

TRIBALISM-VAGUE BUT VALID

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Standardized concepts of a world neatly divided into independent States, each clearly differentiated by precisely drawn lines on a map, each presumed to possess absolute power within the designated area, presents a shallow, and ultimately false, picture of modern social and political reality. An earlier idea of sovereignty, which sanctioned total authority for the governing bodies to rule over the inhabitants of the territory under their control, has only limited value in a world of both increasing concern for the universal nature of human rights sparked by international and regional bodies and non-governmental organizations (NGOs), and of increasing activity and intervention in the economic area, spearheaded and symbolized by the proliferation of multi-national companies.

The very term, nation-state has become---in fact perhaps always was - a misnomer, as there are only a limited number of States in which there is any synchronism between the political fact of a State and the social fact of a nation. Most States are multi-national (or multi-ethnic or multi-tribal), either by design (the result of immigration policies for sparsely-populated areas) or by history (the consequences of past conquests or more subtle intermingling). Perhaps the most brash example of the artificial nature of many states is the outcome of the "scramble for Africa," in which European colonial powers, towards the end of the nineteenth century, laid down artificial boundaries, based on military power, missionary presence and trading parameters, which have become, with only minor and insignificant alterations, the sacrosanct boundaries of independent countries, rendered ever more inflexible by the pronouncements of Africa's political leaders and the policies adopted by its continental organizations, such as the OAU¹.

Yet, whatever the present-day fallacies and the flaws of yesteryears, the State is still the dominant factor in the modern world as we know it, and

will probably remain so into the foreseeable future. But this very fact makes ever more urgent the need to understand its changing nature and its ongoing limitations. Indeed, the very colonial powers that once laid down the borders in the continent of Africa, have recently embarked on a pioneering effort to co-operate in a new-style community of nations, based on a willingness to restrict the totality of their sovereignty and to make both their legislative and judicial organs subject to a certain amount of regional surveillance in certain defined matters. The ultimate outcome of the present endeavors is unknown, but whatever emerges will have repercussions in other regions, and most certainly on the meaning of standard concepts in political and social science. One certain consequence is that geo-political frameworks are no longer to be considered monolithic. The emerging pattern is one of pluralism- social, political and legal².

It is in this context that I wish to examine the nature of customary law in the modern State: specifically the manner in which the traditional beliefs and practice of tribal groupings may be recognized by state authorities.

I have used the term "tribe," even though it has become a problematic one - and do so for a number of reasons, not least of which is the want of a better nomenclature. Like the word "State" the word "tribe" is undergoing re-assessment, and there seems to be a growing number of persons, in political and academic life, who are eschewing its use, arguing that its limitations outweigh its clarificatory capacity, and that it is an imposed categorization enunciated by outsiders and attuned to their own convenience and not to objective reality. Even if there is some truth in these assertions, they often ignore the problems that inherent in all of the proposed alternative terms, problematics that are, it should be stressed, not different from those of most social science terminology-ranging from those of the aforementioned "sovereign State" through the issue of what is a religion or a language or a race.

For instance, there is, we have been told, no such thing as tribe, partly because there is no clear-cut distinction allowing for meaningful categorization, as though there were no problems relating to, for example, religion: when is a religion only a cult, or should Catholicism be differentiated from Protestantism?³ or language: when is a language only a dialect or how do we categorize Pidgin or Creole?⁴ These are complex

issues but, for now, it is necessary only to emphasize the reluctance to use the term "tribe". For instance, the most touted alternative, indigenous people, is based directly on past imperialism-far more so than tribe, for it is applicable only on those States in which there is a dominant settler population. Thus, for example, in India, which does officially recognize the existence of tribes, partly for the purpose of what is known elsewhere as affirmative action programmes on their behalf, all of its people are indigenous;⁵ in this context, those known as tribes are given certain privileges to offset some of the handicaps from which they suffer in the modern world.

In fact, the very use of the term "indigenous" allows some countries that have "tribal people" to deny, because of the semantics, their very existence, possibly thereby undermining the possibility of having their rights recognized as a minority group with legitimate claims on the majority population.

Perhaps there is a need for the use of a new word, but that seems a task of sisyphistic proportions, given the very looseness of the kind of population that is associated with the term "tribal groupings" or "indigenous people" or any of the alternative suggestions, e.g. fourth world, first nation, aboriginal, clan or descent group. Worse still are the attempts to ignore the uniqueness of tribal people, in terms of the very possibility of upholding their most basic rights to land, religion, social ritual, by subsuming them under other categories, such as language, nation or ethnic group. In fact, the prevalent suggestion of ethnicity instead of tribalism, is perhaps the most problematic of all. It is vague in its conceptualisation and often specifically related either to the European continent, with its variegated population, or to the consequences of European, imperialist, experience-as where Italian, Irish or Greek ethnicity is applied to immigrant groups only in the "new world," and not in the home base.⁶

The solution may well be in trying to move beyond the old anthropological and political categories, and to see "tribe" in sociological terms, as the embodiment of a *gemeinschaft*, as representing those qualities, which Tonnies⁷ tried to describe as the alternative to a *gesellschaft* society, with the latter being most noted in the western world, about which he also expressed reservations.

Furthermore, tribal culture, while struggling for its own very viability in the modern world, poses also daunting existential challenges for the modern State—including the vexed question of the rights of minorities in an all-powerful state, as recognized by its laws, its constitutional guarantees, earlier treaty provisions or more recent international conventions; since the latter rarely refer to tribe as such, the question becomes whether tribes are entitled to the same rights (at the least) that have been vouchsafed to other minority groups, based on language, religion or ethnicity.⁸ Beyond that, the question arises whether the specific problems of tribes can always be resolved by relating to them as though they were no more than minorities of the type mentioned. Calling a tribe an ethnic group does not guarantee all the rights it seeks, which often are different from, and go beyond, those that are claimed for ethnic groups or religious or language groups.

In any event, there is now a bench-mark change in societal perceptions whereby most countries are moving from earlier conceptions of a unified value-system, based on ideas of assimilation or of the melting-pot,⁹ to an approach that allows for diversity and speaks in terms of varying degrees of pluralism an approach that encourages toleration for differing customs, including possibly those perceived by the dominant culture to be deviant.

This is perhaps easier for older and more mature States, than it is for the newer States, still in the first decades of independence and still actively involved in the process of nation-building, often intent on breaking down old barriers of differentiation, continually aware of peculiar allegiances that might well undermine the struggle to forge a national unity and a national identity.

So, for instance, tribal identity is minimized, so that national allegiance may be enhanced. The very term tribe is superseded by alternatives such as language group, or ethnic group or community, as though the older countries of Europe have not known language strife or ethnic community strife, recently indeed rampant throughout Eastern Europe and noted also elsewhere, as in Northern Ireland, or the Basque country in Northern Spain or the isle of Corsica in France.

The truth of the matter is that at least, some of the socio-legal issues that confront newer States cannot in my opinion, be satisfactorily resolved,

except by an acknowledgement of the fact that the issue is tribal and not simply one of language, ethnicity, or religion.

Since it cannot be denied that certain dangerous and divisive manifestations have emerged from tribalism, it might be well to recall the distinction made by a leading African politician, Tom Mboya of Kenya, between what he termed "positive" and "negative" tribalism the former to be retained and fostered, the latter to be thwarted and removed.¹⁰ Mboya stressed rather the various manifestations of tribal identity in a political context—negative tribalism, for instance, was not specific tribal customs, but the rate of nepotism and corrupt practices linked to familial contacts, generally (and perhaps paradoxically), in the urban areas outside of tribal territory.

Writing at an early stage of independence for African countries, he concedes that

...to anyone concerned with African unity, tribalism presents one of the major problems. We discussed at length this problem at the All-African People's Conference in 1958, the question of traditional rulers, the problems of language and customs. We concluded that, if governments tried to destroy tribal culture and customs, language and ethnic groupings, they would create such a vacuum that the African might find he had nothing to stand upon and become a most bewildered person in the modern world. We thought it essential to isolate what you might call "negative tribalism" from tribalism in the form of customs and culture.

Let me state the positive contribution of tribalism first. At this stage of economic emancipation, with many more Africans moving into the money economy, they have to decide whether to allow themselves to be completely uprooted from all their past beliefs. I believe it unwise to destroy this African structure or interdependence within the community where each man knows he has certain responsibilities and duties and where there are certain sanctions against those who do not fulfil expectations: there is, for instance, inherent generosity within a tribe or clan.

After describing various aspects of tribal life, he continues,

People have done their worst in outlawing tribalism, and never differentiating what was positive and worth preserving. Missionaries taught Africans to despise their tribal culture, telling them it was in conflict with the modern world. No effort was made to trace what was good, or to point out to the potential leaders of a community how some customs could be modified to suit the changes in the world. People were simply taught

European social behaviour... without any reference to African custom. The question is whether we can develop within Africa a system which reflects the African personality, but is at the same time a growing system in which a man does not have to cling to tribal customs in the raw and primitive sense.¹¹

It is this approach that lay at the base of philosophical ideas seeking a specific African approach to social life, such as Negritude¹² or African Socialism, as espoused by Leopold Senghor.¹³ Down the years these lodestar ideas have lost their luster, which is perhaps a dull reflection of the malaise—political, economic, social that has gripped so much of Africa as the original excitement of throwing off the shackles of colonialism, has subsided, and the daily struggle for survival becomes an all-encompassing reality. One doubts if this malaise stems from tribal life. If anything, in other parts of the world a revival has taken place in recent years; in Australia among the Aborigines, in New Zealand among the Maoris, in the United States among the Amerindians, in Canada among the latter and the Inuit.¹⁴ Will these groupings be encouraged to seek a revival of their damaged culture, after they have been made into marginal minorities in their own land, while those, in Africa, who have been accorded full independence as nations will, by virtue of the inexorable onward path of progress, lose their traditional culture? This would be an incomprehensible paradox.

Even so, social reality may impose its demands on political developments; firstly, that so many people still live in their tribal areas, still influenced by tribal life still conversant with tribal customs, and secondly that tribal identity continues to maintain some hold over many who have physically departed their ancestral heartland.

Indeed, as many researchers have pointed out, tribal identity often takes on greater importance in the urban areas, as migrants seek help;¹⁵ sometimes this was legitimate and positive, when viewed within the framework of social welfare considerations, but often was negative, when exploited for the purpose of gaining favoured treatment or as a ploy for political power. But here again this negative aspect is not unique to or inherent in the nature of tribalism, but a common pattern noted in many places where ethnic links intrude on politics and become a basis for power (as in the Tamany Hall-style politics in the United States),¹⁶ or where there

is glib talk of a Catholic vote, a Jewish vote or a Black vote.¹⁷

The issue of positive or negative tribalism is, in many respects, what underlies much of the involvement of States with the varied customs with which they deal. A key issue to be explained is the attitudes displayed by the various state authorities towards those customs which differ from the overall norms of the society.

In a provocative book, one of Africa's leading social scientists, Ali Mazrui, presently with academic tenure in the United States, argues for, and basically predicts, the coming demise of the tribal system.¹⁸ Mazrui uses tribalism as a counterpoint to racism, contending that just as tribalism was eradicated in Europe, so will racism be eliminated there. He then shows the connection between the two terms, and then goes on to distinguish between "two forms of human solidarity," one based on "biological relationship" among the members of the group, the second based on an "economic relationship...real or assumed," of which he claims, the clearest example is "class consciousness," whether of workers or of employees.¹⁹ arising out of this contrast. He claims that:

...the history of the world so far seems to indicate a decline in the power of biological solidarity, and a rise in the influence of economic forms of unity.

Tribalism, in the sense of a larger group that sees itself as having been descended from a particular tribal ancestor, has almost disappeared in the western world as a whole.

The question arises whether the fate of these other forms of biological solidarity—the extended family, the clan and the tribe—will also befall racism and race consciousness as the last political bulwarks of the mythology of kith and kin.

In Europe, tribalism was almost the first to go among these forms of biological alignments; racism may well be the last to go. In Africa, on the other hand, racism is likely to end first, following the liberation of southern Africa. But tribalism may last much longer, though ultimately also doomed to extinction in the generations that will follow.²⁰

Mazrui believes that the preferable advanced human relations of the future will emerge when tribalism, as one of the examples of biological connection, will disappear; relationships based on economics will replace them, even though here the future forebodes of constant class struggle. And so, for Mazrui, going beyond Marxist thought, "The ultimate

destination for humankind is not a classless society, but a detribalized society, at least in the sense of the final elimination of all forms of political and economic allegiances based on the solidarity of kith and kin²¹

What Mazrui ignores is the fact that tribe is far more than a biological connection leading to economic interaction. It has other aspects that are far more important; as a framework for cultural expression, for sociological identity, for religious beliefs, for ties linked to geographical ecology.

Mazrui seems to know only the "negative" tribalism against which Mboya warned us but nothing of the "positive" aspects, which Mboya had praised. But there are other writers who argue that an understanding of tribe is central to an understanding of modern Africa, just as perhaps an understanding of Christianity is essential to understanding modern western secular civilization, or Buddhism and Confucianism to understanding China, even modern Communist China.²³

The concept of tribe is undoubtedly a problematic, it is vague in its initial formulation, over-extended in the kind of groupings included within its orbit, exploited by those colonialists and others, who wish to stress the alleged primitiveness of local peoples and the divisions among them, and critically and negatively analyzed by many political activists and social scientists, who claim that its continued use will serve only to foster the negative trends they wish to counter.

Yet, much of the criticism is based on certain assumptions, which are as dubious and debatable as the concept itself is problematic, namely, that there are no similar problems as to most of the alternative concepts being suggested, such as indigenous or ethnic groups (both of them in any case entirely different in their compass, the former narrower, the latter broader), or ancillary concepts with which it is contrasted, such as State or nation, or, for that matter, a whole host of other social science concepts, which are vague, unclear, have been inaccurately or unfairly used, and whose validity has been challenged, such as class or caste.²⁴

As an opening gambit it should be pointed out that the issue of adequate and acceptable terminology in the social sciences is often encountered and there are few concepts that are universally and unequivocally recognized. Within this context, the problematics of tribe are not unique;

the term is not being used as some sort of diabolical trap set by those who wish to retain its use as a guarantee for continued tribal strife, or for prolonged backwardness. On the contrary, the concept of tribe may well pertain to the uniqueness of aspects of culture and living that are not easily encompassed within other rubrics. While this factor may be of only minor relevance when dealing with artistic aspects of a culture ("tribal art," "tribal dance," "tribal music"-it would make little difference to the aesthetic value or social impact, if they were to be referred to as "ethnic" music, dance and art),²⁵ yet it may be of major import where some of the material aspects of life are concerned, including those that have legal implications such as the legal claim to territory, the legal significance of ritual acts, or even issues such as the meaning of sovereignty, the basic rights of minority groups, and the recognized limits of state power. It is necessary to present some of the rationale for the use of the term tribe. One of the key reasons is certainly that there are some rights, even privileges, that are best, sometimes perhaps only, guaranteed within the conceptualisation of tribe. The issue then is not just semantic, but substantive, not just of a definition of a social group, but of an assertion of legal rights.

Let me stress that I am fully aware of the reluctance to use the term by those eager to ensure the progress of the so-called "Third world" countries and also fully aware of the exploitation of the term in the past by those intent on divide and rule, on control through indirect rule,²⁶ on the co-operation of lackey chiefs, and a host of other defects that were associated with tribe in colonial times; and also aware of the term's possible negative implications today---as a divisive or regressive factor.

But to deny its use is also to denigrate much that is of value in the community or group being discussed. More than that, recognition of tribe is important it is one of the internal groups within the modern State that is both entitled to recognition in its own right, and that may also serve as a focus of allegiance and social identity. For many for whom the state fails to evoke the necessary sentiments, in the understandable and justifiable striving for national independence and unity in new nations, there is no need to ride roughshod over the feelings that ordinary citizens have for smaller and more immediate groupings, especially those among the citizenry who lack the easy universalism and cosmopolitanism of the political and intellectual elite.²⁷

This need not lead to the fusion often feared; on the contrary, it might well be that recognition of intervening groups-between the individual and the state-might be an essential intervening agent for a healthy political community and fruitful social interaction. Properly perceived, responsibly presented, the tribe (no less than the ethnic, language or religious group) may be seen as a positive and constructive mediating factor between the individual and larger social aggregates, such as the state. One may even argue that resentment at the denial of such recognition may lead to alienation from the larger aggregate.

In the context of American society, Will Herberg has suggested that in a large continental State such as the United States, smaller affiliations are needed in order to provide a social mooring for personal identification.²⁸ He specifically suggests the three major religious trends of Protestantism, Catholicism and Judaism, but, given demographic changes since the 1950s when he wrote, it would today seem necessary to add Orthodox, Christianity and Islam, or the monotheistic religions that have made some impact in recent years, and of course, the indigenous American Indian religions- all these incidentally, in a country ideologically and constitutionally committed to a separation of state and religion.

Of course, in other contexts, religious divisions have led to strife, irrespective of whether differentiation was made between State and religion. Similarly, it is not completely clear what the subtle accompanying variables are that vouchsafe for a seemingly serene multi-linguistic society in Switzerland, in contrast to intermittent eruption strife in Belgium; or how Japan copes with a tolerant attitude to religion that allows for dual membership of Shinto (the former state religion) and Buddhism (in its Japanese form of Zen), while the Indian sub-continent, more or less ethnically (but not linguistically) homogeneous, is divided partly on a religious basis of Hindu/Indian and Muslim/Pakistan, with additional divisions, some of them with nationalist overtones, such as the Sikhs. Or how much of Northern Ireland's problems are related to religion, and how much to class differences or nationalist or ethnic aspirations.

In as much as Africa, for instance seeks unity, either regional or continental, it is by no means clear that it is tribalism that is the major divisive force-it may well be that an identification with a tribe might be the very factor that could facilitate the larger striving for unity, whether or not

at the expense of the newer States, some of them with their inner controls, often repressive, all of them with their outer symbols of flags, anthems and all the other paraphernalia of statehood. In this context, it is of interest to note the developments of regional unity in Europe (from whence comes the model of the modern State however much earlier empires in Africa may serve as present inspirations). These developments toward unity, according to many astute observers of the European scene, may actually facilitate the recognition of smaller local ethnic and national groups. The larger and looser conglomeration of states may make smaller groupings more viable than they previously were, when within the confines of the tightly sealed boundaries of individual States. The converse pattern may well be true, where a recognition of narrower loyalties, by whatever name, including tribe, may render the establishment of larger, regional groupings more likely.

These are very real possibilities, perhaps only partly sensed at this stage, but before the political and academic worlds cry "finis" to the idea and the very existence of tribe, they may wish to consider it not merely as an unfortunate and anachronistic reminder of the past, but as a potential valuable resource for the future, a new future that is still being forged, and that offers new prospects for minority groups of various types that until recently were considered to be of only marginal significance in a world of precisely-drawn State boundaries. Indeed, the State may be a far greater hindrance to continental or regional unity than tribe.

Yet for many, tribes are really a relic of the colonial age; they originated as no more than the figments of imperial imaginings and designs, and so there is a need for revisionist understanding of historical processes, and for a radical understanding of present-day reality.²⁹ In a thought-provoking book, Martin Chanock³⁰ has shown how the British policies for Africa included, among other pre-requisites for indirect rule, the designation of chiefs and headmen, through whom it would be possible to maintain control over the "lesser" members of their "tribes" It was in the interests of the British colonial administration to recognize the existence of tribes in order to consolidate the power of the chiefs, who, in turn, benefited from the extra authority, power and honour that the European conquerors bestowed upon them. Anthropologists of the time (together with other key figures such as missionaries) fostered such tendencies by similarly using the concept of tribe as the basis of their unit of research. It is being

argued that to recognize tribes today is to perpetuate the colonial sin, and to hinder national unity.

However, it is not clear that it is the recognition of tribes that causes the problems in new nation-states, or that other appellations, such as ethnic group or community, would make it easier for these states to coalesce. If differences exist, they do so whatever the name given to modern independent Africa; there is a wide consensus not to make any changes in this imposed settlement.³²

One of Africa's leading academic lawyers, B.O. Nwabueze, himself a Nigerian, devotes several chapters in his book on *Constitutionalism in the Emergent State*,³³ to the problem of attaining true unity in Nigeria. While aware of the background of tribalism ("Nigeria is perhaps one of the most conspicuously tribalised societies in Africa," he writes³⁴), he points out the many other factors that undermine the sense of national unity, from the very fact of colonialism itself ("colonialism is intrinsically inimical to the fostering of a sense of national identity"³⁵) to the ineffective manner in which federalism (presumably to make allowance for regional, including tribal, interests), was set up ("The boundaries of the North were partly the result of that of the accident of its origin and partly of sheer gerrymandering by the British"³⁶).

Similarly with other internecine wars in Africa, the issue is not the so-called divisive quality of tribalism, but perhaps the lack of an ideological concept of pluralism, that might allow respect for diversity. What many heterogeneous States need in order to achieve a viable, stable environment is recognition and appreciation of the cultural differences among the different groups, linked to adequate political expression. This seems to me to be the major issue and not the question of what the groups are to be called. In fact, many European and Asian countries that do not use the terminology of tribes to differentiate population groups often find themselves with divisive problems no less than, and sometimes greater than, those in Africa based on language (Belgium), ethnicity (Spain, Yugoslavia), or religion (India, Sri Lanka, Northern Ireland). In Africa one of the most disturbing and long-lasting conflicts, with over a million deaths in several decades of fighting, has nothing whatsoever to do with tribalism—the conflict in Sudan between north and south is based on a combination of ethnicity, nationhood, religion, class and regionalism.

Recent years have seen several attempts to seek alternative appellations for tribe—the most notable being those of "indigenous people" or of "fourth world people," the former term being more officially and academic, the latter having ideological overtones; but these do not only resolve the semantic problems; on the contrary, they also create new ones, including that of an awkward terminology.

In fact, there are countries such as India, where the law actually officially recognizes certain tribes—mainly of economically less advanced groups and often from outlying, generally mountainous regions—and by including them in the list of scheduled "Tribes",³⁹ allows their members to benefit from a whole range of affirmative action policies.⁴⁰ The idea of classifying them as "indigenous" is as confusing as calling the original North American inhabitants "Indians" as the 'non-tribal' Indians (in India) are no less indigenous. In that, the idea of using the term "indigenous" seems a relic of colonial thinking, raising suppositions that it is only in formerly colonial countries, such as Canada, Australia and New Zealand, that there is a problem, while ignoring the similar needs of similar groupings in other countries, where no settler colonialization took place.

The term "fourth world" people also raises issues including the acceptance of a world already divided into three worlds,⁴¹ and the clear degradation with the connotations of superiority and inferiority, Third world being inferior and Fourth world even moreso, precisely one of the reasons why many people have sought alternatives to the term tribe.⁴² In any event in terms of ordinal members "first" might be far more appropriate, as used in Canada, where the indigenous people are known as "First Nations". However, in Canada there is also extensive use of the term "native", and also increasingly in Australia a term that in South Africa was and still is considered totally taboo by those struggling against the inequities of segregation and apartheid.

But the real problem of the concept of tribe, or any alternative term, is that the issue of satisfactory definitions for population groups is a perennial one for the social sciences. Tribe is not the only definitional categorization that poses problems, especially as regards the diversity of the types involved, as to demarcation in the marginal cases, as well as the possibility of incorrect, often negative, characteristics attributed to such entities.

Other widely-used terms are problematic. Some of them, such as class or race are already, in fact, far more controversial than tribe; others such as State and religion seem almost beyond dispute, yet they too have their problematic aspects.

Although few concepts in the social sciences seem to be as clear as a reference to a "State," since states have sovereignty, borders, and enter into relations with other similarly recognized entities, yet the variety in the size, composition and nature of the 200 odd States in the world community today is so great that their diversity is probably more extensive than that of tribes. On the other hand there are the massive continental States China, Russia, USA, and India with large and heterogeneous populations; on the other hand, there are the city-states of Menace, San Marino and the Vatican City, the island State of Nauru (population slightly over 10,000, yet once considered *per capita* the richest country in the world), and small, isolated mountain States such as Andorra and Bhutan.

From another perspective, it is not clear what the ultimate meaning of emerging regional groupings are, with the European Union as the clear pace-setter. Even without entering into the intricacies of whether a new kind of super-state is emerging, or whether the groundwork is being laid for a United States of Europe, the constituent States of the community already have voluntarily agreed to forgo some of their sovereignty, by making their law in certain specified areas subservient to the provisions of treaties and of judicial norms of the European Court of Justice. Even the much-wanted sovereignty of the British Parliament has had to succumb to this new wave of change in Europe.

There is one particular term that is receiving increasing support as a useful alternative to tribalism—that of ethnicity; yet whatever advantages it might have, there is little doubt that it is even far more a product of western reality than is the asserted western imposition of the term "tribalism" in the areas of its imperialist conquest. For the awareness of a person's ethnicity in North America is generally a consequence of immigration from a home base to the creation of some kind of community on behalf of immigrants. In its original use the immigrant community was of European origin, trying to carve out a viable existence for itself in the so-called "new world." Later, of course, as migration patterns changed, the number of groups qualifying for ethnic States vastly increased; thus,

now there are ethnic Chinese, ethnic Japanese, ethnic Indian and ethnic African, but not, interestingly ethnic Nigerian, Ghanaian or other separate national African identities. In fact, the term Afro-American has, in recent years, been replacing Black (which itself replaced Negro) as the term of normal parlance in academic writings and the media-and with it, apparently an acceptance of the term "people of color," which is being increasingly used, despite the general rejection of the term "colored people," even though one of the leading civil rights organizations in the United States uses that term in its name--the NAACP--the National Association for the Advancement of Colored People.

In general, then, people from Italy or Greece became ethnic Italian or ethnic Greek only on leaving Italy or Greece, or being children, or perhaps even later descendants of immigrants. Ethnicity basically replaces lost national or citizenship affiliation. In the United Kingdom, for instance, the Irish or the Scottish are never looked upon as being ethnic groups, only when they leave does their ethnicity become relevant. If anything, in Britain itself, they are seen as "people" or even as a nation. As for the English who immigrate to other lands, there is to the best of my knowledge, no use whatsoever of the term ethnicity, neither in academic argon, nor in popular parlance. In the United Kingdom, then, the real ethnic groups are the immigrant black or Asian groups, almost irrespective of which "tribe" or "nation" they belong to. Conversely white immigrant groups living in the United Kingdom, from Australia or South Africa for instance, are never referred to as an ethnic group.

So, while ethnicity may have some uses, it seems to be used often in a sort of catch-all manner, and certainly has no clear-cut line, neither of total definition as against other forms of groups, nor any clear-cut demarcation as between the different groups that are considered ethnic.

In fact, Nathan Glazer and Daniel Moynihan, formulating the concept of ethnicity specifically within an American context, have no illusions as to its problematics and its divisiveness, and specifically refer to the dangers of.. political realities.. (which) seem to provide a good number of the ingredients for a greater degree of ethnic conflict,"⁴³ in many instances, the presumed divisiveness of different - tensions. Thus, the terms ethnicity and group, largely used in order, at least partly, to forestall use of the more threatening (to the State) term of nation, failed to prevent the

disintegration of Yugoslavia and Czechoslovakia.

Further warnings as to the inability of ethnicity (as a concept) to avoid real-life problems is to be seen in other articles in the anthology edited by Olazer and Moynihan. Talcott Parsons argues that ethnicity is an extraordinarily elusive concept and very difficult to define in any precise way, while William Peterson notes that the concept of ethnic groups would be "...unobjectionable except that it is used precisely to designate a variety of entities: some would include a religious determination under the rubric, others not; some would identify a race as an ethnic group, while for others the latter is a smaller subdivision of races; and so on."⁴⁵

Possibly the most devastating criticism of ethnicity is that by Colin Tatz, who examines its meaning in its historical-philological context. He writes:

"Ethnic" is overused and misused without the faintest regard for its meaning. It comes from the ecclesiastical Latin *ethnicus*, which means heathen; it also derives from the Greek word for nation, but specifically for the non-Israelitish nations, the Gentiles. Since 1470, it has meant gentile, heathen and pagan. It is time to stop misusing this term in the vocabulary of multiculturalism; it is not a soft synonym for migrants, nor non-English speakers nor blacks in particular.⁴⁶

In sum, the stuff of science, the stuff of law, the stuff of social reality is the problem of definitions with the accompanying inevitable and intricate problems at the margins.

Three points emerge and must be strongly stressed:

- 1) tribe is not the most problematic term in social science or in social and political reality;
- 2) alternative suggested concepts, such as ethnicity, are no less problematic,
- 3) the use of terms has importance-social, political, legal. Thus to refuse to recognize nationhood means almost inevitably to deny the right to statehood; conversely, where there is a recognition of nationhood, there is certainly room for according statehood.⁴⁷ Similarly, no recognition of a religion may mean no right to practice rituals or protect sacred sites, whereas recognition opens up all sorts of legal possibilities.

The question then, is: do similar considerations apply to tribes? Does the recognition of a group of people as a tribe guarantee them any rights (both as individuals and as a collective) which would be denied them if they were to lack such recognition? Could the denial of tribal status lead to the possible denial of certain group rights? Are the possible dangers of recognizing tribalism (such as factionalism in new countries) of greater danger than the potential benefits of tribal rights, rights to land, to legal recognition of customary practices, to the existence of valid alternative legal systems? Would the use of other terms e.g. definitions attuned to language or ethnic group differences-in any way minimize the dangers where friction between groups already exists: or alternatively, would provide a greater or lesser prospect to guarantee group rights?

I wish to argue that there are some rights that can best be protected by a clear recognition of the existence of a tribe, as distinct from other types of groups such as language, ethnicity, or religion. Yet, for as long as the term "tribe" is presented in negative terms, there will be no prospects of a proper discourse on this issue. Examples of negative approaches need to be examined.

In 1975, Morton Fried, a leading anthropologist, attacked the concept of tribe and argued that there were no "highly discrete political units in pre-state. He notes that the word tribe is of ancient origin, based on the Latin "tribus," used in differentiating population groupings in ancient Rome, as had been done in earlier large cities, such as in the city-states of Ancient Greece.⁴⁹ However, Fried suggests that there are far reaching implications for the difference between tribe in the ancient and modern worlds. Today, for instance, the word tribe has taken on negative connotations, and it is generally associated with primitive social groups. (In a sense this is, really begging the question, since there are a number of leading anthropologists who have argued that the concept of primitive should be seen as positive, a description of a society with many desirable qualities, from which much may be learned, as will be discussed later). Thus, Fried goes on to state that

The nature of the concept of tribe has been a confused and ambiguous one from its earlier period of utterance. Scrutiny of the Crack materials, for example, shows variations in the significance of kinship, as opposed to non-kin relationship, in the composition of tribal membership,... Similarly, variations exist in the degree and type of political cohesion in

such units insofar as they represent populations integrated for the achievement of diverse internal or external goals, management of the community or warfare.⁵⁰

Fried focuses on the Greek city states in order to contrast them with what he sees as the negative role of tribes in undermining national unity in new nation-states of the modern world. Thus, he claims that it was not because of tribalism that there was an "absence of centralized government as a characteristic of classical Greek policy," and then adds: "This point is important because analyses of third world political developments, particularly those relating to Africa, are often couched in the most pessimistic terms, with tribalism being described as an unavoidable obstacle to political modernization."⁵¹

He also notes that the original use of the term tribe in English, as taken from the Latin, was in the translation of the Hebrew word, "shevet," denoting the biblical tribes.

These were perhaps the epitome of what tribe connotes, based on a common ancestral lineage. This point is then used by Fried to argue that many groups known as tribes do not fulfil the essential characteristics of tribe, and should really be considered to be nations or ethnic groups.

Fried also seems to exhibit a great degree of sensitivity to the categorization of tribes as primitive (a concern shared by many others). Yet the truth of the matter is that there is a vigorous, ongoing debate in the social sciences, particularly in anthropology, as to the essential nature and meaning of primitively. Stanley Diamond has argued very forcefully that the very idea of primitive should be seen in positive terms, and that the characteristics associated with it have significance both for understanding social reality and for clarification in the social sciences.⁵² Thus Diamond writes:

The search for the primitive is the attempt to define a primary human nature. Without such a model, or...without such a vision, it becomes increasingly difficult to evaluate, or even to understand, our contemporary pathology and possibilities.⁵³

After analyzing the importance of such an approach for understanding different areas of human conduct and behaviour (such as medicine, for

example), Diamond concludes that in certain "basic and essential respects...primitive societies illuminate, by contrast, the dark side of a world civilization which is in chronic crisis."⁵⁴

In a similar vein Robin Clarke and Geoffrey Hindley state categorically that the theme of their book, *The Challenge of the Primitive*,

...is that Western man is lost in a search for happiness, and may begin to find his way again only if he is prepared to look into the world of the primitive, a world that he is fast destroying. The objectives of that primitive world have been different from ours. Our quest for progress has led us to dedicate the energies of our society to maintaining imbalance and tension as a motive force. The primitive society, on the other hand, devotes its resources to the maintenance and nurturing of a social equilibrium, inherited from the past, but always adaptable to the present.⁵⁵

Ashley Montagu pinpoints the key issue with direct relevance for the issue of the term tribe. He writes:

There is a perfectly sound sense in which the term "primitive" and the concept for which it stands may be used, but not until we have disembarassed ourselves of the unsound ways in which the word is employed, shall we usefully be able to employ it at all.⁵⁶

In contrast to debates of this nature among Anthropologists, sociology has almost totally ignored the framework of a tribe. Most basic textbooks make no reference whatsoever, to tribe-or when they do, they do so only to refer to anthropological research. Yet, the essence of a tribe is almost the epitome of the *gemeinschaft* that Ferdinand Tonnies⁵⁷ spoke about so favourably. The distinction between a *gesellschaft* and *gemeinschaft* is out of the classic characterizations of sociology, but very rarely is the tribalised as an example *gemeinschaft* of properties. Yet tribes is focus around the relevant variables of kinship and neighbourhood. Further, in both sociology and law, there is an increasing search for the essence of community (in sociology)⁵⁸ and communitarianism (in Law).⁵⁹ Both disciplines might find in the qualities possessed by tribes a useful model for the kind of social living that is being theoretically expounded.

Fried himself seems to concede this much. In a final three page chapter, in which he notes the calls of other writers for the preservation of tribalism, he accepts that "a distinction between destructive nationalism

and a more pacific tribalism... is in my opinion a sound idea.⁶⁰ Admittedly, Fried seems to be referring mainly to smaller groupings. He may indeed be correct that there is a need to re-consider some of the categorizations that have been made in the past as regards tribe, perhaps especially when dealing with particularly Large groups numbering in the millions, but then other characterizations also carry their marginal examples that suggest the possibility of endless re-definition.

Having posited tribe in contrast to State, I should stress that my intention is not to dismiss the State; I certainly sense no anarchist future in which the State will disappear. What I wish to argue is the need to present the state in proper perspective, including especially its limitations, for only thereby will it be possible, I believe, to fully understand the nature and the role of tribes in the modern world, irrespective of whatever appellation is applied to them; or for that matter, also for other constituent social categories found within the modern state. The problematics of the term "tribe" can only be partly resolved when the problematics of the term "State" are fully perceived.

Only if we come to terms with the inaccurate descriptions, only if we can see beyond the ensuing reluctance to recognize tribe that these inaccuracies engender, only then can we begin to confront realistically and meaningfully the prospects for tribal life (under whatever name) in the modern world.

Two of the most significant efforts in this regard are the broad range of opinions with contrasting viewpoints, carefully worked out, in the anthology edited by Peter Gutkind,⁶¹ and the thoughtful and penetrating presentation by Marxist anthropologist, Maurice Godelier.⁶² The latter, indeed, while not at all enamoured of the concept of tribe, does note the shortcomings of many of the critics of tribe, especially those that are conceived within an evolutionary framework. Godelier suggests that the exploitation of a concept for ideological ends cannot lead to its demise, even if as a result it becomes "...a concept which fails to recognize the reality it expresses. The concept itself is quite innocent of its own effects."⁶³ He Further he notes that

difficulties in concepts of "tribe" and "tribal society" are not isolated or unique. They are found in other guises as adjacent or like concepts are made clear: concepts of "band," of "stateless society", concepts

designating other terms under which the social relations of other societies appear and around which people build general schemes of the social evolution of mankind. For this reason, we cannot hope to improve on the concept of tribe, cure it of all of its ills in isolation: we must consider other concepts and improve them all in turn.⁶⁴

Finally, he concludes that

... we shall not be able to get rid of the difficulties involved in the content of the concept of tribe; we cannot silently bury it with a mere death sentence, or stigmatize those who continue to use it with the epithet "infamous" empiricism. Insofar as new concepts will not appear to resolve our problem, this concept of the 'tribe' will continue to be used in more or less refined forms and will deliver the same goods and the same kind of bad service. Until it loses its object, it will not lose its place.⁶⁵

Parallel with the effort to improve the scientific enquiry, in fact as a direct consequence of such activity, he argues that:

We must continually attack the political and ideological manipulations by which the concepts of 'tribe' and 'tribalism' are used as a tool by the powers who dominate and oppress the young nations of the Third World. These powers often make it seem that tribal conflicts are modern contradictions which have their origins in the functioning of pre-colonial structures, in fact, these conflicts are explainable primarily by reference to colonial domination. While we must not fall into this trap and, in the name of anthropology, become accomplices of such arrant nonsense, let us not forget that their value as evidence and political practicality derive from the structural characteristics of former societies of the Third World and from their development. A scientific analysis of these structural characteristics is therefore not a disinterested exercise of pure thought; it is an urgent task involving thought and practical reasoning.⁶⁶

I would suggest that the prospects of doing so are far more likely after examination and evaluation of the nature of tribe per se and of the manner in which the term is now being used, than as a result of any outright rejection and wholesale denunciation. In fact, Godelier himself, in later chapters of the book, carefully analyzes Marxian approaches to primitive society; and this section of the book is entitled "Dead and Living Ideas in Marx's Thinking on Primitive Society"⁶⁷

In the book edited by Gutkind, there is a balanced debate, in which the majority of the participants adopted a stance critical of the term tribe, with varying degrees of intensity, while a minority of the writers argue for its validity. The nature of the debate in general is well presented in the opening sentence of the preface, where Gutkind quotes from one of the

participants, Clyde Mitchell: "The emotions aroused by the topic of 'tribalism' in erstwhile colonial countries has made it a topic outside objective scientific enquiry"⁶⁸ but as Gutkind himself adds, this particular collection of articles avoids, for the most part, the faults that have affected the work of others.

One of the most interesting and revealing contributions is by Herbert Chitepo, a political activist, formerly involved in the political struggle for the independence of Zimbabwe, who explains that definitions of "tribe" inevitably "... reflect an implicit subjective judgement by the user of the word that the people he is talking of are "primitive, that is to say underdeveloped, backward and even inferior certainly to himself-for whoever heard anyone call himself primitive."⁶⁹ Perhaps, on this last score, somebody might wish to do so if he were to read the important work on the primitive by those authors,⁷⁰) as noted earlier, who expound on the importance of primitivity and its many advantages, particularly in the modern world. But aside from such a critical approach, the definition of tribe does not necessarily correlate with primitive or even backwardness, certainly not with inferior except by those who twist it for their own ends, or those who, surrendering to these distortions, then relate critically to the term within these narrow confines.

In contrast Aidan Southall, though also critical of the concept, rightly notes some of its ambiguity. "It is in the political context that tribalism is regarded with particular disfavour and in a number of social and economic contexts also. But those who rightly stigmatize the carryover which is tribalism in these contexts would in others often favour it, especially with respect to certain family values and to aesthetic modes of expression, as for example in music, dancing and plastic arts."⁷¹ But the issue of tribalism is, of course, not just of arts and culture; it is also of religious beliefs and rituals, of customary practices and law, of philosophical concepts of land and ecology, of kinship patterns and familial relationships, of economic interactions and obligations, and of group loyalty and allegiance. These are some of the real issues of tribes and they are so real and meaningful that they have survived the years of colonial dispossession, of political subjugation and of personal and group humiliation.

However, Southall concludes that Western anthropologists will have to

learn to adapt themselves to the approaches of their non-western colleagues "whose fathers or grandfathers were members of non-literate societies, to remove the colonial taint,' and to reject the uses of the terms "primitive" and 'tribe' in reference to societies in the modern world, and to replace them with the term 'ethnic group.'⁷²

Yet it is specifically an African anthropologist, Victor Uchendu,⁷³ in the very next chapter of the anthology, who pleads for the right of tribal people to be heard and respected. And perhaps most pertinently, he challenges not only western anthropologists, but African intellectuals, who fail to ask tribes people as to their needs and desires. And so Uchendu argues pointedly that...the dreams and the frustrations of the African elite must not be misplaced,⁷⁴ on to those still living in the tribe. He argues that the tribes person "is heir to rich and diverse cultures, (yet) is still pictured as living in an undifferentiated, small-scale, society where social experience and historical processes are assumed to impinge equally on all bearers of tribal cultures."⁷⁵ Important as it is to combat the negative impressions, it is no less essential to ensure the presentation of the rich and diverse cultures."

Indeed, Uchendu cuts through to the heart of the issue of tribalism in modern Africa, claiming that much of the tribal tensions that have arisen have been as the consequence not of inherent circumstances linked to tribal differences, but a consequence (similar to processes that occur in many other plural societies even without tribes) of overlapping inequities and inequalities, where "Imbalance in development is noted ... between one ethnic group or region and the other."⁷⁶ In fact, part of the reason for the resurgence of "tribal nationalism" is the awareness of inequality in some of the newer States. He also warns against those "among the elite who denounce 'Tribalism' though they exploit tribal sentiments in order to establish their tribal base."⁷⁷ Finally, Uchendu ends with a plea to allow the tribal people themselves, these still living in their traditional settings- to determine the rate of development, and specifically which of their institutions they wish to change, and which they wish to retain.

In similar vein, Colin Legum, a British Journalist, with much knowledge of and experience of Africa, in a further contribution to the anthology, expresses the opinion that "Tribalism a Africa's natural condition is likely

to remain so for a long time to come."⁷⁸ The basis for such a prognosis is the fact that similar ethnic groupings in Europe have sustained their identity and cohesion. Of course Legum could have simplified his analysis by using the term ethnic group as others have done instead of "tribe", since these were the groups in Europe who were serving as his model. But Legum prefers retaining the term that has been applied extensively in Africa and in fact attempts a definition for the purpose of his essay... "Tribalism", he writes is the manifestation of over-riding group loyalties by members of culturally-affiliated society to locally based interests, which involve tradition, land and opportunities for survival and growth...⁷⁹ He notes a further crucial factor that "Tribalism must be distinguished from traditionalism. Traditional systems may pass away while tribal affiliations remain strongly entrenched in defence of ethnocentric interests...the 'tribal' factor cannot simply be abolished from the academic vocabulary ... What is badly needed are agreed definitions among academics to fit the modern phenomena. of 'tribe' and 'tribalism'.⁸⁰

In addition, tribalism is not inherently anti-modern, even though its internal political system is basically pre-modern. Tribalism in Africa has largely survived in its present strength because of the willingness of traditional societies to meet the challenge of modernization by adaptation.⁸¹ Indeed, the most notable fact is that "tribalism has by and large been either an active or at least an acquiescent participant in the process of modernization."⁸²

P.H. Gulliver, too, after carefully considering the pros and cons of different terminology, acknowledging the sensitivity; of the debate over the term, and examining some of the empirical evidence, concludes that "one great importance of tribalism lies in its intrinsic flexibility as a concept, and in its ability to represent a highly flexible social process: the tribe, variously confined according to circumstances and need, can be made the unit of reference, the banner, and the cluster of symbols, for groups of people involved in the manifold upheavals and opportunities in the contemporary world."⁸³ And in terms of the legal problems of that world, the issue is how to preserve the living customs of a tribe, how to guarantee its group rights, how to assert the importance of its legal system, and how to protect its individual members from the intrusive, often repressive, power of a modern state, moulded on the model of an alien culture.

Whatever the nature and the variety of States, and whatever the appellation to be applied to those groups that have traditionally been known as tribes, the key issue that needs examination is whether these two forms of framework are compatible with each other, and how-if there is the will to do so-the state can accommodate itself to the demands and the needs of tribal groupings existing within its borders. There should, however be no illusions on this score; more than any other human groupings-including those based on language and religion-tribe poses a threat to the State. It is theoretically at least, far more comprehensive and more embracing than other conceptual groupings, and far more than them it offers an alternative source of authority and allegiance, one which is not focused on only one particular aspect of social life, such as belief system as regards religion or means of communication as concerns language, but which touches on both religion and language, as well as on obligatory customs dealing with family life, economic arrangements, social control, concepts of property ownership, rights to land and environmental consciousness.

It is specifically this that differentiates tribe, by whatever name, and ethnicity, again by any name; whatever the overlap and similarities, tribe, both in its historical context, and in its present potentialities, offers an alternative means of providing those qualities and properties that are characteristic of a State, and, in particular, for the purposes of this essay, its legal system.

There are ideological and theoretical implications that make the nature of interaction between tribe and State vastly different. Firstly, in historical terms, it is widely held, especially by those who see historical development as being an evolution in stages, that the tribe was a precursor to the State,⁸⁴ a stage in the onward march of human history, which, in a world of nation-states, has fulfilled its historical role, except for a number of basically irrelevant groupings, living on the margins of society, scattered in various places all over the world, and numbering in toto no more than a few tens of millions, with many of them in any event being drawn inexorably into the vortex of modern industrial and technological life.

It is partly on this basis that there is such a great insistence on the choice of ethnicity over tribe. The latter seem to indicate some sort of atavistic

regression into a dwindling past. What I wish to suggest is that the concept of tribe, the existence of tribe, is perfectly compatible with the needs of a state. Tribe and state may co-exist in the modern world. The "threat", if so be it, is not to the existence of the state per se, but to the nature of the state. The pluralism must come to terms with this fact; in fact it may well be that it is State that is more problematic than tribe. To probe this issue, it is necessary to examine the essence of what is a State--its sovereignty. However, it is specifically on this issue that there are differing conceptions, some of which are antagonistic to the idea of a shared control and authority, others of which are compatible.

We have noted already how some States are shedding some of their sovereignty in terms of their external powers by voluntarily submitting themselves to the surveillance of larger supra-national authorities. Can the state similarly divest itself of some of its internal sovereignty--as is basically the case in federal systems? Can such concessions be made by a State not on the basis of geographical entities, precisely mapped out as in a federal system, but in respect of looser amorphous groupings, as in a true pluralistic framework?

It is possible for tribes to change, to become part of larger entities such as States, to adapt their way of life, and yet to retain the uniqueness of their tribal identity, without endangering the State, without having a divisive impact, without being involved in conflict with other tribal groupings, without the insistence on endogenous marriage patterns and exclusive membership rules, and without elevating the biological nexus to a supreme or sacred rule.⁸⁶ To succeed in avoiding all these pitfalls will indeed require plasticity and capacity for change as well as a simultaneous and parallel ability on the part of states to adapt to a tribal reality. A mutual re-assessment and an interactive re-moulding of the nature of both entities, raises prospects, serious and meaningful, of a new style of political settlement.

The fact that, in Europe, tribes were absorbed and snuffed out is no necessary deterministic historical precedent for a repetition in Africa and Asia--or in America or Oceania, that matter. The state that absorbed was often indeed an empire crumbling at that, and based often on a fragile concept of divine right. Peter Skalnik tentatively raises some of these issues to meaningful intellectual debate. Based on one particular ethnic

or tribal conflict in Ghana, Skalnik suggests that there is a deeper truth embedded in the conflict that he carefully describes.

From a theoretical point of view, he draws a distinction between authority and State power. He describes the unfortunate consequences that are liable to flow from an injudicious and inequitable application of the latter, particularly in situations where the state itself lacks full legitimacy-not because of tribal loyalties, but because of its failure to function effectively in the daily lives of its citizens.

Skalnik openly challenges many of the truths abounding in Africa today with its State boundaries and state power. More important, though, he hints at an alternative model, which though it admittedly draws on only one case-study, may, as he suggests, be a symptom of similar processes existing elsewhere-as a result of which he suggests that there is an "ultimate inadequacy of the concept of the "state" in indigenous Africa."⁸⁸

Discussing the nature of authority in the tribe under discussion, that is the Nanumba, he argues that, for them, the chief was not the source of power, but the embodiment of consensual authority-in terms of modern sovereignty. This could be presented as sovereignty residing not with the centralized power of the dominant figure, the chief, but with the people. Indeed, the very longevity of the situation-from pre-colonial times and into the post-independent State was the result of it being a "powerless authority" of naam.⁸⁹ He then goes on to describe the naam in the context of its continued survival within a larger political entity-whether under a foreign colonial power or in a modern independent state. "Naam is not an opponent of imported state power, colonial or post-colonial; rather it is its virtual alternative. The two systems communicate with the people in their spheres in quite different languages. Power seen as "illegitimate" and "violent" is an attribute of the state, and is alien to the authority of naam and its incumbents in Nanum and perhaps many polities of the "archaic" world seem to suggest examples of a social order more stable and a sub specie aeternitatis more acceptable and useful to all members than any historical form of the state. Therefore Nanum is not a state in the conventional Western understanding of the concept, whether we try to call it early, specific African or primitive.

Skalnik poses painful and penetrating questions for the existing and static political structures of Africa. He suggests a new approach to an understanding of the political failures that have so characterized Africa in the years of post-colonial independence. He writes: "The explanation for the so-often lamented instability of modern states in Africa and elsewhere in the developing world is to be sought in the struggle between their Western-imposed state systems and the tenacious indigenous social and political institutions. I suggest that these African indigenous institutions show the world that without the State a society could function quite well, even better than with it."⁹¹

Part of the tragedy of the present political situation in Africa is that "...the alien State mode was imposed on the indigenous systems of authority with such a vigour that in many parts of the continent whole nations lost their identity and orientation."⁹²

Skalnik explains that his example forms one particular instance of an escalation of conflict into a violent struggle between two opposing and intermingling tribal groups; the research was carried out in order to "...investigate indigenous African alternatives to violent power,"⁹³ so as to "explain why modern Africa is so ridden with coups, tyrannies and atrocities." He claims that "The whole world can learn from African alternatives to violent power. The institutions of the autonomy of chiefs and elders, and the various institutionalized checks on these incumbents of authority, which spontaneously and independently developed in Africa and elsewhere, could serve as an inspiration to all."⁹⁴

Then, while not saying so specifically, Skalnik directly challenges those who set the tribe as an artificial construct, created to serve the needs of the colonial powers. Having already described how the chief's authority was basically an embodiment of social consensus, he then turns up side-down the contention of those who see the tribe as a colonial imposition by stating categorically that

The purpose of the article has been to show that the State as a specific social and political phenomenon was 'invented' in Africa by outsiders because they were looking at African institutions like the Naarn of the Nanumba through Eurocentrist eyes..By labelling...a certain kind of African political organization a 'State' one does disservice to African history and the Africans themselves because not only is African originality

forced into a Eurocentrist straight-jacket but worst of all this bias denies the possibility that, in Africa viable alternatives to the State, as it evolved in the West, may have developed. The State is by and large a Euro-Asian invention, whereas the Africans gave the world their systems of chieftainship or their ingenious systems of kinship-based organization.⁹⁵

Skalnik's presentation opens up new possibilities for both academic theorizing and practical politics-although it raises perhaps more questions than it resolves. Going beyond the question as to whether his empirical data justify his conclusion, or whether one case-study provides a model for a total continent, the basic question is whether in Africa, the State is to be abandoned, as an irrelevant western invention, so that the ethnic group, known also as tribe, may reclaim its position of grandeur as the basic unit of social and political life; or whether that tribe, with its primordial tendencies and the pressures that they create for parochial concerns, should not be abandoned in favor of the State, even if it is a transplanted and alien invention; or whether an accommodation must be sought between the tribe, representing the old traditions, and the State representing the basic unit of the modern world.

And what of the prospects of regional or continental unity? will not an emphasis on the tribe undermine these strivings as so articulately presented by some of the dominant figures-intellectual and political--of the first decades of African independence, including cultural concepts of negritude, philosophical manifestations of a special African road to socialist, and political earnings for pan-African unity.⁹⁶

Indeed, it is of no small interest to note that, while in Africa, the prospects of some over-riding unity are receding (and the few attempts at partial, regional arrangements have generally broken down), the States of Europe have moved to closer unity, whether in the European Union or the larger culturally-oriented Council of Europe, or even the pan-continental security organization. All this took place with little ideological trumpeting of a vaunted shared purpose,⁹⁷ that so characterized Africa in the 60s and 70s as hopes that the Organization of African Unity would move beyond a mere State-bound organization into a real union that was embodied and emblazoned in its name were dashed. As already pointed out, there is a paradox here of African States proudly guarding their new-found sovereignty, while their ex-colonial overlords move fairly rapidly into a newer and tighter association of states.

The point must be made crystal clear: it is not narrow parochial tribalism that is hindering Africa from reaching out into common markets, trans-national courts of human rights, continental conventions on environmental protections, free passage between states; it is the existence of States, and the political leaders of separately trying to build up a loyalty among the citizens, often through one-party States, that, at this moment in history, might constitute the main stumbling-block to larger unity.⁹⁸

From a sociological point of view, one could argue for layers of social reality at the immediate personal level of the need to assure the individual of his human rights of free and unfettered expression of his autonomous self; then the need for expression of affinity and affection within an intimate familial setting, whether nuclear or extended; beyond that the need for membership as citizen in a state that will guarantee protection of rights and provision of basic social and economic needs; and ultimately the need for a larger striving at the continental and world level for a common recognition of shared humanity, the basis of those human rights that then revert back to the individual and his own individual rights.

In addition, there may be a need for a further layer, between family and State, that will answer to the needs of belonging; this may be found in the form of membership of a religious or ethnic group, or even of an ideological or cultural entity, or of membership of a tribe, in as much as a distinction may be drawn, as I have argued, between ethnic group and tribe. To deny the support and vitality that such membership may provide is to negate one of the needs that are an essential of full social life.

For those without tribe, it is clear that religion or ethnicity or even language or ideological connections, provide adequate groupings,⁹⁹ but that is no reason why for those who have tribes as a membership category, they should be deprived of it merely because historically tribes seems to be doomed, as occurred in Europe, or because they seem to threaten the unity of a State, or because they conjure up pictures of primitivity.

The problem is not unique to Africa, though it certainly takes on different, if more acute, dimensions there, because of the nature of its pre-state society. The problem of belonging, the underlying tensions of artificially-

created states lacking the attributes of nationhood, lacking a common language or a common belief-system, is rife throughout America, Asia and Oceania.

In addition, the idea of shared sovereignty has been developed by a group of Dutch jurists and philosophers, and has aroused little interest or even notice outside of the Netherlands. The term that they suggest is 'sphere sovereignty,' that is an acknowledgement of the fact that there might well be spheres within a State for which limited sovereignty could be granted, relative to the concerns of that sphere of social activity. J.van der Vyver explains that "The doctrine of sphere sovereignty... developed under the auspices of neo-Calvinistic sociological thought," and denotes an enclave of competence belonging to a social entity of its own accord---without that social entity depending on any other person or institution for the possession or exercise of those powers."¹⁰⁰ The leading exponent in recent times of the idea is Herman Dooyeweerd, who describes a situation where, within one society, there would be different social structures, each entitled to make its own rules.¹⁰¹

Sphere sovereignty opens up possibilities of shared sovereignty, allocated according to the functions that any institution or corporate body exercises. Included in the possibilities are a family unit, an ecclesiastical denomination, business corporations and other voluntary associations. Each is presumed to be sovereign within its own sphere, but also subject to the State's courts of law, which are presumed to act from a cognizance of shared sphere sovereignty.

Sphere sovereignty presents no simplistic solutions, but involves a sophisticated presentation of socio-legal reality. It leaves the ultimate task of determining the juridical validity of any act in the hands of the State courts. This is precisely what State courts have done in profusion over the years for tribes. But what they lacked was a theoretical framework which would clarify the nature of this judicial activity, allowing them to recognize the full extent of the autonomous source of authority from which the customs at issue derived their obligatory power.

Given the many groupings in Europe for a new understanding of political structures- from the European Union moving toward greater integration, to the attempt at a Commonwealth of countries formerly part of the Soviet

Union---it would seem that the idea of sphere sovereignty contains many penetrating and fruitful insights. They may well serve to help elucidate also the nature of tribal authority in new (and not so new) States.

Furthermore, a parallel model exists in practical terms that is generating much interest---namely that of consociational democracy as practised in such a special manner in Switzerland.¹⁰² Linked also to this idea, is that of a civil society, also being increasingly touted in many places; though largely parallel to the State, it preserves some distance from it.¹⁰³ Ideas of this nature are also of great import in evaluating the nature and role of tribal communities in the modern State.

In fact, it is rigid, and possibly antiquated, ideas of the citizenship that are associated with State, that is preventing the creative development of a synthesis between the State and tribe as one of its constituent elements. More than this, the very prospect of compatible shared loyalties may be based on tribal models from the past. In sum then, many of the criticisms of the use of the term 'Tribalism' have to do with problematics not much different from those pertaining to "State." If we realize this simple factor, we shall be able to better comprehend the nature of tribalism and perceive its latent potentialities in the making of the New Africa on the threshold of the third millennium.

NOTES

1. On the borders of Africa, see Ian Brownlie, *African Boundaries: A Legal and Diplomatic Encyclopedia* (London: C. Hurst, 1979)

2. On pluralism see Leo Kuper and M.G. Smith (eds.), *Pluralism in Africa* (Berkeley: University of California Press, 1971); John Rex, 'The Plural Society in Sociological Theory,' *British Journal of Sociology* 10 (1959) p. 114.

3. A recent book argues that the three monotheistic religions, Christianity, Islam and Judaism should be considered as one religion. See Allan H. Cutler and Helen E. Cutler, *The Jew as Ally of the Muslim: Medieval Roots of Anti-Semitism* (South Bend: University of Notre Dame, 1986). The opening sentence is "Judaism, Christianity and Islam are not three separate religions, but three branches of the same religion: the religion of Abraham."

4. See Mala Tabory, 'Language Rights as Human Rights,' *Israel Yearbook on Human Rights* 10 (1980), p. 167, especially at pp. 188-189 for (the discussion of distinction between language and dialect. See also Stanley Rundle, *Language as a Social and Political Factor in Europe* (London: Faber and Faber, 1946)

5. See, for instance, G.A. Ghuryre, *The Scheduled Tribes* (Bombay Bhaktal, 1963).
6. The term ethnicity was used originally partly in order to avoid using the term race, which was coming into disfavour.
7. Frederick Tonnies, *Community and Society* (East Lansing: Michigan State Univ. Press, 1957).
8. See Natan Lerner, *Group Rights and Discrimination in International Law* (Dordrecht: Martinus Nijhoff, 1991). See also collection of articles in *Israel Yearbook on Human Rights*, Vol. 21(1991)
9. See, for instance, Milton Gordon, *Assimilation in American Life: The Role of Race. Religion and National origins* New York: Oxford University Press, 1964).
10. Tom Mboya, *Freedom and After* (London: Andre Deutsch, 1963).
11. *Ibid*, pp. 67-68.
12. Leopold Senghor, "Négritude et Humanisme (Paris: Editions du Seuil, 1964); see also Maulana Karenga, *Introduction to Black Studies* (Los Angeles: Kawaida Publications, 1982).
13. Leopold Senghor, *On African Socialism* (New York: Praeger, 1964)
14. For detailed discussion on the status of these groups, see Leon Sheleff, *The Future of Tradition: On Customary law, Common Law and Legal Pluralism* (London: Frank Cass, 1999).
15. See Abner Cohen, *Custom and Politics in Urban Africa* (London: Routledge and Kegan Paul, 1969).
16. On Tammany Hall Politics, see Martin Sheffer, "The Electoral Foundations of the Political Machine: New York City, 1884-1897" in J. Silbey, A. Boque and W. Flanigan (eds.), *the History of American Electoral Behavior* (Princeton: Princeton University Press, 1978), p. 263.
17. On ethnic voting in the United States, see Robert Lane, *The Way of the Ethnic in Politics*, in H.. Bailey and E. Katz (eds.), *Ethnic Group Politics* (Columbus, Ohio: Charles Merrill Publishing, 1969), p. 85
18. Ali Mazrui, *The African Condition: A political Diagnosis* (London: Heinemann, 1980).
19. *Ibid.*, p. 42
20. *Ibid.*, p. 43
21. *Ibid.*, P. 44
22. See for instance Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (New York: Scribner's, 1958)..

23. At a recent conference of Asian sociologists, several papers were presented dealing with the residual impact of Confucianism in several countries of Asia, including China. See Proceedings of 7th Conference of Asian Sociologists, held in Beijing, November, 1995.

24. In the United States, for instance, there have been endless debates as to whether it is a society based on class or not. There have also been attempts to describe the society as being based on principles of caste this at a time when there were many legal disadvantages imposed on Blacks. See Oliver Cox. *Class, Caste and Race: A Study in Social Dynamics* (New York: Monthly Review Press, 1959).

25. See, for instance, Francis Bebey, *African Music: A People's Art* New York: Lawrence Hill, 1969).

26. For a brief historical analysis see H.F. Morris, "The Framework of Indirect Rule in East Africa," in H.F. Morris and James Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972), p.3.

27. Almost all radical movements encounter the problem of the relationship between leaders, particularly intellectuals and thinkers in the vanguard of a political struggle, and those on whose behalf they struggle. Socialists and national struggles in many parts of the world have been characterized by such difficulties, but they may take on added pertinence when dealing with indigenous people.

28. Will Herberg, *Protestant, Catholic, Jew: An Essay in American Religious sociology* (Chicago: Chicago University press, 1970).

29. For an anthology of articles dealing with such issues, see Leroy Vail (ed.), *The creation of Tribalism in Southern Africa* (Berkeley: University of California Press, 1989).

30. Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985).

31. See Thomas Pakenham, *The Scramble for Africa* (London: Weidenfeld and Nicolson, 1991).

32. See David Lamb, *The Africans* (New York: Vintage, 1984).

33. B.O. Nwabueze, *Cinstitutionalism in the Emergent States* (London: C. Hurst and Co., 1973).

34. *Ibid.*, p.83.

35. *Ibid.*, p.89

36. *Ibid.*, p.118. Because of the many tribes, Nwabueze basically favors federalism, but claims that the framework in Nigeria was badly set up. See also Ugbana Okpu, *Ethnic Minority Problems in Nigerian Politics: 1960-1965* (Uppsala: Studia Historica Upsaliensia No. 88, 1977).

37. See Leo Kuper, *Race, Class and Power: Ideology and Revolutionary Change in Plural Societies* (London: Duckworth, 1974).

38. See, for instance, Dunstan Wai (ed.), *The Southern Sudan: The Problem of National Integration* (London: Frank Cass, 1973).
39. See, for instance, G.A. Ghurye, *The Scheduled Tribes*. op. cit.; Other groups protected are the Backward Classes and the Scheduled Castes. For a good discussion of the historical, legal and constitutional background to this preferential treatment, see G.P. Verna, *Caste Reservation in India: Law and the Constitution* (Allahabad, India: Chugh Publications, 1980). See also Marc Galanter, "The Problem of Group membership: Some Reflections on the Judicial View of Indian Society," *Journal of the Indian Law Institute*, 4 (1962), p. 331.
40. See. 46 of the Constitution reads: 'The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.'
41. See comments by Irving Horowitz in the Preface to the second edition of the book, *Three Worlds of Development: the Theory and Practice of International Stratification* New York: Oxford University Press, 1966).
42. See N. Dyck (ed.), *Indigenous Peoples and the Nation-State: Fourth World Politics in, Canada, Australia and Norway* (St. John's Memorial University, 1985).
43. Nathan Glazer and Daniel Moynihan (eds.), *Ethnicity: Theory and Experience* (Cambridge: Cambridge University Press, 1975), p.24.
44. Talcott Parsons, 'Some Theoretical Considerations on the Nature and Trends of Change of Ethnicity,' in Glazer and Moynihan, *ibid.*, p.53.
45. William Peterson 'On the Subnations of Western Europe.' in *ibid.* > p.181.
46. Colin Tatz, *Aborigines and Uranium and other Essays* (Richmond. Victoria: Heinemann, 1982), p. 6; originally published as article, 'Aboriginality as Civilization,' *The Australian Quarterly* March 1981, p. 41.
47. See James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979). On the specific issue of the creation of constituent states within a larger federal state, see Eme Ekekwe, *Glass and State in Nigeria* (Lagos, Longman, 1986), Part 4, 'This Debate on State Creation,' pp. 154-194.
48. Morton Fried, *The Notion of Tribe* (Menlo Park, Col.: Cummings Publishing Co.,) 1975), preface.
49. *Ibid.*, pp. 3-5.
50. *Ibid.*, p. 5
51. *Ibid.*, pp.5-6
52. Stanley Diamond, *In Search of the Primitive: A Critique of Civilization* (New Brunswick, N.J. Transaction Books, 1974)
53. *Ibid.*, p. 119.
54. *Ibid.*, p. 160.

55. Robin Clarke and Geoffrey Hindley, *The challenge of Primitive* (New York: McGraw-Hill, 1975), p. 9. See also Pierre Clastres, *Society against the State* (New York: Urizen Books, 1977).
56. Ashley Montagu (ed.) *The Concept of the Primitive* (New York Free Press, 1968) p. 1.
57. F. Tonnies *Community and Society* (East Lansing: Michigan State Univ. Press, 1957).
58. See Robert Nisbet, *The Quest for Community* (New York: Oxford Univ. Press, 1953).
59. See for instance, Stephen Mulhall and Adam Swift, *Liberals and Communitarianism* (Oxford: Blackwell, 1992).
60. Fried, op.,... cit., p. 113.
61. Peter Gutkind (ed.), *The Passing of Tribal Man in Africa* (Leiden: E.J. Brill, 1970). The book is a reprint of *Journal of Asian and African Studies* (1970) vol. 5, Nos. 1 and 2.
62. Maurice Godelier.. *Perspectives in Marxist Anthropology* (Cambridge: Cambridge University Press., 1977), Chapter 3: "The Concept of the Tribe.: A Crisis Involving Merely a Concept or the Empirical Foundations of Anthropology itself" pp. 70-98. In general, see also his *Marxism and Anthropology: The History of a Relationship.*(Oxford: Clarendon Press, 1983).
- Challenge of the: Primitive (New York:
- 63- *Ibid.*, p. 95.
Ibid., p- 95.
65. *Ibid*, pp- 95-96 (*italics in origin*)
66. *Ibid*, p. 96
67. *Ibid*, p. 99
68. Gutkind, op. cit. at ft. 32, p. 1, quoting from article by Clyde Mitchell, "Tribe and social change in South central Africa: A rational approach" p. 83.see also his lecture, *Tribalism and the Plural Society* (London: Oxford University Press, 1960).
69. Herbert Chitepo, "The Passing of Tribal Man: A Rhodesian View" in *Ibid.*, p.10
70. See footnotes 52-56
71. Aidan W. Southhall, " The Illusion of Tribe" in Gutkind, op. cit. at ft. 32, p.30
72. *Ibid.*, pp. 47-48. He adds that this may be a case in which human feelings have to prevail over strict logic."
73. Victor C.Uchendu. "The Passing of Tribal Man: A West African Experience," in Gutkind, op. cit.. p.63.
74. *Ibid*, p. 63.
75. *Ibid*, p. 63.
76. *Ibid.*, p. 64
77. *Ibid.*, p. 57. He also notes the arguments by some that anthropologists, "should not explore those issues which divide modern Africa" (p. 57).

78. Colin Legum 'Tribal Survival in the Modern African Political System' in Gutkind, op. ct., p. 102.
79. Ibid, p. 103.
80. Ibid, p. 103.
81. Ibid, p. 103.
82. Ibid., p. 103
83. P. H. Gulliver (ed.), *Tradition and Transition in East Africa: Studies of the Tribal Element in the modern Era* (London: Routledge and Kegan Paul, 1969), p. 35. See also some of the articles included in this anthology W.J. Argyle, *European Nationalism and African tribalism*," pp. 41-58; G. Bennett, "Tribalism in Politics," pp. 59-88; E. Cotran, "Tribal Factors in the Establishment of the East African Legal Systems," pp. 127-146. For a good overview of the subject at the textbook level, see Roger M. Keesing, *Cultural Anthropology: A Contemporary Perspective* (New York: Holt, Rinehart and Winston, 1981) (2nd Ed.), Part 3, "Tribal Peoples: Towards a Systematic View" pp.109-174: and Part 4, "The Tribal World: The Legacy of Human Diversity," pp 175-376.
84. See, for instance Elmer Service, *Primitive Social Organization: An Evolutionary Perspective* (New York Random House, 1962). For a critique of this approach, see Morton Fried, *the Evolution of Political Society: An Essay in Political Anthropology* (New York.. Random House, 1967).
85. The numbers of fourth World peoples are estimated at about 50 million throughout the world-but of course there can be no country in this regard, neither as to what groups to count, nor as to an accurate estimate of their numbers.
86. For example of change in tribal structure, and intermingling among tribes, see Ronald Cohen and John Middleton (eds.), *From Tribe to nation in Africa: Studies in Incorporation Processes* (Scranton, Penn: Chandler Publishing, 1970).
87. Peter Skalnik, "Questioning the Concept of State in Southern Ghana," *Social Dynamics* 9(1983), p. II.
88. Ibid, p. 11.
89. Ibid, p. 17.
90. Ibid., p. 17
91. Ibid
92. Ibid, p. 26
93. Ibid., p. 26
94. Ibid, p. 26
95. Ibid, p. 26
96. For a succinct, contemporaneous analysis, as seen from a Ghanaian perspective, see William Harvey, "The Option for Unity" Chapter 3, *Toward Society Change in Ghana*' (Princeton: Princeton Univ. Press 1966) pp. 123-170.
97. It should, however, be noted that ever since the end of the Second World War, voices have been raised in favour of a United States of Europe.

98. On one-party States in Africa, see G. Carter (ed.), *African One-Party States* (Cornell University Press, 1964).
99. For a good discussion of the problematics of State, and of the possible alternatives to it, see John Hoffman, *Beyond the State: An Introductory Critique* (Cambridge: Polity Press, 1995).
100. J.O. van der Vyver, "The Concept of Political Sovereignty," in C. Visser, ed., *Essays in Honour of Ellison Kahn* (Cape Town: Juta, 1989), p. 303.
101. See Herman Dooyeweerd, *A New Critique of Theoretical thought* (Amsterdam: H.J. Paris, 1953).
102. See K. McRae (ed.), *Consociational Democracy: Political Accommodation in Segmented Societies* (Toronto: McClelland and Stewart, 1974); and Arend Lijphart, "Consociational Democracy," *World Politics* 21(1969), p. 221.
103. See, for instance, John Keane (ed.), *Civil Society and the State* (London: Verso, 1988). For an interesting analysis of the overlap with civil society and religion, which also has much relevance for Dooyeweerd's work (though he is not mentioned in the book), see Andrew Shanks, *Civil Society Civil Religion* (Oxford: Blackwell, 1995).