

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: “Customary” Law on Kilimanjaro,
1880-1980

Sally Falk Moore

Excerpt

[More information](#)

Introduction:

A time-oriented anthropology: events, processes, and history

Since World War II social anthropology has become increasingly preoccupied with process over time. This historical attitude might be called the New Social Anthropology were it not for the fact that there have always been some anthropologists laboring in that vineyard even when other themes have dominated the discipline. But now there is a new urgency along with a new reflexivity in this growing interest. On the large scale the current problem is how to use yet transcend the limitations of a pair of excessively general models of change. One is the evolutionary one which puts certain abstracted social types in developmental, metatemporal sequence. The other model is an even simpler and more contemporary construct; technologically advanced societies are contrasted with all others. All significant change is interpreted to be the consequence of the self-serving activities of those dominant societies in the world economy and in world politics. Both models are founded on a gross morphology of types. To both are attached some general conceptions of the dynamics of transformation, endogenous and exogenous. The dilemma of the anthropologist is that, applied to the world of this day, both models trivialize the very variations with which anthropology is preoccupied, and about which it has something to say.

Equally troublesome are the questions raised by the truism that models of society vary according to the historical moment at which they are produced. Considerable self-consciousness has been generated about the reasons for current interests and the constraints on insight these imply. How are anthropologists to understand their own time, their own theories of their time?

A less time-warped vision of social “reality” must have seemed more available in the 1870s, when Lewis Henry Morgan sat in his study in Rochester, New York, writing *Ancient Society* (1877). Without apparent hesitation or self-doubt he attempted to explain social change on the grandest possible scale. He traced its progress from what he imagined to

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro,
1880-1980

Sally Falk Moore

Excerpt

[More information](#)

be the earliest beginnings of group life to the nineteenth-century zenith that he was experiencing. But even for him an undistorted "reality," though presumed to be knowable, was not simple.

Morgan was ready to describe social evolution in general as "a progressive connected series," but when it came to particulars the dynamics of change he adduced were many and various (1963:58). As long as he was talking about what he saw as the three great stages of human progress, savagery, barbarism, and civilization, Morgan's causal argument was essentially that, as material conditions change, other changes follow (271-2, 351). But when it came to institutions Morgan's thesis was quite different. Government, the family, language, religion, and property, were all said to have evolved out of "a few germs of thought" that were there from the beginning. And, he said, "the evolution of these germs of thought has been guided by a natural logic which formed an essential attribute of the brain itself" (59-60). He assumed that human intelligence impelled people consciously to seek better solutions to the technical and social problems of existence, hence bringing about change. But he also asserted that the propellants of institutional change were "unconscious reformatory movements to extricate society from existing evils" (53). In Morgan's argument one sees both the operation of conscious intelligence and of "unconscious reformatory movements," both the determination of societal forms by material conditions and the capacity of an aware human intelligence to reshape these conditions (351). Morgan seems not to have seen any tension between a vision of humankind consciously striving for control of its situation, and the quite different view of individuals as relatively powerless beings swept by great forces of culture and history. Yet today the reconciliation of these two perspectives presents serious analytic challenges.

Another instance of double vision that was not problematic for him was his conception of the relationship between structure and "practice," ideology and action, which he described in two quite different ways. In some parts of his work Morgan assumes that an absence of congruence between cultural ideas and social behavior is commonplace, that it always occurs in the course of change, and that change is unending. In other parts of his writing Morgan stresses a necessary coherence between social practice and cultural order, a systematic consistency. For example, in describing the evolution of kinship systems he assumes that the forms of the family change before kinship terminology does. It follows that there are periods when terminology does not reflect current organization, but rather past organization (1963:444, 450). He seems to be arguing that circumstances of change necessarily produce an absence of isomorphism between cultural categories and social relationships. Yet when he is explaining why his good friends the Iroquois had a confederacy that was committed to liberty, equality, and fraternity, and pledged to democracy writ large, he

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880-1980

Sally Falk Moore

Excerpt

[More information](#)

says that the reason was simple, these were the "cardinal principles" of the basic kin groups of which the tribe was composed. The cardinal principles therefore shaped the whole society. Morgan's idea here seems to have been that large political entities grew out of small ones, and that a superordinate organization necessarily replicated the values of its subparts. "As the unit, so the compound" (85). The picture is of total consistency produced from the ground up. But elsewhere, the argument goes in the opposite causal direction from the large scale to the small. The family "is the creature of the social system, and will reflect its culture . . . it must change as society changes, even as it has done in the past" (499).

Morgan's eclecticism about the dynamics is attractive even when his facts are wrong, and seems much more suited to an exploratory social science than to a dogmatic one. Much more variety of argument appears in Morgan's work than in what Engels made of it (1884). Morgan adduces general causes and particular causes at many different levels. In his account, change in some social forms could be analyzed in the framework of accretion (more and more property, bigger and bigger organizations); changes in others were to be addressed as the product of experiments in relation to which conscious choices were made of better and better customs and techniques (1963:434). His argument with its mentalist and moralist streak emphasized that change was generated by the germs of thought, the capacities of human intelligence, and reformatory movements. And it stressed a materialist theme when he talked about the growth of property as "an unmanageable power" with political and economic inequality a long-term consequence of its growth (351). As Sahlins has said, "The man may be submitted to many theoretical readings" (1976:57). Terray speaks of "the different ways of reading Morgan . . . the evolutionist reading, the structuralist reading, and the Marxist reading" (1972:89). The wealth of causes Morgan mentions, and only a few have been noted here, make many subsequent explanations look impoverished.

Inherent in Morgan's evolutionary project were many interrelated analytic puzzles. He sailed through all of them more confidently than can be done today. At least three questions which did not trouble him now give considerable unease. First is the problem of determination as against improvisation, invention, construction, and choice. How can the impact of intentions be acknowledged, while giving proper weight to the determined in thought and situation? Second is the problem of system. How are the systematic connections among social practices and between these and cultural ideas to be appraised without losing sight of inconsistencies, conflicts, and disconnections? If some arrangements, activities, and ideas are less tightly interrelated than others, how are integration and nonintegration to be addressed in the same model? And last, can general trajectories of historical sequence be constructed that can be reconciled with

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro,
1880-1980

Sally Falk Moore

Excerpt

[More information](#)

particular histories? As he addressed his illustrative examples Morgan dealt with these three questions of determination, system, and sequence incidentally and with more panache than consistency. Many of the theoretical bogs Morgan thus traversed without stopping now seem full of daunting obstacles.

Part of the trouble comes from a central paradox in anthropological method and theory. Anthropologists are methodologically committed to observing social life at first hand, on a small scale. But the discipline has been theoretically committed to inferring from those small-scale observations something on the large scale about the character of "society" and "culture."

A generation ago society was a system. Culture had a pattern. The postulation of a coherent whole discoverable bit by bit served to expand the significance of each observed particularity. Societies could be classified as types and compared. Everyone knew that in reality boundaries were not always clear, that mixed systems and "intermediate" types were commonplace, that transformation and transition were ubiquitous, and that conflict and contradiction were inherent in social life and human thought. However ethnographically real, and often faithfully described in the literature, these "irregularities" were a theoretical public nuisance. For many decades now the very shifting picture that was once thought least amenable to systematic theorizing has become the only interesting problem for analysis. This new focus creates methodological problems. If connected social fields are varied in composition and structure, and are changing over time, then how can the significance of localized, short-term fieldwork be magnified into a picture of a social/cultural totality? The musicians are visible but where is the symphony? What method will capture the essence of a transforming, variegated entity? The project now is to understand the constitution of heterogeneity and metamorphosis, open systems and their levels of integration, to assess if possible the direction and velocity of a process of change. The leap of interpretation is from situations observed to ongoing historical processes in which the observed events are seen as episodes. Anthropology is caught between its method and its ambitions.

When, at the foot of Mount Kilimanjaro, one meets a blanket-wearing, otherwise naked, spear-carrying Maasai man on a back path in the Tanzanian bush, one notices that he has a spool from a Kodak film packet in his earlobe as an earring plug. That earring alone is sufficient to indicate that he is not a total reproducer of an integrated ancestral culture. His film spindle is made of extruded plastic manufactured in Rochester, New York, his red blanket comes from Europe, his knife is made of Sheffield steel. Dangling from a thong around his neck is a small leather container full of Tanzanian paper money, the proceeds from selling his cattle in a

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro,
1880-1980

Sally Falk Moore

Excerpt

[More information](#)

government-regulated market. The price of his animals varies with world inflation. The roads nearby have buses and tourists. The international economy has penetrated everywhere. Ideas and information have moved with it. All peoples live within nations and have seen the silvery sides of planes flying over their lands. The definitions of social part and social whole have changed.

This means that anthropologists have had to reconsider both the consequences of method and the perspectives of theory. The anthropological project has been redefined by its subject matter. Not only is new work now undertaken in terms of new models, but older materials are being rethought. Long-term field research has come into its own (Foster et al. 1979). There has been an intensified interest in history (Lewis 1968). As Augé has remarked, and his comment is only part hyperbole, "Anthropologists have discovered that the societies they study have a history just when historians, along with Fernand Braudel, were discovering the structural dimension of [the] historical . . . *longue durée*" (1982:112).

Increasingly, detailed long-term history has been addressed by persons who initially set out to do fieldwork. But they approach history in a great variety of ways. Recent work by S. J. Tambiah and M. G. Smith (1978) show the eclecticism of anthropologists in choosing the theoretical frameworks on which they found historical analyses. Tambiah says of his study of Buddhism and polity in Thailand that he "uncovered, in following the trajectory from contemporary Thailand to early Buddhism, a recurrence of structures and their transformations in systematic terms" (1976:5). Tambiah abstracted a political type from the Thai material: the galactic polity. In doing so, he produced a creative advance on a Weberian maneuver. By constituting the galactic polity as a general type and then tracing it through a series of transformations in the very historical instance from which the type was distilled, Tambiah avails himself of the condensed characterizing power of social typologizing, while escaping its atemporality. The social type is constructed on a foundation of durable Thai ideas and institutions. Tambiah argues that "the systematically accountable . . . produces a historical totality that is best understood not in disaggregation but in combination . . . the passage of a totality and its 'becoming' . . . over time" (5). M. G. Smith's fascinating and problematic study of sequence is entirely different, yet it too raises issues about the tension between model and instance. The model Smith constructs is not of a type, but at an absolute level of analytic generality. His framework is purely theoretical, designed for application to any society. It does not grow out of the particular instances to which he applies it. Smith is concerned to specify the formal attributes of all corporate groups. He then puts the diagnostic elements he has identified in a hierarchical/causal order. That is to say, he argues that in corporate groups certain constitu-

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro,
1880-1980

Sally Falk Moore

Excerpt

[More information](#)

tive elements are by definition logically preconditional to others. His temporal sequential hypothesis is that change in the preconditional elements will necessarily have systematic consequences for all subordinate conditions and that these must occur in a sequence related to the logical hierarchy. He then proposes to test this thesis in a historical instance, a Hausa state from 1800 to 1958. There is a question whether definitional frameworks of this kind are "testable" at all, whether there is not an inherent circularity in making an analysis of data in terms of a logically formal framework while also considering the same analysis to be a "test" of the framework. But Smith's contribution serves important purposes beyond the ultimate theoretical goals he sets himself. The logical model of corporations serves him as a guide to particular aspects of corporate politics in historical time. Tambiah and Smith's methods are unusual and original, but their interest in history is no longer so. Even in anthropological analyses in which the objective is more comparative than historical, historical themes are recurrent, as is clear, for example, in the work of Jack Goody (1971, 1976, 1982, 1983). Comparing metamorphic sequences may eventually become a dominant methodological form.

The first step is to establish detailed accounts of particular histories assembled from an anthropological perspective. Tambiah's and Smith's are among the most ambitious of recent efforts to do so. In their work the focus has been on politics from the top down, on continuities and transformations at the centers of power. Because the problematic of this book is that of inspecting a changing African "customary law" over the better part of a century, it concentrates on the opposite dimension, on the base of the political structure rather than the top. The base is where "customary law" endured. The situation on Kilimanjaro is one in which the indigenous polity was dismantled through colonial conquest and was ultimately replaced. Old subparts were repeatedly reassembled under new governments. In such circumstances the greatest organizational and cultural continuities are found not at the highest levels of government, but at the level of domestic organization, of kinship connections and of neighborhood and parish politics. This book follows the melting down and recasting of the political organization of a group of African chiefdoms to the point where they ceased to be such at all, and their people became a localized ethnic category in a culturally plural nation, preserving for quite new reasons certain elements of their old "customary" laws.

The conceptual shift to a time-oriented anthropology which this work represents dates not only from this decade. It dates at least from the 1940s. As postwar anthropology gradually gave up the model of a stable, integrated social/cultural system as its dominant paradigm (and it did not altogether relinquish it), the fragment that was fieldwork could no longer serve as the key instance of such a system. Instead, the most salient larger

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880-1980

Sally Falk Moore

Excerpt

[More information](#)

entity to which fieldwork findings could be attached became the trajectory of change itself. *Fieldwork has become a peculiar form of current history.*

Consequently social anthropology in the 1980s, though a long way from Lewis Henry Morgan, is in some respects closer to his interests than it was in the 1930s or 1940s. As Sahlins says, "The great challenge to an historical anthropology is not merely to know how events are ordered by culture, but how, in that process, the culture is reordered" (Sahlins 1981:8). "The historical process unfolds as a continuous and reciprocal movement between the practice of the structure and the structure of the practice" (72). The unresolved paradoxes in the thought of Marx, Freud, and Weber have become more salient features in theory than their visionary paradigms.

What implications does this general shift of subject matter and of attitude have for the fieldwork method and for the inferences that can be made from the evidence it garners? Surely in complex settings the "culture" or the "whole society" (however those are defined) cannot be constituted out of the small part that is observed. Information about the larger "background" must be obtained through methods other than field observation. Archives, government files, census reports, agronomists' surveys, missionary records, newspapers, interviews—all the tools of the historian and the journalist become pertinent to an understanding of local events in a time context (Schapera 1962; Smith 1962).

If the "process of change" is the matter inquired into, given that the period of field study is limited, can change be *seen* in fieldwork? Furthermore many changes do not originate where the anthropologist happens to be. Can fieldwork be done with a historical attitude even in places where there is no historical record? Because the social field being observed is recognized to have penetrable economic and social boundaries and limited autonomy, what is the analytic bridge between the visible scene and the larger background? Between the limited period of fieldwork and the longer historical era? As the recording of the total ethnography of a people becomes less and less a practicable objective, what kind of inquiry can cut across these several levels of time and place?

One old technique is to concentrate on a particular institutional domain (economy, politics, law, religion), and to try to understand its social logic (Augé 1982:107–8). But this old technique is now used under new constraints. For one thing these domains are self-consciously conceived as modern Western categories, not as universal ones. To be sure, institutions partially analogous in form or function to those in the West exist in other societies, but it is precisely to discover and understand the logic of *differences* that one looks in the first place, and differences there are. A second limiting assumption stems from an awareness that even from the

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro,
1880-1980

Sally Falk Moore

Excerpt

[More information](#)

point of view of the West, where these analytic categories were generated, the domains of economy, politics, and the rest are understood to be neither discrete nor autonomous. That being so, general causal arguments founded on the universal primacy of one domain or another have become less than illuminating. Even a structural Marxism that alludes respectfully to the contention that *in the last instance* the economic is determinative finds it necessary to assert that in history, "From the first moment to the last, the lonely hour of the 'last instance' never comes" (Althusser 1970:113).

For many anthropologists, economy nevertheless serves as the central connecting entity around which ethnographic data are organized over space and time. In 1961 Leach insisted that "the student of social structure must never forget that the constraints of economics are prior to the constraints of morality and law" (1961:9). The prevalence of this attitude suggests that Sahlins is right in his argument that the dominant symbolic idiom of discourse in our own society is the economic. He speaks of "the cultural scheme" as "variously inflected by a dominant site of symbolic production, which supplies the major idiom of other relations and activities" and for us, he contends, that site is the economic, which gives all else meaning (1976: 206, 211). Impossible to prove and difficult to refute, the underlying point is incontrovertible, that we come to the analysis of the thought of others with our own cultural categories and conceptions in mind even if we use them to heighten the perception of differences. Sahlins dolefully puts it, "Having dissociated the cultural order into subsystems of different purpose—we are forced to live forever with the intellectual consequences" (205). But it is mistaken to assume that our set of institutional categories state, market, church is therefore a serious obstacle to analysis. It is a truism that the state is not only the site of politics and legislation, but purchaser, seller, employer, money lender, and manufacturer of ideology, as well as a host of other things. Religious institutions own property and directly enter the political arena as well as propagating philosophical ideas and performing rituals. The institutional "subsystems of different purpose" overlap, intersect, become one another in different situations. The discrete definition of the subsystems in terms of function has long been seen to be impossible and theoretically useless. Such a division may have seemed clear to Malinowski, and seemed simple in some textbooks, and perhaps in the administrative organization of academe. It is (and always has been) less than clear in life. The element of cultural arbitrariness and ethnocentrism in any such classification is no longer a surprise. Given the overlapping nature of such categories, like most other categories used in anthropology, the task of explaining the logic of one major institutional domain then necessarily leads outward to the others (see Needham 1975).

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro,
1880-1980

Sally Falk Moore

Excerpt

[More information](#)

That being so, in my view there are three primary routes to social analysis that in combination commend themselves to the eclectic anthropologist today: the approaches via relationships, via resources, and via "representations." By definition, those dimensions are present in every institution, in every social field, in every social situation. The elements of the triad are always intertwined, but in variable and complex ways. They are not simple reflections of one another. An approach to data made in terms of all three dimensions opens the possibility of analyzing dynamic shifts in their patterns, content, and connections over time. Doing so in terms of specific settings and specified systemic tensions is the task of the day. Within that skeptical, time-oriented and tridimensional perspective, more easily described than accomplished, law is the category of affairs used as the point of departure for this book.¹

In anthropology law is a topic that could be said to have floated down the same theoretical stream as the rest of the discipline. There are exceptions; but the general drift is the same. It had a nineteenth-century evolutionist for a grandfather in Sir Henry Maine (1861), and evolutionary approaches have enjoyed considerable durability since. Most of the few descriptive works that were produced in the first half of this century treated the law of particular peoples in much the same way that "customs" were treated in the ethnographies of the period, as an expanded list of rules, sometimes embellished with illustrative cases (Malinowski 1926; Schapera 1938). After 1945, legal anthropology gradually moved away from that kind of description. At first there was Hoebel's totalizing, structural-functional and culture-pattern-like comparative account of several whole legal systems which sought to identify the underlying "legal postulates" of each society (1954). Virtually at the same time others generated a very different approach—small-scale case studies of dispute hearings in action (Gluckman 1955:196; Bohannan 1957; Pospisil 1958).

At first such hearings were interpreted as largely normative and standardizing, of interest because they were expressive of "traditional" ideas. That these hearings were taking place under colonial conditions was noted, but that circumstance was not the central focus of discussion. The emphasis was on the customary content of the disputes themselves and the rules and concepts employed. The ingenuity with which indigenous ideas were applied was admired, the logic which they represented was aesthetically and intellectually appreciated. But later another stream of analysis displaced this one. Disputation came to be treated primarily as it involved strategic competition between individuals. Within this approach disputing was seen as an occasion for the testing of relative power, not for the most part as an occasion for the "application" of rules (Gulliver 1973). In anthropology concentration on the rule dimension weakened as individual strategy came to the fore. The questions of choice of argument,

Cambridge University Press

978-0-521-31201-1 - Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880-1980

Sally Falk Moore

Excerpt

[More information](#)

choice of forum of hearing, and choice of occasion became major parts of the analysis (Collier 1973; Nader 1965). The active individual with intentions became the object of study. The unfolding of a case over time entered the models of disputing.

Several inconsistent tendencies can be seen in the subdiscipline today. In one stream of development the scale of the subject matter has been reduced. Interest in describing "whole" legal systems has faded as the focus on particular cases and disputing has increased (Fallers 1969; Nader and Todd 1978; Comaroff and Roberts 1981). In another direction the scale has increased and the subject matter has expanded. Plural levels of law and plural legal systems have come to enjoy stage center in a major postcolonial spate of works (Hooker 1975; Starr 1978; Burman and Harrell-Bond 1979). An evolutionism of sorts also has come back (Diamond 1971; Roberts 1979; Newman 1983). At the same time the study of coherent cultural assumptions manifest in the judicial domain continues a durable intellectual tradition (Rosen 1980-81; Geertz 1983). Most recently of all, building on earlier work (Kuper and Kuper 1965; Fallers 1969; Schapera 1970), some legal anthropologists have been newly occupied with change and legal history (Benda-Beckman 1979; Saltman 1979; Snyder 1981; Moser 1982).

This book, in keeping with that latest of developments, analyzes the transformation of legal and political ideas and practices among the Kichagga-speaking people of Kilimanjaro over the past hundred years. To the extent that this book asks the question how the distinctive legal aspects of the way of life of the Chagga people came to be the way they are today, the story is an account of the transformation of a tradition. But it is also the story of the making of a new polity and economy in which "traditional" law has come to have a very different significance from what it once had. What has been attempted, in a broad sense, is a *metamorphic analysis* which includes both an account of alterations within the tradition itself and a sketch of the overwhelming changes in its political / economic context.

Clearly tradition is one of the elements most readily available for the *bricolage* of the present. From this perspective current social/cultural "systems" like souped-up automobiles are constructions made out of new and used parts. This composite condition is acknowledged more at some times than others. The British, with their policy of indirect rule, were clearly not replacing all they found in existence in the colonies. By contrast, revolutionary regimes frequently claim they will erase the past. The former rule actually changes more than it claims, the latter less. In the present period of applied projects and planned change, of hubris about designed societies, the place of "used parts" in particular historical sequences is more than academically instructive. Traditional ideas and tra-