people.

If large numbers of people refuse to obey an unpopular law, as is happening in the United States, and they violate the laws, it is a beginning of a contempt for all law. Some observers are inclined to dismiss this as unimportant, but I am convinced from the study of law enforcement that it is vital and fundamental to have the support of the community for law if it is expected to be enforced.

It was pointed out to Professor Radcliffe-Brown that civilised people do not live in small towns, that western people have drifted away from such intense attachment to religion and the size of large cities and great nations make it inevitable that unpopular laws may frequently be passed. How can we imitate savage life?

'It is not essential to imitate savage life', replied the sociologist, 'but it is important to adapt their principles to our way of living. They base their system on fundamentals. They succeed. We talk about reforming the police, reforming lawyers. We fail. These things are secondary, I am convinced. If you have an informed, earnest, aroused and participating public, the problem of incompetent and corrupt police, unscrupulous lawyers and all the rest solve themselves because the fundamental need has been solved. It is not easy nor simple. There is no magic method. Our brains are no better than savage brains, it is true. The savage solved his problems because it was comparatively simple. But we have knowledge, we have facts, we have learned something about thinking, and when we apply our brains to the accumulated experience and knowledge, we ought to be able to solve our problems as sufficiently for our society as the savage has solved it for his. We have to organise ourselves so that in our complex life punishment follows crime as certainly, as efficiently, and as remorselessly as in savage society.

For instance, in East Africa a chief would think he has done a poor job unless he has convinced the defendant as well as the plaintiff that justice was being done to both. Yes, he really satisfies the criminal that his punishment is fair and just. When a man is on trial for a crime the

whole community is directly and immediately interested. He is part of their lives. The whole community participates in his punishment. And if death is the verdict, his brother's arrow carried out the judgement. In savage society you have speedy arrest, quick punishment, and the punishment fits the crime, so that it does not outrage the moral sense of the people. Punishment is justified by social indignation, and so it must follow, while the emotions of the people are hot and seething.

In the great cities of America, the newspaper performs the valuable service of spreading social indignation. When I was in New York, there was a journalistic hue and cry against the gangsters who shot down children in the streets. But indignation cools off. If the police are slow to arrest, then public feeling dies out. And if the trail is a long way from the commission of a crime, the public may begin to feel that perhaps the defendant is being treated too harshly. And perhaps some other grave crime is on the front pages, and public interest in the earlier breach of the law and morals has dissipated itself.

Because of the complexity of our social law, law and government are remote from the people, and the people do not feel that they participate in making the decision. In the savage community, everyone participates, and every man is a vital factor in the life and law of his tribe.

The newspaper is the link between public opinion and the institution men have created as a substitute for their personal share in law and government. In times of serious crises, newspapers are able to infuse people with the idea that they personally share in the momentous acts and decisions, but usually government and law remains remote.

No matter how hard or impossible or difficult it seems, we have to solve this problem of remoteness if civilisation is to survive. We need new institutions, new ways of doing the work of the community in preserving peace and order. And we can invent and devise such institutions only after having exact knowledge of the conduct of people.

Some sociologists are inclined to believe that the enforcement of legal enactments should be derived from those which are fundamental laws and those which are mere social regulations.

Law against murder is fundamental, while traffic ordinances and the ban on spitting in the streets are regulations. People successfully dodge traffic rules because the public opinion of the community condones the violation. It is looked upon as trivial. Spitting in the street is an offence against decency. It is also hard to stop. Therefore, in many places the penalty is severe. Suppose it is a $500 fine or 30 days in jail. Bring the offender before a jury, and the jury will say the punishment is too severe and acquit the defendant.

That is why the law must have community support behind it and the punishment must fit the crime. If we can create tribunals to deal properly and effectively with the minor ordinances and regulations that are supported by public opinion, punishment should be effective in developing respect for the law and the government and in diminishing the breaking of the law. Perhaps another type of organisation is needed to enforce the more important and fundamental laws and to ensure swift and righteous punishment for the lawbreaker.

If a man thinks he has done his duty when he goes downtown to work and then comes home to enjoy himself, and if he is satisfied that he need not share in the work of the community, he is contributing to the crisis and the collapse of his civilisation. Savages do not have this point of view. They do not delegate the business of community to others. It is their job, and because everyone lends a hand, the administration of law and justice reflects the moral sense and the need of all. And while in a community of 1,000,000 or 10,000,000 persons it seems impracticable for everyone actively to take on an oar in the government, yet it is imperative that the best brains, the top layer of citizens, step forward to accept this responsibility, or the grandeur of our times will pass just as the glory of Rome.

There is a movement on foot in the United State to make the universities the centre of this imperative social planning. The universities form ideal institutions for the furtherance of this work. They are centres of research, they are meeting places for investigators, students and scientists. They are the logical organisations to produce the facts which will show what forms we must create in order to bring back the people into the administration of government.

The Roman empire survived as long as its people were able to create institutions which kept pace with the change and the growth of the empire. And when the leadership failed, when the people were unwilling or unable to apply themselves to solve the new difficulties which arose, development ended, and the decline began. We will follow the same road only if the foremost citizens of our great nations pursue their own ends and refuse to do their clear duty to their communities.