

PART I

The Foundations in Law and Morality

Margaret Gruter and Paul Bohannon

Law is multidimensional. It is, therefore, difficult to define law in its totality. We greedily at the conference not to spend our time defining law, for we knew we could get bogged down in it and never emerge. Definitions of law are influenced not only by the uses of the law, but by different concepts about the origins of law and its functions and structure. Several basic theories on the origins of law reappear throughout recorded history. One of these theories is that law is given to us by a deity - Moses, for example, got the Ten Commandments directly from God. Another theory holds that laws are the product of human reason. Both these theories have influenced and shaped the changing concepts of "natural law" during the centuries. (We will not use the confusing term "natural law," but will speak of "man-made law" on the one hand and biological laws or "laws of nature" on the other.) Today, ideologies from Marx to Freud are used to explain the origins of law. Legal scholars, influenced by various theories of the origins of law, often provide very narrow definitions of law.

Law is an evolving system that changes under the impact of the environment, both physical and cultural. It is expressed in the behavior of the individual and the group. Among the first to recognize this, at the beginning of the twentieth century, were an anthropologist of law (Malinowski, 1926) and a sociologist of law (Ehrlich, 1913). Ehrlich coined the expression "the living law" to describe law in action as opposed to law on the books. Today Friedman (1975) uses the term "legal system" for the interaction of law and behavior. The legal system includes law in action and law on the books, as well as such subsystems as the courts. The structures and rules that are part of law have an impact on behavior, which in turn creates new norms and rules. We may speculate that some "concept" of law may even have been one of the first abstract ideas formulated by the human mind.

[2]

when, early in the evolutionary history of the human species, the awareness of rules freed human social organization from genetic commands. Certainly we can assume that the functions of early law complemented the functions of human behavior to some degree.

All this necessarily leads to today's questions: how do we link the functions of human behavior with the functions of the legal system? The essays in this section examine the legal foundations of our efforts to link law with biology. The authors consider some previous contributions to this topic in the literature of jurisprudence to see what sort of problems and what solutions they bring to our task of examining the biological basis of law. They find the picture of law and justice incomplete and ask the neighboring disciplines to help legal scholars find the missing pieces.

In Parts II and III, several essays deal with morality. Morality, like justice or ethics, has always been linked with law. It should certainly be of interest to scholarly inquiries into the relationship between behavior and law. Morality as a biological phenomenon was the subject of an earlier conference and to some degree we are building on their published reports (Stent, 1980). However, we recognize that the concept of morality is an essential part of our discussions. As part of the introduction to Part III, we have published a segment of the report by Christopher Boehm on the Primates Discussion Group at the conference, which deals specifically with this topic, but which makes more sense after the essays on biological research have been added to those in the first section. All of the essays in the book bear on the search for the missing pieces.