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Crime and Custom in Business Society

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The editors of this journal asked me to discuss a book that made a difference in my academic career. They wanted a blend of autobiography and book review. For me, the book was Bronislaw Malinowski's *Crime and Custom in Savage Society*,[1] which I first read in the late 1950s.

I was twenty-six when the University of Wisconsin Law School faculty hired me in 1957. I had done well in law school, served as a federal appellate judge's law clerk, and been a teaching fellow at the University of Chicago Law School. However, I had not practiced law. Moreover, my business experience was only that of a student who had taken part-time jobs at the bottom of several organizations.

The Assistant Dean assigned me to teach a section of contracts to first-year law students. My senior colleagues who taught the other sections used Professor Lon Fuller's casebook,[2] and I thought it prudent to follow their lead. I remember spending hours each day trying to understand Fuller's book. I looked for clues in Fuller's contracts writing. I also spent time decoding articles by Corbin, Llewellyn, Patterson, and Sharp. I managed to stay slightly ahead of my students, but I felt thoroughly unprepared throughout my first years of teaching. I suffered from the impostor syndrome, but I tried hard to appear confident and in control.

My wife and I were married when we were Stanford students, and we assumed that I would practice law in San Francisco. However, the University of Wisconsin Law School offered me a teaching job. As a result, somewhat to our surprise, I brought Jackie from California back to Wisconsin where she had been born. Naturally, we often drove from Madison to Racine to visit her parents. Jack Ramsey, my father-in-law, was the retired General Manager of S.C. Johnson and Son, a major corporation with world-wide distribution. He had managed the firm through the great depression of the 1930s, and he had lived in Europe reestablishing its business after World War II. In addition, he had represented the firm when it dealt with Frank Lloyd Wright and built its architecturally famous administration building and research tower.

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Sons-in-law and fathers-in-law often must struggle to find topics to discuss. However, Jack respected the academic world far more than most business people. He asked me about my contracts course, and I tried to explain what I was teaching. He found it hard to believe what I told him about the Fuller book. In short, he thought that much of it rested on a picture of the business world that was so distorted that it was silly. I know now that he would have had the same reaction had I used any contracts casebook available in the 1950s. The problem was not Fuller's scholarship but the generally-held academic picture of contract at that time.[3] Jack arranged appointments with several of his friends who also managed large and medium-sized corporations. I did not know it at the outset, but I had started down a road that I am still travelling.

However, I was confused and slightly threatened by this dissonance. I lacked experience in the practice of law and the conduct of business. I also lacked an education in the areas that might help me deal with the gap between what I was teaching and what I had begun to learn from conversations in Racine. As an undergraduate, I had taken introductory courses in several social sciences, but I had avoided sociology and anthropology. At Stanford, they were combined in a single department which was infamous among students as the football players' major. A popular student joke was that all examinations in sociology courses were the same. The professor asked only one true or false question: 'Sociology *is too* a science.'

Fortunately, I was teaching at the University of Wisconsin Law School with its 'law in action' tradition. My senior colleagues were studying such topics as police practices and how various laws played out in dealing with natural resources. Willard Hurst, our great legal historian, had received several foundation grants to help develop the social study of law. If Willard approved, a young law professor received a research leave and some help in beginning a process of self-education in matters not taught in law schools. Willard, for example, arranged appointments for me with Talcott Parsons and Robert Merton. I spent an afternoon with each of them. Both offered many suggestions about approaches to take and things to read. I discovered, of course, that sociology is too a science.

I labored through Parsons and Smelser's *Economy and Society*.[4] I read Max Rheinstein's translation of Max Weber.[5] I learned about latent functions[6] and Durkheim[7] from Robert Merton's work. Then I read Malinowski's *Crime and Custom in Savage Society*, and I was reassured that I had found something in my interviews with business people that was not then stressed in legal culture. I was delighted to draw analogies between the behaviour of Trobriand Islanders – Malinowski's 'savages' – and American business executives. Indeed, Malinowski says:

> The force of habit, the awe of traditional command and a sentimental attachment to it, the desire to satisfy public opinion – all combine to make custom be obeyed for its own sake. In this the 'savages' do not differ from the members of any self-contained community with a limited horizon, whether this be an Eastern European ghetto, an

> Oxford college, or a Fundamentalist Middle West community. But love of tradition, conformism and the sway of custom account but to a very partial extent for obedience to rules among dons, savages, peasants or Junkers.[8]

Why did Trobriands honour their obligations? Malinowski says that sanctions are provided by 'a definite social machinery of binding force, based . . . upon mutual dependence, and realized in the equivalent arrangement of reciprocal services, as well as in the combination of such claims into strands of multiple relationship'.[9] Those who failed to keep economic obligations would soon find themselves 'outside the social and economic order'.[10] He also commented: 'Whenever the native can evade his obligations without the loss of prestige or without the prospective loss of gain, he does so, exactly as a civilized business man would do'.[11] Even in a long-term continuing relationship, obligations are not fixed once and for all but subject to redefinition in light of the social situation. Malinowski tells us:

> The rules . . . are essentially elastic and adjustable, leaving a considerable latitude within which their fulfilment is regarded as satisfactory . . . [T]he quantities exchanged vary according to whether the fishing or the harvest is more abundant. All this is taken into account and only wilful stinginess, neglect, or laziness are regarded as a breach of contract.[12]

I followed Malinowski's analysis of long-term continuing relations as I interviewed business people. Just like Trobriand Islanders, American business executives wanted flexibility rather than fixed commitments. My informants added the second element that explained their preference for relational rather than legal approaches: the costs of the American legal system's approach to contracts and the limited value of the remedies it offers in most cases.

My interviews and reading prompted my paper, 'Non-Contractual Relations in Business: A Preliminary Study'.[13] Professor Merton asked me to present the paper on a panel on applied sociology that he was organizing for the American Sociological Association meetings. I was to follow the star of the panel, the grand old man of sociology, Pitirim Sorokin. About 300 people crowded a large lecture hall to see him. Sorokin, as I remember, asserted: 'Hitler was a sociologist! Stalin was a sociologist! All important leaders are applied sociologists!' He also continued long beyond his share of the time given to the panel, and Professor Merton unsuccessfully tried to stop him. Merton then handed me several notes asking, 'Can you cut?' I began editing my talk as I waited my turn. When Sorokin finally concluded, all but about fifty members of the audience stood up and began leaving the room while loudly discussing Sorokin. I tried to begin my talk with little success. Professor Merton came to the microphone and asked 'the intellectual tourists' to be quiet, and I gave the talk to the backs of a large group filing out of the room.

Merton was sympathetic to my plight, and after the session he suggested that I submit my paper to a sociological journal. Very diffidently I submitted it to the *American Journal of Sociology* which prompted rejected it. Professor Merton learned of this, and wrote me suggesting several revisions. At his

request, I sent the revised version to him. He gave the paper its title, and I was pleasantly surprised to receive a letter from the *American Sociological Review* accepting it. The article has had a surprising long shelf-life. Apparently, there is no limit to the propositions for which it can be cited.

Is there any reason today to read Malinowski's *Crime and Custom in Savage Society*? Almost seventy years after it was written, some of us are troubled by the labelling of people as 'savages.' Most of us would stop and consider the passage in Malinowski's preface that says: 'The study of rapidly vanishing savage races is . . . not devoid of considerable practical value, in that it can help the white man to govern, exploit, and "improve" the native with less pernicious results to the later.'[14] Moreover, when Malinowski's diary was posthumously published in 1967,[15] we discovered that he was a racist who disliked the Trobriands. However, Clifford Geertz notes that whatever Malinowski called the Trobriands in his private diary, 'in his ethnographic works they are, through a mysterious transformation wrought by science, among the most intelligent, dignified, and conscientious natives in the whole of anthropological literature: men, Malinowski is forever insisting, even as you and I.'[16]

The standard criticism of *Crime and Custom in Savage Society* is that Malinowski misused the term 'law.'[17] He wanted to reject a position held by earlier anthropologists that there was no law in primitive societies. These writers assumed that in such societies 'the individual is completely dominated by the group – the horde, the clan or the tribe – that he obeys the commands of his community, its traditions, its public opinion, its decrees, with a slavish, fascinated, passive obedience.'[18] The Trobriands, Malinowski insisted, obeyed rules only partially and conditionally, and they would evade them when they could. He called law only those customs supported by binding forces found in 'the concatenation of the obligation, in the fact that they are arranged into chains of mutual services, a give and take extending over long periods of time and covering wide aspects of interest and activity.'[19]

Paul Bohannan asserts that Malinowski 'has widely influenced lawyers with a faulty mode of distinguishing law from nonlaw'.[20] Law, Bohannan argues, is better thought of as 'a body of binding obligations regarded as right by one party and acknowledged as the duty by the other' *which has been reinstitutionalized within the legal institution so that society can continue to function in an orderly manner on the basis of rules so maintained.* In short, reciprocity is the basis of custom; but the law rests on the basis of this double institutionalization.[21]

For Bohannan, this reinstitutionalization offers the potential for social change because law necessarily will be out of phase with society, and there will be pressure to bring the two together.

Sally Falk Moore notes that Malinowski's view of law is 'so broad that it was virtually indistinguishable from a study of the obligatory aspects of all social relationships.'[22] It seems odd to speak of the law of Christmas or birthday gift-giving or the law of behaviour in an elevator. However,

inappropriate gifts may presume an unwanted intimacy and unreciprocated gifts may signal the end of a relationship.[23] There are norms about how close I may stand to you in an elevator that are enforced by frowns, sarcastic remarks or even blows. Roughly, we can sort social norms and sanctions into (i) those given to third parties or institutions to clarify and enforce, (ii) those supported by reciprocity and continuing relationships and (iii) those left to only such immediate sanctions as expressions of displeasure or physical force. If it suits our purposes or whims, we can call some or all of these combinations of norms and sanctions law, and those hearing or reading us usually will be able to translate more or less what we mean. Malinowski wanted to give a special place to norms supported by complex relationships resting on reciprocity. Perhaps there are no judges, police officers or members of parliament involved, but he thought that these norms are different from those not involving relationship and reciprocity. He was right to insist that much social control exists between a police officer arresting someone for stealing goods and the dictates of an individual's sense of morality or the commands of her or his church.

Does it matter? Today we need not read about the Trobriand Islanders to make points about the power of long-term continuing relationships or to find discussions of other-than-state law. I tell my students today to read Boa Santos[24] and Marc Galanter,[25] for example, rather than Malinowski. We have a rich body of literature often grouped under the heading 'legal pluralism.'[26] Writers note that many functions often thought of as legal are carried out by other-than-state bodies.[27] Private police, often costumed in the symbolic garb of the public police, patrol rock concerts and shopping centres. Shopping centres and condominiums create and maintain systems of private government, creating and enforcing their own norms in law-like processes. In many countries, poor people illegally occupy land that they do not own and build houses on it. They may create systems that mimic the public legal structures to preserve order and allow interests in particular houses to be transferred. In many countries there is a second, or off-the-books, economy. Often its operations are essential to the society. Many scholars have discovered that much of the second economy rests on the norms and sanctions of long-term continuing relationships that create trust. Somewhat as Malinowski, some of these writers see these non-state norm making and enforcing systems as legal systems. Yet they rest beside, within or in conflict with state-run public legal systems. Hence, those affected by informal and formal, public and private legal systems face a situation of legal pluralism.

Two recent articles in this journal reflect problems with the idea of legal pluralism. Brian Tamanaha argues that 'the concept of legal pluralism is constructed upon an unstable analytical foundation which will ultimately lead to its demise.'[28] Legal pluralists point to concrete patterns of social ordering. However, this raises what Tamanaha calls 'the Malinowski problem.'[29] We include in our concept of law a wide variety of norms and

sanctions, some of which are analogous to public government law and some of which are not. Social expectations surrounding birthday gift giving, private police guarding an expensive residential area, an arbitration panel in a trade association, and the United States Supreme Court announcing a decision about the constitutionality of a federal statute all are lumped together as 'law.' According to Tamanaha, this linguistic move obscures the differences between these norm-creating and enforcing systems.

Tamanaha concedes that we can call private institutions that identify and enforce norms legal or law-like institutions.[30] Of course, fashioning this analogy obscures any differences between the public and private legal spheres. For example, large corporations often establish their own police force. These private police officers can use the best surveillance technology because they have more resources than many public police departments. Moreover, they are free from many restrictions that apply to the public police. Corporations sanction employees by firing them rather than taking them to court. However, that corporate police are not public legal officers makes a difference. We may risk obscuring this if we fail to distinguish public from private, formal from informal.[31]

However, once we have read Tamanaha's 1993 article, we turn to Deakin, Lane, and Wilkinson's piece in a more recent issue of this journal.[32] They note that empirical research shows that firms often dispense with formal planning and make little recourse to law to resolve contract disputes. Firms deal on the basis of trust, and leaving a business relationship is a common way to end a dispute. The authors state one of the major questions of their article as follows:

> Does law have a role to play in fostering trust or is trust, on the contrary, an independent cultural phenomenon resting upon country or industry-specific factors which cannot readily be reproduced in different contexts?[33]

They argue that to synthesize these empirical findings with such analyses as transaction cost economics we must look at the 'contractual environment of the firm.'[34] This consists of the available state of technology, the structure of labour and product markets, and the broader normative framework of laws, customs, and assumptions within which inter-firm relations are embedded.

They look at my 'Non-Contractual Relations in Business', and note that I defined contract in a highly restricted way – as rational planning and the existence of actual or potential legal sanctions to induce performance or compensation for nonperformance. I left trust as a vague catch-all term.[35] They argue that trust is a 'precondition for co-operation,' and it is 'closely linked to the presence of legal and social norms which control and regulate competition between firms.'[36] Contract law provides 'a residual form of security should all other things fail, and a basis for systematic planning over risk in certain agreements.'[37] As such, they claim, it underpins trust.

They conclude that 'contract law should be broadly defined to include reference . . . to those social norms which . . . govern economic behaviour . . .'[38] I have no problem with this broad definition of contract law. Indeed, it is consistent with my 1963 article and much that I have written since.[39] I remain sceptical about how much formal contract law – defined as the stuff taught in law schools – underpins trust and contributes to the contractual environment. I would join Malinowski and guess that complex chains of long-term continuing relationships do more than legal opinions and judgments to underpin trust in business relationships. However, I concede that it is an empirical question, and answers may differ in different situations. I suspect that contract law contributes to trust most for those who know the least about it. My guess is that it operates as a vague threat of turning matters over to lawyers and other forms of unpleasantness that should be avoided in all but a few situations. As I argued in 1977:

> The contract litigation process may also maintain a vague sense of threat that keeps everyone reasonably reliable . . . For this process to operate, it is not necessary that business managers understand contract norms and the realities of the litigation process. Perhaps all that is needed is a sense that breach may entail disagreeable legal problems.[40]

Having said this, I think that Deakin, Lane, and Wilkinson have fallen into Tamanaha's Malinowski problem. For them, contract law is some unspecified mixture of the reinstitutionalized custom enforced in state courts as well as business customs reinforced by the sanctions of long-term continuing relationships. Even if we seek Tamanaha's linguistic clarity, any empirical study of business will find multiple normative and sanction systems interacting. While it might be nice to have clean concepts, reality seems very messy.

Lauren Benton champions this messy approach to reality.[41] She remarks:

> It seems that by merely identifying an object of study – particular kinds of behaviour outside of formal legal systems that nevertheless appear law-like – we emerge into a conceptual field that contains imagined shapes (legal 'spheres' or even 'social fields') that then must have a geometrical relationship to one another.[42]

She notes that official state law exerts influence in informal economies. However, people use state law 'in ways that are ad hoc and opportunistic, and that consistently force its combination with other sets of rules and procedures.'[43] People engage in rule shopping turning to the informal sector to qualify or redefine both their relationships in the formal and informal sectors.[44] Moreover, it is not always easy to tell whether people are acting within the formal or the informal sector of an economy.

Usually, people do not see themselves as acting illegally. For example, the state may have a statute prohibiting conduct XYZ. State officials may know that many people are violating that law, but they do not enforce the law. Those who are doing XYZ redefine the law by grafting on an unwritten exception that covers their case. After time passes, officials might have to pay a high price if they were to try to enforce the law as written. They are

in a long-term continuing relationship with those who are violating the letter of the law, and they may risk various forms of retaliation if they upset expectations. Enforcing the law might provoke a riot, cause a political party to lose an election or contribute to the power of a revolutionary movement. These situations are more consistent with Malinowski's views about law than attempts to confine the term to reinstitutionalized custom or particular social institutions charged with making and enforcing norms.

In an article on 'private government',[45] I emphasized that when we used such a term we were drawing an analogy. I stressed that empirical study of real governments indicated that the public and private distinction often fails to capture what is happening. Our concepts are imprecise and fail when we look at practice and try to apply them. The terms private government or legal pluralism should remind us that we will know little about law if we confine our inquiry to the statute books and reports of cases.[46] Malinowski's broad definition of law, whatever its flaws, does remind us that social control is not just the state threatening and sanctioning individuals who live in isolation. People live in overlapping clusters of small social units that can definite norms and sanction failure to comply with them. Often formal state law serves as a system of last resort.[47] Often, however, it is little more than a symbolic statement far removed from the life of most people.

Benton's warning about making our theories too neat is right. We cannot divide the world between public and private or formal and informal legal systems. Public legal systems do not necessarily control private legal systems; they are not neatly harmonized. For example, Sally Falk Moore studied workers, most of them women, in the better dress industry in New York City.[48] The law and union collective bargaining agreements purport to regulate their hours and working conditions. However, the rhythms of production do not fit the five-day-a-week eight-hour-day assumed by this regulation because demand in this industry is seasonal. Sometimes there is much work that must be done by a deadline; sometimes there is relatively little work to do. When work must be done on time, employees do the job and work overtime and skip breaks. This means that their employer has violated laws and union contract provisions about hours and conditions of work. However, now the employer owes the employees something. For example, an employee's friend will register the worker present at work – punching in on a time clock – when there is little to do and the employee is absent. Actually, she has taken the day off. The employer knows this but accepts it as part of the system. In effect, employees sold their legal rights to limited hours for paid vacations. State law and union contract norms had impact, but we would be unlikely to see what this impact was just from reading statutes and collective bargaining agreements.

Benton tells us to focus on people dealing with complex webs of social control rather than on institutions or social fields. Here, again, we find the spirit of Malinowski. His Trobriand islanders were not robots following the dictates of custom. In 1984, I tried to list seven important ideas that I thought

three decades of law and society research had made salient.[49] One reflects Malinowski. People are not passive objects moved here and there by legal regulation. Rather, they cope with law and other systems of social control in often surprising ways. If reading *Crime and Custom in Savage Society* served only to remind us of this, it would be well worth the time spent on the book.

NOTES AND REFERENCES

1 B. Malinowski, *Crime and Custom in Savage Society* (1926, 1959).
2 L. Fuller, *Basic Contract Law* (1947).
3 For my comments on the virtues of the Fuller casebook, see S. Macaulay, '"The Reliance Interest" and the World Outside the Law Schools' Doors' (1991) *Wisconsin Law Rev.* 247, 289–291.
4 T. Parsons and N. Smelser, *Economy and Society: A Study in the Integration of Economic and Social Theory* (1956).
5 *Max Weber on Law in Economy and Society*, eds. E. Shils and M. Rheinstein (1954).
6 R. Merton, *Social Theory and Social Structure* (revised ed. 1957) 19.
7 E. Durkheim, *The Division of Labor in Society* (1893, trans. George Simpson 1933). Durkheim did say: 'For everything in the contract is not contractual' (id., p. 211). However, he asserted that the law of contract 'constitutes the foundation of our contractual relations' (id., p. 214). This was not the story I was hearing from American business people. For Merton's critical approach to Durkheim, see R. Merton, 'Durkheim's Division of Labor in Society' (1934) 40 *Am. J. of Sociology* 319. This essay has been reprinted in (1994) 9 *Sociological Forum* 17. See Merton's comment on his earlier work: R. Merton, '"Durkheim's Division of Labor in Society": A Sexagenarian Postscript' (1994) 9 *Sociological Forum* 27.
8 Malinowski, op. cit., n. 1, p. 52.
9 id., p. 56.
10 id., p. 41.
11 id., p. 30.
12 id., p. 31.
13 S. Macaulay, 'Non-Contractual Relations in Business: A Preliminary Study' (1963) 28 *Am. Sociological Rev.* 55. I reconsidered this article at a conference marking its twenty-first birthday. See S. Macaulay, 'An Empirical View of Contract' (1985) *Wisconsin Law Rev.* 465.
14 Malinowski, op. cit., n. 1, p. ix. Clifford Geertz said that Malinowski was 'the prime apostle of what might be called, transforming his own irony, join-the-brutes ethnography.' C. Geertz, *Works and Lives: The Anthropologist as Author* (1988) 76.
15 B. Malinowski, *A Diary in the Strict Sense of the Term* (1967).
16 C. Geertz, 'Under the Mosquito Net' *The New York Rev.*, 14 September 1967, at 12, 13. Marc Galanter called Geertz's review of the Diaries to my attention.
17 See I. Schapera, *Malinowski's Theories of Law in Man and Culture*, ed. Raymond Firth (1957) 139. Schapera argues: '[Malinowski] himself . . . adopted "social enforcement" as the distinctive criterion of law when discussing the Australian aborigines, and reversed to . . . [this criterion later]. One cannot help thinking that had he adhered to it when writing about the Trobriand islanders he would have avoided some of the confusion into which he fell. He might then have regarded self-help, vendetta, payment of "blood-money", the chief's penal powers, and the punitive applications of sorcery, as specifically legal sanctions, taboo as a ritual sanction, etc.; and reciprocity would have been classed, like public opinion, among the various sanctions enforcing what in the Australian book he called "customary rules" . . . But in his anxiety to emphasize "positive inducements" to conformity he failed to do justice to the significant fact that even among the Trobrianders there is "socially approved use of force", and hence he did not sufficiently distinguish from all others the rules to which this particular sanction applies.' (p. 154.)

E. Lamo de Espinosa, 'Social and Legal Order in Sociological Functionalism' (1980) 4 *Contemporary Crises* 43, raises a slightly different but related criticism. De Espinosa notes that Malinowski scarcely considers the role of physical force and power. 'Malinowski is . . . identifying the prescribed customs of behaviour with social norms and social norms with legal norms . . . This situation . . . transforms anthropology into legal anthropology . . . [T]here is a tendency . . . which slowly reduces the problem of society to a normative problem and this to a legal one.'

18 Malinowski, op. cit., n. 1, pp. 3–4.
19 id., p. 67.
20 P. Bohannan, 'Law and Legal Institutions' (1968) 9 *International Encyclopedia of Social Science* 73, 75.
21 id., p. 75.
22 S. F. Moore, *Law as Process: An Anthropological Approach* (1978) 220.
23 See T. Caplow, 'Christmas Gifts and Kin Networks' (1982) 47 *Am. Sociological Rev.* 383.
24 See, for example, B. de Sousa Santos, 'The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada' (1977) 12 *Law and Society Rev.* 5; B de Sousa Santos, 'Law: A Map of Misreading. Toward a Postmodern Conception of Law' (1987) 14 *J. of Law and Society* 279.
25 See, for example, M. Galanter, 'Justice in Many Rooms: Courts, Private Ordering and Indigenous Law' (1981) 19 *J. of Legal Pluralism* 1.
26 See, for example, J. Griffiths, 'What is Legal Pluralism?' (1986) 24 *J. of Legal Pluralism* 1; S.E. Merry, 'Legal Pluralism' (1988) 23 *Law and Society Rev.* 869; A. Guevara-Gil and J. Thome, 'Notes on Legal Pluralism' (1992) 2 *Beyond Law* 75.
27 As this was being written, Kobe, Japan suffered a major earthquake. The Yamaguchi-gumi, an organized crime group, embarrassed the government by providing food and supplies to victims more quickly and efficiently than the government. See *Milwaukee Journal*, 22 January 1995, p. A–7, col. 1.
28 B.Z. Tamanaha, 'The Folly of the "Social Scientific" Concept of Legal Pluralism' (1993) 20 *J. of Law and Society* 192.
29 id., p. 206.
30 id., p. 211.
31 J. Griffiths, op. cit., n. 26, p. 50, fn. 41, suggests that the term 'law' may be so polluted that 'we should abandon it altogether and speak only of more or less specialized social control'.
32 S. Deakin, C. Lane, and F. Wilkinson, '"Trust" or Law? Towards an Integrated Theory of Contractual Relations between Firms' (1994) 21 *J. of Law and Society* 329.
33 id., pp. 329–30.
34 id., pp. 340–4.
35 id., pp. 339–40.
36 id., p. 340.
37 id., p. 337.
38 id., p. 346.
39 See, particularly, S. Macaulay, 'Elegant Models, Empirical Pictures, and the Complexities of Contract' (1977) 11 *Law and Society Rev.* 508, 519–20.
40 id., pp. 519.
41 L. Benton, 'Beyond Legal Pluralism: Toward a New Approach to Law in the Informal Sector' (1994) 3 *Social and Legal Studies* 223.
42 id., p. 224.
43 id., p. 237.
44 Compare M. Galanter, 'Vision and Revision' (1985) *Wisconsin Law Rev.* 647, 650.

45 S. Macaulay, 'Private Government' in *Law and the Social Sciences*, eds. L. Lipson and S. Wheeler (1986) 445.
46 Compare J.M. Conley and W.M. O'Barr, 'Legal Anthropology Comes Home: A Brief History of the Ethnographic Study of Law' (1993) 27 *Loyola of Los Angeles Law Rev.* 41.
47 Compare B. Yngvesson, 'Re-examining Continuing Relations and the Law' (1985) *Wisconsin Law Rev.* 623.
48 S.F. Moore, *Law as Process: An Anthropological Approach* (1978) 78.
49 S. Macaulay, 'Law and the Behavioural Sciences: Is There Any There There?' (1984) 6 *Law and Policy* 149, 153–4.