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**Abstract:**

In this paper we use the cross-cultural record to identify the behavioral rules of conduct, and the system supporting those rules, that are found in traditional societies, such as tribal societies. We then draw on the historical record to identify the behavioral rules of conduct, and the system supporting those rules that were found in the early state. The proposal tested here is that in traditional societies the behavioral rules of conduct and the systems that support them (e.g., processes for identifying guilt, punishing offenders, enacting legislation, preventing conflict) are aimed at promoting enduring, cooperative relationships among individuals who are identified as kin through common ancestry. The assumption underlying this proposal is that once human females increased their investment in offspring, cultural strategies to protect those offspring became more important. A moral system, which is the term we use to refer to the early system of behavioral codes, protected offspring by turning conspecific threats into the protectors, providers, and educators of children. It did this by creating a strong kinship system, the members of which were bound by common ancestry (actual or metaphorical), thus tying individuals into enduring, cooperative relationships by using culture to encourage them to honor ongoing duties to one another. This kinship-based moral system is significantly different from that found in societies in which the majority of interactions are with non-kin, interactions often center on the exchange of good and services, and traditions have largely been broken down. We refer to this second system as a system of law and argue that this distinction between moral and legal systems has implications for attempts to explain the evolutionary basis of human cooperation.



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# The Words of Our Ancestors: Kinship, Tradition, and Moral Codes

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Key words: law, morality, cooperation, evolution

## 1. INTRODUCTION

Altruism, in the field of evolutionary biology, refers to behaviors aimed at promoting the survival and reproductive success of another individual, when such actions are at the expense of one's own survival and reproduction. Altruism directed to offspring makes perfect evolutionary sense because such altruism helps get copies of the parent's genes into future generations. However, altruism is not confined to such parental behavior, and the altruism exhibited towards individuals who were not offspring has been a challenge to evolutionists since Darwin.

One solution to this challenge was proposed by Darwin, who suggested the possibility of group selection (1871:166). By the early 1960s, many evolutionists saw group selection as a solution to the puzzling examples of altruism, based on the assumption that groups of altruistic individuals could evolve because such groups might out-survive groups of competitive, non-altruistic individuals (Wynne-Edwards 1962, 1986). Darwin, however, had anticipated one of the problems with group selection, namely the fact that such altruistic groups would always be vulnerable to selection at the individual level, which would favor

less altruistic members of a group (1871:63; see also Williams 1966). This problem led to the search for other solutions and the first breakthrough was Hamilton's (1964) concept of inclusive fitness that could explain altruism toward close kin who were likely to have copies of the altruist's genes. While this concept had significant predictive power, the existence of numerous examples of altruism toward distant kin and non-kin indicated that additional explanations were needed.

Reciprocal altruism, the concept proposed to account for non-kin altruism (Williams 1966; Trivers 1971), simply states that many forms of apparent altruism really are not altruistic when viewed over a longer time frame because they are reciprocated. While reciprocal altruism could account for much of non-kin altruism, it could not, however, account for acts of altruism in which the person who benefited from the altruistic act did not reciprocate. Alexander (1987), in an attempt to account for these forms of altruism, proposed the concept of indirect reciprocal altruism, which states that some of these altruistic acts are not really altruistic because the apparent altruism is actually reciprocated, but by individuals other than the recipient of the original altruism.

Evolutionists, for the past two decades, generally have accepted that human altruism is sufficiently explained by concepts of kin selection, reciprocal altruism, indirect reciprocal altruism, and perhaps group selection. Individuals who behaved in ways that did not fall easily into these categories were often dismissed as deluded (Miller 2000) or coerced (Harpending et al. 1987). Lately, however, studies have begun to show that these explanations need refining and a number of researchers now argue that "human cooperation is an evolutionary puzzle" (Fehr and Gächter 2002:137, see also Boyd and Richerson, in press). Humans require a unique explanation as "human cooperation is based in part on capacities that are unique to, or at least much more highly developed in, *Homo sapiens*" (Bowles and Gintis 2002:1). Cooperation in humans, for example, involves not just cooperative hunts and the sharing of meat, it can also involve individuals sharing scarce resources with individuals who are not family members and who, once seen, will never be seen again and cannot reciprocate (Fehr and Gächter 2002). Such altruistic acts are not confined to the novel environments of modern societies because they also regularly occur in clans and tribes. Further, such acts in traditional societies are not aberrant deviations from the norm; they are the result of individuals following moral and legal prescriptions (Boyd and Richerson, 2005; Palmer and Steadman 1997).

Attempts to explain this unexplained altruism have often used mathematical models and the concept of group selection. What these explanations seldom do, however, is draw heavily upon the cross-cultural record in order to understand the parameters of the phenomenon to be explained. Recently, Boyd and Richerson (in press), elaborated on existing mathematical group selectionist models, proposing that cooperation in large groups can be explained by what they call "moralistic reciprocity," which requires monitoring of behavior, punishment of non-cooperators by moralistic reciprocators, and the punishment of non-punishers by the moralistic reciprocators. Widespread cooperation in a large group, they argue, is more likely to occur if there are limitations placed on within-group variation, such as when there is a biased transmission which is maintained by conformist social learning.

The first difference between our model and the Boyd and Richerson model is that our model does not require the problematic assumption of group selection. Second, although we agree with Boyd and Richerson that punishment is involved in human cooperation, the cross-cultural evidence seems to give it a more minor role. As Rattray (1929:xx), explained in his book on Ashanti law, “the unwritten, uncodified, unclassified rules of conduct ” were followed, not out of fear of punishment, but almost unconsciously from time immemorial.” While we agree with Boyd and Richerson that conformist social learning is important-- as Kroeber pointed out in 1923 (257), “...on the whole the passive or receptive faculties of culture tend to be considerably stronger than its active or innovating faculties” -- they focus on conformity in the “horizontal” transmission of behaviors among members of a single generation living in a group. We, in contrast, focus on conformity in the “vertical” transmission of behavior *from one generation of kin to the next* and we argue that this vertical transmission of traditional behavior from ancestors to descendants is what produces the homogeneity of behavior among co-descendants of a given generation. Although this “conformity of traditions” is a topic largely ignored by most evolutionary biologists, it is obvious in the cross-cultural record. What the vertical transmission of a cultural trait requires, as Coe (2003) pointed out, is many years of mutually cooperative interaction. It is during this time and under these conditions that enduring cooperative relationships are developed. When traditions are understood as coming from one generation of kin to the next, cooperation between generations is implied. Further, individuals are copying those who have already proved their success in survival and reproduction, namely their parents and (as is implied by the word tradition) their ancestors.

Thus, the explanation of altruism we propose is a model that can account for the altruism among distant kin that is found, perhaps universally, in traditional societies. Our model proposes that this form of altruism is ancestrally-driven and involves co-descendants of those ancestors. The origin of this “ancestrally-driven” altruism was solicitous parental care driven by the increasingly large investment made in human offspring initially by mothers, and then allomothers, and then males. Human offspring are altricial, born in an extero-gestate state and requiring many years to reach full physical, emotional, and intellectual maturity. During this period of immaturity, human offspring are vulnerable physically, as they are born with few or no defenses against those who are smarter, bigger, stronger, or armed with teeth and claw. Human offspring also may be vulnerable to emotional turmoil, resulting in permanent increases in cortisol baseline or reactivity (Weaver et al. 2004), which may place them at higher risk for development of depression and other health problems. Further, the long period of immaturity also indicates that human offspring are designed to be influenced. While this influencability probably was selected along with parental responsibility, this responsiveness makes children vulnerable to those who encourage children to behave in ways that are not in the child’s long-term, or even short-term, best interests, but are in the interests of the individual doing the influencing. Successful parents presumably protected offspring from such influences.

Humans are extreme K-strategists (investing large amounts in a small number of mates and offspring), as opposed to r-strategists (investing very small amounts in a large number of

mates and offspring). As the investment in vulnerable human offspring increased, it would become increasingly important, for a mother in particular, to protect the few offspring she could have and could ever produce (Coe 2003). To protect their offspring from conspecifics and other threats, our ancestors used cultural traditions to create an environment in which large numbers of individuals identified themselves as sharing common ancestry, and cooperated as close kin (although many, based on a coefficient of relatedness, were *not* close kin). Cultural mechanisms, including a moral system, were developed to turn potential threats to children into the protectors, providers, and teachers of those children (Coe 2003).

Kinship is a central organizing factor in all human cultures and central to kinship is the mother-child relationship, which is an enduring relationship, often lasting for life, and which is characterized by a particular hierarchical relationship. The maternal hierarchy, which may have been the first culturally-influenced social hierarchy, is characterized by the obligations the one at the top has to those beneath her; it is characterized by duty, not rights. These obligations were codified into the rule, "Mother take care of your child," which Edel and Edel (1959:34) argue in their cross-cultural study, is a "universal imperative." Mothering behaviors are held to be so important that, cross-culturally, they seem to have an "absolute structuring effect" upon morality, and they serve as the foundation for restrictions and for positive ideas and virtues (Edel and Edel 1959:114).

While maternity is recognizable by birth to a particular mother, humans, as far as we know, have no innate mechanism for identifying kin or for distinguishing close kin from more distant kin. Thus, we argue that descent names (Palmer and Steadman 1997) and body decoration, such as tribal and clan dress (Coe 2003), were the primary mechanisms for identifying kin. Further, cooperation among individuals identified as kin, particularly enduring cooperation, does not occur automatically, as we can see in the number of relationships broken through family feuds, divorce, etc. Cooperation must be encouraged; traditions provide the mechanism for such encouragement. We argue that the aim of the oldest system of behavior codes was to encourage enduring, cooperative, unselfish behavior among all individuals who identified themselves as kin through descent from a common ancestor. The social restraint regularly encouraged by traditions would have been crucial. When traditions break down, so will the personal sacrifices they demand and the cooperative social relationships those traditions encourage (Coe 2003).

Kinship (including metaphorical kinship) ties are distinguished from non-kin relationships not only in the amount of cooperation one is likely to observe (Palmer and Steadman 1997), but in the duration of the relationship. By enduring cooperation we are referring not only to cooperation that lasts over a lifetime, but also to cooperation that is inherited, such as, even after a parent's death, the parent's cooperative social relationships are available to and supportive of their children and grandchildren (Coe 2003). These kinship-based behavioral code systems, which may have persisted because of their effects on the reproductive success of generations of the descendants of the original ancestors who encouraged the traditions, were intertwined with other traditions, including art (Coe 2003), religion (Steadman et al. 1996; Steadman and Palmer 1995), economics, and political systems, which also placed

limits on behavior (Coe 2003). As such systems are widespread and thus presumably ancient; they may have played a crucial role in the success of *Homo sapiens*.

We will define traditional societies as those in which cultural behaviors tend to have been copied from ancestors for many generations. All humans lived in traditional societies until the last few thousand years. Societies still referred to as traditional thus resemble these earlier societies. Such societies typically consist of individuals identified as kin by virtue of being perceived as descended from common ancestors. Although some traditional societies are small, the tradition of passing descent names from ancestors to descendants over many generations can enable traditional societies to become very large. As van den Berghe and Barash explain, unilineal descent “can be seen as a cultural adaptation enabling up to millions of people to organize” (1980:404). For example, among the Tiv, “the whole population of some 800,000 traces descent by traditional genealogical links from a single founding ancestor” (Keesing 1975:32-33; see also Evans-Pritchard 1951:29). While traditions such as descent names enable large numbers of individuals to be identified as kin, other traditions that encourage cooperation with kin are necessary to produce the cooperative social relationships that form these individual kin into a society (Palmer and Steadman 1997). These are the traditions we refer to as moral codes.

We suggest that the kinship basis of traditional societies is why the earliest behavioral moral codes are said to involve more “benevolent principles” (Ghoshal 1959:25) and to facilitate more enduring relationships, than the more punitive legal systems found among non-kin that tend to disrupt enduring social relationships (Coe 2003; van Baal 1981:106). Santos Granero (1991:226) reports that even today, tribal people such as the Peruvian Amuesha, claim that “yi” (morality), which promotes such kinship responsibilities as love and generosity, is crucial to the existence and perpetuation of harmonious and enduring social relationships. In an important sense, as one inherits one’s cooperative relationships from one’s parents and other kin (e.g., for example, a parent’s close friends may maintain a relationship with offspring, even after the parent’s death), when we talk about enduring cooperation we are referring to multigenerational cooperation. “Immoral” behaviors, in contrast, are those that are “antisocial,” demonstrating selfishness or “greediness or meanness” (Santos Granero 1991:226) in their “disregard for kinship duties and failure in one’s duties towards other fellow Amuesha” (p. 45). These immoral behaviors, the Amuesha report, preclude harmonious enduring relationships.

Kinship was regarded as so important that when interactions had to occur between unrelated individuals, rituals were followed that made those strangers into kin. The tribes of the Plains (e.g., Pawnee, Arikara, Cheyenne, Mandan-Hidatsa, and Crow) had a policy of not trading with members of another tribe, who had different ancestors and traditions, until a metaphorical kinship relationship was established through the calumet ceremony (Wood 1980). The calumet involved a “father-son” adoption ceremony and made it possible for tribes that had formerly been at war to trade in peace. “Plains Indian trade,” Bruner (1961:201) writes, “was accomplished by barter between fictitious relatives. From a larger perspective, a vast network of ritual relationships extended throughout the entire plains.”

One prediction generated from our hypothesis is that these kinship-based traditional systems of behavioral codes will differ in significant ways from those that arose relatively recently in response to the growing interaction between individuals who were non-kin; that is, individuals who were independent, autonomous, self-interested strangers motivated towards personal achievement, often in an interaction involving an exchange of goods and services (McClelland 1981). The aim of these later systems was to promote nonviolent interactions among these individuals, but not necessarily to promote enduring social relationships between them (Coe 2003). We test this proposal using the cross-cultural record to identify the features found in the moral codes of traditional societies. We then briefly contrast them with the legal codes and the system involved in teaching and enforcing those codes as found in the early state.

In this paper we use moral to refer to tribal systems of behavior codes and laws to refer to those found in the early state. While earlier anthropologists were almost consistent in using the terms “primitive law” to refer to moral systems found in tribal societies, the difficulty of defining the terms “laws” and “morals” across cultures (Radin 1973) has led to them often being used interchangeably. The terms, however, have quite distinct origins and may have different functions. Moral, according to most sources (Ayto 1990), is derived from the Latin *mōs* (o/s *mōr*), meaning “a way of carrying oneself, hence especially of behaving; a custom as determined by usage not law.” Law, on the other hand, came originally from the Germanic word *lag* (Ayto 1990), which was changed to Old Icelandic *log*, which meant decree, good order, or fate. Interpreting these roots is difficult; however, we follow many historians of law who claim that morals are the older form. Morals, wrote de Coulanges (1955) and Gruter and Bohannan (1983:xvi) may be the more “ancient codes” out of which law developed. Morals (Diamond 1951) may represent the infancy of law, as laws are “ethics written down” (Alexander 1987:184) and the moral judgments of a population shape legal standards (Gruter and Bohannan 1983:xv). As morals appear to be the more ancient system of behavioral codes they would be associated with the earliest forms of human social organization.

## **2. Ancient Kinship Based Traditional Moral Codes**

### ***Source and Justification: Ancestors***

Many scholars would agree that practice of having and enforcing behavioral codes is ancient and that the origin of these codes and the system that enforces them was our ancestors, who “from time immemorial,” were the “primitive custodians of the unwritten, uncodified, unclassified rules of conduct” (Rattray 1929:3). Primitive law was *ancestral*: “All of it [primitive law],” Culwick and Culwick (1935:8) write, “is neither more nor less than the rules of behaviour ordained by the ancestors. According to a number of ethnographic documents, the sources of the behavioral codes found in kinship based societies are ancestors (Hoebel 1949: 366). Codes are said to “be based on the practices of one’s own ancestors” (Edel and Edel 1959:87), and to “contain in themselves the authority of the ancestral ghosts” (Sumner 1907:232). These rules often have no other justification than “we do it this way because the old men say it is wiser” (Sun Chief 1942:268), or “it was the custom of their



ancestors” (Tylor 1960:252), or it is now our “duty” to our ancestors to behave the way they specified (Edel and Edel 1959; Johnson, 1984; Westermarck 1912). The ancestors who gave the rules are said to still participate in social life, rewarding those who obey and punishing those who violate their rules (Santos Granero 1991). Among the Ndembu, the “moral man” is one who “honours his kinship obligations” and “respects and remembers his ancestors” (Turner 1979:374). Middleton states that among the Lugbara, “the rules of social behaviour are the ‘words of our ancestors’” (1960:27). To act morally is one’s duty to the ancestors; morals are not justified by a claim that they are just or fair.

### ***Boundaries of the System***

As expected, based on shared ancestry, in traditional societies, kinship was said to form the boundary of the system: “an individual identifies himself by particularizing his blood relationships” (Brierly 1949:80). Although descent groups can be associated with ancestral lands, birth is what appears to be most important. Birth and descent indicate “those who count in its reckoning and take part in its proceedings” (Edel and Edel 1959:16). It was this tie to kinship and common ancestry (“tie of blood to forefathers”) that lead early scholars to claim that the boundaries of the system were defined by kinship rather than geography (King 1972:37). Rules promoted kinship to co-descendants. As Briffault (1931:57) observed, there are rules of “kindness, love, help, and peace applicable to members of our own clan, tribe, or community, the other of robbery, hatred, enmity, and murder to all the rest of the world.” Outsiders in traditional “static” (or unchanging) societies are considered to be less than human (Santos Granero 1991; Hoebel 1949).

### ***The Transmission of the Codes***

It often is said that while laws tend to be formal and written, morals are rarely formulated clearly (van Baal 1981) and often are unwritten, transmitted orally, as are behavioral codes in traditional, kinship based societies (King 1972). In kinship-based societies many rules may be unspoken, transmitted by copying or modeling, or through verbal behaviors (van Baal 1981; King 1972). Even if unspoken, individuals are quite conscious of a high valuation placed on certain behaviors. For this reason, Pospisil (1956) argued that we must base our studies of systems of behavior code on what actually goes on in the case of conflict rather than on the presence or absence of abstract rules or a formal process for teaching the rules.

Children in all societies are educated about behavioral codes and “the specific consequences that will follow if a rule is not obeyed” (Hoebel 1949:363):

The continuance of a society and its culture require that some men and women, or group of men and women, be fixed with the responsibility of providing the necessary care and training without which children perish or fail to acquire the cultural techniques and values to which their society holds. (Hoebel 1949:205).

In 1949, Hoebel wrote, “The essential function of the family is to provide a basic group in which children receive their primary care and social training in an atmosphere of emotional

intimacy.” (p. 219). By this he apparently meant that a family is unique in combining education with affection, forgiveness with expectations. Further, in families, moral instruction is informal, primarily by story telling, ritual and example (Hoebel 1949). Children copy the behavior of the elders, including their parents, and the behavior in the stories that are often about the ancestors.

### ***Formality of the System: Force and Authority***

In a community without formal laws, without courts, judges, or police, the fear of supernatural power probably played a crucial role in maintaining certain standards in the conduct of relations among family groups (Shkilnyk 1985:97). Early anthropologists, who studied kinship-based societies, referred to this phenomenon as primitive law. The use of the word law, as was suggested earlier in this paper, was seen as problematic; law generally was understood to be based on the Austinian definition, which emphasized the formalized processes of control exercised authoritatively by the body politic or social (see discussion in Meek 1985). Oliver Wendell Holmes (1917:343) wrote that “the foundation of jurisprudence is physical power.” Baxter (1953) argued that the field of law should be understood “as coterminous with that of organized legal sanctions and, correspondingly, sanctions as legal “when they are imposed by a constituted authority, political, military, or ecclesiastic.”

However, as Meek (1985) explained in detail, in some societies studied by anthropologists, it is not always clear what the term authority means or who has authority, in the sense of being able to authoritatively exercise force or processes of control. Although some means of regulating social relations does exist, it is not always fully 'authoritative'. Private boards of arbitrations, such as the Leopard Skin Chief of the Nuer, do not systematically apply force, as there is frequently no compulsion, moral or other, to accept the recommendation of the board (Meek 1985). In kinship-based societies the rules of behavior and mechanisms for punishing and rewarding them were largely informal and unwritten. Anthropologists recognized that if law is defined at least partially by formality, it would mean, as Meek (1985) and Howell (1954) pointed out, that some societies would have no law, even though they do sanction appropriate social behavior and discourage, in various informal ways (e.g., gossip), inappropriate social behavior although there is no code or legal text in which the precise answer to any legal situation may be found. As Radcliffe-Brown (1933), noted, obligations imposed on individuals are often mere matters of social convention.

A problem with this definition of law is that it excludes systems aimed at the regulation of conduct in other social organizations, such as the extended-family and clan, which were often well ordered and which, for most anthropologists, were social rather than political bodies. As Malinowski (1934:xxv) recognized, “The primitive family, village and kinship groups are not subject to courts of law, to policemen, to codes, to judges, or public prosecutors. And yet the laws are kept — to a large extent.” The issue in such systems was how order was maintained.

An authority relationship is essentially one of inequality; power or force refers to the opportunity a person has to restrict the behavior of other individuals and implies an authority

who has the privilege of applying that force as rightful power (van Baal 1981). The manipulation of power to one's own personal advantage may not be characteristic of leadership in small-scale kinship-based societies and even in larger societies such as the Nuer. When Briffault (1931:181) described authority in kinship-based societies, he wrote that the power of the headman "is extremely limited and ephemeral; it is...purely functional and no authority attaches to the office apart from utility to the community." Others argue similarly. Ghoshal (1959) claimed that tribes were governed by their own customs and rules (albeit unwritten), not the enactment of any supreme authority. For Radin (1953:245), "authority [kinship-based societies] is diffused and non-centralized and coercion is limited in its application." "The headman in the primitive world," wrote Hoebel (1949:393), "rarely has explicit authority; his functions are so subtle that they defy easy description." Westermarck (1912:183-184) claimed that "among many savages, the chief is said to have nothing whatever to do with jurisdiction. He, like other men, "acts merely as an advisor, or is applied to as an arbiter...the judicial power with which the chief is invested is stated to be more nominal than real." Bushmen chiefs, according to Schapera (1956:87), had "no legislative or judicial functions, nor are there official tribunals of any kind." If people are unable to reach a decision, they "sometimes ask elderly men to arbitrate their disputes, but such requests are not obligatory, nor are the decisions necessarily accepted."

The Fuegians and New Guinean chiefs, Briffault (1931) argued, had no authority. "The headman's powers to impose his will among the Kapauku...are small.., he cannot afford to deviate too far from the expectations of either his fellows or his followers" (van Baal 1981:112) and he must "avoid provoking their jealousy" (p. 116). Further, even among the Australian Aborigines, "where the influence and authority of the elder men is great, they have nonetheless no power" (van Baal 1981:181).

The small amount of authority that does exist in kinship-based societies may be described as paternal in that it carries with it heavy obligations and the duty of protection (King 1972). According to Schapera (1956:68), the Bushmen leader "has many duties, which if faithfully performed may take up much of his time and energy. He is commonly said to be the 'father or 'herdsmen' of his people." His responsibilities include being generous with his followers, watching over their interests, seeking to promote their welfare and security, being hospitable, helping others in times of need, and visiting the graves of the ancestors to pray and sacrifice to them (Schapera 1956). Further, "the higher a person's position in the hierarchy of power," van Baal (1981:114) reports, the more is expected of him and the greater are his obligations"; these obligations "increase with the opportunity to misuse it for selfish ends."

According to Schapera (1956:105), people in kinship-based societies do not obey the chief merely because they fear direct punishment. His hold over members of the tribe is supported by the fact that his office is sometimes held to be of divine origins. . .not only is the chief's office a venerable institution, but he holds it by right of birth; his birthright sustains his authority. Bandalier (1972:99) wrote that the primary role of the lineage of clan chief is that he is the representative of the ancestors: "he is the point of contact between the real clan (or lineage) formed by the living and the idealized clan (or lineage), the repository of ultimate

values, symbolized by the totality of the ancestors', it is he who transmits the words of the ancestors to the living, and those of the living to the ancestors."

### ***Characteristics of Ideal Leadership***

Although social scientists often assume that humans have two types of relationships, one of equality and one of inequality and subordination (van Baal, 1981), leaders in kinship-based, traditional societies had little power. Following this, the characteristics of a proper leader were parental, involving generosity (Santos Granero 1991; Schapera 1956), fairness, and equality or brotherhood (Hoebel 1949). Santos Granero (1991:258) writes, based on his fieldwork, that Amuesha leaders suggest and persuade rather than issue orders and commands:

morality is an important ingredient of power relations and particularly of political relations. I shall argue that from an Amuesha point of view, obedience is due to a request that is moral in nature and has been made by someone whose power is perceived as legitimate. On the contrary, if a request is immoral in nature, or is made by someone whose power has ceased to be perceived as legitimate, disobedience becomes the right course of action. (p. 258)

The holders of power are represented as generous providers and power relations are characterized by a kind of love which only the powerful may feel for the less powerful. It is this kind of asymmetrical love, with its life-giving qualities, which makes power, whether political or not, legitimate in the eyes of the actors (Santos Granero 1991).

Furer Haimendorf (1967:88-89) reported that headmen who were stingy and grudging expenditure on ceremonial gifts lost the respect of their kinsmen and neighbors; the greater the sacrifices a man is willing to make the more respect he receives. Hoebel (1949:33) argued that a leader cannot be selfish and be successful as a leader; he "is not and cannot be acting solely on his own, his family's or his clan's behalf and yet enjoy the approval or tacit support of the disinterested remainder of his society." "Power" scholars argue, "implies responsibility" (van Baal 1981:117).

## *The Codes Themselves*

The codes regulating interactions in traditional, kinship-based societies are said to focus on the roles of and interactions between kin. Four codes, which were said to be of fundamental importance, promoted motherhood, governed mate choice and marriage, encouraged cooperation between siblings and other kin, and encouraged respect for the elderly and the ancestors. Without these codes men would be “held down by low animal appetites and passions” (Morgan 1963:41), return to a state of savagery, and live in misery (Tylor 1960).

### **1. Rules of Motherhood**

Although few ethnographies report an explicit rule of mothering, Edel and Edel (1959:34) argue in their cross-cultural study that “Mother take care of your child” is a “universal imperative.” Given the needs of infants and children,

the need for maternal care is an absolute: children need the sheltering care of a mother if they are to grow up at all...no society that has failed to provide all these elements could possibly survive; and on the whole it seems this must be provided by a mother or a very nearly equal mother surrogate.

Variations in mothering behaviors, Edel and Edel acknowledge, do exist; there are apparent contradictions to the universal insistence on good mothering. Women in the Marquesas and Mundugumor, for example, refuse to bear children to avoid spoiling their figures, and practice infanticide, “to spite their husband’s families.” Mothers are harsh in disciplining their children, and reject and handle their infants roughly (Edel and Edel 1959:114).

Before we accept that these behaviors are just an example of cultural relativity and behavioral flexibility, Edel and Edel suggest that we determine if these behaviors are truly tolerated by asking “What do the old people think of the rejecting and neglectful young mother?” or “Is she punished for her behavior?” (p. 42). Poor mothering behaviors, Edel and Edel concluded, were not tolerated. Further, they wrote that there is “a striking impression that one cannot help but derive from the account available that their cruelty and destructiveness were so great that being a tiny group they must surely have killed each other off if they had continued in the same way much longer” (p. 41). In other words, poor mothering behavior is not a strategy that should persist, transmitted between generations of kin. They end this discussion by posing a question “we must ask of any set of data which appears to contravene or limit the universal—how viable is this society in fact? (p. 41)

### **2. Rules of Marriage and Mate Choice**

“Intercourse of the sexes,” is treated in all societies, “as a social or ethical matter” (Lowie 1934:231); individuals must have community approval to marry (Malinowski 1932). This ethical matter was not only found in all societies (Briffault 1931; Lowie 1934; Tylor 1960), but it may have been the “first domestic morality prescribed” (Coulanges 1955:42). Tylor (1960:246) claimed that “central to the rules governing moral systems are the rules of

marriage.” The bond was held to be relatively permanent: “Every human society regards as superior a relatively permanent bond between permissible mates, and this is marriage” (Lowie 1934:231)

The choice of a mate was not left to chance (or romance); “marriage is never a matter of an entirely free choice” (Malinowski 1932:16). Pitt Rivers claimed “in every society there are found definite rules regulating whom a person may or may not marry” (1932:39) According to Lowie (1934: 231)

Societies differ in the restrictions they impose, but all of them somehow limit choice of mate...everyone was expected to marry less from personal inclination than in the interests of his family. This was not unreasonable in the circumstances. Sex life is biologically induced long before there is maturity of judgment. It was not cruel for elders to direct her choice in the light of what seemed best for her kin as a whole. Moreover, life was often such that parents had to consider the desirability of a choice...this included such personal traits as training, skill as a hunter or skin dresser, and also very decidedly his or her social connections.

Rules regulating marriage include such things as exogamy, endogamy, polygyny, polyandry, cross-cousin marriage, incest avoidance, and the levirate. At times, marriage is described as a kinship obligation. For example, in tribal endogamy, marriage is prescribed between individuals who claim kinship by common descent (Kroeber 1923; Malinowski 1932; Morgan 1963; Pitt-Rivers 1932; Tylor 1960; Westermarck 1912).

Certain behaviors are expected within marriage. According to Coulanges (1955:89-90), marriage “tells the husband and wife that they are united forever and that from this union flow rigorous duties.” Its aim apparently is reproduction. “Marriage,” wrote Malinowski (1932) “is never a mere cohabitation,” it involves the production of children. Further, the sexual behavior of spouses was governed by moral rules. For Malinowski (1932:4), “marriage remains the most important form of sexual intercourse and it dominates and determines all extra-connubial liberties,” even though “the penalty of an adulterous wife is invariably much graver than upon an unfaithful husband” (p. 7).

Marriages also create fathers. Based on his fieldwork, Santos Granero (1991) described the role of the father as one that was defined more by responsibilities than by rights. Fathers are expected to provide for their families and protect them. Further, fathers are teachers who can “be consulted by their children on any topic as if seeking their teachings for one’s future benefit” (Santos Granero 1991:170). Although fathers have the obligation to help arrange marriages, they cannot ‘give away’ their daughter in marriage without their daughter’s previous consent (Santos Granero 1991). He continues (p. 232)

Fathers have over their adult daughters, little control...women are largely responsible for their own decisions, and they cannot be forced into taking decisions against their will. Rather than argue that females constitute an economic asset for their fathers or

brothers, I shall suggest that daughters and sisters frequently become an economic burden on them.

A father's responsibilities do not end when a daughter marries. Even after their marriage, fathers serve as an insurance policy protecting their daughters against violent husbands (Santos Granero 1991). Further, fathers often become grandfathers, who provide for and help educate their grandchildren.

### **3. Rules Governing Kinship Behavior**

According to a number of scholars, generosity between family members is universal: "Every culture has mutual obligations between parents and children, a moral concept that is universal" (Edel and Edel 1959:28). Tylor (1960:246) explained that "central to the rules governing moral systems are the duties of parent and child." Kin had responsibilities, often referred to as moral responsibilities, that they owed to other kin. Westermarck (1912:4, 539) claimed that "the tie of blood imposes mutual ties, assistance as a duty under all circumstances." Kin had a moral obligation to care for kin (even distant kin) who were ill, in a "kind, patient and affectionate manner," even extending to carrying them from camp to camp (Ellis n.d., cited in Westermarck 1912:547). Kin were morally obligated to extend care to kin who were weaker, smaller, or handicapped, whether blind, deaf, crippled, or simple minded ("idiots") (Westermarck 1912:547).

### **4. Rules and Respect for Elders and Ancestors**

Also important was respect for parents, the elders, and the ancestors: "Nowhere have parents been more venerated by their children than among the nations of archaic culture" (Westermarck 1912:383). This principle, which is said to be central to moral codes, is crucial in tribal societies and is found in the ethic of countries such China, both modern and ancient (Diamond 1951:232). At death, elderly parents become the honored ancestors whose stories were used to encourage cooperation between descendants. According to Tylor (1960:250), "the worship of the dead naturally encourages good morals; for the ancestors who when living took care of his family [felt their descendants] should do right by one another." Nothing displeased the ancestors "like changing the old customs they were used to" and a lack of "respect for the aged" (Tylor 1960:250). In 1991, Santos Granero (p. 91) described an elderly Amuesha man lamenting the recent loss of the shrines to the ancestors: "Nobody takes care of them anymore; nobody offers them even a few coca leaves. How are we going to be saved?"

In a cross-cultural study of aging, Simmons (1945) found that the elderly remained actively involved in social life and that one outstanding activity of elderly women in all societies was midwifery, which brought them tremendous respect. Mistreatment of the elderly, or abandonment through killing or exposure, Simmons found (see also Silverman and Maxwell 1978) was related to ecological factors, specifically, the harshness of uncertain environments. Calhoun (1990) also found that abuse of elders was characteristic only of ecologically marginal societies.

### ***Legislative Enactment***

Numerous writers," Hoebel (1949) explained, "have commented upon the relative absence of legislative enactment by primitive government." Often there was no authority competent to make a new rule: "It is seldom in the heads of a people to alter those customs which have been held sacred from time immemorial" (Westermarck 1912:162). Lowie (1934:358), who is distinguished among anthropologists for his study of law, wrote that

the legislative function in most primitive communities seems strangely curtailed when compared with that exercised in the more complex civilizations. All the exigencies of normal social intercourse are covered by customary law and the business of such governmental machinery as exists is rather to exact obedience to traditional usage than to create new precedents.

One reason for the failure to change laws or add new ones was because, as Sumner (1907:355) explained, "The ghosts of the ancestors would be angry if the living should change the ancient folkways." Furer Haimendorf (1967:148) claimed that Gond philosophy "leaves no doubt that the rules of behavior laid down in the ancestor's time remain binding for present generations."

### ***Determination of Guilt***

Hoebel (1949) reported that in small communities of kin, questions regarding guilt or innocence are rarely raised as not much behavior is kept secret and the usual argument is only about the extent of the damages. When guilt must be determined, Hoebel (1949) reported that divination is the most common device. Diamond (1951) reported that in clans there are no formal courts or trials, and Schapera (1956) described decision-making, involving determination of guilt, being made casually around the campfire. In some African tribes, the clan council has the responsibility of determining guilt. This council is informal and has no fixed sessions; members meet as required, and as soon as possible. In rendering a decision, factors of provocation, negligence, accident, or the status of the persons involved and their relationship to each other are taken into consideration. Judgments are not always impartial: in a society lacking codified legal norms, every judgment of the village-council is the outcome of discussions among the counselors and it is inevitable that their attitude is influenced by the strength and power of the respective clans of the litigants (Furer Haimendorf 1967:92). Although the clan leader and group of advisors make decisions, individuals can go against what they say, but they must explain why they are doing so (Schapera 1956).



## *Punishment*

Among the Cheyenne, an aggressive stand was to be taken against enemies, not one's kin or extended kin. Lethal violence against kin was "a sin and a crime" (Hoebel 1949:369) and the killer was said to have rotten viscera and to give off such a putrid odor that the buffalo would not get near him, so that starvation would threaten the whole tribe. Further, murder was said to pollute the sacred Medicine Arrows and when blood is on the arrow, bad luck dogs the whole tribe. To purify the arrows, the murderer was exiled and a purification ceremony was performed before all the tribe, with the exception of the murderer and his family (Hoebel 1949).

In Ontong Java, Hogbin (1934:135) reported that those who do not fulfill their obligations to kin had those kin ties dissolved; slackers were ousted from the island and others could take vengeance because there were no relatives to assist the ousted person (Hogbin 1934:135). He wrote that "[b]anishment and the loss of rights as a member of the kindred group formed a most effective penalty in a community where the support of the group was so frequently necessary." Violation of less serious codes, such as violation of the rules regulating communal buffalo hunts, was punished by having the hunter's weapons broken and his horse beaten. Hoebel (1949:369) writes that if the perpetrator showed contrition, "the very men who had punished him bestowed free gifts upon him to set him once more on the road to right living." The Cheyenne understood that the purpose of punishment is to correct and reform.

Some anthropologists have claimed that the consequences of breaking a behavioral code, at least in traditional kinship-based societies, were small. Malinowski (1934:66), in fact, claimed that in small groups no punishment existed for breaking a rule, "not even," he insisted, "the stigma of public opinion or moral blame." Even fights over wives, he claimed, lead to mere ritualized fights (Malinowski 1934). While one has to wonder how violent those ritualized fights might have been, Malinowski did acknowledge that if the fact became public, individuals did have to face serious consequences.

Punishments are often described by anthropologists as being influenced by contingencies. Rasmussen (1929) described how after an inquisition that exposed 25 major and minor violations of the Eskimo codes of behavior, an ill woman was pardoned with the shaman saying she should be released from her burden of conscience as what she had done was just a little thing. Further, punishments are often described as being informal. The Eskimo are said to make up scurrilous songs about individuals found breaking moral rules and to "sing them publicly, serving to publicize private errors in an atmosphere of ridicule" (Edel and Edel 1959:173). Such acts of ridicule may force the individual to leave the community until the ridicule blows over. "Ridicule is keenly felt, for there is no escape in anonymity" (Hoebel 1949:374).

Supernatural sanctions, referred to as "scaring techniques" by Barneau (1953), are common and occur when the claim is made that if one disobeys a moral rule, then that person, his family, clan, etc. is in danger of retribution from a supernatural source (Edel and Edel

1959:115). While supernatural punishments were common, the most dreaded and feared punishment was banishment (Spencer and Gillen 1935). Schapera (1956:87) reported that Bushmen who break important codes “may be punished by thrashing, expulsion from the band, or even death.”

### ***Resolution of Conflict***

The type of relationship in which individuals are involved (kinship or non-kinship) apparently affects the manner in which they attempt to resolve conflict between them. The Ifugaos had over 100,000 members living dispersed throughout rugged valleys of Luzon. If there was a grievance, the first step was to try to seek a satisfactory settlement from the offender. If this fails, he must go to a *monkalun* who will hear his story. When the *monkalun* hears the story of the accused, he will,” Hoebel writes (1949:368), “shuttle back and forth between the two parties, wheedling, arguing, threatening, cajoling—attempting to induce them to give ground so that they may meet on terms acceptable to each.” The *monkalun* represents, Hoebel writes (1949:368), “the public interest. He makes no decision and enforces no judgment, but he provides the means through his good offices of bringing disputants to a resolution of their conflict.”

Breaches in enduring relationships, or relationships that have a “time dimension...are not amenable to handling through law” (Yrgvesson 1978:83). Collier (1973) found in her work with the Zinacantan of southern Mexico that if individuals wish to preserve a valued relationship they will avoid legal procedures and seek procedures that make reconciliation possible. In close groups of individuals, crimes and the resulting punishments affect many relationships: “the crime is not only a matter for the individuals concerned, but for the group as a whole (van Baal 1981:106). Social ties between individuals, and their respective families, can be irrevocably broken if “hurt feelings are granted recognition [and] allowed to flare up” (van Baal 1981:106). Strong punishment, or “revenge, denies the presence of social ties” (van Baal 1981:106). To resolve problems and maintain social relationships, settlements will “restore the victim of the crime to his status and give the criminal the opportunity to be re accepted as a member of the group by his atonement” (van Baal 1981:106). Hoebel (1949:366) described how conflict was resolved. “An alternative to killing an aggressor (and thus becoming involved in a feud), is to challenge him to a juridical song context...the two litigants scurrilously abuse each other with songs composed for the occasion:

Now I shall split off words—little sharp words  
Like the splinters which I hack off with my ax.  
A song from ancient times—a breath of the ancestors  
A song of longing—for my wife  
An impudent, black-skinned oaf has stolen her,  
Has tried to belittle her,  
A miserable wretch who loves human flesh  
A cannibal from famine days.

“He who wins the most applause,” Hoebel concluded this discussion, “wins.”

### **3. The Legal Codes of Early States**

In contrast to the moral codes just described, laws and the legal systems that surround them are associated with social systems in which kinship ties are disrupted (Hoebel 1949). Laws also appear to be related to the formation of partnerships, or new social relationships, between individuals who are “associated in some action or endeavor” (Webster’s Encyclopedic Unabridged Dictionary 1989:1052). The function of law, as explained by Maccauley (1963), may be primarily to build and keep, for a period of time, business relationships which tend to be neither close nor enduring. *Legere*, the root word of legal, means to bind together something that was not already connected.

#### ***Source and Justification***

The laws of the early states (e.g., Mosaic law, Hammurabi’s codes) seem to have been created by a prophet who unites his unrelated children in a metaphorical kinship group using the metaphor of a creator god. Laws, unlike moral codes, are often asserted to come from *new* ancestral revelations. The laws of Moses, for example, were said to have come to him through divine revelation from the ancestor, Yahweh, who created him; those of Hammurabi of Babylon were said to have been revealed from the Sun-God Samas, the judge of Heaven and Earth (Johns 1903). Support for these laws was enhanced by the claim that it was the will of God, the creator and first ancestor, that men, as brothers, should behave in certain specified ways. Even in the late 19<sup>th</sup> century, scholars of laws made supernatural claims, writing that the government “was founded upon the will and purpose of the Deity” (Wines 1853:30-31) and that laws had a “divine origin and foundation.”

#### ***Boundaries of the System***

The boundary of the early system of law was geographic, not biological kinship or based on actual descent from a common ancestor. Although family social relationships (and the often unspoken behavioral codes that encourage those relationships) can be mandated or made into law, the social relationships themselves are not legal relationships. As Grotstein (1980:128) pointed out, “Whatever the relationship was that existed between one member of a family and another, it certainly was not a legal relationship.” The earliest laws (e.g., the laws of Moses) were formulated to guide relationships in a group of individuals having distinct cultural and biological backgrounds and origins (Wines 1853). Hammurabi’s code brought together two unrelated groups, Sumerians and Semitics (Diamond 1951).

The foundation of Israel, according to Suelzer, was not community of blood or land, or of government, it was “alliance with the lord [which] united the crowd of mixed ancestry which fled Egypt (1964:90). The boundaries of the Promised Land, however, were said to have been established by God: “From the wilderness and coast be” (*Deut* iv 6). Tribes living outside the geographical area and not sharing the Hebrew God were neither protected by nor

subject to Mosaic Law: They were neither kin nor metaphorical kin, nor were they regarded as fully human. According to Mosaic Law, the Amalekites, a neighboring tribe of fierce, marauding people, were to be exterminated (Wines 1853:383). In other words, while some encouragement of cooperation outsiders did occur, it pertained only to certain outsiders.

While in these early legal systems, a prophet united different tribes living in one geographic area by using a metaphor of common ancestry, Schapera (1980:25) explained that a state or commonwealth

is not a closed group with membership determined solely and permanently by descent. It is rather an association into which people may be born, absorbed by conquest, or admitted as immigrants and from which they may depart voluntarily or be driven by the fortunes of war.

### ***The Transmission of the Code: Education of the Young***

Pospisil (1958:257) argued that “law is concerned with rules or modes of conduct made obligatory by some sanction which is imposed or enforced for the violation by a controlling authority.” Not surprisingly, in the state, legal education is a civil responsibility: the “state controls education” (Coulanges 1955:213) and education is formal.

### ***Formality of the System: Force and Authority***

Hoebel (1949:364, 363) identified three primary elements as important to law: “we may say that force, authority, and regularity are the elements that modern jurisprudence teaches us we must seek when we wish to differentiate law from mere custom or morals in whatever society we may consider,” “the sine qua non of law” in any society is the legitimate use of physical coercion. The law has teeth, and teeth that can bite.” “Legal coercion,” Hoebel (1949:363) explained “is the application of physical power, in threat or in fact, by a privileged party, for a legitimate cause in a legitimate way, and at a legitimate time. This distinguishes the sanction of law from other social rules.” “The privilege of applying force,” Hoebel writes, constitutes the official element in law, by someone specifically recognized as rightly exerting the element of physical coercion (p. 363). “This distinguishes, Hoebel wrote, “the sanction of law from other social rules.”

### ***Characteristics of Ideal Leadership***

Even in the earliest commonwealths, as we saw in the prior section, ideal leadership was described as, and expected to be, generous and self-sacrificing or, in a word, paternal. Moses, heir apparent to the crown of Egypt, and by prescriptive right, heir to “wealth, splendor, and luxury,” sacrificed for the nation he would create when he renounced this inheritance for “exile, poverty, toil, privation” (Wines 1853:292). Moses is described as possessing all the other endowments and qualities which characterize an appropriate authority: intellect of the highest order: a perfect mastery of all the civil wisdom of the age: a

penetrating, comprehensive and sagacious judgment: great promptness and energy in action: patriotism, which neither ingratitude, ill treatment nor rebellion could quench or even cool: a commanding a persuasive eloquence; a hearty love of truth; an incorruptible virtue: an entire freedom from selfish ambition: an invincible hatred of tyranny and injustice: patient endurance of toil: a courageous contempt of danger and a greatness of soul. (Wines 1853:126)

### *The Codes Themselves*

In regard to the codes themselves, early laws, described as collections of rites, liturgical directions, and prayers, joined with legislative regulations (Coulanges, 1955:178), had “traces of the influence of a more ancient system of laws, a *lex non scripta*, or *jus consuetudinarium*” (Wines 1853:122). Mosaic laws were said to be divinely inspired, revealed to the prophet Moses in order to regulate the behavior of a group of individuals who were “not community of blood, or of land, or of government...but a crowd of mixed ancestry which fled Egypt (Suelzer 1964:90). The aim of Hebrew government was to form a “union” of these unrelated people who were ruled by the 31 kings of Palestine (Wines 1853:445). Moses accomplished this by forming a metaphorical kinship group, a brotherhood, of the “children” of God (“Did not He that made me in the womb, make him?”), joining together men and women from different tribes (Job xxxi.13; Wines, 1853:446) and encouraging kinship-like behavior among them. When the laws were given to Moses, he read them to the assembly of headmen (“elders of the people”) who provided “formal assurance of their willingness...to meet his proposal...to unite together and form a civil community to be governed by common laws” (Wines 1853:48-49). This is referred to as the first “true social compact” (Wines 1853:48).

The Pentateuchal corpora of Mosaic Law is made up of both casuistic laws (if...then techniques described in extra-biblical codes) and apodictic laws (unconditional, unchangeable decrees). The codes of the *Decalogue* (or 10 Words of *Exodus*) are said to be of “great age,” far older than the other rules of the Pentateuch (Suelzer 1964:122) and “clearly of perpetual obligation,” or apodictic (Wines 1853:118). These perpetual codes “enjoined supreme love to God, love to our neighbor equal to that which we bear ourselves, reverence for old age, forgiveness of injuries, the rendering of good for evil, mutual kindness, compassion towards the unfortunate, and a generous hospitality” (Wines 1853:113). They “command respect and compassion towards the aged, the deaf, and the blind...benevolence and generosity towards the poor, the widow, the orphan” (Wines 1953:266). They also promoted benevolence and generosity toward “the stranger” (Wines 1853:266), writing “Ye know the heart of a stranger, for ye were strangers in the land of Egypt” [*Exodus* xxxiii.9]).

The mother, in both Mosaic law and the Hebrew constitution is to be “...the light and joy of the household, to nourish and train the immortal children within its precincts, to mold the whole mass of mind while in its most plastic state, to fill the throne of the heart, to be the priestess in the sanctuary of the home, to be the comfort and support of man in seasons of sorrow and suffering...to shine, to cheer, and to bless in the varied ministrations of sympathy

and love, from the cradle to the grave...the true nobility of woman is to keep her own sphere and to adorn it. (Wines 1853:435)

A man's mission is to "subdue and till the earth, to cultivate the mechanic arts, to make roads and dig canals, to carry on commerce, to encounter the perils and fatigues of war, to institute and administer government, to be the shield of woman in moments of danger and sudden alarm, to perform that which requires physical strength and endurance" (Wines 1853:434). The agrarian law of Moses gave every member of the body politic an interest in the soil (all free citizens were given property in perpetuity), and they encouraged industry and frugality (Wines 1853:403).

### ***Legislative Enactment***

The first codes referred to as laws were written. The laws of Moses were written on two tablets. The Laws of Hammurabi, dating back between BC 2285 and 2242, were carved into a block of black diorites nearly eight feet tall (Diamond 1951). Roman laws were written on twelve tables. Laws are written and the "style in which they are written...should be concise, simple, clear, and explicit" (Wines 1853:79). Although writing could have made it easier for the laws to remain unchanged, this did not occur.

Regularity, according to Hoebel, refers to the fact that "laws build on precedents, for new decisions rest on old rules or law or norms of custom and new decisions tend to supply the foundation for future action" (1949:364). While the apodictic codes of Mosaic Law are "of perpetual obligation" (Wines 1853:43), "forever, throughout your generations" (Exodus xxvii 21), the "purely civil law could be repealed or changed" (Wines, 1853:123). The first law against usury, as one example, prohibited the taking of interest from poor Israelites only (Exodus xxii 25). The second law against usury extended this prohibition to the entire nation (Deut xxii 19; Wines 1853:123). Statutes could be modified through reason, logic, the judgments of respected authority, and the will of the people due to "circumstances of climate, soil, situation, political relations, character, and power of the neighboring nations, customs mode of life, prevalent notions as to honor and disgrace, and the nature of severity of punishments, species and sources of crime...etc" (Wines 1853:121). While laws can change, "new elements," Hoebel (1949:371) pointed out,

are not usually adopted simultaneously by all members of the society. The inevitable consequence is that when some members get new goods and new ideas, they have new interests for which the old lines of the culture have made no provision. Their use of their new acquisitions almost certainly comes into conflict with the old standards held by others. New custom and new law must then be generated.

This is seen in Islamic jurisprudence, which is said to have two sources: the primary sacred sources of the Quran and Traditions. The Traditions were not codified and its compilation may have been prohibited, perhaps because undue importance might be given to the Traditions, at the expense of the Quran. Failure to codify the Traditions is associated with

disagreement among legal schools. Today, few legal rules exist that are based on sacred texts.

### ***Determination of Guilt***

The presence of an impartial judge and *judicium parum*, or the impartial judgment of peers, are said to distinguish legal from moral systems and kinship-based systems from modern systems (Grotein, 1980; van Baal, 1981). For the Hebrews, judges (who were governors or supreme authorities) were, in connection with the high priest, the arbiters of civil controversies (Wines, 1853). Judges received no salary, revenue, or tribute and laws limited their power and limited the ability of others to influence their impartiality (Wines, 1853:545). Further, judges were appointed and they served for life as ministers of justice, protectors of law, defenders of religion, and avengers of crime, “particularly the crime of idolatry” (Wines, 1853:546).

### ***Punishment***

Punishment in the early states, depending on the crime, ranged from fines to flogging, to cutting off the ear of an adulterer, to death or banishment from the community (Bameau 1953). The principle punishments that were “known to the Mosaic code, were the sword, stoning, stripes, compensations, restitutions, reparation of losses and fines” (Wines 1853:263). A number of crimes (“of deep moral malignity or aimed against the very being of the state” [Wines 1853:263]) were punishable by death. Further, there were “posthumous disgraces” which included such things as burning or burying beneath a pile of stones (Wines 1853:263), and there were supernatural punishments. Those committing serious crimes were threatened with the loss of their soul, universal deluge, ghastly famine, fiery tempest, the blasting thunderbolt, and sickness (Wines 1853:279). Laws and the procedures associated with them usually were not used to make judgments regarding disputes in families. If individual kin had interactions which “began long before” the problem, “they may wish or need to continue those relationships long after the resolution of the problem” (Nader and Todd 1978:12). Legal systems often damage, irreparably, enduring relationships (van Baal 1981).

### ***Resolution of Conflict***

In contrast to moral systems where the goal of resolving conflict was the maintenance or restoration of cooperative relationships among kin, the resolution of conflict in the legal systems of early states was aimed toward preserving the nonviolent trading, and other, relations between nonkin. These relations were often referred to as the “social order,” and as was discussed in preceding section, this “order” was maintained through punishment: “Within the state, the social order, whatever it may be, is maintained by the punishment of those who offend against the laws” (Herskovits 1952:330).

## 4. DISCUSSION

For the sake of facilitating discussion, the term “moral” was assigned to the earliest behavioral codes. The aim of moral systems was to promote enduring, cooperative ties between kin. Although we may never be able to support any hypotheses about the *origin* of moral systems, there is overwhelming evidence that moral systems were aimed at promoting enduring kinship relationships and that they were traditional.

Traditions, anthropologists tend to agree, are behaviors coming from the past. As humans lived in small groups of kin, traditions were behaviors transmitted from parent to child, often over many generations. While we find the long persistence of traditions intriguing, many, including Sarah Hrdy (1999) find them to be theoretically troublesome. The lack of intergenerational creativity found in “traditional cultures” has been realized throughout the history of anthropology, as the phrase “traditional cultures” itself implies. Indeed, it is one of the aspects of human existence that is so ubiquitous that it often goes without comment in ethnographies (Brown 1991). Further, when the traditional, non-creative nature of human culture is recognized, this recognition has often been imbued with highly judgmental observations that cloud the scientific understanding of this aspect of human existence. E. Sidney Hartland (1924:138) described traditions by writing that “the people are “shackled on every side by customs...bound by traditions.” Frazer (1979:352) described the “thralldom of tradition” by stating:

No human being is so hidebound by custom and tradition as your democratic savage; in no state of society consequently is progress so slow and difficult. The old notion that the savage is the freest of mankind is the reverse of the truth. He is a slave, not indeed to a visible master, but to the past, to the spirits of his dead forefathers, who haunt his steps from birth to death, and rule him with a rod of iron. What they did is the pattern of right, the unwritten law to which he yields a blind, unquestioning obedience....[In such a traditional society] the individual’s lot is cast from the cradle to the grave in the iron mold of hereditary custom.

Underneath the negative value judgments that Frazer made no attempt to hide in this statement, there is an important recognition of the lack of creativity, at least compared to more recent non-traditional cultures, in much of human culture. As Boas (1955:156) stated, because culture was traditional, it acted -- not as a spur to creativity -- but as a “restriction of inventiveness.” That this regularity may have some value was pointed out by Paulme (1940):

After a stay of some length in a village whose daily life he tries to share, the investigator sees fading away the image of a society in which everyone would be thwarted on all sides by the customs of his people, bound by immemorial traditions, not only in his social relations but also in his religion, an image which joins the one, no more arbitrary, of the creature free of all shackles, as Rousseau conceived him. The observer has before his eyes individuals very much alive, each of whom does pretty much as he wishes, provided he does not transgress certain rules.



Traditions, to us, are theoretically interesting not just because they may give pleasure, which they do not always do, but precisely because they can involve sacrifices of freedom, time, resources, and comfort, yet they can persist for a very long time, hundreds of years or even thousands of years. Although we are a species that seems to be unusually good at serving our own needs and desires, traditions encourage restraint of behavior. When we follow traditions we are restrained, we not free to do as we please. Further, we expect parents to be concerned about their offspring's well being; yet parents are the ones encouraging the often-painful traditions, such as those in initiations. We expect to find conflict between parents and their offspring if we follow evolutionary thinking (Trivers 1974; Alexander 1974; 1979). Traditions, however, imply profound parental influence over offspring.

A more precise definition of tradition specifies that the word refers to behaviors transmitted from parent to child across generations. Thornhill and Palmer (2000) explain it parsimoniously (2000:25): "Traditions are phenotypes. They are enduring cultural behaviors that imply parent-offspring similarity." Traditions, according to Thornhill and Palmer (2000), occur only when genes interact with a multitude of things from the environment, including ancestors who perform the behavior so it can be copied by the next generation. While it is popular to think that certain behaviors are triggered in response to certain environmental cues, as for example the prediction that mothers are more likely to neglect certain infants or all infants in certain environments, traditions are strategies that endure even when there is environmental change.

When we see traditions as traits inherited from ancestors, it is possible to appreciate that human behavior has not been the product of an undefined and unspecified group, even though this is a common claim of anthropologists and implied in many discussions of culture. Our ancestors, not our group, have been the primary influences on the way we behave today and the way humans behaved in the past (Steadman and Palmer 1995; Palmer et al. 1997). The transmission of behavior from ancestor to descendant differs significantly from a horizontal transmission, between peers. As behaviors transmitted to children can have multi-generational effects parents are usually careful about what they say and do around children.

It is also theoretically possible that traditions that promote the survival and reproduction of one's descendants would persist because of their effects. Miller (2000:221) toys with this idea when he writes that during the Pleistocene, "one generation's experiences of courtship and parenting would have been much more relevant to the next generation." What Miller (2000) does not appreciate is that traditions can last much longer than a generation or two and that the *massive* accumulation of traditional behavior is as unique to our species as is the large brain.

The key to traditions as adaptations is this: As all of our offspring can inherit our traditions, traditions should respond rapidly to natural selection (Palmer and Steadman 1997). Further, traditions can be expected to show evidence of adaptation *only* to the extent that both the genetic and the environmental influences on that behavior have been replicated across generations for the long periods of time needed for effective selection (Thornhill and Palmer

2000). Success in an evolutionary sense means that one has become a distant ancestor; the success of inherited traits can only be measured in distant generations of kin (see Dawkins 1982:184; Palmer and Steadman 1997). Traditions, by definition, are stable strategies that, as Hrdy noted in regard to the tradition of monogamous marriage (which limits individuals to one partner), persist because they raise “survival prospects for offspring” (1999:258). Such traditions promote not just an offspring’s survival and reproductive prospects, and his/her offspring’s survival and reproduction across generations, but in so doing, the traditions promote the ancestor’s success in leaving not just offspring, but descendants.

Despite claims that kin selection can explain cooperation among individuals who are members of clans and moieties (see Maschner and Patton 1996:94-95), it cannot do so. Individuals in so-called descent groups are not closely related, as is required by kin selection theory. While kin selection can explain the cooperation observed in other species that do cooperate in groups larger than the family (bees, ants, termites, the naked mole rat; Wilson 1971; Jarvis 1981), the individuals in these species are closely related. Human clans, moieties, phratries, and tribes (the so-called descent groups) are comprised of hundreds or even thousands of individuals who claim common descent, but who, depending on the distance or the number of generations leading back to the common ancestor, are not closely related at all.

Reciprocal altruism can not explain this cooperation either. First, there is not necessarily a series of interactions. Generosity is to be extended to strangers who are identifiably one’s co-descendants. A return on any investment might not occur for generations. Reciprocation, consequently, would benefit a distant descendant of the donor. The mandate of favoring “kin,” Palmer and Steadman (1997) argue, is prescribed by tradition. The system depended fundamentally on traditions that specified duties as well as on trust that all would live up to those duties. As this paper has shown, most clans and tribes had no policies or written rules enforcing compliance. Often, as many of these groups were acephalous, there was no strong leadership with the power to enforce compliance. There are few ways, except for informal ones, such as gossip and ostracism of encouraging, for forcing compliance. The punishment regarded as the most severe was banishment, the loss of all social ties.

Group selection is not likely to provide an explanation for kin generosity either, even though natural selection theoretically could work at the level of the group. The conditions necessary for group selection to occur make it unlikely (Lewontin 1970). Further, and more importantly, clans, just as other descent categories, are not residential groups. As Palmer et al. (1997) explain, clans are exogamous, meaning that members move out. A daughter, for example, might move to the residence of her husband’s family; a son to that of his wife. Further, clan members live scattered among various residential groupings. Clans, thus, do not form the type of group necessary for group selection to occur. The same, Palmer et al. (1997) argue, can be said of other descent categories such as tribes.

For the vast majority of time that our species has existed, our social behavior has been profoundly influenced by behaviors copied from our ancestors. Many of these traditional behaviors have involved how to cooperate with our co-descendants. The specific moral

codes found in the ethnographic record are the ones that had the effect of influencing generation after generation to survive and reproduce.

## 5. NOTES

1. Structure: the arrangement of different parts; social structure, the way a social system is organized. System: a union of parts making up a whole essential to the performance of some particular function or functions.

2. While it may be true that all members of some unspecified society agree that morals and laws are just and fair, it does not seem to be the case in our own society, where some individuals find traditional moral rules to be archaic and the system is regularly accused of favoring certain populations while disfavoring others.

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