JUSTICE AND JUDGMENT AMONG THE TIV

Paul Bohannan

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PAUL BOHANNAN

'The mistake of judging the men of other periods by the morality of our own day has its parallel in the mistake of supposing that every wheel and bolt in the modern social machine had its counterpart in more rudimentary societies.'

SIR HENRY MAINE

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PREFACE TO THE SECOND IMPRESSION

IN considering a reprint of this book, I reread it for the first time since the original page proofs were dealt with in 1956. It was then early October, 1966, just ten years later, and *The New York Times* was carrying reports about the slaughter of Ibo in Northern Nigeria. No coincidence could have driven home more dramatically that this book is over ten years old, that the events it reports are over fifteen years old, that it deals with a political and social system now gone, and that ethnographers cannot go back again. I have also reread the reviews and criticisms of this book, most of which were largely cogent and even generous. However, there was one consistent criticism that I thought and still think was uncomprehending (but because so many people read it that way, the shortcoming must be mine) and one other flaw that I have found that had passed unnoticed, or at least largely unnoted.

The Problem of Comparison

The critics, almost without exception, claimed that the material in the book is presented in such a way as to make comparison impossible. Hoebel,[1] Gluckman,[2] Ayoub,[3] Nader[4] and some others have claimed that the book is not only itself not comparative, but that it does not allow other scholars to use the material in comparative problems. Gluckman even claimed that I was so slavish a reporter of Tiv culture that I had achieved what he called 'cultural solipsism'—a left-handed compliment, which he did not intend as such. Even I, under the influence of these criticisms but without having reread the book, have noted that a comparative chapter

[1] E. Adamson Hoebel, 'Three Studies in African Law', *Stanford Law Review*, Vol. 13, No. 2, pp. 418–42, 1961.

[2] Max Gluckman, *Politics, Law and Ritual in Tribal Society*, Chicago: Aldine Publishing Company, 1964. *The Ideas of Barotse Jurisprudence*, New Haven and London: Yale University Press, 1965. *The Judicial Process among the Barotse of Northern Rhodesia*, 2nd edition, Manchester: University of Manchester Press, 1967.

[3] Victor Ayoub, 'Review: The Judicial Process in Two African Tribes', in Morris Janowitz, ed., *Community Political Systems*, New York: The Free Press of Glencoe, pp. 237–50, 1961.

[4] Laura Nader, 'The Anthropological Study of Law'. *American Anthropologist* Special Publication, Vol. 67, No. 6, Pt. 2, pp. 3–32, 1965.

should have been appended.[1] Today, with an opportunity to add that chapter, I have changed my mind: I not only think it unnecessary, but I am certain that it would detract from the purpose of the book.

I have discussed the problem of comparison in legal anthropology in a review of Gluckman's *Ideas of Barotse Jurisprudence* that was originally prepared for the *American Anthropologist*; because of space limitations resulting from a financial crisis in 1967, the editors could not publish so long a review. I thereupon published the original review in Kroeber Anthropological Papers[2] and wrote a 200 word summary for the *Anthropologist*. I have, moreover, answered at some length the charges and complaints that Gluckman and others have made about this book, in an essay to be published in a forthcoming volume, edited by Laura Nader,[3] of the proceedings of a Wenner-Gren Conference at Burg Wartenstein in the summer of 1966. In those places I have again set out my ideas about the problems of translation, have defended the folk system, and have essayed initially a typology of comparative methods.

After considerable thought, I have decided not to repeat or recast any of this material for the present second edition of this book. It is my firm opinion that both the criticisms and the defence are of a transient nature and that to include this discussion would add nothing to understanding the Tiv institutions. Moreover, both the original criticism (especially that of Gluckman) and my response verges on polemic—and I know no book in which polemic does not age more quickly than factual and interpretative substance, and I do know some (like Malinowski's book on law[4]) that are made almost unreadable by polemic that has long since ceased to be relevant. In short, I am much more interested that Tiv institutions be understood in their own terms than that any theoretical or methodological predelictions of mine be defended.

Here I will note only two points: (1) my insistence that Tiv ethnography be seen in its own terms has been read to mean that I said that Tiv ethnography was unique. I find that I said nothing

[1] Paul Bohannan, 'The Differing Realms of the Law'. *American Anthropologist* Special Publication, Vol. 67, No. 6, Pt. 2, pp. 33–42, 1965.

[2] Paul Bohannan, 'Review' of Max Gluckman, *The Ideas in Barotse Jurisprudence. Kroeber Anthropological Society Papers*, No. 36, Spring, 1967.

[3] Laura Nader, . : . forthcoming.

[4] Bronislaw Malinowski, *Crime and Custom in Savage Society*, London: Routledge and Kegan Paul, 1926.

so absurd as that. Whether or not the culture traits that I have reported for the Tiv are unique to them is not important for purposes of this book. What *is* important is that they are valued and understood by Tiv as part of a system, and that to deal with culture traits in any other terms before dealing with the system and their place in it, is to misunderstand and misconstrue the ethnographic scene. (2) My insistence on clarification between what is ethnographic fact and what is analytical frame of reference has been interpreted as hostility to or ignorance of jurisprudence. I want only to make it clear that the hostility is to using jurisprudence (or anything else) as a *deus ex machina* to deliver us from the difficulties either of ethnographic reporting or careful comparison.

It seems clear and obvious that I am not here saying that comparison is unimportant or impossible. Rather, I would note that, from the earliest anthropological times, there have been two schools of thought on the subject. One can be summed up by the early writing of Tylor on traits and clustering[1] and the other by an early article of Boas on the need for comparative categories to arise from ethnographic investigations.[2] The descendants of Tylor have turned to computers; those of Boas have turned to semantics. The two need each other desperately, but they begin from different premises. The Tylorians first define and then classify and correlate; the Boasians first inquire and then subdivide and look for pattern. I essayed the problem of cross-cultural comparison in a piece in the 'Letters' column of *Science* as early as 1958.[3] There I outlined, in rough form, the way these two types of comparison can be brought together. The material was repeated, a little extended, in *Social Anthropology*.[4]

Again, I choose not to repeat this material here—both because I have already published it in two places, and, perhaps more important, because I am still *in media res*. I intend to deal with the subject of comparison at some length in a cross-cultural study of divorce that I have been working on since 1963, and which will,

[1] Sir Edward B. Tylor, 'On a Method of Investigating the Development of Institutions; applied to the Laws of Marriage and Descent', *Journal of the Royal Anthropological Institute*, Vol. 18, pp. 245–69, 1888.

[2] Franz Boas, 'The Limitations of the Comparative Method of Anthropology', *Science*, New Series, Vol. IV, No. 103, Dec. 18, 1896, pp. 901–908.

[3] Paul Bohannan, 'Anthropological Theories', *Science*, Vol. 129, No. 3345, Feb. 6, 1959, pp. 292–94.

[4] Paul Bohannan, *Social Anthropology*, New York: Holt, Rinehart and Winston, 1963.

with luck and tenacity, lead to a monograph on the subject of intersocietal comparison of that set of institutions. That monograph, as it is now projected, will contain a discussion on what different authors have called 'comparative', with the successes and shortcomings of each of several methods.

The Problem of Law and Society

In the process of rereading this book, I have become very much aware of another flaw that none of the published criticisms has explored, although it was mentioned in a recent note by Monga.[1] I am uncomfortable about the chapters on the marriage *jir*. After having made the point that what is important in legal anthropology is the institution of judgment and compromise, and that what can be compared among societies are the 'legal institutions' and certainly not the substantive law, I went ahead and talked about the substantive law of marriage, divorce and bridewealth and did not associate that particular law with the rest of the Tiv institutions of marriage and family. In an article published in Nader's *Ethnography of Law*,[2] another and more general version of which appears in the *Encyclopaedia of the Social Sciences*, I have stated my views on what I have called 'reinstitutionalization'—the process in which some particular usages within an institution are recast so that they can be used as a basis for conflict resolution by legal institutions. I have worried the subject about for several months now, and have come to the conclusion that I had better admit that I cannot at the present time do the job I think should be done in this regard—primarily because my analysis of Tiv family and marriage institutions is not finished. At the moment I can go no farther—but I do think that the relationship between the legal institutions and the other institutions of society is one of the frontiers on which legal anthropology should concentrate its next attacks.

Acknowledgements

In addition to my continuing gratitude to the people who originally helped me with this book, I want now to add that association

[1] Veena Monga, 'On Bohannan and the Law', *American Anthropologist*, Vol. 69, No. 2, pp. 227–8.

[2] Laura Nader, 'The Anthropological Study of Law', *American Anthropologist* Special Publication, Vol. 67, No. 6, Part 2, pp. 3–32, 1965.

with John Coons and with Julius Stone has been most stimulating and rewarding, that Laura Nader has, delightfully, badgered me to continue working in this field which I would otherwise have abandoned long since, and that Herma Hill Kay has always been a most valued critic and source of cogent information. Discussions at Burg Wartenstein in 1966 with many anthropologists interested in legal problems, and throughout the years with my colleagues at Northwestern University, both in anthropology and in other fields, have been stimulating and rewarding.

PAUL BOHANNAN

Northwestern University
August 1967

PREFACE TO THE FIRST IMPRESSION

SHOULD this book fall into the hands of lawyers, I hope they will realize that it is a book of social anthropology, not a book of law. As will be obvious to them, I am not trained in the law. I do not apologize for this fact, but merely state that I am aware that my knowledge of law and my reading in it are extremely limited.

Lawyers, in attempting a task like mine, would be under a similar handicap: indeed, I believe it a greater handicap. They would not have the discipline of social anthropology, which ought to imply systematic definition of the cultural blinkers of one's own society, upbringing, and prejudices so that one can see the ideas and prejudices of other people when one looks for them. Lawyers (except comparative jurists) seem not to be bothered with this problem; they proceed within the view permitted by the blinkers of their own society. Indeed, they help to make them. Their job is organizing and conceptualizing social action of given sorts within our own society. The anthropologist's job is studying the conceptualizations of social action in alien societies.

Therefore, the province of the lawyer and that of the social anthropologist are once for all different. They overlap, primarily in their words, sometimes in their subject matter. Findings in one can often illuminate the other. Their disciplines for understanding that subject matter and their canons for dealing with it remain distinct.

I repeat, this is a book of social anthropology, the subject matter of which may possibly interest lawyers. I request that it be judged by the canons of social anthropology, not by the canons of jurisprudence.

My wife and I used no interpreters among the Tiv until we had been with them for almost a year. By that time we spoke Tiv quite fluently and understood it well. About that time, my new steward, Orihiwe Takema, gradually became my 'scribe' (*malu*) and within a few months I recognized the fact and hired another steward. Orihiwe grew up in close proximity with missionaries, who taught him to read and write and made him Christian. He learned some English, though it is not the policy of this sect to teach much English. Orihiwe was with me the rest of my time in Tivland. He

wrote text, and helped me to translate it. Many days he accompanied me on my round of calls; many other days he did not, but went off to work on his own. One of Orihiwe's favourite tasks was recording cases. We often attended courts together.

During my second tour in Tivland, I hired Iyorkôsu Ageva as a second clerk. Iyorkôsu knew no English at all. He wrote much more slowly than Orihiwe, but he was not a Christian, had learnt what writing he had from a 'clan school' and was, for a man of his age, unusually cognizant of lore and also of the problems of Tiv religion and witchcraft.

When I first went to Tivland in 1949, I was invited by chiefs and elders to attend court sessions. I soon gave them up. I knew their importance, and knew that they formed a late stage in fieldwork, when my knowledge of language and culture was fuller. Most of my case material, then, comes from my third tour in Tivland, in 1952–3. My own knowledge of the language was such at that time that I could understand most court cases easily as they proceeded. I was never able to understand all of them easily or probably any of them fully, for the Tiv language—like all African languages—is highly allusive and its perfect understanding demands not only a thorough knowledge of its idiom and of its myths and stock metaphors, but also of the incidents which have occurred in the specific neighbourhood in the last forty or fifty years. Needless to say, an anthropologist cannot learn all the incident which provides the basis for fresh metaphor and illustration.

Our method of working was that Orihiwe and Iyorkôsu took their notes and then did reconstructions in narrative form. Both the notes and the reconstructions were worked over, and I usually but not always made translations. In the *jir* itself, I took down as much direct quotation as the effort of following the cases allowed me to do. I took this part of my notes entirely in Tiv. The 'continuity' I wrote in English, usually in shorthand.

I also made it a practice to follow up interesting cases by discussing them with Chenge, the *Tyo-or* of MbaDuku. My huts were in Chenge's compound. He was my next-door neighbour for a total of some eighteen months. We spent many evenings talking together. He knew what I was doing, and was anxious that I should get it right. Finally, I discussed with the principals involved as many cases as it was practicable or seemly to do.

I often took one of my scribes with me when I talked to the principals.

Tiv are not a people amongst whom it is possible to exhume a case a few months or years—or even a few weeks—after it has occurred: the judges have forgotten the details, each of the principal litigants has again warped the evidence to his own viewpoint and, worst of all, the entire action has been thoroughly assimilated to the 'ought' notions of Tiv culture. These notions may be of great value, but must be studied in connexion with actual social action. Therefore, it became an absolute necessity that my work be done by the 'case method'.

By other techniques, such as sound recording, it would have been possible to get fuller transcriptions of the cases. I am not sure that it would be desirable, for I have found, in trying to use it, that gadgetry so absorbs the attention of the field worker that it is very easy for him to forget that he must gear his life to the people he is studying, not to his gadgets. He is introducing a false note into the flow of social life much more strident than his own mere presence: he soon begins to 'produce' and 'direct' the social action and the actors to comply with the limitations of his gadgets. The only sensible gadget for doing anthropological field research is the human understanding and a notebook. Anthropology provides an artistic impression of the original, not a photographic one. I am not a camera.

I would like to thank the Social Science Research Council and the Wenner-Gren Foundation for the grants which made possible the 26 months' field research on which this study is based. I am also indebted to the Colonial Social Science Research Council and the Government of Nigeria for travel grants.

Several colleagues and friends have read and criticized the manuscript: among anthropologists, Professor E. E. Evans-Pritchard and Dr. J. H. M. Beattie read and discussed the full book. Captain R. M. Downes read the book and made valuable criticisms from his extensive knowledge of the Tiv. I want particularly to acknowledge Professor I. Schapera's detailed care and assistance. Sir Carleton Allen and Dr. T. Oluwale Elias read the manuscript and made invaluable criticisms; if I have misused legal concepts, it is my fault, not theirs. I would like to thank all of them, and all those of my colleagues and students with

whom I have discussed parts of the book. My thanks are also due to the International African Institute for undertaking the publication of this study, and particularly to Mrs. B. E. Wyatt for her painstaking editorial work. My wife, Dr. Laura Bohannan, shared the field-work and criticized the book in all its stages.

PAUL BOHANNAN

Oxford
17 August 1956

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CHAPTER I

THE PEOPLE AND THE PROBLEM

THE Tiv are a semi-Bantu tribe of subsistence farmers living on both sides of the Benue River in northern Nigeria, some 150 miles from its confluence with the Niger. In 1952 they numbered about 800,000.[1]

To understand the social relations of the Tiv, the cultural idiom in which they are conducted, and the terms in which both are imaged and valued, we need to know something about one concept that is fundamental. That concept is *tar*. A *tar* is a territory occupied by a lineage segment (*ipaven*).[2] Tiv organize themselves into what is called, in anthropological English, a lineage system. They formulate this organization in terms of genealogies running back patrilineally seventeen or eighteen generations from themselves to 'Tiv', the original ancestor of them all.[3] Each of the ancestors in the genealogies who is postulated to have lived more than four or five generations ago lends his name to the social group of his agnatic descendants. These social groups, who call themselves by the plural form of their agnatic ancestor's name, form the basis of communities. The smallest lineages to form local groups inhabit areas of about 1,200 acres or so, and contain from 150 to as many as 1,500 people. This area, within which 83 per cent. of the resident males are agnatic members of the associated lineage, is called the *tar*. The *tar* has the same name as the agnatic lineage which inhabits it. All the homesteads and farms within this area—and they are spread fairly evenly over the ground—are the homes of agnatic members of the lineage, or of kinsmen or 'guests' to whom they have given temporary cultivation and building rights.

In such a situation, Tiv refer to the lineage (*nôngo*) which is associated with a *tar* as a 'segment' (*ipaven*). The term 'segment'

[1] For a preliminary report on Tiv ethnography, see Laura and Paul Bohannan, *The Tiv of Central Nigeria*, International African Institute, 1953.

[2] Some of the material about *tar* in the next few pages was originally published in a different form in *The Southwestern Journal of Anthropology*, 1955.

[3] Sections of the genealogy are printed and discussed in Laura Bohannan, 'A Genealogical Charter', *Africa*, Vol. XXII, No. 4, October 1952.

is applied to a social group; the word *tar* is applied to the area occupied by that social group.

Two minimal *utar* which adjoin, and whose associated lineage segments are descended from a common ancestor, form a larger, inclusive segment and a larger, inclusive *tar*, both named after the common ancestor. At this new, higher level of the lineage system the same statement can be made: two adjacent larger *utar*, whose associated segments are descended from a common ancestor, are taken together to form a still larger segment and a still larger *tar*. The largest *tar* which Tiv see, in this particular set of images, is 'Tivland'—*Tar Tiv*.[1]

Thus, the first meaning of *tar*—and I believe it can be said to be the 'basic meaning'—is the notion of a territory associated with and defined by a social group, in this case a lineage that Tiv will consent to call an *ipaven*, or segment. We might say that the system of *utar* is a view of geography, for Tiv have no place names (other than those for streams and hills) except the names of their *utar*. The *tar* is the country, the land of the Tiv; it contains many smaller *utar* which are defined by the lineages into which Tiv divide themselves and in terms of which they see some of the most significant of their relationships with one another.

Tiv have a commonly used expression, 'to spoil the *tar*'. When I asked what this phrase meant, the immediate reply was always, 'A man who goes around looking for a quarrel spoils the *tar*', and some—especially in the area which had recently experienced war —would add, 'A war spoils the *tar* more than anything else.' One elder compared peace-making with 'repairing the *tar*', and said that the real meaning of the phrase is to sit and listen quietly and dispassionately to all sides of a dispute, then to give a just decision. Repairing *tar* is a matter of arbitration. Repairing *tar* is government.

But the phrase also has a second meaning, the investigation of which takes us immediately into the difficult idiom of ambiguity and metaphor in which Tiv discuss religion and witchcraft. This second meaning is to be found in the secret language of the *mbatsav*. *Mbatsav* are thought to form an organization of the elders of the community, in their combined roles of 'witches' and mystical protectors of the community. In their nocturnal meetings

[1] A fuller discussion of these points is found in Paul Bohannan, 'The Migration and Expansion of the Tiv', *Africa*, Vol. XXIV, No. 1, January 1954.

—and also in communicating with one another in daylight—they are said to use a special 'language'. This 'language' is in fact a series of noun substitutions which varies from one part of the country to another. *Tar* is one of the everyday words that are given a special symbolic meaning in the language of the *mbatsav*. Akiga says and Captain Abraham also notes,[1] and my southern informants agree, that *tar* refers to the magical instrument which Tiv call an owl pipe (*imborivungu*). Another magical apparatus sometimes called *tar* is the one that Tiv call the 'father's head' (*ityough ki ter*). My own informants in eastern Tivland (Ukum) told me this, and Captain Downes tells me that he has heard the word *tar* so used in Turan.

To 'repair *tar*', then, sometimes means to perform a ceremony for the owl pipe or the skull. The use of 'repair' in this context is not unusual, for performance of almost any rite associated with fetishes is referred to by this word. Akiga says that the ceremony for repairing the individually owned owl pipe requires the sacrifice of a mere mouse, but the owl pipe of a patrilineal descent group—repairing *tar*—requires the life and blood of a person.

In the same way, 'to repair *tar*' may sometimes mean performing a ceremony involving killing a chicken for purposes of activating a force thought to be inherent in a properly consecrated 'father's head'. As with the owl pipe, this is thought to involve the sacrifice of a human life in some way or other. Usually the actual mechanism is a mystery, and its being a mystery is part of its value. Any death which occurs in the community can be—but may not always be—attributed to the *mbatsav*. They need human lives to carry out their work of repairing *tar*, which involves the prosperity of the social group. All reports agree that 'repairing *tar*' (owl pipe or father's head) is connected with the fertility of farms and crops and women, with hunting, and with health.

My first task in illuminating the idea *tar*, was to illustrate extensively the distinction between *tar* and the idea of 'earth' or 'soil' (*nya*) and at the same time to write an account which I hoped would be comparable to other studies of land usage and settlement patterns.[2] The next step was obviously to discuss in detail the distinction which Tiv make between the two types of 'repairing

[1] *Akiga's Story*. London: International African Inst., 1939. R. C. Abraham, *The Tiv People*, London, 1940.

[2] Paul Bohannan, *Tiv Farm and Settlement*. H.M.S.O., 1954.

tar'. The present book deals with that aspect of 'repairing *tar*' which centres around arbitration and government. It is concerned, that is, with the jural institutions embraced in the Tiv concept of *jir* meaning 'court, case, moot'. A later study is planned on the other sense of 'repairing *tar*', which centres in the concept *tsav*, talent or witchcraft substance. It will strive to be, as well as the explanation of Tiv ideas, a contribution to the anthropological literature on witchcraft, magic, and religion.

The problem which faces any ethnographer writing about 'law' is twofold. First, he must report accurately the ideas and institutions of the people he has studied, in a language (English) in which most of the words and concepts of social control have been pre-empted by jurists and given precise and technical meanings. That is the translation problem. Secondly, he must report his material in such a way as to illuminate the work of his predecessors and his colleagues. Seeing his work and the ideas of his people in relation to a body of knowledge already in existence might be called the theoretical or comparative problem.

'Law' is a rich and ambiguous word, with wide ramifications in ordinary speech. It has also been adopted and given even more widely ramifying technical meanings by two separate disciplines. The first is the discipline of lawyers. To lawyers the law is the core of that highly refined system of ideas and practices of which the legal institutions of our own society consist. To ethnological or comparative jurists, on the other hand, 'law' is any system of jural institutions which controls, wholly or in part, the 'force' inherent in any 'politically organized society'.

The method by which I attempt to avoid inaccuracies of translation as well as confusion between sociological theory and our own folk theory of social control is, I believe, a simple one. Events that occur within a social field (however defined) can only be perceived in company of an interpretation. Obviously, the human beings who participate in social events interpret them: they create meaningful systems out of the social relationships in which they are involved. Such a system I am going to call a 'folk system' of interpretation, by analogy with 'folk etymology'.

There is also a second sort of system: that which sociologists and social anthropologists create by more or less scientific methods. This system may be called an analytical system. It is determined

by the anthropologist *qua* anthropologist to explain the material which he has gathered *qua* ethnographer. But it is very important that he should also give the folk system which, if he is a good ethnographer, he *learned* (as opposed to created) during the course of his research. For example, a certain field of Nuer social relationships is explained by Nuer in terms of an agnatic genealogy. That is the folk system. The same field is explained, in English, by Professor Evans-Pritchard, as a lineage system based on the principle of segmental opposition. That is an analytical system.[1]

The folk system is, surely, the core of anthropological studies. We start with social relationships expressed in particular cultural terms. When we try to understand this 'process', we find that the people who live in the system, and thereby create it, have systematized it themselves. Their systems may be inadequate for purposes of our analyses—indeed, it would be a sad reflection on social anthropology if they were not. But folk systems are *never* right or wrong. They 'exist'. They are. And the key to the folk system—almost the only key—is the language in which it is stated.

A folk system is a systematization of ethnographic fact for purposes of action. It might well have been called an 'action system', had that term not already been given too many definitions. An analytical system, on the other hand, is a systematization of ethnographic fact (including the folk system) for purposes of analysis.

'Law', in the lawyer's sense, is a systematization of ethnographic fact for purposes of social action. It is thus, in the present terminology, the 'folk system' of the English-speaking countries for dealing with their own institutions and ideas of social control. The 'law' of comparative jurists is an analytical system. It concerns principles and idioms for understanding social control of the 'law' type wherever found. The use of the same vocabulary for these two distinct purposes, however necessary, is confusing.

The anthropologist's chief danger is that he will change one of the folk systems of his own society into an analytical system, and try to give it wider application than its merit and usefulness allow.

I have tried, in this book, to translate the Tiv folk system of jural control. In order to do so, I have had to compare it and contrast it with our own—that is, with lawyer's—'law'. But I have

[1] E. E. Evans-Pritchard, *The Nuer*, Oxford, 1940.

tried *not* to 'explain' it *in terms of* our own system of 'law', which would do violence to the Tiv ideas and folk systems. I have, at the same time, tried to elicit from the data an analytical system which makes it more easily understood in generalized sociological terms.