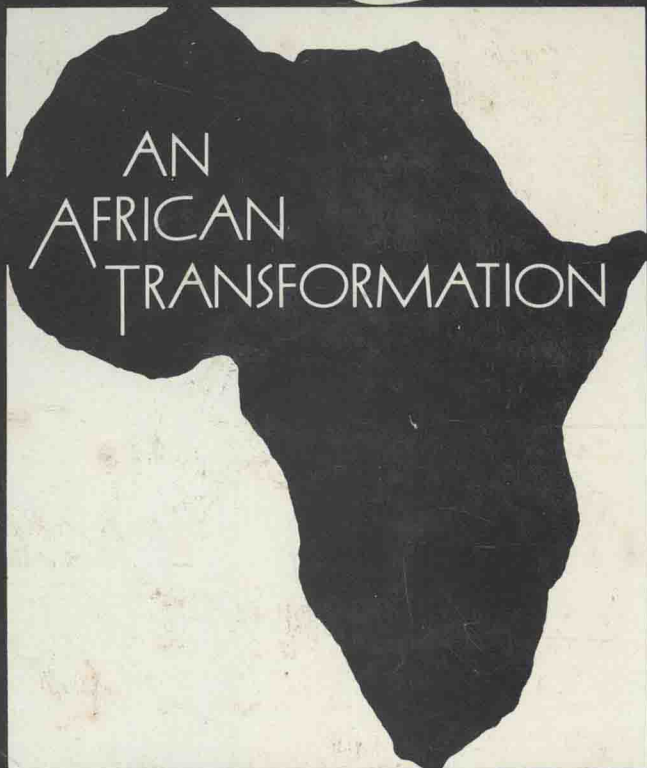


CAPITALISM AND LEGAL CHANGE



FRANCIS G. SNYDER

STUDIES ON LAW AND SOCIAL CONTROL

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Capitalism and Legal Change

An African Transformation

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Preface

In this book I use a case study of the Banjal of Senegal to exemplify the changes in legal ideas that have occurred in the rural areas of many underdeveloped countries during the last century. Material for this study was obtained by field, archival, and library research. After consulting most published works on the Joola (Diola), the congeries of peoples of which the Banjal form a part, I used standard anthropological methods to obtain information during three periods in Senegal, covering 18 months between 1970 and 1975. The first phase of this research was devoted primarily to the acquisition of qualitative information concerning space concepts, social organization, and the allocation, transfer, and use of land. Subsequent periods of field research provided quantitative data on marriage, migration, landholding, and other aspects of social and economic organization. Between 1969 and 1979, I consulted archival sources in both Senegal and France concerning the history of the Lower Casamance area of Senegal since 1800. Local archives of courts and administrative agencies in Senegal having jurisdiction over the Banjal supplied further information concerning marriage, land, and inheritance. Some colonial history material stemmed from my work between 1963 and 1965 on African politics, while information concerning the distribution and growth of population derives primarily from urban research in Senegal during 2 months in 1974-1975.

Legal changes among the Banjal are treated in this study as exemplary rather than typical of the transformation of legal concepts among peasants more generally. Nonetheless, since detailed research in a particular Banjal village is a major source of the book's statistical data, it seems useful to describe briefly the way in which I chose the Banjal and the village as subjects of my research.

The initial stage of research included the compilation of a village file com-

posed of descriptions of approximately 90 Joola villages from previous studies. The file was intended to provide the basis for a study of the effects of ritual centralization and commodity production upon land law and patterns of land use. I envisaged a study of four different villages, two that had not, at least within recent history, formed part of any centralized political structure prior to the establishment of the colonial state, and two that belonged to a ritual area distinguished by a weak form of centralization through the office of a rain priesthood. From each group, I planned to select one village that was primarily composed of adherents of the local religion and one that was primarily Islamic, since conversion to Islam has frequently been associated with the production of peanuts for export. My initial library research and discussion with French scholars who had worked in the Casamance enabled me to select four villages provisionally.

Several other factors, however, were decisive in the eventual choice of a research site. First, further discussion with anthropologists who had conducted intensive research in the Lower Casamance convinced me that the diversity of language, social organization, and land practices among the Joola would make a thorough study impossible unless the research were restricted, at least initially, to a limited area or a single village. Second, during the period of library work, I had begun the study of two Joola dialects. My tutors in Paris each gave me the names of kin in Senegal before the beginning of the first field research. These introductions facilitated a preliminary visit to numerous Joola villages, including those of the Banjal but also encompassing a number of villages north of the Casamance River. In contrast to the latter, however, the Banjal formed part of a relatively discrete ritual area. The rain priesthood, though virtually defunct, was sufficiently recent to have left a profound imprint upon agricultural life. Moreover, the Banjal zone was reputed to be among the earliest settlements in the Lower Casamance, having been the source of the first settlers of several villages north of the river. Furthermore, the Banjal combined the cultivation of rice with commodity production. Although they produced only a small quantity of peanuts, they had been active in the colonial palm produce trade and constituted part of the Joola migrants to Ziguinchor, the regional capital, early in the century. Finally, especially congenial personal relations facilitated my residence in a particular Banjal village; such relations are desirable, if not essential, in any research relying heavily upon participant observation. These factors underlay my selection of the Banjal as a subject and of a specific Banjal village, hereafter referred to by the pseudonym Gasumay, as the source of much statistical data used in this study. While the Banjal are not necessarily typical of all peasant communities, I consider them sufficiently representative that their recent history exemplifies more general processes of transformation.

I have used a number of Banjal terms and expressions. When transcribing Banjal terms and other Senegalese names, I have, with several exceptions,

followed the now standard phonetic alphabet adopted by the Senegalese government in the Decree no. 71-556 of 21 May 1971 relative to the transcription of national languages (JORS, no. 4171, 28 juin 1971, p. 624). The phonetic descriptions of consonants and vowels, respectively, are shown in Tables P.1 and P.2. For the sake of simplicity in typesetting, the nasal velar consonant transcribed officially as η is given consistently as ng. The symbol "c" is used as equivalent to the sound "ch" in the English word *church*. Since this book is written primarily for an English-speaking, nonlinguist audience, I have thought it unnecessary to distinguish between short and long vowels, but the word *Joola* is used instead of *Diola* or *Jola*, consecrated in previous French and English usage. The transcription of place and personal names also follows the official alphabet, except that certain place names such as Dakar, Gorée, and Ziguinchor are spelled as given commonly on maps. The names of individuals cited in the Preface are spelled as they are spelled by the individuals themselves. Throughout the book, I give Banjal words in their singular form only. To avoid unnecessarily long descriptions of kinship positions, I have used standard anthropological abbreviations as follows: F = father; M = mother; S = son; D = daughter; B = brother; Z = sister; H = husband; W = wife; C = child. Unless otherwise indicated, all translations are my own.

TABLE P.1
Transcription of Consonants

	Labial	Dental	Palatal	Velan	Glottal
Closed	b	d	j	g	
	p	t	c	k	
Constricted	f	s			h
Lateral		l			
Trilled		r			
Nasal	m	n	ñ	ng[ŋ]	
Semi-vowels	w		y		

Source: JORS no. 4171, June 28, 1971, p. 624.

TABLE P.2
Transcription of Vowels

	Forward	Central	Rear
Extremely closed	í		ú
Closed	i		u
Half-closed	é	ē	ó
Medium or half-open	e		o
Open		a	

Source: JORS no. 4171, June 28, 1971, p. 624.

Acknowledgments

I am indebted to a great many people for their assistance in the preparation of this book, although it is impossible to name them all here. Field research and the use of court archives would not have been possible without the authorization of the Senegalese government. Initial field research was conducted under the aegis of the Laboratoire d'Anthropologie Juridique, Université de Paris I (Panthéon-Sorbonne). Its director, Michel Alliot, provided indispensable advice and encouragement, as did Etienne Le Roy and Raymond Verdier. During periods of research in Senegal, I worked in liaison with the Institut Fondamental d'Afrique Noire (IFAN) and the Institut Africain de Développement Economique et de Planification (IDEP); Samir Amin, the director of IDEP, was especially helpful. The cooperation of the staff of the Archives Culturelles du Sénégal made possible the transcription of recorded material. Of numerous research institutions whose staff provided help, I wish to thank particularly those of the Archives Nationales du Sénégal, especially J. F. Maurel, its former director; the Université de Dakar; IFAN; the Section Outre-Mer of the Archives Nationales in Paris; the Archives de la Congrégation du Saint-Esprit, Paris; and the Institut International de l'Administration Publique, Paris. The research in Senegal and in Europe upon which this study is based was supported at different times by the Foreign Area Fellowship Program (Social Science Research Council—American Council of Learned Societies); the Wenner-Gren Foundation for Anthropological Research, Inc.; the Canada Council; and the International Development Research Centre. Additional financial help was provided by the Osgoode Hall Law School and the Faculty of Arts, York University, Toronto. The analysis of field material at different stages was facilitated immeasurably by visiting fellowships at the Program in Law and Modernization, Yale Law

School; the Afrika-Studiecentrum, Leiden; and the Institute of Development Studies at the University of Sussex. A Research Associate Award from the International Development Research Centre made possible the preparation of a first draft of the manuscript in 1977-1978; I am especially grateful to Louise Rohonczy for her cooperation.

A number of other individuals also provided invaluable assistance. Louis-Vincent Thomas and Paul Pélissier made available their extensive knowledge of the Lower Casamance. I am grateful to Victor Bassene, Atendeng Tendeng, and especially Leonard Tendeng for their assistance during field research and, later, in correspondence. I am indebted to the late Max Gluckman, A. N. Allott, J. R. Goody, and Claude Meillassoux for their suggestions and encouragement at different phases of the research. For their help during my work in Senegal, I am also grateful to Keba MBaye, Ben Mady Cissé, Jean Benglia, Pierre Bourel, Abdoulaye Bara Diop, Amadou Diop, Marie-Angelique Savané, Landing Savané, Seydou Sy, Moustapha Sarr, Assane Seck, Cheikh Ba, Papa Kane, Paul Moral, Jean-Claude Gautron, the late Tété Diedhiou, Monseigneur Sagna, Pierre Bassene, Antoine Tendeng, and members of the Afrika-Studiecentrum project on migration. Olga Linares and Siân Snyder read the entire draft manuscript, and chapters of the draft were read by J. David Sapir, Etienne Le Roy, Jos van der Klei, Phil Raikes, James T. Thomson, Ken Foster, and Marc Schloss. All made numerous helpful criticisms for which I am most grateful. Richard Henderson, Richard L. Abel, Sutti Ortiz, and Rita Cruise O'Brien each raised specific queries or brought to my attention points of which I have sought to take account. Ernest Boyden helped to analyze field data concerning the distribution of land. Sally Venables, helped by Helen Beresford and Margaret Wright, typed the final draft of the manuscript.

I owe a great debt to the Banjal peasants, especially to the residents of Gasumay, who so kindly tolerated my intrusions into their lives and who helped me begin to understand their history. Without their help, this study could never have been undertaken. During field research, I assured them that every effort would be made to protect their privacy in the publication of the study's results. Consequently, throughout the book I have sought to preserve their anonymity by avoiding the aggregation of data that might facilitate identification of specific individuals and by using pseudonyms rather than the real names of particular people.

My greatest debt is to Siân Snyder, whose contribution to this study is much too great to be acknowledged adequately here. Her encouragement and help have left their imprint on every page.

None of these individuals or institutions is to be blamed for any errors of fact or interpretation, for which I alone am responsible.

Contents

<i>Preface</i>	ix
<i>Acknowledgments</i>	xiii
1. INTRODUCTION	1
<i>Purpose</i>	1
<i>Concepts</i>	2
<i>Setting</i>	11
<i>Plan and Argument</i>	19
2. THE PRODUCTION OF LABOR	23
<i>Circulation</i>	24
<i>Forms of Reciprocity</i>	44
3. PRODUCTION, DISTRIBUTION, AND EXCHANGE	61
<i>The Circulation of Rice Land</i>	62
<i>Organization of Production and Exchange</i>	82
4. THE ESTABLISHMENT OF COMMODITY RELATIONS	107
<i>Transformation of Exchange</i>	108
<i>Migration and Labor Power</i>	118

5. COMMODITY RELATIONS AND PEASANT PRODUCTION	139
<i>Production of Food and Agricultural Commodities</i>	140
<i>Household and Commodity Relations</i>	158
<i>Extrahousehold Agricultural Labor</i>	173
6. MARRIAGE AND RICE LAND IN THE REPRODUCTION OF LABOR POWER	199
<i>Elders, Dependents, and Marriage</i>	200
<i>Rice Land and Commodity Relations</i>	216
7. TRANSACTIONS AND RURAL INEQUALITY	247
<i>Pledges of Rice Land</i>	249
<i>Transformation of Transactions</i>	263
<i>Bases of Rural Inequality</i>	273
8. CONCLUSION	291
<i>Precapitalist Legal Forms</i>	292
<i>Capitalism and Legal Change</i>	295
GLOSSARY OF SELECTED BANJAL TERMS	301
<i>References</i>	305
<i>Index</i>	321

Introduction

Purpose

This book is a study of relationships between legal ideas and economic organization. Its purpose is to present and analyze some of the changes in legal forms accompanying the subsumption¹ of precapitalist societies into the capitalist world economy. During the past century, rural communities in Africa, Asia, and Latin America have been integrated into the capitalist economy more decisively than ever before. Today, rural communities often constitute the peasant, agricultural sector of peripheral social formations depending upon the world commodity market and forming part of an international division of labor. A comparison of the lives of these people with those of their predecessors indicates that this historical transition entailed a series of fundamental, yet uneven, changes in economic relations and in legal concepts and rules.

Legal and economic changes among the Banjals of Senegal between 1900 and 1975 are discussed as a particular instance exemplifying these processes. The Banjals are sufficiently representative of contemporary peasants so that their history, in addition to its intrinsic ethnographic interest, can illuminate the transformation that, in various forms, has characterized virtually all underdeveloped countries. The basic concepts, setting, and outlines of the book's plan and argument are defined in this introductory chapter.

1. I use this term in the sense given by Galeski, according to whom subsumption

signifies the subordination of some forms of economic activity in the economic system to principles determining the functioning of the economy as a whole. The peasant farm, under the conditions of a capitalist economic order, is usually cited as an example of a subsumed system. This implies that (1) the peasant farm lacks the basic characteristics of a capitalist enterprise, (2) changes in the mode of peasant farming are determined by the laws governing the functioning of the capitalist economic system as a whole, and (3) the peasant farm is acquiring certain features specific to the capitalist enterprise [Galeski, 1972:22].

Concepts

Concepts, however abstract they may appear at the outset, are defined first because they form an integral part of the later introduction to the Banjal and of the argument in general. In this book I aim to orient the Marxist tradition of analysis and explanation toward the previously neglected study of the changes in legal forms that occurred, and continue to occur, in the recent transitions to capitalism in underdeveloped countries. I draw my basic concepts and general theoretical framework from this tradition, which today is extremely diverse. A review of its diversity here would have no purpose, but it is useful to mention briefly some theoretical strands which, in addition to recent French legal anthropology,² underlie this book (see also Snyder, 1980). Economic anthropologists, initially in France, have tried to use Marx's methods and insights to analyze precapitalist societies, especially in Africa. A more heterogeneous group of writers have advanced the study of underdevelopment as an historical process, starting in "the period when any given region of today's 'third world' began to be progressively incorporated into a permanent relationship with the expanding capitalist economy [Leys, 1975:8]." Contemporary students of agriculture in underdeveloped countries have concentrated on the relationship of peasants to capitalism, drawing upon the earlier work of such writers as Lenin and Kautsky. The 1970s encompassed a vigorous growth in the number of studies of law by Marxist writers; most studies concerned Europe or the United States, but some Marxist writers analyzed legal processes in contemporary underdeveloped countries. These scholars emphasized the importance of the Gramscian concept of hegemony and Pashukanis's conception of the relationship between commodity form and legal form, thus breaking with Renner's sociological functionalism and legal positivism. These diverse strands, however, have tended to remain relatively isolated from each other. As a consequence, scholars have largely neglected the study of the transformation of precapitalist legal forms, leaving it for an ahistorical and idealistic comparative sociology of law.

It is essential to include definitions of certain concepts used throughout this book because of the nature of this study and because scholars who share a general Marxist framework often differ radically from each other in their basic concepts and modes of explanation. The concepts of "mode of production" and "social formation" have been subjects of intense debate (most recently, see Wolpe, 1980). These concepts are related by certain common definitional elements, but they differ fundamentally in their theoretical roles

2. As described elsewhere (Snyder, 1981a), research for the book began within the framework of the Laboratoire d'Anthropologie Juridique, Université de Paris I, France. This book draws especially upon the distinction between the repartition and the use of land and upon the concept of representation, though it does not employ either in precisely the same sense as that outlined by LeRoy (1970, 1974; LeRoy *et al.*, 1971).

and levels of abstraction. The concept of mode of production is used in this study in an historical sense to refer to "epochs of production," "historic organization of production," or "social form of production" (Marx, 1973:85, 105; 1974:36; see also Banaji, 1977:4-5). A mode of production comprises the relations and forces of production and their laws of motion. We may define the relations of production as the unity of production, distribution, consumption, and exchange:

The conclusion we reach is not that production, distribution, exchange and consumption are identical, but that they all form the members of a totality, distinctions within a unity A definite production thus determines a definite consumption, distribution and exchange as well as *definite relations between these different moments* . . . [Marx, 1973:99, emphasis in original]. [This and subsequent quotations from Marx, K. (1973). *Grundrisse: Foundations of the critique of political economy*, translated by M. Nicolaus, are reprinted by permission of Penguin Books Ltd. (Pelican Marx Library/New Left Review). U.S./Canadian edition © 1974 by Random House, Inc., New York, N.Y.]

The laws of motion identify the ways in which the forces and relations of production are reproduced.

This definition of mode of production resembles Wolpe's (1980:7, 36) extended concept of a mode of production, but has two further implications. First, in contrast to many other writers on precapitalist societies and contemporary underdeveloped countries, I consider that a mode of production cannot be defined solely at the level of the labor process or merely as a means for the extraction of surplus labor. Such definition would reduce the mode of production to a simple abstraction in Marx's (1973:100-108) terms, for particular labor processes or modes of exploitation are not necessarily exclusive to specific historical periods. Second, my definition of a mode of production posits the unity of production and reproduction. It thus follows Marx, who wrote that "[a] society can no more cease to produce than it can cease to consume. When viewed, therefore, as a connected whole, and as flowing on with incessant renewal, every social process of production is, at the same time, a process of reproduction [Marx, 1967:566]." Such a conception of the relationship between production and social continuity differs from that used in early studies of precapitalist societies. Stemming from the work of Althusser (see Althusser and Balibar, 1970), these studies often followed Engels (1972:71) in distinguishing sharply between production and reproduction. They thereby adopted a demographic notion of reproduction that facilitated a separation between the perpetuation or transformation of social relations and the process of production as a whole.

If the concept of modes of production furnishes a means for distinguishing the essential features of different historical periods, that of social formation provides a conception of the social totality. The concept of social formation, which is less abstract and more concrete than that of mode of production,

refers to the unit of analysis known in non-Marxist works as “society.” Conceptions of this totality vary substantially, and the definitions of the social formation proposed by different writers usually accord with different conceptions of modes of production. Three different positions form a background to the definition here, but need to be distinguished clearly from it.³ Early Marxist studies took literally Marx’s (1968a:181) general reference to “the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness.” They frequently represented the social formation by a crude spatial metaphor, which distinguished between an economic base and a political and ideological superstructure, the latter merely reflecting the former. Subsequently, those writers who were influenced especially by Althusser elaborated this notion into a conception of the social formation comprising three relatively autonomous levels. They considered the economic level as determinant in the last instance, but they posited the political-legal and the ideological levels as relatively remote from production and ascribed them the function of securing the reproduction of the social totality. Some writers who accepted this formulation considered the conception of mode of production to encompass all three levels; others used the concept of mode of production to refer solely to the economic level. A third group of writers, addressing themselves especially to underdeveloped countries, sought to locate a combination of different modes of production within any specific social formation. They considered the nation-state to constitute a social formation; and, regardless of whether they defined a mode of production in terms of labor processes, forms of cooperation, or modes of extracting surplus labor, they argued that a social formation usually comprised several different modes of production linked or articulated through class alliances or exchange.

Like many of these studies, in this book I employ the concept of social formation to delimit a relatively coherent social whole and thereby circumscribe its analysis. Unlike them, however, and without subscribing to evolutionary social theories, I use the term to denote “the relations of production in their totality [which] constitute what are called the social relations, society, and, specifically, a society at a definite stage of historical development [Marx, 1968b:80, original emphasis omitted]. Comprising and thus deriving its form from the relations of production, the social formation constitutes a complex totality of social relations that may be isolated for purposes of analysis but whose boundaries must be determined empirically in each set of specific historical circumstances. This concept of a social formation is consistent with the study’s conception of reproduction and its historical definition of a mode

3. The following brief synthesis is extremely schematic and is intended only as a background for the definition used here. For more elaborate discussion of the basic positions, see Amin (1974a:137-142), Hindess and Hirst (1975), Foster-Carter (1978), and Wolpe (1980).

of production. It implies the rejection of the distinction between base and superstructure and the abandonment of the distinction among relatively autonomous levels remote from the process of production. Moreover, while the concept of a particular mode of production is essential to the analysis of a social formation, since only the former enables one to define abstractly the relations of production, no necessary congruence or coincidence exists between a social formation and a mode (or modes) of production. Social formations do not necessarily circumscribe modes of production, and modes of production cannot necessarily be "mapped" or "located" within social formations because these concepts have different theoretical purposes and are defined at different levels of abstraction.

Capitalism is a term that, following Marx's work, formerly had a generally accepted meaning. Numerous students of European economic history have tended to widen its definition, frequently to the detriment of its utility as an analytic concept (see Dobb, 1947:1-11; Hilton, 1978:145-158). Some recent writers have departed even farther from the conception of capitalism as a mode of production by defining it as a social system encompassing particular types of exchange (see, e.g., Wallerstein, 1979). In this study, however, capitalism refers to an historically specific mode of production which has two essential features: first, a generalized commodity production in which "being a commodity is the dominant and determining characteristic of its products"; and, second, "the production of surplus-value [is] the direct aim and determining motive of production [Marx, 1974:879-880; see also Mandel, 1971: 97-99]." Consequently, if capitalist relations of production are considered as a whole, both labor power and the means of commodity production take the form of commodities, and the means of producing value lie outside the control of direct producers. The definition here of capitalism as an historical mode of production does not exclude the existence within a particular social formation of other forms of immediate production. In some of these forms, direct producers have legal claims and some control of the means of production, though formally they are subordinated to capital. In this study, a sharp distinction is not drawn between central and peripheral capitalism as separate economic forms (cf. Amin, 1974a). Though such a distinction might be reformulated to accord more nearly with this study's definition of basic concepts, it refers to units of analysis, rests upon theoretical bases, and raises conceptual issues which differ from those that are of immediate concern here. It is essential, however, to recognize from the outset the profound difference between transitions to capitalism in Europe in the past and those transitions in underdeveloped countries today. Later, it will be shown that the subsumption of formerly precapitalist producers into capitalist relations of production in which the reproductive circuit of capital could be completed only through imperialist countries (see Alavi, 1975; Ziemann and Lanzendörfer, 1977) had

specific characteristics, resulting in the coexistence of extremely different types of immediate production and also in the partial, uneven transformation of specific legal forms.

Law is a noetic concept with a wide range of possible referents and meanings. Its definition depends primarily upon the purpose for which the concept is used (Bohannon, 1965:33). A definition of law is required that will permit an understanding of the place of specific concepts and rules in the process of production in a precapitalist social formation and a grasp of their transformation in connection with the subsumption of producers within capitalist relations of production. Consistent with Gulliver's (1969:17) emphasis, the present definition must specify, if only in general terms, what "law" does rather than what "law" is. A brief review of the way in which law was circumscribed in the initial stages of research for this book will provide the background for an adequate definition.

Field research began with a conception of law as the concepts, rules, institutions, and processes used by the Banjal and others with respect to matters of land tenure in the Banjal area. Composing a domain of law, land tenure was defined as the way in which people associate three factors: "a representational 'map' of the country [or area] in which they live"; "a set of concepts for speaking about and dealing with the relationship between themselves and things"; and "the spatial aspect of their social organization [that] has some overt expression in word and deed [Bohannon, 1963:104]." Initially, this conception was useful because it was sufficiently precise to delimit a subject of study, yet general enough to avoid imposing external definitions upon the ethnographic material from the outset. Subsequently, however, it proved to be seriously deficient. It provided no basis for understanding the creation of "customary law" during the colonial period; contemporary legal processes belied its assumption of cultural homogeneity within a single community; and an idealistic definition of land tenure, thus of law, was not appropriate in analyzing the relationship between legal and economic change. Moreover, as the study proceeded, it became apparent that the transformation of Banjal legal forms could not be understood by examining the Banjal alone, nor was this transformation important only in its own right. Its wider significance lay in providing an example of the processes of legal change that, in different forms, have characterized the recent history of many underdeveloped countries. In order to elucidate these changes and to show their significance, it was essential to understand concepts, rules, and processes concerning land as part of the economic organization of the Banjal as a whole and also to grasp their connection with this broader transformation. This entailed a redefinition of the unit of analysis so that, while still giving primary emphasis to the Banjal, national and international factors could be taken into account. It also required the use of new concepts that, in the event, were drawn from

underdevelopment theory and Marxist analyses of precapitalist societies. These changes in orientation and emphasis necessitated a different definition of law.

Underdevelopment theory, as Colin Leys (1975:7) describes, is “partly a correction and partly an extension of Marx’s interpretation of history.” A study of the relationship between underdevelopment and changes in law, therefore, logically might look to Marxist theories for definitions of law, at least to distinguish colonial and neocolonial from precapitalist forms. Marxist analyses in the past have considered law generally to be a form of social control that is a concomitant of the formation of the state and the development of antagonistic classes within the capitalist mode of production. Marx’s own conceptions were far more subtle, but most of his references to law concern capitalist formations (see Cain and Hunt, 1979). The capitalist mode of production formed the main object of his analysis. Few anthropological sources, especially on law, were available when he wrote; and in the elaboration of his theoretical framework, a consideration of precapitalist formations and underdeveloped countries was necessary but tangential. Though integral to his method, his discussion of precapitalist formations was directed primarily toward showing the historically transitory character of capitalism and the historical specificity of capitalist economic categories (see Meek, 1976; Meillassoux, 1972:96–97). He contrasted precapitalist formations with bourgeois society in order to distinguish between two types of abstractions: simple categories, which were valid for all epochs of production, and concrete categories, which were “the concentration of many determinations” and were historically specific. Marx used the examples of possession, money, and labor to show “strikingly how even the most abstract categories, despite their validity—precisely because of their abstractness—for all epochs, are nevertheless, in the specific [concrete] character of this abstraction, themselves likewise a product of historic relations, and possess their full validity only for and within these relations [Marx, 1973:105].” His discussion of underdeveloped countries also was peripheral. He considered them principally as sites of primitive accumulation, expecting that European penetration would lead eventually to capitalism by destroying social formations he presumed stagnant (see Snyder, 1980:737–738).

Following Marx, many scholars have built upon this legacy, though they select different points for special emphasis and differ in the extent to which they analyze specifically precapitalist, rather than capitalist, formations. Precisely because they refer to precapitalist legal forms, the contributions of four writers in particular will enable us to formulate our conception of law. Criticizing attempts to give an ahistorical, universally valid definition of law, the cultural anthropologist Stanley Diamond (1971) contrasted custom and law as two antithetical, historically related forms of social regulation. He drew