THE STUDY OF AFRICAN LAW AT THE AFRICAN STUDIES CENTRE, LEIDEN: IN REACTION TO JOHN GRIFFITHS' OVERVIEW OF THE ANTHROPOLOGY OF LAW IN THE NETHERLANDS IN THE 1970's(1)

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Professor John Griffiths (an American occupying the chair of sociology of law at the University of Groningen, The Netherlands) has published, in a recent issue of NRR ('Newsletter for Dutch-language sociologists of law, anthropologist of law and psychologists of law') a critical overview of the anthropology of law in the Netherlands in the 1970s. This review exceeds 100 pages, and includes what Griffiths (1983: 224) claims to be 'a complete bibliography of Dutch legal anthropology in that period'.

The production of such overviews has become rather fashionable in Dutch anthropology in recent years (cf. Kloos & Claessen 1975, 1981); and Dutch sociologists are now involved in a similar exercise, by means of a conference convened for spring, 1984. In the current climate of financial cutbacks and government-imposed restructuring of the organization of research, in the Netherlands and elsewhere, it is only understandable that one tries to create and exploit new intellectual and institutional boundaries, mobilizing potential friends and stressing if not inventing cleavages and feuds, for the sake of competition over funds, personnel establishment, institutional recognition, and academic esteem.

Griffiths joined a Dutch law faculty in 1977 from abroad, and during the period covered by his review his personal contribution to legal anthropology and related fields has been on the level of legal theory and the philosophy of law, rather than empirical socio-legal studies (see his bibliography, Griffiths 1983: 229). Griffiths thus has the advantage of being an impartial outside observer, from a national and to some extent also from a disciplinary point of view. No doubt work on the review was for him a highly rewarding familiarization tour across the Dutch intellectual landscape and its history. The fact that he writes in English presumably makes his extensive summaries of publications and of colleagues's biographies rather useful to other outsiders.

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At the same time, his outsidership may have been an impediment. One wonders whether the task of reviewing and, with the powers of hindsight, structuring and restructuring the national outlines of what he claims to be a subdiscipline, should not have been left to someone more solidly rooted in that field over a longer period of time, someone who could match his bibliographical, synthetic and theoretical skills (such as Griffiths obviously possesses) with personal experiences of the period described.

Admittedly Griffiths's picture of Dutch legal anthropology in the 1970s is on the whole extremely gratifying: the 1970s are claimed to have witnessed the rather unexpected rebirth of the subdiscipline, in the Netherlands, from the ashes of a honourable but unfortunately declined tradition featuring such great names as Ter Haar and Van Vollenhove. However, not so much the data but the author's treatment falls short of being totally convincing. The same few names and projects come back time and again in this excessively long and repetitive overview. Far too much attention is paid to insignificant, even unpublished, articles and lectures. Far too few colleagues are praised far too highly. Far too little is shown of a historical sense (as is best demonstrated by the very unfair, for anachronistic, treatment of André Köbben's seminal work - Griffiths 1983: 164-65). The author has hardly any understanding let alone appreciation of the institutional, intellectual and social preconceptions that underlie academic life in the Netherlands. Increasingly, one has the feeling of reading not a scholarly study but a political or even religious pamphlet, whose aim is not so much describing and analysing a recent past but evoking the illusion of an imminent golden age.

If this is what the editors and subscribers of NRR like to print respectively read, let them go ahead. In reality, of course, legal anthropology in the Netherlands scarcely exists as a distinct subdiscipline. It is amorphous, floating, historically heterogeneous, largely determined by conventions of Dutch academic subculture which Griffiths shows no signs of having internalized, and by and large it is so parochial that personal network contacts and personal rivalries determine it more than anything else. Griffiths covers himself nicely by claiming that his review is 'still a more or less provisional version' (1983: 132), and invites critical remarks. Now that his version has already been published, Griffiths regrettably has forced the hands of those wishing to comment on the

more controversial parts of his paper: they have no option but engaging in published debate, thus risking to overstate points which would perhaps be better discussed in a more informal and relaxed way. Incidentally, the same would apply to some of Griffiths's own remarks, e.g. those concerning the 'scandalous' ('in the technical sense of the word'; Griffiths 1983: 213) ignorance of Dutch anthropologists, who according to him fail to recognize legal anthropology as the cornerstone of their discipline; or the alleged absurdity of national procedures of research funds allocation. Such general attacks on Dutch conditions as Griffiths's review contain, are not not my concern here. However, he also levels a very specific and violent attack on research and research policy at the African Studies Centre, Leiden; and as head of one of this institution's two research departments, it is my duty to reply to his challenge.

Griffiths's picture (1983: 156, 160-63, 168-70, 185-91, 221) of work at the African Studies Centre during the 1970s, and subsequent developments in the 1980s there, can be summarized as follows. As an aftermath of Holleman's leadership (whose formal link with the African Studies Centre was severed in 1969), the Centre is claimed to have been prominent in the study of African law right through the 1970s, successfully embarking on all sorts of activities (research, conferences, publications) in which over the years more than ten different researchers are said to have been involved. While going into excessive detail in some cases, Griffiths underexposes the work of some other African Studies Centre researchers in the 1970s. Thus on the basis of his review the uninformed reader would scarcely suspect that it was Harrell-Bond and Rijnsdorp who, during much of the period covered, carried the lion's share of legal research at our institution. Their Sierra Leone project was rather more successful than Griffiths suggests; its output includes for instance one major book overlooked by Griffiths (Harrell-Bond et al. 1978). Anyway, in 1983, one of the African Studies Centre researchers, E. van Rouveroy van Nieuwaal, saw his activities in the field of legal anthropology rewarded by a part-time chair in African constitutional law at Leiden University. But one swallow does not make summer. For Griffiths signals at the same time

> 'a well-advanced proposal to eliminate the Law section and "integrate" it in a Department of Political Development and History, headed by a (sic) anthropologist. When one considers the lack of

> interest in or knowledge of legal anthropology (or matters legal in general) which have been long typical of Dutch social science -- a generalization to which the current leaderschip (58) of the African Studies Center is no exception -- it seems safe to translate "integrate" out of bureaucratic jargon into "eliminate" in plain language. Certainly there is no reason to suppose that anthropology of law will fare better in the surrounding of such a Department than it does in any other social science department in the country. (...) what a shame such a (gradual) death will be' (Griffiths 1983: 160).

Earlier it was scandal, and now shame; again, presumably, in the technical sense of the word? Fortunately, the truth is both more complex and more balanced; and in view of the excessive length and repetitiveness of Griffiths's overview, one can hardly suspect that sheer limitations of space made him hold back essential information which however was at his disposal.

In 1980 (cf. Grootenhuis 1983; van Binsbergen 1981) the African Studies Centre decided to reorganize its research activities. The structure of about ten small sections - one among them the African law section - was supplanted by two major interdisciplinary research departments, one concentrating on rural development, the other on state and society in both a historical and a contemporary perspective. Research activities came to be structured, no longer by academic discipline, but around these two broad themes. As a transitional measure, only too common in cases of institutional reorganization, this shift was not immediately implemented to the full extent, and the small law section was allowed to persist for some time as a monodisciplinary anomaly; this anomaly has recently been terminated by the Board, thus making definitive what Griffiths still refers to as a proposal (the dissolution of the law section). The programmes of both departments had, from their first formulation in 1980-81, been sufficiently broad so as to encompass the study of relevant legal aspects of the state and/or rural development (Hoorweg 1981; van Binsbergen 1982). Thus, the programme of the department of political science and history had from its very inception stressed the importance of research in constitutional law (van Binsbergen 1982: 15).

Griffiths's footnote 58 in the long passage quoted above (Griffiths 1983: 160), placed so as to suggest that it is going to reveal the name or names of the current leadership of the African Studies Centre - allegedly so insensitive to the study of African law - only mentions Holleman's

leadership up to 1969. Since 1980, the scientific leadership has been in the hands of Hoorweg and myself, as heads of the two research departments; the library is managed by Van der Meulen; general management has for many years been Grootenhuis's province; while a Board, and a Board of Trustees, check long-term policy decisions. I am head of the department specifically mentioned by Griffiths. It is therefore reasonable to conclude that his devastating criticism is largely directed at me, as one entrusted with the formulation and implementation of the department's research policy (2).

However, the real issue is not my person, scholarly performance, or the discipline I was trained in, but revolves on the following questions:

- Is our department a good environment for African law research, in terms of both personnel and of explicitly stated research programmes and policies?

- If these conditions are essentially positive, what kind of African law research should we have in such a department? Only if the answer to this question would be: 'monodisciplinary law research', would it be a liability to the department and to legal research therein if its head were not a lawyer or legal anthropologist.

Our present department and its composition show that meaningful law research can be undertaken outside a specific department of legal studies. The members of our department include Buijtenhuis, Hesseling and Konings, all of whom feature in Griffiths's account as having done work in the field of African law studies. Of these, only Hesseling is a lawyer, while Buijtenhuijs and Konings have primarily published on revolutionary movements and urban and rural class struggles within the framework of twentiethcentury African states. Other members of the department are Baesjou (whose interest in the history of litigation on the West African coast has led to a collection of papers, Palaver, co-edited by him; cf. Baesjou & Ross 1979); de Jong, whose Islamological studies pay considerable attention to Islamic law particularly in the context of Muslim mystic associations; cf. de Jong 1978); February, whose work on language problems and the position of the so-called Coloureds in South Africa strongly emphasizes legal aspects (cf. February 1976, 1981, 1983); and finally Schoenmakers, whose current research in Guinea-Bissau explicitly includes a study of constitutional processes. Until early 1984, the department included Van Leynseele, about half of whose Leiden doctorate, 1979, deals

with the legal institutions of Libinza society, Zaïre - another omission in Griffiths bibliography which however claims to be complete. In short, I could hardly imagine, in the country, a research department where the study of African law would find a more stimulating and competent setting - provided one accepts the view that African legal studies should not be conducted in a monodisciplinary vacuum but should form part of an overall interdisciplinary research commitment to the African continent and its problems.

Admittedly, the existence of such a setting would still only compensate for the dissolution of the pre-existing African law section, if within our department specific research projects are to be undertaken focussing on African law. Griffiths suggests that this is not the case, but he is wrong.

Now that the Senegal project on land law and state-imposed legal change is nearing completion, new law projects are being proposed within the department of political science and history. The African Studies Centre's commitment to the study of law in Africa remains as firm as ever. While we agree with Griffiths that African law research should be undertaken by experienced professionals (lawyers, legal anthropologists, legal sociologists), there is no reason why their research should be undertaken on a monodisciplinary basis, i.e. in a separate law department or law section. As is the case internationally in the field of African Studies, disciplinary boundaries are fading at the African Studies Centre; our record of recent publications, and list of research projects, may indicate that this is a good thing. Of course, much of this interdisciplinary work is not specifically on law in Africa; but why should an approach that has proved to be productive in such related fields as sociology, anthropology, political science, history and the science of literature, be such a bad thing if applied to socio-legal studies as well?

At the same time it should be emphasized that African law studies are by no means to be confined to legal anthropology. Law in Africa today exists not only, not even primarily, at the level of villages and of chiefs' traditional courts. The interaction between historical judicial forms on the one hand, and modern law as formulated by the state on the other (a topic on which the research programme of our previous law section

revolved) may be important, but again it is by no means the only topic worthy of Africanist legal research. Thus if one concentrates on land tenure and land reform, one soon learns that legal anthropologists (mainly trained to work at the level of face-to-face social relations) are not optimally equipped to study the intricate formal legal procedures African bureaucracies generate and impose at the national and regional level. This is why the execution of our Senegal land reform project has been primarily entrusted to an experienced constitutional lawyer (Hesseling), while the work of the more junior anthropologist (Sypkens-Smit) was confined to the village level. In our department of political science and history, where research focusses on the economic and ideological dimensions of the state in precolonial, colonial and postcolonial Africa, we may well contemplate topics in the study of African law which Griffiths (1983: 163) would deem 'marginal' from a legal-anthropological point of view: national constitutional processes, as both creating and reflecting power structures and ideological tendencies in the society at large; the legal constraints governing processes of information and participation, including forms of political and religious association (political parties, Islamic pious associations, Christian churches), the press and other media; legal aspects of the organization of economic life, from Islamic banking corporations such as have recently been established throughout West Africa, via a large variety of parastatal bodies, to labour legislation, trade unions, land reform and the legal-organizational structure of rural development projects; the challenges which established constitutional structures are facing from the part of revolutionary movements and liberation movements (e.g. Chad, South Africa); interstatal interactions in the way of treaties, international bodies, armed conflict; and legal aspects of such pressing national and international African problems as famine, refugees etc.

If we agree that the study of law should form an integral part of African studies, we should strive towards the selection of research topics that combine scientific and societal relevance to the highest possible degree (cf. van Binsbergen 1982: 7-11); we should also maintain and expand relations of intellectual exchange within and across our national boundaries. Regretfully, the tone and content of Griffiths's review suggest that in this process we can expect very little help from him and his associates.

NOTES

(1) I am indebted to several of my colleagues for criticism of earlier drafts; however, the responsibility for the views expressed here is entirely mine.

(2) Being only human, I cannot repress the temptation to produce here summarily my (admittedly limited) credentials in the field of African legal studies (cf. Griffiths 1983: 169; van Binsbergen 1977; 1981: 51f, 57f; Hesseling 1982: 2; Doornbos, Hesseling & van Binsbergen, in press). I would readily agree with Griffiths that this is not enough to qualify as a legal anthropologist; but that is immaterial. One cannot expect the leadership of a multidisciplinary research structure to be fully qualified in all disciplines involved - the essential thing is the existence of explicit policy that provides room and stimulus for these various disciplines.

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A COMMENT ON DR. VAN BINSBERGEN'S REMARKS

John Griffiths

It would certainly be distasteful to respond to dr. van Binsbergen's reaction to my review article on Dutch legal anthropology (NNR 1983/2: 132) in the tone which he has chosen. I limit myself to clarifying a few points:

1. I can claim neither the credit he bestows on an "outsider" nor excuse myself with the unfamiliarity with the Dutch scene which he suggests. In the first place because such implicit nationalism is scientifically quite irrelevant: my review article was not about Dutch academic life or politics, but about Dutch anthropology of law. In the second place, because I am in fact not an outsider to the Dutch university world nor to that of legal anthropology. And in the third place because my article had the benefit of advice and criticism from those best placed to judge the current situation and best informed about its history; their help is acknowledged in the footnote on the first page of the article.

As indicated in the same first footnote, the version published in NNR was a provisional one (NNR has long had a policy of publishing work-in-progress); readers were urged to call omissions and errors to my attention. I am grateful to van Binsbergen for having mentioned several items I had overlooked (Baesjou & Ross, 1979; Harrell-Bond e.a., 1978; Leynseele, 1979) and which probably require mention in a revised version of the article.

2. The subject of my review article was legal anthropology, not what van Binsbergen calls "law research" or "legal studies". What he says about the latter is therefore quite irrelevant. (Vagueness about such an elementary distinction is precisely one of the reasons for concern about the future of anthropology of law at the ASC.)

Although he is not entirely clear on this, van Binsbergen seems to be of the opinion that the interaction between state and local law is only one among many equally eligible objects for Dutch scholarship in African law. In this I believe him to be mistaken. The circumstances and consequences of legal pluralism are the characteristic feature and give rise to the characteristic problems common to all African legal systems. It is, for example, no accident that when Leiden recently created a chair in African constitutional law, the job-description made it clear that pluralism and interaction in public law should be the central concern of the holder of the chair. Furthermore, because of the adat-law tradition, Dutch scholarship has much to offer in the

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study of legal pluralism and its implications; on the other hand, one can wonder whether Dutch scholarship can significantly contribute to the study of most other aspects of African law and why a Dutch research institute would choose to emphasize them.

3. Van Binsbergen disagrees with my judgment concerning the relative importance of various Dutch scholars and their work. I tried to make the reasons for my judgement clear in my review article. He gives no reasons whatever for his contrary position, for his ex cathedra pronouncements that some writings have been "seminal" and that others (unnamed) are "insigificant". I see no reason to adjust my original judgment.

4. The opening passages of van Binsbergen's reaction, whatever one may think of them, turn out to be gratuitous, since there is really only one (relatively tiny) part of my review which interests him, and that is my negative assessment of recent developments concerning the position of research in anthropology of law (not, again, of "law studies") at the ASC. My assessment was based on extensive discussions with a number of well-informed persons, as well as a limited amount of personal exposure. So far, I am aware of no reason for doubting its general accuracy. It is this: The ASC began, under Holleman's leadership, an active program in legal anthropological research and related activities, which made the Center (largely because of the efforts of van Rouveroy van Nieuwaal) an exciting and important locus of work in legal anthropology during the 1970s. Internal reorganization, involving the incorporation of the hitherto independent law section into a department headed by van Binsbergen, and taken without seeking the advice of those active in the field, threatens the independence and therefore the future of this once-flourishing institutional base for anthropology of law.

There are two sorts of reactions to this assessment which could form the basis of an open exchange. Of course, I would be happiest if van Binsbergen could convince me that my fears for the future are unfounded. Or he could say, "So much the worse for anthropology of law--we think other things are more important." In the latter case I would probably disagree with him (depending of course on the alternatives), but it would be an honest disagreement. Instead of either of these reactions, he merely obfuscates what is going on in a way which makes serious discussion practically impossible. A few examples:

--work in legal anthropology is not "monodisciplinary" (see, e.g., my discussion of Holleman's article, "Law and anthropology," on page 185). It would in this connection be interesting to know what experience it is from which van Binsbergen says he quickly learned that legal anthropologists are not "optimally equipped" to study "the intricate formal legal procedures African bureaucracies generate and impose at the

national level"; it would also be interesting to know what experience it is which led him to the surprising conclusion that a constitutional lawyer is so equipped.

--the Sierra Leone project was not "rather more successful" than I suggested; if anything, it was less so. It is wrong to suggest that this project was the major activity of the ASC in the 1970s, as far as legal anthropology is concerned. (My judgment of the project and the reasons for it are to be found on page 188.)

--the current research activities of van Binsbergen's department do not afford much hope that research in legal anthropology will continue to be nurtured. Few of the publications mentioned by him in this connection are relevant (either because law is completely marginal or because they are in no sense anthropological). Apart from van Rouveroy van Nieuwaal, there is hardly any current activity at the ASC which is of interest to the international community in legal anthropology or capable of making a significant contribution to problems of African law and legal development (what there is, e.g. Konings 1983b, is not mentioned by van Binsbergen but was dealt with in my review article). The Senegal project, after a promissing beginning under van Rouveroy van Nieuwaal's guidance (a guidance backed by years of experience with land law and land reform in West Africa, both at the field level and at the level of national legislation), later got absorbed into the Department of Political Science and History, and appears in the year since my review to have rather bogged down; despite the huge investment, it has yet to produce significant research results.

That van Binsbergen indiscriminately throws everything in which the word "law" appears, regardless of approach and quality, onto one pile, whose mere dimensions he invites the reader to admire, only obscures the fact that there have been and are good people at the ASC, some of whom have occasionally done interesting work that can be reckoned to the anthropology of law. It does not, however, address the question which led to my negative assessment of the future of anthropology of law at the ASC, namely whether the structural conditions for continuation of an interesting research tradition in anthropology of law are being threatened. He has not convinced my that my judgment of a year ago is unwarranted. On the contrary.