Chapter 02: History, schools, and names of anthropology of law

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Outlines, Issues, Suggestions

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The present part of “Law and Anthropology: Outlines, Issues, Suggestions” is an abridged version of the text of the hardcover edition, shortened by certain subchapters or other sections. The text and the footnotes left out are indicated by the words: not included. The reader who wants to see these omitted parts is referred to the hardcover version (see preceding paragraph).
Chapter 2: History, schools, and names of anthropology of law

The materials for this Chapter are mainly taken from Marschall (1991), Kohl (2001), Feest & Kohl (2001), Ortnier (1984), Gottowik (1997), from my class readers (see Preface, above) and W. Fikentscher (1995/2004), 77 – 92. Apart from interest in, and observation of, current events in the anthropology of law, there was no additional research of my own. References may be found in Chapter 1 I. 6 or in the bibliographical subchapter III. below. In Chapter 2, the presentation of schools, directions, and names in cultural anthropology as well as a report on the crisis of ethnographic representation in the 70ies and 80ies try to follow new paths.

I. The history of anthropology in general, and of the anthropology of law in particular

1. Precursors

The expression “anthropology” for the scientific study of the human cultural and biological condition was first used, as far as we know, in the late 16th century by systematizers and curriculum planners at Continental European universities and other educational institutions. The Age of Discoveries gave rise to the question whether “savages” were human beings, what distinguished them from the European discoverers and conquerors, why they looked and behaved differently, etc. After Christianity had spread across most of Europe and started to influence the New World, writers tried to comparatively relate the human condition to its natural and cultural surroundings, mostly from a religious, or religion-critical, point of view. Late Spanish scholasticism debated whether Indians - the Indios of the newly discovered Americas – were beings with human qualities, and therefore had rights and duties: Fernandez de Oviedo (1478 – 1557); Bartolomé de las Casas (1475 – 1566); Bernardino de Sahagún (1499 – 1540); Michel de Montaigne (1533 – 1592). Against universalist and categorical tendencies of the baroque philosophers, Johann Gottfried Herder (1744 – 1803) developed his encompassing life work on the history of human culture. He attempted to research the human soul in history and peoples. Georg Forster (1754 –1794) was one of the first who identified as a problem the contrast between ethnographic observation and participation in local cultures on the one hand and scientific building of knowledge about them on the other, preempting Malinowski’s “participant observer” by more than hundred years. His critique of both the compilation of unrelated facts and unproved speculations is an early version of Clifford Geertz’ reasoning of “interpretationism”. Forster also muses about Europe’s singular position in world history. His works were of immediate influence on Alexander von Humboldt (on him see 6., below).

2. Missionaries

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1 All sources cited before are listed in Chapter II. 6.
3 Erdheim, in Marschall (1990), 19.
4 On Sahagún see, e. g., Kohl (2001), 103
An up to now often untapped source of early anthropology are the reports of Christian missionaries of their contacts with “heathens”. Of course, these reports are written from the vantage point of missionary mandate and zeal, and are tinted by success or failure in that regard. But they may be a valuable contribution to the knowledge of the conditions of life at the time of their first contact with Europeans.\textsuperscript{7} Sometimes these missionaries abandoned their task for which they had been sent out, or added personal ethnological engagement to their mandate, and familiarized themselves with indigenous languages, habits, and modes of thought. While these early ethnologists risked to becoming disciplined by their clerical superiors, their reports and judgments are of special value today.\textsuperscript{8}

3. Adventurers

Another value arises from reports consisting of notes and collections of early adventurers who traveled to distant parts of the world for curiosity’s sake, sometimes as (or under the disguise of) traders or cartographers, sometimes in combination with scientific interests, and sometimes, as in the case of missionaries, commissioned by political authorities. Marco Polo’s (1254 – 1324) travel from Venice “to China” (whatever may have been the final point of his journey), Christopher Columbus’ crossing of the Atlantic, and Lewis’ and Clark’s expedition to the Pacific coast are well-known examples. In 1788, the Association for Promoting the Discovery of the Interior Parts of Africa was established in London. Some of the early adventurers did not survive their dangerous travels, such as Eduard Vogel (1829 – 1856) and Moritz von Beurmann (1835 – 1863). Others became famous by their meticulous reports of hitherto unseen lands and peoples, for example Carsten Niebuhr (1733 – 1815) who travelled Arabia and surrounding lands and was financed by the Danish Crown. Gustav Nachtigal (1834 – 1885), commissioned by King Wilhelm I. of Prussia, visited African kings in the Sahara and then turned East to reach the Nile.\textsuperscript{9}

4. Herder and Klemm

To understand the slow rise of anthropology and ethnology as scientific endeavors, it is convenient to observe the circles of unrest and pacification in post-Reformation Europe since the middle of the 16\textsuperscript{th} century. The 16\textsuperscript{th} century – the “long” one – had been replete with religious, political, and scientific upheavals and revolutions. The 17\textsuperscript{th} century became a time of baroque order, discipline, and scientific categorization. In philosophy, Gottfried Wilhelm Leibniz’ (1646 - 1716) conceptualities and monade theory served as models for educated categorical thinking. In France, the encyclopedists, and in Great Britain, the thinkers of human individuality and society (Richard Hooker, John Locke, David Hume) engaged in what has become known as “the age of enlightenment”, a movement that found its center in the standing of the individual in a well-ordered, freely accessible world.

But then Sturm und Drang (Storm and Stress) resumed. Johann Gottfried Herder (1744 – 1803) generated intellectual unrest directed against baroque orderliness. Herder, in a reaction to fashionable dry reductionism, discovered culture, culture as a human being’s place in history, geography, and language, in all their variations. Culture became a synonym to an individual’s

\textsuperscript{7} Erdheim, in Marschall (1990), 35 ff.

\textsuperscript{8} An example: the Franciscan friar Bernardino de Sahagún (1499 – 1540) who learned the native Nahuatl, tried to let the Indios describe their world view in their own language and terms, and wrote, from the material he gathered, about the destroyed Aztec culture; Mario Erdheim in Marshall, 33 – 40; Kohl 102 ff.

physical and mental homestead. Herder’s influence on his contemporaries was so strong that to them Leibniz’ concepts seemed to lack perception (Anschauung) and experience (Erfahrung). Increasingly, the baroque state in its uniformity was sensed as a mistaken answer to the demands of human cultures. The upcoming age of romanticism, poetic Sturm und Drang, and the information piling up since the age of discovery, contributed to the spread of the concept of culture in Europe. In 1868, the first French ethnological society was established in Paris, in a late answer to a program drafted by the Société des Observateurs de l’Homme (founded in Paris 1799). Under Herder’s influence, Gustav F. Klemm (1802 – 1867) wrote a ten-volume treatise “Allgemeine Cultur-Geschichte der Menschheit” (General history of culture of humankind), Leipzig 1843 – 1852. E. B. Tylor (on him II. 1. d., below) used Klemm’s and thus Herder’s concept of culture.

5. German idealism: Kant and Hegel

Immanuel Kant (1724 - 1804) wrote an influential critique to Herders cultural theory. From a contemporary vantage point, this methodological dispute concerned, for the first time and in full awareness, the never ending contrast, in cultural anthropology, between the search for inherent, philosophically definable rules from which to draw detailed conclusions (Kant’s view), and empirical research for singular and detailed data, as starting points for a scientific treatment by way of generalizations and specifications.  

G. F. W. Hegel (1770 - 1831) found only words of despise for peoples of African cultures. To him, Africa is the “land of children, which on the other side of the day of self-conscious history is veiled into the black color of night”. Obviously, Africans did not fit into his gnostic-evolutionary philosophical program to combine history and systematic thought, and they were too far, in mind and matter, from his idealization of the Prussian state.

6. A. and W. von Humboldt

Alexander von Humboldt (1769 – 1859) was one of the most successful and renowned travellers and discoverers of his time. The Humboldt Basin in the North American Rocky Mountains and the cold Humboldt Current off the South American Pacific coast are two of his discoveries. He spoke of the peoples he met on his travels with respect, unlike many of his contemporaries who behaved and wrote in a more or less arrogant way when they reported about the nations and tribes they encountered along their way through newly discovered land which often was claimed for a

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[11] I. Kant, Rezension zu Johann Gottfried Herders Ideen, in: Werke in 12 Bänden, W. Weischedel, ed., Frankfurt/Main 1977, vol. 12, 779 – 806, esp. 791; on this still today ongoing dispute, Jerry D. Moore, 363 ff; and Eberhard Berg, in Marschall, on Herder, 67. See also the discussion of universals and specifics, see note 514, infra. It is noteworthy that Kant himself, by tracing his way between David Hume’s rule-skeptical empiricism and G. W. Leibniz’ rule conceptuality, by resorting to a radical modernization of Parmenides’ theory of judgment, had proposed a solution to that dispute. But now, confronted with Herder’s search and love for the details, Kant missed philosophical consistency, and thus seems to side with Leibniz, against Hume. See the discussion of Kant’s theory of judgments, Chapter 2, above.


[13] Cited from, 81. Hegel expressly refers to Africa’s “lack of history”. For details, see Wimmer loc. cit. (see foregong note); W. Fikentscher, Methoden vol, III (1976), 455 – 486.
European country as colony or area of future exploitation.\textsuperscript{14} Whereas Alexander von Humboldt concentrated on geography, fauna, flora, and geology, his brother’s Wilhelm v. H. (1767 – 1835) main interest were languages. This interest became a guiding factor for German ethnology and linguistics till today:

\begin{itemize}
\item[7.] \textbf{German Volkskunde}, and a preview on „European Ethnology“
\end{itemize}

In Germany, ethnology developed a different focus through the influence of the linguistic studies of Wilhelm von Humboldt and other linguists of the growth of languages in the light of their written sources. In particular, W. v. Humboldt’s book on the Kawi language set new standards for linguistic research.\textsuperscript{15} The influence of linguistic studies of ethnologically interesting societies became so strong that German ethnology focussed on illiterate cultures.\textsuperscript{16} It was not before the second half of the 20\textsuperscript{th} century that German ethnology began to include literate societies and thus returned to international usage. This was one of the reasons for the separate development of \textit{Völkerkunde} (= ethnology) from cultural anthropology. In turn, this separate development accounts for what Christoph Engels calls a “lack of theory” of German ethnology.\textsuperscript{17} It is the essence of anthropology to provide for such “theory”.

The general relationship between anthropology and ethnology has been discussed in Part One, Chapter I 1, and V 3: Ethnology deals with specific peoples, whereas anthropology is a comparative theory. However, there are differences in national scientific traditions. The birth hour of Western European ethnology is said to be the foundation of the Society of Ethnology at Paris in 1859. The French meaning of ethnology includes the study of foreign tribes and peoples, typically as parts of European colonies, or otherwise of exotic origin.

The Anthropological Society of London was founded in 1863. The Berlin Society for Anthropology, Ethnology and Prehistory followed in 1869, the Anthropological Society of Vienna in 1870, the American Anthropological Association and the American Association of Physical Anthropologists in 1902.\textsuperscript{18}

In the 20\textsuperscript{th} century, sociology developed from a social science of living nations to an abstract science of societies as systems (Talcot Parsons, Niklas Luhmann).\textsuperscript{19} Sociological models were taken from Western societies only. In the mean time, west of Germany socio-cultural anthropology developed. Thus - said \textit{cum grano salis} -, German ethnology (today no longer being restricted to illiterate societies) corresponds to international sociocultural anthropology, and “European ethnology” as it is presently taught in Germany to an internationalized sociology.\textsuperscript{20}

\begin{itemize}
\item[14] Kohl 105, mentioning also Adelbert von Chamisso and Heinrich Barth as likeminded and sensitive discoverers.
\item[19] Schelsky, see note 97 above.
\item[20] An indication of the difficulties in translating the technical terms in this context is the difference between the German and the English title of the Max-Planck Institute (MPI) in Halle/Germany: its German title is \textit{MPI für ethnologische Forschung} (for ethnological research), its English title MPI for Social Anthropology
\end{itemize}
II. Traditions and schools

This is not the place to trace the complex history of anthropological theory – anthropology understood – as throughout in this book – in the sense of an empirical social science. Neither the history of philosophical (speculative) anthropology (better called: anthropological philosophy) can be reported here. There are both numerous historical works of anthropology and chapters dealing with the history of this science contained in the great treatises and introductory works (e.g., by Binney, Bohannan, Harris, Kottak, Kroebber, Linton, Lowie, M. Mead, Thomas, Wesel, K.-H. Kohl and others). However, it appears that a true history of anthropology that takes into consideration the scholarly developments in the different countries concerned – Germany, France, Great Britain, United States, Russia, Netherlands, Sweden, to name the countries which became home to various schools – has not yet been written. To some degree, Franz Boas’ remarks in his preface to Ruth Benedict’s Patterns of Culture (1934) present a description of the history of anthropology that, while painted in broad strokes, is still rather valid today.

This explains, at least to some degree, why the history of comparative ethnology and anthropology has been almost exclusively concerned with certain particulars (often belonging to material culture), but less with the ideational side of cultural anthropology (for example, the modes of thought). Only occasionally are differences in conceptual approaches to problems touched upon, for example when Leopold Pospišil (1971, 134) mentions the “principles for the particular structure of the society and for the particular content of its culture” (in 1982 a, 179: “Prinzipien ..., die der besonderen Struktur der jeweiligen Gesellschaft und für die besonderen Inhalte der Kultur maßgeblich sind”); or when Ernst Rabel (1927) speaks of “national ways of thinking” (nationale Denkarten); or when Margaret Mead directs her anthropological interest towards what is going on inside of a person’s head. But apart from the “primitive mind” approach, modes of thought as such have rarely been included in anthropological research, or are quickly discarded as “unscientific”. There is hardly a logos-oriented Herodotus or Anonymus Jamblichi to be found in all the schools and doctrinal traditions of anthropology or ethnology. Most modern anthropologists and ethnologists, for that matter, often keep on neglecting ideational cultural barriers, instead of simply being amazed that other people apparently follow other patterns of thinking and reasoning, patterns that may go beyond “cultural traits” in the established sense. This critique needs to be illustrated with references to some anthropological schools and their literature. The following is a brief (and necessarily incomplete) sketch of the various schools of anthropology, and their common interests and differences since the first half of the 19th century. The failure of the crusades to reestablish Christian rule of the Holy Land resulted in the separation of Europe from the East. There is probably no other period in history where traditional ties between the East and West were so radically severed than since the rise of the Muslim empires. Religious fervor and mercantile interests prodded Portuguese, Spanish, Dutch, and English sea captains to sail around the Islamic barrier. This “sailing-around-the-barrier” attitude modeled European thinking about the rest of the world since that time.

The specific character of this attitude becomes clearer when European expansion is compared with Greek discoveries of, and confrontation with, the Orient during the time of classical polis during the axial age (see Chapters 5 I and 9 IV): the Greeks were startled by the realization that the Egyptians, Persians, and Skyths followed different patterns of thinking and reasoning. Herodotus wrote glosses on Egyptian religion and coined the term of the Persian logos. He and the Anonymus Jamblichi compared Greek trust and obedience to law with Persian attitudes towards wealth and power, a difference in behavior inferred by both writers (Fikentscher 1975 a, 249; 1979: 90; idem 2004 b, Ch. I; cf. Ch. 9 II 4, infra; am modern, but non-comparative and ethnocentrical, restatement of the role of trust for contracting: Erin O’Hara 2008).

However, when the Portuguese and the Spaniards conquered and missionized Latin America on their way to India, and the Dutch settled at the Cape of Good Hope, they were not interested in
understanding other cultures. Their concern, along with their successors, was trade and influence. This limited comparative interest did not change much in modern times when one regards some or all of the subjects for possible comparison available in culture. Progress has been made only in such clearly defined fields as language, music, or law. Colonialism raised interest in the “colonized” cultures, but mostly for the egoistic objective of more efficient rule. Nevertheless, some ethnologists and anthropologists (to be mentioned soon) wrote admirable studies of foreign cultures.

The five main research directions of anthropology may be characterized as follows:
(1.) Evolutionists, since the middle of the 19th century; (2.) Historical-comparative directions (since about 1890); (3.) Functionlists, Materialists, Eologists, Structuralists (since about 1920); (4.) Special directions, and the crisis of cultural anthropology (mainly after 1945); (5.) Philosophical and other non-empirical anthropologies

The ascriptions to one of these five groups are of course schematic, and they may intersect. They cannot do justice to many writers and researchers. Multiple ascriptions are possible. Not all important authors can be named. Thus, the enumeration is far from complete.

1. The evolutionists. Diachronic and synchronic research

Modern anthropology began under the influence of Darwin (1809 – 1882) with the evolutionary analysis of the path of human societies and cultures. The concept of evolution was used to construct a history of human culture based on archeological fragments. In the terminology of F. de Saussure (1857–1913), evolutionary thinking is diachronic, the opposite of which is the synchronic analysis of systems and their structure at a given moment in time (for the general applicability of this distinction to the social sciences, see W. Fikentscher 1960).

a. Study of “primitives”

This first phase of anthropological study was followed by a period of reconstruction of historical connections between cultures based upon studies of distribution and diffusion of special features. This kind of work was supplemented by archeological evidence21. The field of anthropology opened up with the study of “primitive” or other exotic peoples by travelers, poets, missionaries, adventurers, merchants, and others who thought it worthwhile to record their experiences. Out of the great number of writers in this genre, three might be noted for the influence they had on later anthropologists: R. H. Codrington, who wrote on the Melanesians; Frank Cushing, who reported his Adventures in Zuni (recently reprinted); and Henry P. Junod, who earned fame for his Life of a South African Tribe. This first phase of anthropological literature might be called life descriptions of distant peoples in exotic areas.

b. Bachofen, Maine, Morgan, Lennan

The later period in anthropological literature is characterized by a more or less uncompromising devotion to evolutionary theory. The evolutionary period has its early stage, its variations, and its epigonic forms. In 1861, the evolutionary breakthrough started the era of “modern” anthropology. In this year the Swiss J. J. Bachofen (1815–1887) published Mutterrecht (Mother right, maternal law), and Sir Henry Summer Maine (1822–1888) Ancient Law (1861). The thread of tradition from earlier empiricists, from David Hume and Montesquieu, to Bachofen and Maine is tenuous, due to the publication of Darwin’s The Origin of Species (1859) and the growing interest in natural sciences and linguistics which preceded it. The American Lewis Henry Morgan (1818–1881) wrote a
profund study of the “League if the Ho-de-no-sau-nee, or Iroquois”, later more simply called League of Iroquois (1851).

c. Adolf Bastian

Adolf Bastian (1826–1905), a German, and John Ferguson McLennon (1827–1881), a Scotsman, continued this empirical-evolutionary trend in the discipline of anthropology as a social science. McLennon studied and published on the issue of patriarchy vs. matriarchy. Bastian (1868, 1884, 1895, 1896; see Fiedermutz-Laun 1990) is usually categorized, in historical accounts of anthropology, as an indefatigable traveler and collector whose interest was to discover human universals and their cultural variations. One of his ideas was that peoples possessed their own cultures and thus become buildings blocks of cultural anthropology. He stressed the role of migration of peoples and their cultures. Most of his many book titles reflect this interest and make the books appear early studies on the counterpoint between culture and cultures. However, the material Bastian presents is so overwhelming and his categorical work so sketchy – he likes the word *prolegomena* (introduction) – that in most instances the reader is left alone to decide what is universal and what not (Fiedermutz-Laun 1990:121: the theory gets lost in details). This does not take away from Bastian’s keen sense of observation, his compilatory energy, and his ingenuity in comparing seemingly very distant findings (e. g., the thunder god in 1895 (I) 178, or thinking in units in 1895 (II) 306ff.; in general terms in 1896: 1). Bastian demonstrated the importance of fairy tales for “elementary thoughts” (1895 (I) X) and of insisting on the plurality of the concept of soul (1895 (I) 12). It has been said above that the term *anthropology* was used during the last decades of the 19th century (and is partly still used) in Germany only for biological anthropology. However, Bastian (1868, 4) remarks that “historical research fails to recognize the assistance given to ethnology by anthropology”. “Working on the borderline of the corporeal and the mental” enables the researcher to claim the “certitude of an exact natural science”. Bastian does not consequently (Greek: *synepeically*, see Chapter 6, below)) distinguish between thinking and metathinking about culture and cultures.

d. *Spencer, Tylor, Steward, White, Service*

Herbert Spencer (1820–1903) combined biology and sociology into a “descriptive” evolution. Sir Edward Burnett Tylor (1932–1917) introduced “culture” as a central anthropological theme. His two seminal books are “Primitive Culture” (1871) and “Anthropology: An Introduction to the Study of Man and Civilisation” (1881). Later evolutionists - some say “neoevolutionists” - are Leslie Alvin White (1900–1975), Julian H. Steward (1902–1971), and Elman R. Service (1915–1996). The interest of these evolutionists lies in how human society and civilization developed, not in how different human groups came to think differently. These anthropologists conceived of “stages” in human development.

e. *British and Swedish diffusionists*

One of the prominent fields of interest became *diffusionism*. “Evolution by migration” could be an appropriate title for the several “diffusionist” schools. British diffusionism held that cultural patterns and traits such as tattooing or the plow, were invented in one place and then diffused from there to other parts of the world: Egypt was believed to be the main source of such cultural migration. Together with W. R. H. Rivers (1864–1922) and W. J. Perry (1887 – 1949), Grafton Elliot Smith (1871–1937) founded the “Heliolithic School” that placed ancient Egypt at the center of cultural diffusion. A stricter empirical treatment of the diffusion of “units of culture” was employed by the “Swedish School”, best known through the work of Baron Erland Nordenskjöld (1877–1932) who
stressed the importance of verifying migrations with archaeological data. He himself was a renowned collector of artifacts. Franz Boas (in Benedict 1934 a, preface) notes that the first broad evolutionist designs were followed by more intensive study of the influence of the different evolutionary trends upon one another, accompanied by much detailed research and archeological fact-finding.

The migration of ideas, however, such as the possible influence of Nestorianic Christianity to explain the elements of grace and redemption in Mahayana Buddhism, has to my knowledge not been a subject of diffusionist research. William H. McNeill’s (1917 -) theory of cultural centers and cultural slopes marks only a beginning. Archeological data, difficult to collect as they may be, are still easier to obtain than data on migratory belief systems and modes of thought.

f. German diffusionists. Kulturkreis-Lehre

Fritz Graebner (1877–1934) co-authored his paper on “Kulturkreise” and “Kulturschichten” in 1905. According to this rather constructivistic – but still influential – doctrine, “primitive” peoples can be subdivided into a limited series of culture types depending upon modes of livelihood, descent patterns, basic religions and convictions, etc. According to Graebner, every “primitive” society receives its cultural elements from such archetypes through migration, transmission, or simple acceptance, thus explaining similarities between peoples of Melanesia, California, and West-Africa. Cultural innovation and inventiveness is rated rather low within this theory. Similarities are thus explained by diffusion. Such a theory would imply considerable migratory movements in early times because certain cultural traits, such as pyramids or bow and arrow find themselves at geographically sometimes very distant places.

g. The Anthropos School

The “Anthropos” School of Austria, with the convent of Societas Verbi Divini - S.V.D.- at St. Gabriel at Mödling near Vienna as its geographic center, is represented by missionaries and ethnologists such as Fathers Wilhelm Schmidt (1868–1954), Robert von Heine-Geldern (1885–1968), Paul J. Schebesta (1887–1967), Martin Gusinde (1886–1969), and Wilhelm Koppers (1886 –1961). These writers relied to some degree on this theory of Kulturkreislehre as a “non-evolutionist” and non-Darwinian point of reference (see also Albrecht Schneider 1976).

When the Nazis entered Austria in 1938, members of the Anthropos School became victims of religious persecution. Wilhelm Schmidt retreated to Switzerland. After World War II, the ethnological and publication-directed traditions (and the journal Anthropos) was resumed at St. Augustin, near Bonn, Germany, while the missionizing center remained in Mödling. Gusinde is still considered the undisputed authority for Tierra del Fuego peoples. The best known work published by this school is Wilhelm Schmidt’s Vom Ursprung der Gottsidee, 12 volumes 1926 – 1955. Schmidt also published articles in the Journal “Anthropos” beginning 1908.

2. Historical-comparative directions

There are some early German and Dutch compilers and comparatists. A first group may be called:

α. Comparative-Ethnological Legal Universalists: Wilutzki, von Dargun, Post, Bernhöft, F. Meyer, Kohler

A group of legal ethnologists entered the academic scene who were interested in the compilation

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and positivist comparison of societies. Most prominent was the polyhistor Josef Kohler (1849–1919). Albert Hermann Post (1839 – 1895), Lotar von Dargun (1853 – 1893), P. Wilutzky (he published between 1880 and 1903), Felix Meyer (1852? – 1928), and the Dutch Georg Alexander Wilken (he published between 1882 and 1894) may be counted to this group. Theodor Waitz (1844 – 1864, in Marburg) wrote his influential six-volume “Anthropologie der Naturvölker” (Anthropology of the Nature Peoples) in the tradition of Klemm’s ten-volume treatise on the basis of more recent material, collected among North-American Indians and elsewhere. Waitz made a claim for identical moral standards of humankind.

German ethnological jurisprudence had its own journal, the Zeitschrift für vergleichende Rechtswissenschaft, founded in 1878 by Franz Bernhöft (1852 – 1933) and Georg Cohn (1845 – 1898?). In its third year, Josef Kohler joined the editorship. The journal still flourishes (but of course has long since left behind positivism and description (for details see Rüdiger Schott’s history of German ethnology, 1982). Schott is critical of the German post-war ethnology of law development. He adds: “Anglo-American colleagues who seem to master the most exotic idioms for their ethnographic fieldwork ... are apparently unable to require a reading knowledge of German ...”).This group of authors of comparative law expanded their comparatist interest to ethnololical dimensions. Differing in methods and intensity of research “in the field”, their main interest was directed in finding cultural universals relating to law. Sebastian Kuck who closed a gap concerning biographical and bibliographical research in this group called these writers the “comparative-ethnological universalists”.  

β. Ihering, Frobenius

Rudolph von Ihering (1818 – 1892) remarked in one of his later letters to Bernhard Windscheid that he had finished his work on the dogmatics of the law (“mit der Dogmatik habe ich für immer abgeschlossen”); his subsequent literary efforts would be devoted to the prehistory of the Indoeuropeans and what they must have had as their law. Ihering speculates on an Indoeuropean original law, so his work cannot be counted as an ethnohistorical study. It rather confirms Ihering’s earlier approach to law as an elaboration of behavior-guiding norms under exigencies (“purposes”) of daily life, Ihering’s “realistic method”. The unfinished book on the “Indoeuropeans” are proof for Konrad Zweigert’s statement that Ihering is one of the founders of modern comparative law. It should be added that he is also one of the founders of comparative legal culture.

Leo Frobenius (1873 – 1938) condensed the massive material he gathered as an untiring ethnological traveler into a “culture morphology” that is still quoted as an example of ethnological

23 S. Kuck, Die Anfänge der deutschen Rechtsanthropologie: Die vergleichend-ethnologische Universalrechtschule, Regensburg 2001: Roderer; Kohler, active author in many legal disciplines, was not – as often asserted - the founder but over 25 years co-editor of Zeitschrift für vergleichende Rechtswissenschaften and wrote for it 280 articles, most on ethnology, Kuck 147. In this sense, he was universal; still, he favored cultural specificities instead of looking for generalities. Bernhöft held a middle position between researching details and sweeping generalities (Kuck 152).


25 cf., W. Fikentscher, Methoden III, 239, 249 – 255, 271, 275..

general theory.

Frazer. Haddon. Sociological positivism and its influence on ethnology

More compilatory work was undertaken by the English scholars Sir James George Frazer (1854–1941), and Alfred Cort Haddon (1855–1940) who felt that fieldwork should be a prerequisite to ethnology and anthropology. These compilations cannot avoid a certain positivism. Positivist sociology becomes of influence. Doubters and problematizers have a background different from those of the evolutionists and diffusionists who appear to be influenced by the sociology of Max Weber, Georg Simmel, Emil Durkheim, and Marcel Mauss (on him P. Centlives 1990). These sociologists all took interest in “primitive” societies. Their work influenced historians and social scientists on both sides of the Atlantic.

Sharing its fate with Völkerkunde, German philosophical anthropology (see 9., below) now began to diverge from the other schools and embarked upon its own path. Comparative sociology for some time joined the international anthropological mainstream and revitalized it, notable through Max Weber’s studies in the comparative sociology of religion. However, later modern systems sociology became an entirely separate discipline. Both developments, the growing independence of German philosophical anthropology and the turn of sociology towards systems theory empowered the comparative study of cultures. Scholars were often tempted to limit themselves to the observation and description of the attributes of a single culture. Observed cultural traits sometimes appeared so disconnected that in the end there was no common thread (“geistiges Band”) to pull together the peculiarities. By relying on compilation and positivism, evolutionism reached its latest phase.

d. Thurnwald

Richard Thurnwald (1869-1954) wrote on „Die Denkart als Wurzel des Totemismus” (1911), a book in which he defined the totem as a legal tool by which property, a family history and other items of belonging are assigned to a group of people, usually a clan. The publication offers a sober contrast to competing theories of totemism of his time which often mix religion, taboo sanctions and occult ideas into a hodge-podge of mysteries. Thurnwald, a practicing lawyer with a common sense for procedure also wrote „Die menschliche Gesellschaft in ihren ethnologischen Grundlagen” (human society in its ethnological foundations), 5 vol., 1931-35. He created the concept of forager (Wildbeuter).

e.. Comparative sociologists (Durkheim, Weber)

British social anthropologists were much concerned with structural analysis (the “school of structural functionalism”). American cultural anthropologists exchanged arguments over the diachronic versus the synchronic method, but never developed a strict dogmatic contrast. The reason for this cultural openness to history might be rooted in the fact that, in one way or another, human beings are historical beings, so historical evolution will always play a part in an anthropological view of man. Thus it can be observed that anthropological scholarship has never been completely opposed to the idea of evolution, also in the case of another approach to anthropology-related work which claims to be non-evolutionary: the comparative sociology of Max Weber (1864–1920) and Emile Durkheim (1858–1917) and their followers.

f. Boas

Franz Boas (1858–1942), a German-born anthropologist who worked in the United States after 1888, attacked both the evolutionary and the diffusionist schools as proponents of mere compilation.
and positivist ethnography. For him, all cultures stand in history and space as entities in their own right, and are equal and comparable. As early as 1911, he warned against anthropological misuses of the concept of race (1911 a; 1961: 324–330). Taking note of the fact that many cultures were disappearing, Boas accepted historical components to ethnological theory without believing in evolutionism. He assumed that similar cultural phenomena may have developed in different environments for very different reasons.

Boas had great influence over a large group of anthropologists, but he always remained open to the creativity of his students. It is not possible to assign Boas’ followers to a specific “school”. They are too different in method and interests to be lumped into a single group of authors. Yet, all “Boasians” follow their teacher in his culture-centered, historical-comparative approach by which he founded modern comparative cultural anthropology (a tribute: Pierpont 2004).

Boas’ position was not only anti-evolutionist, it was also anti-functionalist. To understand his contribution to anthropology, these two opposite camps have to be regarded. Boas was a contemporary of a group of anthropologists who became influential during the ‘20s and ‘30s of the past century, especially in Great Britain. Their work is associated with the problems posed by late colonialism. It is based on synchronic analysis, and ignores the assumptions of the evolutionists, diffusionists, and compilationists. Its scientific tendency is anti-evolutionary. Therefore they were called functionalists and structuralists. Their interest was not in how things develop through time, but how cultures work at a given moment in time. Functionalists hold that there are functions to be fulfilled by culture. In a wider sense, Leslie White’s (on him, see 1 d, above) concept of culture promotes the welfare of the social whole and may be called functionalist. Another functionalist approach does not search for the purpose of culture or cultures as such, but focuses on the functioning of the elements of a given culture. The “functionalist school” is said to originate in the work of Bronislaw Malinowski (1884–1942) (cf., R. Girtler 1981; on functionalism see 3. below).

According to Boas, however, cultures do not serve functions. They are “purposeless” institutions. Franz Boas’ central objective in his historical-comparative approach was the understanding of cultures as historically discrete and conceptionally independent units. In Boas’ view, this approach made possible certain generalizations about specific cultures and their contrasts with other cultures. In this regard, Boas acknowledged the contribution of Ruth Benedict’s book Patterns of Culture (for which he wrote the preface, which is a compte-rendu of the historical-comparative method that he himself had proposed). Benedict adopted this method to penetrate “the genius of a culture”. It is this “genius” to which Benedict refers as a “configuration”, which in turn is a loose translation of the world Gestalt that had come into use in psychological Gestalttheorie. “Configuration” is to be understood as the “one dominating idea” inherent in a given culture. Boas, in this preface, draws attention to the fact that Benedict’s method for discerning “fundamental attitudes” is not functional in the sense of the (British) structural-functionalist school. He takes the opportunity of writing the preface to distinguish his own historical-comparative view from the functionalist-materialist inquiry of Malinowski and other functionalists. Boas felt that “fundamental attitudes” or “configurations” were inherent to cultures and rather resistant to culture change.

g. Ruth Benedict, Margaret Mead

According to Franz Boas (in the preface to Benedict 1934) the intensified study of cross-cultural influence led to a double development: the trend of applying the evolutionary method to a universal history of civilization in light of the diffusionist studies; and the growing interest in single, unrelated cultural units with their own particular histories. Boas is not clear on which universalists he had in mind. Most likely he was referring to the works of Max Weber, Emile Durkheim, Marcel Mauss, and their followers.

It is easier to guess what he meant by the fragmented approach to unrelated cultural units, because
at this time the German tradition had turned to pure ethnology (Völkerkunde), and voluntarily limited itself to non-literate societies. Modern works on ethnology in the tradition of Völkerkunde include Nachtigall (1974), R. Schott (1968), Schmied-Kowarzik and Stagl (1981), H. Fischer (ed.) (1983, 2nd ed. 1988), E. W. Müller et al. (ed.) (1984), Bargatzky (1985), and J. W. Raum (1989). The broader anthropological approach that also includes literate societies, Spencerian “descriptive sociology”, continued to exist on the British and U.S.-American side with ramifications in the Netherlands, France, Sweden, and some other countries. As has been remarked, the self-imposed limitation led to a German deviation from the international mainstream.

Franz Boas’ central objective of his historical-comparative method was the understanding of cultures as historically discrete and conceptionally independent units. In Boas’ view, this approach made possible certain generalizations about specific cultures and their contrasts with other cultures. His student Ruth Benedict (1887 – 1948) probably came closest to Boas’ intentions, while adding modern psychological insights. Boas acknowledged the remarkable contributions by Ruth Benedict to cultural anthropology. One of Benedict’s famous books is Patterns of Culture for which Boas wrote the preface. This preface (which is amply used here in my present account) is a compte-rendu of the historical-comparative method that he himself had proposed and introduced. Benedict took this approach to penetrate “the genius of a culture”. It is this “genius” to which Benedict refers as a “configuration”, which in turn is a loose translation of the world Gestalt that had come into use in psychological Gestalttheorie. “Configuration” is to be understood as the “one dominating idea” inherent in a given culture. Boas draws attention to the fact that Benedict’s method for discerning “fundamental attitudes” is not functional in the sense of the (British) structural-functionalist school (see below). He distinguishes the historical-comparative school from the functionalist-materialist inquiry of Malinowski and other functionalists. Boas thought that “fundamental attitudes” or “configurations” were inherent to cultures and rather resistant to culture change.

In the broad Boasian manner of identifying and comparing cultures, but going one or two steps beyond this, Margaret Mead in part used functional analysis when she studied female adolescence in Samoa (on advice given by Boas), and tried to show (1928) that adolescent anxieties were a phenomenon dependent upon Western cultural attitudes and not inherent in the adolescent stage of psycho-biological development, because they did not appear among Samoan youth. In Mead’s approach, “function” implies a cross-cultural explanation for behavior. The merits of this advanced approach are not diminished by the fact that Mead’s results in concreto were later subject to doubt.

h. The US-American comparative school and its offshoots, including specialists and modernists. Influence in other countries


Some of the more specialized branches of anthropology, such as culture change, have benefited from this. Pioneers in studies of culture change are Barnett, Herskovits, Redfield, Kroeber, Vogt (1951) and Wissler; and to this list of authors about culture change Elizabeth Colson and P. Bohannan (1995) ought to be added.


i. “Yale Ethnographers”

Any survey of the main schools and directions of anthropology should mention the “American Anthropological School of Formal Analysis” or “Yale School” or “the New Ethnographers”. This method of componential and, in the case of normative judgments, correlational analysis will be discussed in Chapter 6 on the “analyses”. “Yale ethnography” grew in the 50ies and 60ies of the 20th century against the background of Boas’ and his followers’ culture-comparative anthropology.


The so-called British functionalism sees foreign cultures, particularly the cultures subsumed under the former British colonial empire, in its workings, governmental, social, economic, legal, religious, etc. The names at the beginning of functionalism during and after World War I are Bronislaw Malinowski (1884 – 1942) and Alfred Reginald Radcliffe-Brown (1881 – 1955). The third author is Evan E. Evans-Pritchard (1902-1973). Functionalism also fostered important regional studies (W. C. Bennett; Audrey I. Richards; G. Willey; A. Cass; E. J. Thompson; F. Rainey; I. Rouse, J. B. Griffin; R. Heizer; and Louis Dumont).

a. Malinowski

Malinowski was born and raised in Krakow, in the traditions of Polish aristocracy and intellectualism. In 1910 he began postgraduate work in London. Several field trips took him to Australia and New Guinea. From the materials gathered during two stays with the Trobriand Islanders of about a year each (between 1915 and 1918) he wrote “Argonauts of the Western Pacific” (1922). His description of the Kula trade is one of the lasting studies in economic anthropology. Malinowski’s “Crime and Custom” (1926) is a discussion of human behavior and its normative regulation.

Malinowski taught in London and after 1941 at Yale. Malinowski’s way of doing ethnography by living with the people he studied became a model for later generations. He created the term “participant observer”, and he tried to be one as best he could. In living among the Trobrianders as their participant observer, he never “went native”. “Going native” in cultural anthropology became the opposite concept to being a “participant observer”. “Going native” describes an ethnologist or anthropologist who while being engaged in field studies gets so much involved in local habits and life style that she or he looses that critical distance to the subjects and objects of observation which is indispensible for rendering a scientific record. It is unknown who coined this expression. “Going native” sometimes happens when the researcher marries into the tribe under research, or otherwise builds up strong ties of friendship and confidentiality, for example by accepting a tribal office. Having gone native sometimes means to meet a difficult fate. Malinowski masterly managed walking that tight rope between getting familiar with the cultures he studied and guarding the critical observer’s objectivity. One of the most instructive introductions to Malinowski’ life and
work is Jerry D. Moore’s chapter on the man.²⁷

b. Radcliffe-Brown

A.R. Radcliffe-Brown (1881 – 1955) is to cultural anthropology what Emile Durkheim is to sociology: the believer in and researcher of rules, structures and functions inherent in the culture to be observed. Radcliffe-Brown rewrote his doctoral thesis on “The Andaman Islanders” after having discovered Durkheim so that the book was belatedly published in 1922. Like Durkheim, Radcliffe-Brown tried to find the inner structures – he called them the social structures – that hold a society together. To him, history was too much subject to conjecture and imprecision, and Boas’ interest in specificities risked getting lost in details.²⁸


In E. E. Evans-Pritchard, Franz Boas’ deep humanity and respect for other cultures, B. Malinowski’s elegance and sincerity, and Radcliffe-Brown’s focus on rules and principles in such a fact-laden field as anthropology, combine and culminate. In his Nuer and Azande studies, Evans-Pritchard starts from the single person, not from inherent generalizations, yet cultural complexes such as segmentation and witchcraft gain conceptual color and persuasion. Together with Meyer Fortes he edited a seminal work on “African Political Systems” (1940). The book contains valuable information on African governmental forms before decolonization in the years 1945 ff. thoroughly and for ever changed the political landscape of Africa. “African Political Systems” found a continuation in John Middleton’s and David Tait’s book on “Tribes Without Rulers” (1958). Both books can be used together. The high standard of the first remains unequaled. In one of his latest publications, Clifford Geertz remarked that Evans-Pritchard’s texts read as if they were a movie about a near-by object.²⁹

Functionalism is opposed to evolution, especially in its diffusionist offshoot, and invests little interest in historical development and comparison. Functionalist analysis does not adequately deal with cultural change. There can be no doubt that most cultures are in a state of flux, if not a state of evolution. Change does not necessarily need to have evolutionary undertones, but even aimless change is a stumbling stone from a purely functionalist perspective. There have always been scholars in anthropology who share a pro-evolutionist view (Lewis Henry Morgan (1818–1881), E. B. Tylor (1832–1917), Leslie White (1900–1975), on him C. E. Guksch 1990), Marshall Sahlins (1930–), E. R. Service (1915–); and those who offer theories on culture change such as Henry Summer Maine (1822–1888), Homer G. Barnett (1906–1985), Clark Wissler (1870–1947), Arthur R. Kroeber (1876–1960), Melville J. Herskovits (1895–1963), Robert Redfield (1897–1958), Elizabeth Colson (1917–2001), and J. N. Steward (1902–1971, on him J. W. Raum 1990). Moreover, change is a given in all archeological research. With respect to legal anthropology, a theory on cultural change has been developed by Leopold Pospíšil (1971, 1978 c, 1982 a) (a summary of the theories on culture change will be given in Chapter 5). But change and evolution escape the attention of functionalism.

After 1945, both streams, American cultural-comparative anthropology and British functional social

²⁷ J. D. Moore (2004), 134 – 146.


anthropology merged to what is today called sociocultural anthropology, or “The British-American Compromise”. The Americans accepted, at least for the time being, British (Durkheimian) implied-rule generalizations, and the British in turn agreed to Boasian plurality. There was no empire any more to defend and to explain *(for details see Robert Layton & Adam R. Kaul, American Cultural Anthropology and British Social Anthropology: Connections and Differences, 47 Anthropology News, January 2006, 14 – 14)*.

δ. The “materialist” tradition (Sahlins, Harris, Kottak u.a.). The structuralists

A special “functionalist” view is pursued in economic anthropology. Representative of the economic approach in anthropology is M. Sahlins’ (1930–) book *Stone Age Economics* (1974). Sahlins’ position has been characterized as “neoevolutionist”. However, Sahlins’ later work took a turn away from functionalism in a materialist sense and more towards an ideational point of view. Other studies in economic anthropology include books and articles by L. Pospíšil 1963, M. Harris, M. Gruter (1976, 37), W. Fikentscher (2004), and M. Rössler (2005).

A structuralist in his own right is Claude Lévi-Strauss, whose penetrating structuralist findings set standards for anthropologists and sociologists around the world (for a detailed, critical discussion see W. Fikentscher 1975 a: 62, 134ff.). Lévi-Strauss influenced among others, the Dutch anthropologists, e. g., P. E. de Josselin de Jong, who became a critic of structuralism (1956, 1980, 1982), and the Belgians Luc de Heusch, who defends a moderate structuralism in his book on sacrifices (1985), and Maurice Corvez. Michael Oppitz (1975: 329), defines: “Structural anthropology is a science that starts from the hypothesis of a logical arrangement of social phenomena” (die strukturale Anthropologie ist also eine Wissenschaft, die von der Hypothese eines logischen Arrangements der sozialen Phänomene ausgeht); see also K. R. Andriolo (1981).

The situation in the 60s and 70s was characterized by a strong representation of the functionalist–structuralist–materialist tradition on the one hand, and a linguistic influence on anthropology on the other. The latter led to what became known as symbolic anthropology. The materialist tradition held sway in France through Lévi-Strauss and his followers, whose anthropological structuralism was influenced by Roman Jacobson’s structural linguistics. In Great Britain materialism was represented by the “structuralist” Edmund R. Leach, Mary Douglas, Stanley J. Tambiah, and others. The American counterpart to these trends was cultural ecology, affected by an “evolutionary” trend (Marshall Sahlins, Elman R. Service), and by an approach that looked towards system theory (Marvin Harris, Roy A. Rappaport). A third category formed which might be called “structural Marxists” (Louis Althusser, Maurice Godelier, Emmanuel Terray, Jonathan Friedman), and a fourth by the “political economists” in anthropology (Emmanuel Wallerstein, G. Frank).

e. Influences from linguistic anthropology and symbolism. Clifford Geertz and his followers. Literacy theories

E. Sapir’s student Benjamin Whorf demonstrated that the relationship between thought and language parallels the relationship between thought and culture (1956), thus influencing the science of linguistics through his anthropological experience. In the confines of the present book, linguistic anthropology – an important and somewhat neglected field - cannot further be pursued, however.  


32 See, e.g., Dell H. Hymes, Language in Culture and Society: A Reader in Linguistics and
It would be interesting to know whether Sapir or Whorf had personal or reading contact with Ludwig Wittgenstein, whose second philosophy of reality as language points in the same direction.\textsuperscript{33} Drawing from very different theoretical sources, both Whorf and Wittgenstein hold that the limits of human speech define the limits of human thinking, whereagainst the basic tenet of the present book is that the modes of thought define the limits of human thinking but lay bare the possibilities of meta-thinking (see also the Foreword, \textit{supra}, and VI. 2., final paragraph, \textit{infra}). One can only speculate about roots of Sapir’s and Whorf’s “linguistic relativity principle” in W. v. Humboldt’s linguistic studies.\textsuperscript{34}

Anthropology’s answer – probably premature – to the \textit{linguistic revolution} (which had received momentum from the Sapir-Whorf hypothesis) was symbolic anthropology. Clifford Geertz – who introduced hermeneutics to anthropology (1973 a, a review 1988) more than any other author before him – and David M. Schneider opted for a more cultural orientation, while Victor Turner (1967, 1969, 1982, 1986) and G. Cronk (1973) adopted a rather “social” and “symbolic” stance.


A subspecies of symbols is writing. Thus, the influence of writing systems became of importance for anthropology. In 1968, Jack Goody took up the subject of the role of literacy and “literality” for traditional and other societies (1968, 1968/90 with a list of Goody’s publications, at 9). It is difficult to follow Goody’s result that there is no concept for “religion” in non-literate societies. In at least 20 non-literate tribes of the North-American South West Bob Cooter and myself found a concept for religion which, rendered in English, is “way”. “Way” includes the creation stories and much of what we call “ethics” and “law” (cf. David P. McAllister, Enemy Way Music, Cambridge, Mass. 1954: Harvard Papers). For reflective discussions of “how to write” ethnology, or anthropology, Geertz 1988/1990, and Kohl 1993, 119ff. may be mentioned.

4. The modern Austrian and Dutch schools


Founded on a modernized, secular, historical and comparative basis, a new Austrian tradition was raised in 1986 through the journal “Law and Anthropology” which favors subjects of the protection of ethnic groups and non-discrimination. The “Journal of Legal Pluralism and Unofficial Law” (John Griffith \textit{et al.}, ed.), published in Groningen, Netherlands, and “Law and Anthropology” (Richard Potz, René Kuppe \textit{et al.}, ed.), published in Vienna, working on related fields of minority

\textsuperscript{33} See Wolfgang Stegmüller 1978, 526 (in Chapter XI).

protection, may be named as two new European contributions for continued research in the anthropology of law, both looking back to older traditions at Leyden and St. Gabriel but free from the older dogmas of evolutionism, diffusionism, functionalism, or structuralism.

1. **Anthropologists of law**

Anthropology of law became a divers subfield of some - not preponderant - interest for cultural anthropologists. Writers and keywords in this subfield are (doing no justice to the full range of the authors’ works, nor attempting a full list of writers): Karl N. Llewellyn (1893-1962), see his seminal book “The Cheyenne Way” 1941 (with E.A. Hoebel); Max Herman Gluckman (1911-1975), see above; Leopold Pospíšil (see above.); Paul Bohannan (1920- ), renowned for his studies among the Tiv, where he observed, among other discoveries, the “economic spheres”; Laura Nader (Zapotec studies and collections); Rüdiger Schott (Bulsa, theoretical issues); Sally Falk Moore (Chagga and Meru in Tanzania, Inca in South America, theory, editions, collections); P.E. de Josselin de Jong (customary law); Franz von Benda-Beckmann (Indonesia, legal pluralism), see above; Keebet von Benda-Beckmann (Indonesia, legal pluralism), see above; John Comaroff (Southern Africa, dispute settlement, marriage, theory); Jean Comaroff (Southern Africa, migration, decolonization, theory); John Griffiths (legal sociology, native law, symbols); Norbert Rouland (law and state, legal pluralism); Shalini Randeria (globalization, environment, India); Peter Sack (Australian aborigines, theory); Martha Mundy (Yemen, theory of modern state), Jeremy MacClancy (non-tribal anthropology, also of law); Richard Potz (religious law, minorities); René Kuppe (Brasil, human rights, minorities); Melanie Wiber (environment, agriculture); Ann Griffiths (Botswana, Scotland, legal pluralism); Rebecca French (Tibet, methods); Sally E. Merry (children, urban and gender issues, human rights, mediation); Ellen Hertz (legal-economic and legal-political issues, poverty law, anti-discrimination law, theory); Bertram Turner (Morocco); Trutz von Trotha (legal behavior); Hagen Hof (legal behavior, ethology of law). The – non-exhaustive – examples show a heterogeneity that asks for a more systematic treatment.

2. **Marxists. Postmodern authors and the “crisis”**. Eric Wolf, Sherry Ortner, Marshall Sahlins

A surprisingly large share of American anthropological writing since the late 60s seems to be influenced by Marx. It is up to every American anthropologist to which degree he or she wants to engage in propagating Marxist totalitarianism. But insofar as one relies on Marx, one propagates enforced conscience and political dictatorship, because Marx’ method hinges on the distinction between *exchange value* and *use value*, and use values can only be dictatorially be prescribed, see Ch. 10, *infra*. Even Marxism viewed as *method only* postulates dogmatically-closed criticism and, consequently, the suppression of those who doubt. It should have been self-evident that with the introduction of Marxism, the “shared discourse” would come to an end. Shared discourse is an *exchange of value* conceptions, a *market* and meeting place of opinions. This is what Marx tried to prevent. Is there any causality between Marx’ influence and the field’s “coming apart”?

Authors who assign weight to economic factors in shaping a culture are Marvin Harris and, from a Marxist point of view, Maurice Godelier and C. Meillassoux. Uwe Wesel (1985: at 48, 51, 191 and 277) thinks that economy and forms of government are of central importance. and C. Ph. Kottak describes his position as “materialist”. Friedrich Engels’ fame as the founder of speculative Marxist ethnology remains untouched, although the number of his followers has dwindled drastically. The single-cause reduction of a given culture to economics, once taught by Marx and Engels – see the
references in Wesel 1985, 51, 98 and 191 -, no longer finds many followers.35 Chapter 2 pointed to the modes of thought as shaping all elements of culture including its economy, rather than being determined by economic circumstances.

In 1973 and 1983, Clifford Geertz published his two books on interpretationism in cultural anthropology. Geertz was dissatisfied with ethnographic description of facts. Unaware of Kant’s synthetic judgment a priori, and in the tradition of David Hume, he added evaluations to ethnographic fact-finding he called “interpretations” (see text at notes 28 and 45, above). In this light, Geertz’ interpretationism was not the ignition for the postmodern crisis (however, see Gottowik 1997). The “crisis” began with Dell H. Hymes’ “Reinventing Anthropology”, New York 1972 (Pantheon; 1974: Vintage), Roy Wagner’s “The Invention of Cultures” of 1975 (reprint 1981), Johannes Fabian’s “Time and the Other” (1983), and James Clifford’ and George E. Marcus’ “Writing Culture” (1986). This general criticism of traditional method claimed that ethnographic presentation was caught by self-reflective preconditions. An extended discussion followed which sometimes goes under the headline of anthropological postmodernism. Systems and generalizations became suspect, a fresh start from the factual bottom seemed in order. One of the discarded generalizations was Marxist “method”.

Is there perhaps causality between Marx’ influence and the Eric Wolf’s remark on the field’s “coming apart”? Sherry B. Ortner (1984) wrote a concise survey on anthropological theory since the 60s, of which the foregoing paragraphs are a condensation. She agrees with Eric Wolf (1980) that American anthropology as a “field is coming apart”, losing a “shared discourse”, a shared set of terms, a shared language (Ortner, at 126). However, in two regards Ortner sees a new beginning: a concentration on “practice” (for this aspect she quotes Pierre Bourdieu, Marshall Sahlins, Antonio Gramsci, Michel Foucault, Anthony Giddens, Bruce Kapferer, Jack Goody and others), and a concentration on reorientation in history36. One form of practice is process (Sally Falk Moore 1978).149 (On French post-modernity see Ch. 11, below). In a steadily broadening line of thought, culture change (see Chapter 5 VII) and, derived from this, “culture in flux”, certainly were ideas behind “culture as a process” and finally “practice”.

7. German Historische Anthropologie

Historical Anthropology is a term with many meanings. Also the history of biological anthropology uses it. Being considerably older, German Historical Anthropology might be seen as a precursor of the crisis after 1974. In Germany, Historical Anthropology (Historische Anthropologie) became a field of research that utilizes historical data as quasi-empirical material, thus preventing undue generalizations and categorizations. In this sense it has already been mentioned.37 History became an empirical study object for cultural anthropology because the disadvantage of merely classificatory, non-empirical work became obvious. In order to address this flaw, some „historical anthropology“ however entered the scene of a largely speculative, “philosophical” anthropology. There are several serial publications and a number of monographs and collective works. The relationship to strictly empirical ethnographic research and its ethnological and cultural anthropological evaluation has to my knowledge not yet been systematically studied.38

35 see also Rüddenklau 1981.
36
1 More on Ortner and Moore, see III., below. “Practice” is becoming a key word in neighboring sciences, too, Riesebrodt (2007).
37 See text near footnote 93.
8. Modes of thought, “mind-sets”, “world views”, “mentalities”, others

In order to get a better sense of the about 10,000 cultures that are estimated to have existed or to exist on this planet, a grouping according to culture-defining modes of thought (Denkarten) has proven to be useful for anthropological study. Whereas the older anthropology was satisfied by dividing all cultures in just two groups, developed and primitive, modern anthropology accepts a larger number of modes of thought to which several cultures can be assigned. In earlier publications, the proposal was made to distinguish at least the following cultural modes of thought: (1) pre-axial-age modes of thought (synonymously: animism in the wide sense); (2) Hinduism; (3) Buddhism, sub-divided into Hinayana and Mahayana Buddhism; (4) the Greek Tragic Mind which, in combination with Judaism and Christian traditions, developed into modern “secular” Western thinking; (5) Islam; and (6) modern totalitarians.


Mainly in W. Fikentscher (1995/2004); also W. Fikentscher (1987). The “founder” of the anthropological sub-field of modes of thought was Henri Lévy-Bruhl who in 1922 published a much-cited book on primitive mentality. For about thirty years, Lévy-Bruhl was virtually the only source to address when an anthropologist wanted to study culture-comparative thinking. Then, the mid-fifties of the last century produced more recent material which increased over the years. The characterization “primitive” was gradually dropped in anthropological discussions of mentalities. Instead of “primitive,” newer terminologies used the qualifications “early,” “animist,” “primal” (in comparative religion), “natural,” “original,” or “culture-specific.” Also, other names were used to replace mentality, such as thinks-ways, frames of thought, thought-ways, worldviews, mind-sets, mindscapes, thought patterns, etc. Presently, all these terms are in use for essentially the same concept, with a preponderance of the designation “modes of thought”. Cultural modes of thought are manners of thinking which are typical for a specific culture, as a middle type (W. Fikentscher), not as an ideal type (M. Weber). Departments of anthropology frequently offer classes or seminars on modes of thought, such as Yale where Harold Scheffler made this field a regular course.

Modes of Thought are not identical with religions. There are far more religions than modes of thought. Of course, there is an interactive connection between modes of thought and religions, as with other cultural traits and complexes such as education, traditions, social habits, and etiquette. A non-exhaustive list of anthropological writings about the modes of thought includes (in historical order):

Lévy-Bruhl, Henri. 1922. La mentalité primitive. Paris: Alcan (several reprints and translations into other languages; Lévy-Bruhl wrote a number of articles and books on this subject.).


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9. New developments in Europe. Collections


10. Anthropological philosophy. Anthropological theology (a text here not included, with footnotes^{41} and^{42}, because of the restriction of the study version to empirical anthropology)

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