

CHAPTER SEVEN

CONCLUSIONS

In this last chapter I shall draw some conclusions from the material presented in my study. My main concern is with the change which has occurred in Minangkabau in the domain of property relationships, and in this final chapter I want to give my interpretation of this change. I shall adopt two different perspectives. In the first part I shall summarize the factors which have contributed to this change and interpret their functional interconnections. In the second part, I shall offer my interpretation of what this change means in relation to the Minangkabau social system in general. Finally, in the last part of this chapter, I shall briefly revisit some of my basic assumptions and evaluate them in the light of their usefulness for the description and analysis of the empirical data on Minangkabau.

A. THE FACTORS OF CHANGE: CONCLUDING REMARKS ON THE DEVELOPMENT IN THE DOMAIN OF PROPERTY RELATIONSHIPS IN MINANGKABAU

From the materials presented in this study it is obvious that there has been a considerable change in Minangkabau within the domain of property relationships during the historical period over which we can look. The most important changes in the law have been described in Chapter 6. They involve the development of prescriptive intestate inheritance rights of children as regards their father's *harato pancaharian* and the recognition of a nearly unrestricted autonomy to dispose of one's *harato pancaharian* both in the synchronic and diachronic dimensions. The law concerning relationships to *harato pusako* has not changed all that drastically. The restrictions pertaining to temporary and permanent alienation have

been lessened but by no means abolished, although in practice these restrictions have lost much of their former force through the increasing *pancaharianization* of use-rights to *harato pusako*.

The stories told in Chapter 5 show that, in comparison with reports in the older Dutch sources, the practice in property and inheritance affairs also has changed significantly. Minangkabau men and women act quite individualistically and manage property affairs for their own interest and for the benefit of their closest kin, their children in particular. The interests of the *kaum* and the more distantly related *kaum* members only play a small role and are generally respected only if the pursuit of *kaum* interests is in the personal interest, too. The stories also illustrate the individual motivational attitudes towards relatives in property and inheritance matters. Most people express a definite preference for small social units, for their conjugal family, their spouse, their children and grandchildren. To an increasing extent, they are emotionally indifferent towards their other kin. In summarizing the change I would put the greatest emphasis on this individualization and attachment to small social groups and the complementary disintegration of the larger social groups, the *kaum* and the *buah gadang*, rather than on the change "from the *kamanakan* to the children". The change "from the *kamanakan* to the children" is the aspect of the individualization process seen from the point of view of Minangkabau married men. It is a very evident illustration, for it transcends the borders of matrilineal descent and *kaum* exclusiveness. But it should not be overlooked that from the point of view of women, too, there is a change of focus from "one's children in the *kaum* to one's own children". Women definitely prefer their own children to their sister's children and act accordingly in property and inheritance affairs; women, too, are much more attached to their conjugal family than before. This individualization and attachment to smaller social groups is only somewhat less evident, as the social group is a segment of the larger social group within the framework of matrilineal descent. A certain preference for one's own children is, of course, nothing new in Minangkabau. For women, it was the normal state of affairs and quite in accordance with *adat*. For men, too, it cannot be looked upon as something unusual in "old" *adat*. It was always recognized in *adat* that close bonds exist between a father and his children, and between the father's *kaum*, the *bako*, and its *anak pisang*. As the *adat* saying states: "*Anak dipangku - kamanakan dibimbiang - urang kampuang dipatanggangkan - jago nagari jan*

binaso" - "The children are carried - the *kamanakan* are led - the people of the *kampung* are cared for - in order to safeguard the order of the *nagari*".

Villagers who interpreted this saying for us stressed that in *adat* (meaning "old" *adat*) it meant that the children had to be carried and to be cared for as long as they needed to be carried, i.e. as long as they were children and not adults. The *kamanakan*, on the other hand, were to be led throughout their lives. This interpretation brings out different emotional attitudes towards one's own children and *kamanakan*. The relationships towards one's children is warmer and more affectionate, the *kamanakan* are emotionally more remote. These different emotional attitudes fit very well with the general pattern which anthropologists have observed in matrilineal societies.¹ The relationship between MB and ZS in particular is one of authority and potential enmity. The picture of the nephew waiting for his mother's brother to die in order to inherit his property and to succeed to his position of socio-political authority was also present in Minangkabau and well expressed in the *adat* saying: "*mamak badagiang taba - kamanakan bapisau tajam*" - "the *mamak* has thick flesh, the *kamanakan* have a sharp knife" (Nasroen 1957: 87).

In contemporary Minangkabau, the attitudes towards *kamanakan* and children have changed, and particularly as regards the authority-aspect. The relationship between *mamak* and *kamanakan* has become less authoritative and more affectionate. The more recent interpretation of the saying "the children are carried, the *kamanakan* are led" does not make any difference in emotional value. It stresses that the children have to be carried with what one can carry, i.e. the, generally movable, *harato pancaharian*, whereas the *kamanakan* are led where people can be led, on the land, i.e. on the, generally immovable, *harato pusako*. This interpretation found its expression also in a changed version of the *adat* saying, which has already been reported earlier: "*anak dipangku jo pancaharian - kamanakan dibimbiang jo pusako*" - "The children are carried with the *pancaharian* - the *kamanakan* are led with the *pusako*" (I.H. Dt. Rajo Panghulu 1973: 58). The man's relationship towards his children has also changed. When the children are small, the Minangkabau fathers are probably no less affectionate towards their children than in former times, but when the children grow older, the relationship, especially towards their male children, becomes more authoritative, a reflex of the greater authority the contemporary Minangkabau father has over his children. As has been mentioned already, however, the *mamak*'s loss of authority is

only in part absorbed by the father's new authority, for much authority is wielded by the mother.

The growing individualization of social and property relationships, the attachment to smaller social groups and the complementary disintegration of the larger social units is a very summary description of the development which has taken place and which continues to take place in Minangkabau. The changes in the domain of property relationships are but one aspect of this change. The development can be attributed to a series of factors, of which the property and inheritance law and the behaviour in property and inheritance affairs take part, too: the increase of the population and the growing scarcity of land occasioned by it; the establishment of a new system of power and authority by the Dutch, which in a modified manner was maintained by the National Indonesian government, thus weakening the authority system of *adat*, and putting the task of law interpretation and application officially into the hands of *nagari*-external judges; the imposition of a new economic system on West Sumatra, which had a great impact on the *nagari*-internal economy; new residential arrangements, etc. Enumerating these factors is, of course, no more than a description of the change; it is no explanation in terms of operative causal connections. On the basis of my present knowledge of Minangkabau history I would not attempt such a causal explanation of the development except in the most general way. For there are only a few factors which we may assume to have had a one-way influence upon the others and for which we can show their logical and historical priority, like the influences (political, economic and others) which affected the *nagari*-internal relationships from the outside without being conditioned by the *nagari*-internal situation. Like all other factors, the significance of these influences varied considerably in the course of history and, once incorporated in *nagari* life, they became also internal factors influencing and to some degree reinforcing each other. I therefore would speak rather of an interpretation of the change, not of its explanation. What I can do is to assess the interdependence of the factors and the logical and functional link between them.

The imposition of a new power and authority system by the Dutch colonial administration was an important factor contributing to the disintegration of the traditional socio-political units and the growing individualization. The *panghulu*, the leaders of the political and property holding social units, whose position had just been attacked and partly

successfully demolished during the Padri-war, were slowly divested of most of their traditional political and juridical authority. To some extent they were incorporated into the new power structure, which made their function attractive as it provided them with a new source of power which they could use within the *nagari*. But only a limited number were thus privileged. The consequent distinction between recognized and unrecognized *panghulu* led to a loss of prestige and authority on the part of the unrecognized *panghulu*. Those recognized by the colonial administration tended to abuse their power which adversely affected the traditional mechanism of *buah gadang*-cohesion. And in relation to the colonial administrative system, the position of all *panghulu* was relative, they had become servants and tools of a higher power.² But the position of authority and prestige of the *panghulu* was not only reduced by the superordinate colonial power system. The new economic system and administrative machinery offered alternative positions of authority and prestige to their fellow *nagari* men, positions which were accessible independent of social status based upon descent. The same holds true for the developing system of religious functionaries, former *adat* functionaries who since the Padri-war had emancipated themselves from the *adat* system of status acquisition and succession. The mere existence of these new positions of social and economic authority already put an end to the exclusiveness of the *adat* system of authority. Besides, the incumbents of the new authority statuses competed with the *adat* authorities for power and influence, and thereby decreased the actual power wielded by the latter. Minangkabau informants frequently stated that this loss of power and prestige of the *panghulu*, together with the high expenses connected with a *panghulu* installation, were the main reason why so many *panghuluships* were vacant in the present situation, and why there was consequently no real authority exercised over the *buah gadang* and *kaum* members. Whilst this is probably partly true, there is another reason for the many vacancies. In CKL, there were several *panghuluships* for which there were interested potential successors, who did have the means to finance the installation ceremony. They were not installed because no consensus could be reached as to who of the various claimants really "owned" the title and should succeed to it. This was mainly due to the difficulty of the claimants to trace back and prove their actual genealogical relationship to the former *panghulu*. When the Dutch prohibited the creation of new *panghulu* titles in the 1880's, they also inhibited the traditional mechanism of group formation. Instead of splitting the

group of "one *sako* and one *harato pusako*" in accordance with the *adat* principle of "what has become too large must be shortened, what has become unclear must be clarified" (Chapter 2: 66), the *buah gadang* could not effectively split any longer, and this just happened during the period of the most massive population increase. Thus, "one property" holding groups became too large, and within them, subdivisions developed with a great degree of autonomy in property matters, although in *adat* they remained subject to the final authority of the *panghulu*. The more *kaum* developed in a *buah gadang*, and the more often these *kaum* split themselves, the more difficult it became to settle the question of the succession to the *panghuluship*. As the *musyawarah-until-sapakat*-principle of decision making still functions well in that no *panghulu* is installed unless there is an agreement between all units of the *buah gadang*, many *panghuluships* stayed vacant. And the more *panghuluships* stayed vacant, the more independent the *kaum* under their *mamak kepala waris* became. This led to the ambiguity which surrounds the legal status of so many contemporary *buah gadang* and *kaum* in CKL. It further greatly contributed to the feeling that being "of one property" in *adat* with the other *kaum* of one's *buah gadang* has only little to do with actual property relationships. The political and socio-economic units are practically dissociated in contemporary CKL.

Within the smaller social units, the *kaum*, which appeared as the property holding groups, the cohesion of property and authority was further dissolved through the increasing monetarization of property relationships to the "common" property. This was the result mainly of Dutch economic policy. Through the system of forced cultivation of coffee, money - held individually and mostly by men - became important. For lack of alternative possibilities it was invested within the *nagari*, mainly in land through pawnings, redemptions, and transfers of pawnings. This started the monetarization of property relationships to *harato pusako*, which provided the investors with a legitimation to use and to exploit *harato pusako* independent of the traditional mechanisms of allocation and distribution.

The new Dutch economic policy introduced in the beginning of this century brought new changes (cf. Kahn 1975, 1976, Dobbin 1977). The system of forced cultivation was abandoned, a tax-system introduced, and West Sumatra was opened to the influx of foreign commodities. A need for cash was created along with increased opportunities to earn cash through wage labour, trade, and the cultivation of cash crops; activities in

which mainly men were engaged. *Harato pancaharian* increased in economic importance, and it made the men increasingly independent of their *kaum*'s *harato pusako*. But the monetarization of relationships to *harato pusako* also gained in importance as land was increasingly used to procure money through pawnings and, on the other hand, as an object of investment of money through redemptions and transfers of pawnings. The traditional mechanisms of distribution and allocation of *harato pusako* lost in importance as they were increasingly replaced by the acquisition of exploitation rights through the investment of money. They were increasingly limited in their operation to a smaller circle of kin within the *kaum*, namely to those persons for whom the formerly monetarized relationship to *harato pusako* became *harato pusako turun temurun* in the course of time. This gradual dissociation of the legitimation to receive use-rights from the status of *kaum* member also contributed to a further decrease of the authority that could be exercised in decision making processes about *harato pusako* in which all *kaum* members participated; it also affected the *mamak*'s authority whose task it was to see to it that such decisions were taken.

The growing disintegration of the authority and property relationships within the *kaum* led to, and was reinforced by, the increasing spatial dissociation of the *kaum* members, a process accompanied and speeded up by the population increase. In former times, when there were small groups, nearly all *kaum* members could live in one or two *rumah gadang*. Living together probably contributed significantly to the feeling of belonging together. The concentration of the individual *kaum* members on the smaller *kaum* segments and their conjugal families, facilitated by their separate holding of *harato pusako*, and the increasing number of such segments as a consequence of the population increase, led people to prefer living in smaller houses. The monetarization and individualization of property relationships facilitated the building of smaller houses. The investment of money held separately in the building prevented it from being invested in the interest of the *kaum* as a group. When smaller segments of the *kaum* started to live in smaller houses, the conjugal families gained in importance. In most daily affairs the husbands were confronted with a smaller set of their wives' kin. Common residence of husband and wife in a smaller house also led to an increasing individuation of the wives within their *kaum*. Husbands lived in with their wives in small houses more permanently, and consequently less opportunities existed for them, as *mamak*, to stay in their mother's or

sisters' house(s). Sleeping in the open room of a small house is a much greater intrusion on the privacy of one's sisters than sleeping in the large front room of a *rumah gadang*. The more men lived together with their wives, and the more their *mamak* functions decreased in importance, the more they directed their economic activities to the house and property of their wives and children, applying most of their labour force and their *harato pancaharian* for the benefit of those with whom they lived. The new economic residence pattern and the increasing investment of men's *harato pancaharian* for the benefit of their conjugal family - generally in and on the *harato pusako* of their wives - led to an increasing individualization of their wives' *harato pusako* and a greater influence and autonomy of the conjugal family vis-à-vis their wives' matrikin.

This series of interrelated and mutually reinforcing aspects does not only affect the *kaum*-internal relationships and the conjugal families. It also is visible in the relationship between the *bako* and its *anak pisang*. Within the *kaum*, viewed as *bako*, social and property relationships are increasingly individualized, with the *urang sumando* playing a greater role. The land is held by smaller *jurai* more independently and, owing to population increase, it has become scarce. There is not much common *bako* property left, which could be given to outmarrying *kaum* members as *harato pambaoan*, or to *anak pisang* as *harato hibah*. There is less willingness and less opportunity for the group to show its generosity. If such property is still given from time to time, it is rather given by *jurai* out of their separately held *harato pusako*, and then only to *jurai* members and their children. But if a male *kaum/jurai* member stays with his wife anyway, working on her fields and bringing all his *harato pancaharian* to the house of his wife and children, why should he be given *pambaoan* as well if his *kaum* has barely enough land to live on? The men counter this decrease of *pambaoan* and *hibah* by investing their *harato pancaharian* in their *harato pusako* through redemptions and transfers of pawnings for the benefit of their children, by stressing the latter's inheritance rights within the *ganggam bauntuek* complex, and simply by cheating their sisters and mothers. So the *bako* - *anak pisang* relationship is gradually reduced to the individualized relationship between father and children.

I have summarily described the process of individualization and the attachment of the Minangkabau to smaller social units, and discussed the factors which contributed to this development. The change of property

and inheritance law and the change in the Minangkabau behaviour in property and inheritance affairs are one aspect of this process. I mentioned other factors which, through history, have influenced this process and, in turn, have been influenced by it. Thus if we wish to focus on the development within the domain of property relationships we cannot treat the dialectical relationship between law and behaviour in isolation. It is behaviour, and not only within the domain of property relationships, which influences and eventually changes property and inheritance law; and it is not only property and inheritance law, but other law and other conceptions as well, which influence and eventually change the behaviour in property and inheritance affairs. All the factors mentioned must be kept in mind when the relationship between law and behaviour and its development through history are analyzed. Their analysis is often approached through the question of whether practice was "ahead" of law, and of whether and when the "gap" or the "lag" between behaviour and law was closed; or conversely, whether in certain historic periods law was ahead of practice. The conceptualization of law outlined in the first chapter, however, demands a different approach which in my view leads to a much better appreciation of the changes which have taken place.

To begin with, we should note that the change in property and inheritance behaviour to a large extent has happened wholly in accordance with established general *adat* conceptions. The mechanisms of pawning and transfer of pawning are not new in *adat*, and the legal conceptions pertaining to them have scarcely changed. But through the growing infusion of money into the *nagari* and its investment in property relationships to *harato pusako*, the frequency and importance of these mechanisms have drastically changed the social and economic life in the *nagari*. This is an excellent example of what Renner, in his analysis of the development of the institutions of private law in Europe, called "change of function" (*Funktionswandel*): a considerable change in the "basis" or "infrastructure", due to non-legal factors, without a consequent or necessary change in the law (Renner 1929: 5 ff.).

Secondly, much change in practice could be achieved within the framework of unchanged general conceptions through a differently directed exercise of autonomy in property and inheritance matters. We must remember that the autonomy of the property holding group, which became manifest in its unanimous decisions, covered a wide range of potentially highly diverse results. The *kaum* could give property to its *anak pisang*;

the *kaum* members could give their consent to or take cognizance of the gift of property from a *kaum* member to his children. When in the course of history men tended to give their property to their children and the children could effectively keep this property after their father's death, this did not yet amount to a change of general law, nor was this necessarily contrary to *adat*. It primarily meant that the *kaum* recognized a greater autonomy in property affairs for their individual male *kaum* members. It is useful to recall the statistical data on *pancaharian* inheritance and *hibah* collected by Sa'danoer (1971). Sa'danoer reported an increasing amount of *pancaharian* inheritance and cases of *hibah* by the children, from which he concluded a change in inheritance law. But his data on *pancaharian* transfers (given for 81.8% of the transfers) show that in nearly all cases such transfers by inheritance or *hibah* were based upon unanimous decisions or agreements by the recipients' matrilineal and/or patrilineal kinsmen. Only 0.3% of all cases were decided by a State Court, and only 3.9% by the *adat* council (1971: 12). So the direction of inheritance was changed as the Minangkabau tended to exercise their autonomy, but this did not yet change the general *adat* conceptions. The probable reasons for this change in practice have been discussed above. The *de facto* individualization of property relationships was recognized by the *kaum* members in concrete decision making processes, but the decisions reached were still "*tergantung situasi dan kondisi*", depending on the situation and conditions of the concrete cases. The possibility of different decisions in future similar cases was thereby not excluded.

New, however, was the rule that individuals could also dispose of their *harato pancaharian* for the benefit of their children *against* the wishes of their *kaum* members. We should note again, that this new general rule did not so much affect, or run counter to, the *adat* conceptions concerning the direction of the diachronic flow of property, but primarily liberated the individual's autonomy from his *kaum*'s former restrictions. It confirmed the *de facto* individualization in terms of general legal consequences. Though individual autonomy was thus strengthened at the expense of the *kaum*, the latter's restrictive powers were also transferred to "society" as a whole. This autonomy transfer from the social group to "society" is manifest in the new general legal conceptions, restricting the autonomy of both individuals and groups in the name of society and its law. The Colonial and State Courts played a prominent role in this process, for they transformed the, probably statistically

dominant, contents of concrete decisions made in the exercise of *kaum* autonomy into a general legal rule ignoring *kaum* autonomy. The economic, moral, and political factors which influenced the decision making interaction of the *kaum* members in concrete cases to an increasing extent produced the same concrete result: the recognition of individual autonomy in concrete cases. These results were given general and prescriptive character by the courts. Two factors were decisive for this transformation:

1. According to the theory of law to which the judges adhered, law was or should be either the recognition of normative principles reflected in statistically preponderant behaviour (in the sense of the theory of customary law), or the recognition of normative principles embodied in the decisions of the courts and village judges in concrete cases (in the sense of Ter Haar's *beslissingenleer*). In both alternatives this thinking involves the transformation of the concrete results into a general rule: either directly as in Ter Haar's decision theory, or indirectly via the recognition of the statistical behavioural rule as in the theory of customary law. The essentially different doctrine of law and decision making in *adat* which stresses the uniqueness of each decision as being dependent upon the concrete situation, was thereby ignored (compare F.D. Holleman 1938).
2. The *adat* process of reaching and legitimating decisions through the adherence to procedural conceptions and the demand for unanimity *cannot* be reproduced in the State Courts. The courts cannot legitimate their decisions in terms of an interaction process but must do so by reference to conceptions outside this process. According to the judges' theory of law and decision making, such "external" conceptions must necessarily be the general law.

The most obvious change in the law of property relationships is the general prescription that a man's *harato pancahari'an* in intestate inheritance falls to his children. Yet this change is not as drastic as it is often made to be. For one thing, the rule only operates within the relationship between father and children, whereas in all other cases of *harato pancahari'an* inheritance the rules of matrilineal inheritance still apply; for another, the patrifiative relationship upon which the new intestate inheritance rule was based, did not have to be "invented" for diachronic property transfers. In Minangkabau *adat*, a man's *harato pancahari'an* could be diachronically transferred along the patrifiative link, if he wished to do so *and* if his *kaum/jurai* members agreed. The

man's matrikin had, based upon common group membership, an "expectancy" to inherit their *mamak's harato pancaharian*. Their expectancy was manifest in their power to restrict his autonomy to dispose diachronically over his *harato pancaharian*, whether the transfer occurred during his lifetime or after his death. When this power was gradually abolished and his unrestricted autonomy became recognized, also this expectancy vanished. If, as Willinck writes, in former times the children could never receive more *harato pancaharian* after their father's death than during his lifetime, now the reverse was true. What the *kamanakan* could not assert during their *mamak's* lifetime, they could not demand after his death either. *Harato pancaharian* intended for, used or kept in the house of the children, "remained" there and "fell to" the children after their father's death. Moreover, a man always had and still has the option to "intend" *harato pancaharian* for his *kamanakan*, e.g. through pawning it in "the house of the *kamanakan*", in which case it still falls to them after his death. This "falling of *harato pancaharian* to the children" was then called inheritance.

Although data on the problem are nearly non-existent, I think that the "falling to the children" was only slowly identified with the technical western legal conception of "intestate inheritance". Remember that in former times the *harato pancaharian* received by the children were not incumbered by the *pancaharian* holder's debts. This seems to have changed, too, for children tend to be held responsible for their father's private debts in contemporary Minangkabau. But the uncertainty which still surrounds the inheritance of debts in contemporary Minangkabau indicates that the filial inheritance of *harato pancaharian* is still somewhat different from that of the *kamanakan* in former times, when the latter inheriting *harato pancaharian* were fully liable for the *pancaharian* holder's private debts. The recent case described earlier (Chapter 4: 184) in which a debt case was construed as a pawning case by the court, shows that there may well be different attitudes towards *pancaharian activa* or *passiva*.

I would therefore say that the conceptualization of the childrens' inheritance right in their father's *harato pancaharian* presents a systematic development of the old law recognizing the individual's autonomy over his *harato pancaharian* and of the use made of this autonomy under the prevailing socio-economic conditions, rather than a radical break of the *adat* conceptions regarding intestate inheritance.

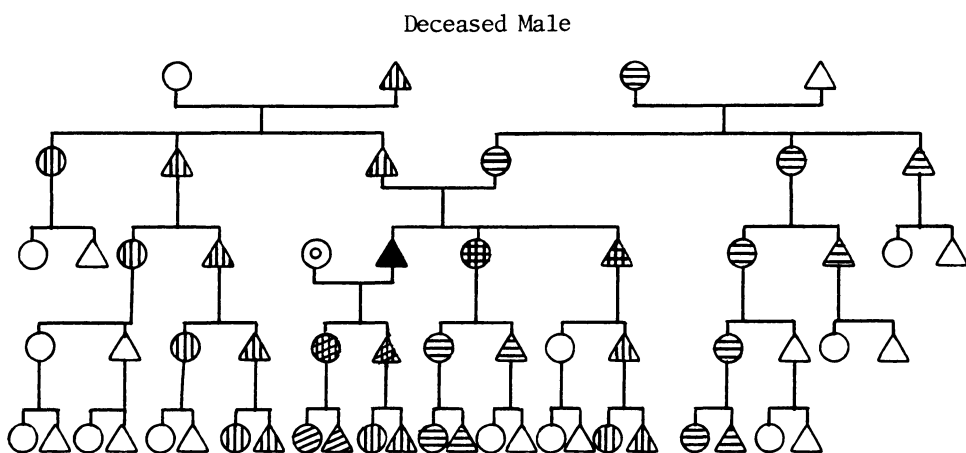
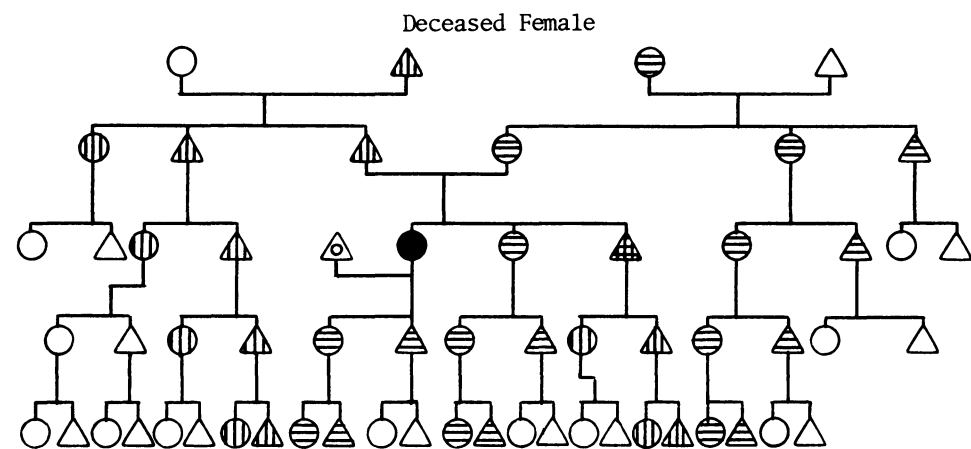
B. THE MINANGKABAU SOCIAL SYSTEM AND THE MAINTENANCE OF PROPERTY RELATIONSHIPS THROUGH TIME

I shall now try to consider the system of property relationships in general as part of the social organization of the *nagari*, and give my interpretation of the changes which have occurred in the more recent past. Some previous interpretations of social change in Minangkabau shall be briefly discussed first.

For most authors commenting upon social change in Minangkabau, the change in the inheritance law concerning the *harato pancahari'an* has been the central topic. The development of intestate *pancahari'an* inheritance "from the *kamanakan* to the children" was regarded as indicative of a radical change in the Minangkabau family and social system in general. Already in 1909, Van Vollenhoven mentioned closer bonds between father and children (1918: 271), echoed by Joustra, who spoke of a growing inheritance law "in the father's line" (1923: 127). Later authors observed a change from matrilineality to patrilineality (Maretin 1961: 193). Although these statements do not, of course, embody the complete analyses which these authors have given, the label which they have put upon the change in Minangkabau is highly misleading, superficial, and not supported by ethnographic facts.

For the sake of greater clarity, I present two diagrams (p. 374), showing the matrilineal, patrilineal, and bilateral connections between a deceased female/male and those persons who can become actual heirs to their property according to the contemporary inheritance system. Already a brief glance at the tables shows that statements about patrilineal or bilateral inheritance *as a new system* are completely unfounded. The table for the inheritance from a deceased female indicates that, for females, there has been no change at all, and references to bilateral or patrilineal inheritance are obviously nonsensical in this respect. They reveal not only a viricentric view of change, but do not even hold true for male deceaseds either. A "patriline" is only used in the descending direction for inheritance between a male ego and his children. The classical patrilineal heirs, BS, FB, FBS, etc., are completely excluded in the Minangkabau system. Equally marked is the difference between actual inheritance and assumed patrilineal or bilateral inheritance on the -2 generation level. The designated patrilineal heirs would be the SS and SD or, bilaterally, SS, SD, DD, DS; in fact, only the DS and DD can

Table of Lineal Inheritance Systems



- | | | |
|---|---|--|
| ⊖ | △ | Potential heirs in an assumed patrilineal system |
| ⊗ | △ | Potential heirs according to Minangkabau <i>adat</i> |
| ⊙ | △ | "New heirs" according to Minangkabau <i>adat</i> |
| ○ | △ | Potential heirs in an assumed bilateral system |
| (in addition to the three categories mentioned above) | | |
| ● | ▲ | Deceased |
| ⊙ | △ | Spouse |

become actual heirs in Minangkabau. The only thing one can say is that, within an otherwise unchanged matrilineal system of inheritance, the patrifiliative link in the descending direction is now also used for intestate inheritance.

This misinterpretation of the development in the *adat* of inheritance can hardly be explained by the authors' superficial use of the concept of lineality. In my view, it rather reflects most authors' ideological bias. Many interpretations of the Minangkabau social system and such change as could be observed appear to be given by persons opposed to the *adat* system or who looked upon it as something "unnatural". Within Minangkabau, such interpretations were mostly given by experts with a strong Islamic background. Most foreigners adhered to conventional anthropological or Marxist evolutionary ideas. All were convinced that after the unnatural state of matriarchal and heathen Minangkabau *adat* the patriarchal, Islamic, or capitalistic stage would follow. These biases become manifest, on the one hand, in a dramatization of the matrilineal principle as more or less the only one which structured "old" Minangkabau society; on the other hand in an equally strong dramatization of any change or deviance from this hypothesized matriliney. Any change from pure matriliney was interpreted as a change towards the desired and expected direction of an Islamic, bilateral modern, or capitalist society. This should be stressed, because much of the "description" given by some authors prove to be ideologically biased when the original sources, upon which these descriptions rest, are examined. Among the non-Indonesian writers, Maretin offers the most obvious example, and his descriptions have already been commented upon in other parts of this study.³ In Minangkabau it was the persons with the closest attachment to Islam who put the greatest emphasis upon the change in the inheritance law. They held that in former times, the whole *pancaharian* was inherited by the *kamanakan*, whereas now it is inherited by the children in accordance with Islamic law. The opposite attitude, namely to play down any changes in the *adat* system, can be observed among the *adat*-*"purists"*. So R.M. Dt. Rajo Panghulu, one of the most reknown contemporary *adat* experts who is regarded as an adherent of "pure" *adat*, writes that it was the law in Minangkabau that *harato pancaharian* should be inherited by the children (1971: 51).⁴

The truth probably lies somewhere between these extremes. In terms of *descent* and *lineality* the change in *pancaharian* inheritance is certainly not as drastic as it has been made out to be. Many of the apparent elements

of change are in fact integral parts of the traditional social system, as has also been stressed by a few writers. So the traditional system recognized bilateral kinship (a point particularly stressed by Djojodigono 1968: 262 ff.), but these ties were not loaded with social functions. The patrifiiliative link was always an integral part of the Minangkabau social system, and it could be used for property transfers - similar to matrifiiliative links being commonplace in patrilineal societies. Korn (1941) and Fischer (1964) in particular stressed the importance of the father-children/*bako-anak p'sang* relationship as part of the social organization, and cautioned against the superficial interpretation in terms of "pure" matriliney and "exceptions". De Josselin de Jong's interpretation of the Minangkabau social system as being based upon a system of double unilineal descent (1951), is exceptional insofar as it does not subscribe to the naive notion of a formerly exclusively matrilineal Minangkabau, and in that it does not treat the "deviations" from the matriliney as "changes". But instead of concentrating upon the bilateral kinship elements and the patrifiiliative link, it postulates the existence of a patriline, for which the evidence adduced remains unconvincing.⁵

Most of the changes which have occurred during the last 150 years could in fact be absorbed by the traditional social system. An analysis of how these changes were actually absorbed reveals the main factors which permitted matriliney to survive in Minangkabau in spite of its frequent obituaries.

The Minangkabau social system is upheld through time by the principle of matrilineal descent, which embodies the Minangkabau notion of social continuity within the territorial framework of the *nagari*. Social relationships which are not in accordance with this principle are skillfully and consciously adapted. Those contributing to continuity are assimilated with matrilineal descent and expressed in descent terminology: hence, the incorporation of group members not related by genealogical descent, as well as permanent inter-group relationships like the *hindu* system. The other relationships not in accordance with matrilineal descent, i.e. affinal and patrifiiliative relationships, are recognized, but are only of a temporary nature. Though they are an integral part of the social organization of the living persons, they are not used to structure the system in continuity. Marriage establishes only temporary affinal bonds, which usually are very important for the persons concerned, but unimportant for the continuity of the social organization.

This continuity is structured in terms of descent, and other permanent bonds between groups are created by common exogamy or "non-marriage". The filiative relationships between the *bako* and its *anak pisang*, though highly valued and functionally relevant, are also temporary, for they end with the death of the individual *anak pisang*. For the temporary existence of the individuals a larger set of relationships is therefore provided. They are not completely bound by descent principles; on the contrary, within the unchanging framework of continuity, the individuals are granted a certain amount of freedom.

This parallel existence of permanence in terms of matrilineal *pusako* continuity and temporary non-matrilineal relationships, also obtained in the field of property relationships. In continuity, all property was, or was destined to become, *harato pusako turun temurun*. But temporarily, property could be transferred across the borders of the *pusako* holding groups. *Harato pusako* could be pawned, but the right to redeem could never be abrogated. The *bako* could allot property to its *anak pisang*, but after the *anak pisang*'s death the property reverted to the *bako*. A person's *harato pancaharian* could be given to his children, crossing the line of his matrilineal property holding group, but once it had crossed the line, it again became and remained *harato pusako* in matrilineal continuity.

The recent change in the inheritance law from the *kamanakan* to the children does not, as such, greatly affect the system, for the use of patrifiative links for property transfers is by no means new. What has happened is that the functional value of the patrifiative link has increased, but this only concerns the temporary relationship between a father and his children. Whether *harato pancaharian* becomes *harato pusako* in the man's *jurai* or in his children's *jurai*, is irrelevant for the system; what matters is that it becomes *harato pusako*, and as such follows the continuity outlined by matrilineal *pusako* inheritance after its short patrifiative interlude.

The same holds true more or less for the changes which, for economic reasons, have occurred in the residential pattern and in the individualization of the residential units. No matter for whom a man might work, or where he might spend most of his time, he was and is attached to a group in which matrilineal continuity is represented by women. As Tanner has stated, the new arrangement of the men's residence and economic activities in the *nagari* has led to a shift within the matrilineal system, but has not affected the matrilineal system as such

(1971: 34). Whereas in former times men were more attached to their own matrilineal groups, in contemporary Minangkabau they are increasingly more closely attached to their wives' matrilineal groups. The new forms of individualized residence of conjugal families in small houses, which is generally thought to be detrimental to a matrilineal system, has supported rather than weakened matrilineity in Minangkabau, for it has eliminated the only alternative for uxori-local residence. Residence is rooted in *pusako* property and *adat*, and since both still prevail in the whole *nagari*, there is practically no chance to establish neolocal residence in the *nagari*. I fully agree with Tanner who speaks of an even increasing matrifocality in the Minangkabau *nagari* (1971: 34). To some extent this even fulfils part of the modern man's wishes. He wants to live together with wife and children, he wants to work with and for them, and he wants to emancipate himself from the bonds of his *kaum* membership. But the more he does so, the more he lives and works with his wife on his wife's *harato pusako*, the more he also contributes to the maintenance of the *pusako* system, and the less he is a danger to it or to his sisters through whom the *pusako* is continued. The medium of economic emancipation, money, and its investment for the benefit of women (whether wives or sisters) is absorbed in the *pusako* system. Those men who really want to emancipate themselves by controlling property and money which is not at once absorbed in the *pusako* system and who want to establish households whose residence is not determined by *pusako* and *adat*, leave the *nagari* to seek some freedom in the towns or in other areas of Indonesia. The Minangkabau tradition of voluntary temporary emigration (*merantau*) has gradually assumed a new quality. In former times, *merantau* would bridge only that period in a Minangkabau man's life in which he had not yet a stable position in his social system. In contemporary Minangkabau, *merantau* increasingly provides the outlet for those Minangkabau who do not wish to conform at all to the *pusako* system in the *nagari* (cf. Naim 1974). The conflict thus is not carried out within the *nagari* but is exported. As more men leave the *nagari*, so the importance and dominance of women increase within it, while the chances of Minangkabau men ever breaking the *pusako* system of property and residence in the *nagari* get even more slender. We have seen that in contemporary CKL even the staunchest opponents of the *pusako* system, the leading Islamic functionaries who are economically largely independent of their wives' and their own *harato pusako*, have not yet had the chance of evading residence on their wives' *harato pusako*.

It is property which is the main carrier of the *pusako* ideology. That the maintenance of the *pusako* ideology is possible at all, largely depends on the natural characteristic of that property. Basically, it is land and not consumable. It would be difficult to maintain such a system on the basis of consumer goods. But the natural characteristics only facilitate the continuous existence of the *pusako* system; the decisive factor is the socio-legal definition of the *pusako* land as something essentially immobile (i.e. inalienable) and inconsumable. The example of western societies shows that land can easily be transformed into a highly mobile commodity which is socially "consumable"; in other societies, however, property objects which seem movable and consumable to us, like cattle, may be transformed into virtually inconsumable and legally immobile property which greatly contributes to the continuity of social groups.⁶

In Minangkabau we can observe an important change in this respect. The monetarization and consequent individualization of property relationships, the increasing evaluation of property relationships in terms of money, has been mentioned as the most important factor of change. I agree with Schrieke, Maretin, and Kahn that these changes in the economic system will be the most decisive factors which, in the end, may contribute to the destruction of the *pusako* system. This has not yet occurred, however. Until now, the system has been strong enough to absorb most of the impact which the monetarization of property relationships has had. So far, it has only become effective on the temporary level. The *pusako* status of the property objects to which the monetarized relationships pertain is maintained through time, and the individualized relationships themselves become *harato pusako* through time. New groups come into existence which hold the formerly individualized property relationship as *harato pusako turun temurun*, and within which the traditional mechanisms of property allocation and distribution are used. In some respects the increased monetarization has even supported the *pusako* system by the increase of pawnings, redemptions and transfers of pawnings, and the *pusako* status of the property and the rules of matrilineal *pusako* inheritance are thus regularly restated. Temporary games with money and land can easily be played within a matrilineal system.

The *adat pusako* system is, of course, not only a system of property relationships but also one of socio-political authority. Although the actual authority of the heads of the matrilineally structured groups

has decreased heavily, the little authority still left greatly supports the system. In the field of property relationships, the lineage head's authority has been weakened by the growing dissociation of the rights to use and to exploit property from the individual's status as a group member. Yet this loosening of authority has in part been counteracted by the conception of the "*harato pusako tinggi* of the *kaum* as represented by the *mamak kepala waris*", which was and is systematically enforced in the Colonial and Indonesian State Courts. If authority over persons is considered in isolation, the authority of the *mamak* and *panghulu* has decreased, too, by the superimposition of the colonial/national system of local government. But these systems of authority, though skilfully manipulated by the Minangkabau, have remained a foreign element through their lack of social relevance. As regards authority relationships which are both social and political, there is no alternative (yet) for the *adat* system. In the domestic and property domain, authority still is too much bound to *pusako*. Men as fathers can exercise some authority within their domestic household, but they have no chance of building up a larger group of persons over whom they could exercise authority. In the political domain, all efforts to bind political representation and government to political party relationships have more or less failed, which probably is also due to the fact that the Central Government does not permit really free political party association. It is symptomatic that the DPRN (*Dewan Perwakilan Rakyat Negeri*), the elective village government councils, have recently been abolished by the Provincial Government for their ineffectiveness. Recourse is made again to a *Kerapatan Adat*, in which the *Ninik Mamak*, the *adat* lineage elders, play a dominant role. This new prestige given to the *adat* functionaries makes their position more attractive again. It may now be easier to fill the many vacant *panghulu*ships, and to bolster the declining authority of *adat* functionaries in general.

With the analysis of the factors which maintain the system of the *adat pusako* I have also indicated those aspects in which change, or continuing change, may prove to be fateful for it. The analysis provides a good frame of reference in which the development trends outlined in Chapters 5 and 6 can be properly assessed.

In the last resort, it is the conception of the *pusako* continuity of property relationships which gives the Minangkabau social system its distinctive character. All actual property transfers are related to the

notion of *pusako* continuity and thereby assume a temporary quality. The notion of continuity "infuses" these temporary affairs with the past and future. The inalienability of residual property relationships through time, and the rule that all property must become *harato pusako* through time, are the basic functional safeguards of the system. In contemporary Minangkabau, there is no evidence that the idea of *matrilineal* continuity is to be replaced by any other conception of *lineal* continuity. But there is sufficient evidence that the conception of continuity itself will disappear. It is probable that, if the notion of *pusako* continuity fades away, the hitherto temporary holding of property, and the temporary character of property transfers, will gradually assume a different quality. They will lose their temporary character in relation to predefined continuity. The presents in which they occur will become discrete periods of time which follow each other successively and the sum of which constitutes "continuity".

There are definite signs which indicate this development. The conception of *pusako*-continuity forms part of the knowledge and consciousness of the Minangkabau. As such, it is to a great extent embodied in language. In Chapter 6 I have shown how language, the conceptual system in which the Minangkabau think and speak about their property relationships, changes. The diachronic dimension is gradually eliminated from the conceptional system, which finds its culmination in the transformation of the *harato* categories into the *hak milik* category. The *hak milik* status of property objects is not affected by time or property transfers, synchronic or diachronic. Nothing in the *hak milik* conception transcends the holding and the inheritance of property. Looked at retrospectively, it is and was *hak milik* regardless of the way it had been acquired. Prospectively, it will keep its legal status also when inherited. *Hak milik* holding and *hak milik* inheritance will be successively repeated in the same way through time, and continuity of property holding can only be inferred from such successions.

The tendency to employ *hak milik* for *harato* is most marked when people refer to *harato pancaharian*. This leads to a conception in which *harato pancaharian* is equated with *hak milik*, and in which the property relationship no longer becomes a *harato pusako* relationship but keeps its abstract legal status through time. As could be illustrated by a court judgement (p. 345 ff.), there is a tendency to make this explicit and to abolish the *pusakoization* rule for *harato pancaharian* as a matter of

law and to ban it from conceptual objectifications. Thus, at least as regards *harato pancaharian*, the future will have no place in the thinking about property. This will not only have the effect that no new *harato pusako* will be created, it will also gradually diminish existing *harato pusako* through its *pancaharianization*. We could see that, through the monetarization and individualization of use-rights, *pancaharianized* relationships to *pusako* property are increasingly divorced from the matrilineal system of inheritance and *pusako* continuity. There is also a tendency to extend the use of *hak milik* to *harato pusako* if the latter is individualized through monetarization or even through intra-*jurai* inheritance (see p. 347 f.). The rights to use *harato pusako* are reified in the concept of *hak milik*. As a consequence, the rights themselves - and not the land to which they pertain - tend to be treated as things. Through this mechanism the legitimation of holding and using property is increasingly dissociated from the natural characteristics of the property as well as from its original acquisition and previous transfers. In short, the past is being eliminated from property relationships.

The weakening of *adat* socio-political authority likewise has important consequences for this development, for the continuity of *pusako* is also expressed in the socio-political control over property. *Pusako* property was held in common by a group defined as "one" within the wider socio-political domain. The distributions and allocations of use-rights in such a group were temporary in relation to the permanent division of the residual "group-*pusako*" relationship, a division which involved property and political group alike. Such permanent divisions of the group-*pusako* relationship have lost in importance with the decline of *pusako*-based authority and the disturbance of the traditional mechanisms of group splitting and formation of new groups (see p. 78). Seen against the decreasing relevance of permanent property divisions, the formerly temporary distributions and allocations appear to be less temporary, and the holding of distributed *pusako* property will increasingly be regarded as more individualistic and permanent. The old allocations and distributions turn out to become final divisions, and the provisional character of these property relationships tends to develop into a residual one.

As the notion of *pusako* continuity fades away from the language and consciousness of the Minangkabau, the present in which they live gains in importance, and with it, all activities which occur in that present.

Here, individuals hold individualized property relationships. Rights to land are highly mobile. Even if they are still considered to be of a temporary nature only, the effectiveness of transfers often transcends the lifetime of individual persons. Individualized property relationships are inherited by the children, and if the individualized character of the relationships can be maintained through time, they will later be inherited by their children, too. If the Minangkabau were to consider only this when conceptualizing their system of property relationships, they probably would not retain a system like *adat pusako*. But the notion of *pusako* continuity is still strong and as yet absorbs an ever expanding present. A new notion of continuity could only be derived from the present, and this would require a present similar to the past and the future. It would require that the mechanisms maintaining the continuity of property relationships in the present were similar to the ones used in the past and expected to be used in the future. Before a notion of continuity can be established which is different from the old one and more in line with the activities in contemporary Minangkabau, the association of property holding and inheritance with the past and the future must be completely abolished first. As we have seen, the Minangkabau are well on their way to doing so and to reducing the past and the future in favour of the present - at least as far as the system of property relationships is concerned. But we have also seen that many factors which on the one hand weaken the *pusako* system, reinforce it again on the other. If left to further evolution, it may still have a long existence in Minangkabau. Those who are opposed to it probably rightly believe that a revolution would be necessary to cut short its life (HAMKA 1946).

C. CONCLUDING NOTE ON THE APPROACH EMPLOYED

Finally, I briefly wish to revisit some of my basic assumptions and hypotheses in order to evaluate them in the light of the empirical data and analyses which I have presented.

As a whole, my study illustrates an important lesson in anthropological theory, which is neither new nor generally taken to heart. The presentation of the Minangkabau material shows that it would be naive to assume that systems of objectified conceptions, the *adat pusako* in particular, would be an adequate representation of what really happens

in property and inheritance affairs. Such assumptions would be particularly unwarranted, if the systems were to be forced into the straightjacket of a structural-functional model in which the internal contradictions were smoothed away and the "gaps of uncertainty", left open for the exercise of society's members' autonomy, were filled. The disregard with which British social anthropologists like Radcliffe-Brown and Evans-Pritchard treated the actual behaviour of society's members was based upon the assumption that the structure which they described was, essentially, a representation of actual behaviour. Conduct not conforming to this patterned set of roles and relationships was dismissed as exceptional or deviant.⁷ During the last two decades several anthropologists have demonstrated that this assumption cannot be upheld. They stressed that "the ideal order tends to be a constant which is reinterpreted to fit the changing circumstances of economic and political fact, ... but that the latter, the facts of empirical reality, are, in every variation, constrained by the ideas which people hold about what is supposed to be the case" (Leach 1954, 1961 b: 9). They focussed attention on the fact that people could, through such reinterpretations, substantially change the ideal order. Other authors have stressed the superficiality of the structural-functionalist assumptions as regards the nature of rules and structures, demonstrating that society's structures and general legal conceptions rarely, if ever, form a logically consistent system nor are prescriptive in character only. More attention was consequently given to the study of social processes in which people were shown to manipulate existing conceptions and to create their own innovations. A variety of conceptual frameworks was designed to analyse such processes, like case-method, situational analysis, processual analysis, network analysis, etc.⁸ The comparison of the Minangkabau systems of objectified conceptions given in Chapter 4, and the stories told in the 5th Chapter, reemphasize the need of such studies if social organization is to be described comprehensively.

But my own study illustrates, too, that social organization cannot be treated as a system of overt human activities only, and that the nature of a social system cannot simply be inferred from the human conduct observed in concrete cases. As Leach already stressed in his *Political Systems of Highland Burma* (1954) and as has been outlined systematically by Berger and Luckmann (1967), human behaviour is only understandable in terms of the body of objectified conceptions which

provides the means by which the actors explain and justify their actions. If we observe 100 cases where children inherit their parents' *harato pancaharian* in Minangkabau, this does not make the inheritance system for *harato pancaharian* bilateral. Such bilaterality would only exist in the anthropologist's head. The generalization of concrete behaviour and its projection into structures or general legal conceptions which lies at the root of action theories in sociology and of the case-methods in legal anthropology, is no less misleading and distorting than was the former structuralist-functionalist assumption. For it creates structures or general legal conceptions where there are none, and induces the anthropologist to substitute the people's general system by his own interpretations of concrete cases. The greater emphasis which in recent studies has been laid upon the diachronic aspect of social processes is an important step towards improving their analysis. But the study of "diachronic micro-sociology" (Turner 1957: 328), too, only makes sense in relation to the system of objectified conceptions and the notions of time which are embodied therein.

The anthropologist must take a step back, and look at both the actual behaviour of society's members and the system of objectified conceptions. He must try to assess how the system of conceptions influences human activity and how human activity influences the conceptional system through historical time. He is in the position which Gluckman, with reference to legal anthropology, has characterized with the words: "We are caught in a circle, in which law, it is true, can only be understood through cases - but cases can be understood only through law, and both have to be set in the matrix of social process" (1973 b: 622).

All reality is subject to social definition, and all social definition of reality has its legal aspect. This holds true for all domains of social organization which have been defined with reference to universal problems, and it holds equally true for the three factors which constitute the field in which all human societies exist: the psychobiological character of man, the temporal continuum, and the environment. The Minangkabau system of property relationships and the changes which have occurred therein illustrate this point in a manner which is not very exotic. Let me briefly clarify the point in comparison with the conclusions which Leach has drawn in a study dealing with a situation similar to Minangkabau. In *Pul Eliya* (1961 b) he stressed that the

ecological situation, and the use made of it for production, are factors which determine what people will do, and that the constraints of economics are prior to morality and law (1961 b: 9). I should rather say that these factors determine *that* people do something about them; they pose problems to be solved by social definition and activity. *What* people do, however, is not so determined. It is true, that "water evaporates and flows downhill" and that land cannot be extended in space (Leach 1961 b: 9), but the immovable character of land can be accommodated by creating socio-legal mobility of property relationships to it. Besides, the constraints of economics are part of the social definition of reality, too. To some extent, they exist in the form of law and morality, although they may be "prior" to the law and morality in other domains of social organization.

Though Leach's description and analysis rests upon assumptions which are basically similar to mine, I find irritating his insistence that the social structure he describes for Pul Eliya is, in principle, a statistical notion, and that Pul Eliya is a society in which locality and not descent forms the basis of corporate grouping (1961 b: 300 f.). For this would imply that locality, in contrast to kinship, would not be a subject for social definition and legal conceptions. That locality, in its abstract sense, is the basis of the continuity of human societies, is a commonplace which holds true as long as people live on earth. It is always socially defined locality, in terms of property relationships and residence, which are basic to continuity. The character of these social definitions can no more be inferred from the mere fact that people live on the land - the Minangkabau residence rules here provide a good example to illustrate this point - than it can be inferred from the fact that a man begets children, that he will be treated as a father in his society. Though Leach later speaks of "the environmental context as a social construct" (1961 b: 306), he does not incorporate this notion into his analysis, but rather suggests an alternative between the legally/morally defined kinship system and the natural continuity of the environmental layout and mode of economic production. His analysis does not make it sufficiently clear that the "alternative" here is between two aspects and domains of the objectified system of social reality and its legal dimension.⁹

What Leach actually means, of course, is that locality, conceived in terms of property relationships to land, is of much greater importance

for the continuity of Pul Eliya society than is Pul Eliya kinship. But his conclusion, "that kinship systems have no 'reality' at all except in relation to land and property" and that "what anthropologists call kinship structures is just a way of talking about property relations" (Leach 1961 b: 305), does not help to clarify the matter. It rather conceals the specific problems about which we would want to make generalizations. For one thing, it confuses descent/kinship as an ideology of identities (Moore 1969) with the legal consequences which can be attached to this ideology. As Moore has pointed out in her brilliant analysis of "Descent and Legal Position" among the Lango (1969: 375 ff.), and as the Minangkabau data also illustrate, such a distinction is crucial for the understanding of social systems in which descent/kinship is a dominant element. Secondly, it is a misleading restatement of Maine's *dictum* that primitive law does not sharply distinguish between the law of persons and the law of things. In a most general and superficial way Leach's aphorism would seem to hold true for both Pul Eliya and Minangkabau; yet there are important differences which are concealed by it. In both societies there is more than one mechanism of incorporation into the socio-political group, as a result of which kinship terms and group membership are extended to persons who are not related to the core-members of the group who are inter-related by common descent. In Minangkabau, the incorporation into the group by formal adoption is a precondition for the acquisition of property rights. In Pul Eliya rather the contrary is the case, the critical test of membership in the "descent-group" being whether or not a person can assert a claim to any kind of property right (Leach 1961 b: 303). This presupposes that a person can acquire such property rights by means other than his prior group membership. These means are indeed provided in Pul Eliya through the mechanisms of sale and outright gift, and this probably led to the dissociation of descent and property holding and to a relatively greater importance of property law as distinct from the legal consequences of descent. So in Pul Eliya "property is a way of talking about kinship", rather than *vice versa*. But note the difference with Minangkabau. Here, too, kinship and property are increasingly divorced. But whereas property can be acquired by means other than those provided by the legal consequences attached to kinship, kinship cannot be acquired by establishing rights to property.

The relation between kinship and property is also crucial if the maintenance of kin groups and of property relationships through time is considered. I think that the approach proposed towards this problem in the first chapter is justified by its practical application to the Minangkabau system of property relationships. I do not want to repeat myself unnecessarily here, but will only indicate the difficulties into which we would have run if the alternative approach, as exemplified by Goody, had been followed.

When speaking of inheritance in the widest sense, the definitional restriction of the category to property transfers *after* the death of a property holder has to be given up. This much was indicated by the ethnographic data referred to in Chapter 1 and in most social and legal anthropological writing. So inevitably, property transfers made during the lifetime of the property holder have to be associated with the "inheritance in its widest meaning" or, as I would have it, with "diachronic transfers". Admittedly, this primarily concerns donations to persons who would, after the property holder's death, receive this property as legally prescribed heirs anyway, the donations in the holder-heir situation (Goody). Yet if we were to follow Goody's suggestion and only treat donations from holder to prospective heirs as inheritance in its widest sense, where would we stand in Minangkabau and how could we analyze the change in Minangkabau inheritance law?

Hibah transfers of *harato pancaharian* from a father to his children at the time when the *kamanakan* still inherited such property intestately, would not be subsumed under Goody's "inheritance" but under "alienation". Yet a) the transfer would only be effective after the father's death, b) the property would be held by the children during their whole lifetime, and c) we can safely assume that such transfers were made "*propter mortem*" by Minangkabau men. It is true that such transfers *are* an alienation of property from the corporate group, but they also are clearly diachronic or inheritance-like in character. Important as the distinction between in-group and out-group property transfers is, it should not be the decisive element in the definition of "inheritance" but be subordinate to the synchronic/diachronic distinction. Inheritance within the group, donations in the holder-heir situation, and donations and testamentary dispositions to non-intestate heirs (to non-group members) are, of course, different kinds of property transfers and should be distinguished, but they are all diachronic in character and should therefore be distinguished as sub-categories of the wider category of

diachronic transfers.

This approach is even more plausible if the change in Minangkabau *pancaharian* inheritance law is considered. The contemporary intestate inheritance of *harato pancaharian* by a man's children should be included in the anthropological category of inheritance, probably no one would contradict this. And, in terms of Goody's argument, the *hibah* to the children in contemporary Minangkabau would have to be included as a donation in the holder-heir situation. Yet, in Goody's conception, these transfers would be "alienations" from the corporate group? And how should we categorize a *hibah* transfer of *pancaharian* property to the *kamanakan* in contemporary Minangkabau: as "inheritance", because it is a transfer to members of the matrilineal descent group? Or as "alienation", since it is an alienation of property from the new legal heirs? Clearly, Goody's categories fail us here. Through the implicit identification of unilineal descent with inheritance (which is in contrast with Goody's explicitly stated intention, see 1962: 316), it cannot deal adequately with situations where the one changes differently from the other. As the Minangkabau example illustrates, the change in intestate *pancaharian* inheritance law, though changing the functional relevance of the matrilineal descent principle and of the patrifiiliative relationship, has not changed the latter as such: it has neither changed the composition of the Minangkabau matrilineal descent groups nor added new persons to a man's kin. Is it therefore not much more reasonable to define "inheritance" by reference to the character of a property transfer (diachronic, no counter-prestation) than by focussing on the beneficiaries?

It should be noted that the same objections would hold true if a less rigid approach than Goody's were followed and the "corporate group" were to be replaced by "kin" or "legal intestate heirs" in general. Again, it cannot be denied that all legal systems predefine a set of persons as intestate heirs, usually selecting a person's kin (by descent, filiation, marriage) as beneficiaries of his property, and that donations or testamentary dispositions to non-kin are legally and emotionally treated differently from those made for the benefit of kin or legal heirs. But there would again be the identification of inheritance with transfers to the legal heirs. In other words, such a conception of inheritance is implicitly based upon a predefined system of prescriptive inheritance law. It would only embrace the restriction of society's members' autonomy in property affairs. It would ignore that even in the most traditional

societies society's members have some legally recognized autonomy to determine by whom their property is to be held after their death; or, if it is transferred during their lifetime, who may keep it after their death. Any change in prescriptive inheritance law would directly affect such a concept of inheritance. Consequently, the concept would not be suitable as an analytical framework for dealing with culturally and historically variable inheritance laws and practices.

This brings me to what I believe to be the primary question in the study of social organization and its legal dimension. It is not *how* the social system, in its various domains, is structured, but *how far* or *to what degree* it is structured at all; or conversely, to what extent society's members, be they individuals or groups, are free to exercise their autonomy. My study of Minangkabau property relationships has, I hope, demonstrated that such an approach has a larger heuristic and analytical value than an approach centering upon institutions as units of study and comparison.