as though they pertain to a single universe or category as refined as the data permit.

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REPLY TO MAX GLUCKMAN

Max Gluckman pays me the high compliment of devoting a good portion of his recent article (1973) to a re-analysis of my interpretation (1969) of a case drawn from the records of the primary courts of Kenya. And he is extremely flattering in his comments upon that interpretation. A reply would therefore seem unnecessary at the least, and possibly ungrateful. I know I am not the latter, and I hope the reply is not wholly superfluous.

With the distance created by time, I now see my article, Gluckman's criticism, and my reply, as a dialectic. In writing my article, I was reacting to a body of scholarship that was almost totally preoccupied with rules. Although I only quoted at length from the work of Charles Dundas (a colonial administrator), I also cited numerous other examples by both lawyers and anthropologists. And Gluckman, himself, acknowledges that "some lawyers tend to be concerned in Africa to record rules, as the *Restatement of African Law* shows . . ." (1973: 635). I therefore do not agree that it has been "long established and accepted" that "a study of abstract rules is not enough" (1973: 624).

In reacting to this preoccupation with rules, I confess that I went to the other extreme, and gave the impression that I believed "that cases are more important than rules," for which Gluckman has quite rightly criticized me (1973: 634). But I never contended that "the study of the case, or the dispute, or the conflict should be the only focus of the study of law" (1973: 613), nor did I assert "that cases alone will give rules" (1973: 622). Indeed, I could hardly have done so, for, as Gluckman writes, the "analysis by Abel, does not observe the rule (note!) he promulgates" (1973: 613). The reason it does not is that I promulgate no such rule.

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If my reaction to earlier scholarship was exaggerated, so, I believe, was Gluckman's reaction to my article. Recognizing that Dundas' work "particularly raises [my] ire," Gluckman attempts to explicate Dundas' report that, in Kikuyu law, "if a man were seized by a lion, and his friend wishing to save him were to throw a spear, he would be liable for compensation if he inadvertently struck the man instead of the lion" (1915: 263-64). Gluckman writes:

> one would like to know if Dundas was told the rule by the elders in reply to his putting an hypothetical case, or whether they were discussing with him the absolute liability of a man of one group for blood-compensation if he kills a member of another group, or whether it cropped up spontaneously from the elders in a discussion of the relationships of groups involved in potential feud as against payment of blood-compensation (1973: 624).

I, too, would like to know this, for I agree with Gluckman that context is vitally important. Gluckman has perceptively suggested some of the possible contexts, each of which would alter the meaning of the rule. Lacking a knowledge of the actual context, I stick to my original contention that such rules are "absurd" (1969: 575). Nor will it do to guess at the context. Gluckman argues "that it must have been a statement in one of these contexts, or a very similar context" (1973: 624), but he offers no evidence for this, and the contexts themselves differ significantly. Alternatively, Gluckman tries to illuminate the rule by describing the context in which another rule — which he views as similar — was employed in a case involving another tribe, the Pokot. This simply will not do. True, the Pokot, like the Kikuyu, live in Kenya; but there the resemblance ends. The Pokot are members of the Nilo-Hamitic linguistic group, pastoralists of the western Rift Valley. The Kikuyu are a Bantu people, agriculturalists on the slopes of Mount Kenya. These differences affect both social structure and culture; nor is there any record of significant contact between them. A case from one cannot illuminate a rule from the other.

Yet despite these quibbles, I arrive at complete agreement with Gluckman's fundamental position, and do so largely by reason of his thoughtful criticism of my earlier article. "We are caught in a circle, in which law, it is true, can only be understood through cases — but cases can be understood only through law, and both have to be set in the matrix of social process" (1973: 622).

Having allowed myself the indulgence of a reply, perhaps

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I am in no position to call for an end to controversy. But I find myself applauding the Cheshire Cat's response to Alice:

> "Cheshire Puss," she began, rather timidly . . . . "Would you tell me, please, which way I ought to walk from here?"
>
> "That depends a good deal on where you want to get to," said the Cat.
>
> "I don't much care where," said Alice.
>
> "Then it doesn't matter which way you walk," said the Cat.
>
> "— so long as I get *somewhere*," Alice added as an explanation.
>
> "Oh, you're sure to do that," said the Cat, "if you only walk long enough!" (Carroll, 1946: 64).

Perhaps we should turn to the question of where we want to get to.

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REFERENCES

ABEL, Richard L. (1969) "Customary Laws of Wrongs in Kenya: An Essay in Research Method," 17 American Journal of Comparative Law 573.

CARROLL, Lewis (1946) Alice in Wonderland and Through the Looking Glass. New York: Grosset & Dunlop.

DUNDAS, Charles (1915) "The Organization and Laws of Some Bantu Tribes in East Africa," 45 Journal of the Royal Anthropological Institute 234.

GLUCKMAN, Max (1973) "Limitations of the Case-Method in the Study of Tribal Law," 7 Law and Society Review 611.

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