Nor do codes of fair procedures promise easier solutions. Most of these codes deal with such matters as the right to counsel or the right of reply; few concern themselves with the proper scope of legislative inquiries.[6] But one provision embodied in some of these codes—namely, the requirement that legislative investigations be subjected to continuing scrutiny by a special supervisory congressional committee—is, as Mr. Barth points out, "an indispensable means of keeping committees responsible and of discharging the responsibility of the House and Senate for their conduct";[7] particularly if these supervisory committees are empowered to receive and investigate complaints from the general public.[8]

But no such codes will be enacted until a public morality is created that makes congressional abuses politically unprofitable. *Government by Investigation* will aid greatly in generating that morality.

WILL MASLOW†

THE LAW OF PRIMITIVE MAN, A STUDY IN COMPARATIVE LEGAL DYNAMICS. By E. Adamson Hoebel. Cambridge: Harvard University Press, 1954. Pp. viii, 357. $5.50.

PRIMITIVE law as a subject partakes of both legal science and social anthropology. While textbooks of anthropology have been appearing during the last ten or fifteen years at the rate of three or four a year, comprehensive publications on primitive law appear but seldom. This is probably due mainly to the fact that a two-fold professional qualification is required for the study of primitive law. Only a jurist with training in cultural anthropology or ethnology, or conversely, an anthropologist with additional training in legal theory and historical jurisprudence is truly competent for a discourse on primitive law. A happy solution to the problem of equipment and competence is the association of two co-authors, one with legal, the other with anthropological training. In their volume *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*, published in 1941, E. Adamson Hoebel in collaboration with K. N. Llewellyn presented us with a work that is probably the best monograph ever

6. See Maslow, *Fair Procedure In Congressional Investigations: A Proposed Code*, 54 COLUM. L. REV. 839, 850-61 (1954). The Doyle Resolution, H.R. RES. 151, 84th Cong., 1st Sess., adopted by the House of Representatives on March 23, 1955, is a mere sop to the advocates of reform. Its only advance is the provision requiring committees to hear first in executive session matters that may defame a person, and entitling such a person to appear as a witness in his own behalf.

7. P. 202.

8. For such a provision see § 8 of S. RES. 101, 84th Cong., 1st Sess., introduced on May 17, 1955 by a bi-partisan group of eighteen Senators, headed by Senator Estes Kefauver. See also AMERICAN BAR ASSOCIATION, SPECIAL COMMITTEE ON INDIVIDUAL RIGHTS AS AFFECTED BY NATIONAL SECURITY, REPORT ON CONGRESSIONAL INVESTIGATIONS 40-43 (1954).

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written on the subject. Since then, Professor Hoebel has further distinguished himself in the sphere of legal science by the publication of half a dozen papers on primitive law, including his important essay on *Fundamental Legal Concepts as Applied in the Study of Primitive Law*.[1] Now Professor Hoebel has published a comprehensive volume that submits a wealth of factual material to sociological analysis and legal evaluation.

The book is divided into three parts. The largest of these parts, and the factual backbone of the volume, is part II, "Primitive Law-ways," which consists of a series of studies of social structures and tribal laws, derived from monographs. Two of the five chapters in this part are devoted to American peoples, the Eskimos and the Plains Indians; one to an Asiatic people, the Ifugao of Luzon; one to an African group, the Ashanti; and one to the Melanesian Trobriand Islanders. These chapters are primarily descriptive, but Professor Hoebel also supplies analysis and commentary. A number of other primitive groups are referred to in parts I and III, but these parts are primarily devoted to theoretical discussion. Thus part I, entitled "The Study of Primitive Law," includes chapters on "The Cultural Background of Law," "What is Law?," "Methods and Techniques," and "Fundamental Legal Concepts as Applied in the Study of Primitive Law." Part III, under the heading "Law and Society," contains three essays: "Religion, Magic and Law," "The Functions of Law," and "The Trend of the Law." There are, of course, a bibliography and an index.

Professor Hoebel calls his method "functional realism."[2] His attitude toward law arises from his general methodological postulate in anthropology: "Our primary concern, it is true, is functional: How does the law work as a whole? Why does it work as it does? How and why do its parts work as they do in relation to each other and to the cultural totality and the social entirety?"[3] This is a paraphrase of the classic definition of functionalism coined by Malinowski, the dogma and methodological vade mecum of the majority of students of anthropology in the English-speaking world from around 1925 until only a few years ago. But recently functionalism has been tempered by a renascence of the historical approach, and it is pleasant to find Professor Hoebel in the camp of those scholars who not only recognize the great importance of history, but live up to this insight in their own method of research:

> "[C]ulture and society are not momentary things. They come out of the past, exist in the present, and continue into the future. They have historical continuity. What they are is the product of what they have been, worked upon by presently impinging conditions and forces. . . . Thus with the law; its present nature and functions are our chief concern, but its general history also has significance."[4]

The author analyzes the "law systems" of the cultures he examines. The term is a sufficiently accurate and useful one, but it must be distinguished from

1. 51 YALE L.J. 951 (1942).
2. P. 5.
3. P. 288.
4. Pp. 288-89.

the very similar term "legal system" which, following Dean Wigmore, should be restricted to the small number of peoples "who have developed a well-defined, organized, continuous body of legal ideas and methods, reaching the dignity and solidarity of a legal system."[5] Not one of the primitive peoples whose laws are discussed in part II would qualify for this category, not even the Ashanti. Generally speaking, the study of primitive law is not concerned with "legal systems," although it may deal with the early stages in the development of legal systems.[6]

Professor Hoebel presents his own definition, not of "law," but of the adjective "legal," and used as a noun, "the legal:" "A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognized privilege of so acting."[7] Implicit in this definition is the general concept of law as a complex of rules of social conduct, or norms, and of "a law" as one of these rules or norms. But there are rules that are not law, and the author takes the trouble of demonstrating that in particular, custom and law are not identical: otherwise, "the patterns of pottery making, flint flaking, tooth filing, toilet training, and all the other social habits of a people, are law."[8] The argument is not a sound one, for habits, usages and technical practices are not really "customs." The term "custom" should be reserved for social behavior and norms of social conduct that have relevance to the public order in the community. Law arises out of custom: there can be no doubt that in the early stages of most of the great European legal systems, the unwritten law grew up in the form of custom.

Professor Hoebel presents an interesting theory of how such unwritten "primeval" law originally developed. Having initially stated that the first essential function of law is to define relationships among the members of a society, he suggests:

> "No culture has a specific starting point in time; yet in the operation of the first function it is as though men were getting together and saying to each other, 'Look here! Let's have a little organization here or we'll never get anywhere with this mess! Let's have a clear understanding of who's who, and what we are to do, and how we are going to do it!' In its essence it is what the social-contract theorists recognized as the foundation of social order."[9]

Interesting though this theory is, the reviewer is inclined rather to George W. Paton's view:

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5. 1 WIGMORE, A PANORAMA OF THE WORLD'S LEGAL SYSTEMS 4 (1928).
6. One of the best examples, in the sphere of Germanic laws, is H. Schreuer, *Das Recht der Toten*, in 33 ZEITSCHRIFFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 333 (1916), 34 *id.* 1.
7. P. 28.
8. P. 20.
9. P. 276.

> "It is often asked whether conviction generates practice, or practice conviction. If we emphasize too much the first alternative, this suggests that the community logically faces its problems and devises self-consciously the best rules. This is a false picture—the growth of much custom is not the result of conscious thought but of tentative practice."[10]

In his chapter on "Fundamental Legal Concepts as Applied in the Study of Primitive Law," Professor Hoebel accepts Hohfeld's fundamental premise that all legal relations are between persons,[11] and he quotes A. L. Corbin's formulation that "there can be no such thing as a legal relation between a person and a thing."[12] This theory is definitely inadequate in dealing with primitive cultures, where the *jus in rem* by original acquisition (as opposed to derivative acquisition) emanates from the personality of the purchaser, maker or author. In fact, the idea that a manufactured object is the product of the personality of the maker is ultimately responsible for *specificatio*, the Roman and civil law concept of acquisition of an object by means of physically transforming it. It cannot be argued that those invisible ties between person and thing are fictitious, since they are established by conviction and sanctioned by convention, precisely like any other legal ties—such as the rights and obligations arising from contracts. In the life of the Australian aborigines, for example, the whole social structure of the group is tied up with certain material objects, the ritual boards, which are engraved with symbols of the totem and believed to be literally identical with the ancestors of the prehistoric "dream-time."

These few criticisms will not, I hope, obscure my feeling that a wealth of stimulating ideas is offered in the book, in addition to the solid material presented in the five monographs in part II. There are some minor inaccuracies in Professor Hoebel's book,[13] but in spite of these this work is bound to become *the* textbook of primitive law for future generations of students of both social anthropology and jurisprudence, and as well for administrators in those parts of the world where "primitive" peoples are still under European guidance.

LEONHARD ADAM†

10. PATON, A TEXT BOOK OF JURISPRUDENCE, 145 (2d ed. 1951).
11. P. 47.
12. P. 47.
13. The first exposition of *reciprocity* as the fundamental principle of many primitive societies, in particular in Melanesia, was made not by Malinowski but by Richard Thurnwald ten years earlier, in his *Banaro Society*, 3 MEM. AM. ANTHRO. ASS'N 251 (1916). A few misprints: R. R. Marett is mis-spelled "R. H. Marrett" and the name of Wolfgang Köhler (THE MENTALITY OF APES) is not "Kohler." Lastly, I should like to be permitted to say a few words *pro domo*: in the bibliography, Professor Hoebel has done me the honor of including the titles of some of my publications. The second in the list, METHODS AND FORMS OF INVESTIGATING AND RECORDING OF NATIVE CUSTOMARY LAW IN THE NETHERLANDS EAST INDIES BEFORE THE WAR is not my work but that of my distinguished namesake, the eminent Dutch specialist in Indonesian law, L. Adam, who always signs his initial only.

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