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Gypsy Law: Romani Legal Traditions and Culture

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BOOK REVIEW

GYPSY LAW: ROMANI LEGAL TRADITIONS AND CULTURE, Walter O. Weyrauch, Ed., University of California Press, 2001. ISBN: 0-520-22185-0 (cloth).

ALISON BARNES**

I. INTRODUCTION

This remarkable volume provides an introduction to the heretofore hidden world of Romaniya, or Gypsy law.¹ While unwritten, Gypsy law has coexisted for hundreds of years with the laws of the various states where Roma reside. While there is literature on certain aspects of Gypsy culture, this work poses more specific and difficult queries. Thus, this work has great importance to comparative law for the new information and insight it provides into Gypsy law.

Professor Weyrauch is well-prepared through decades of scholarship to bring this new knowledge to light. As author and editor of *Gypsy Law*, he brings to his work an awareness of private law—the unstated principles and rules that govern behavior in autonomous groups of

* Editor's Note: For purposes of brevity and clarity, citations within this Review to individual chapters in *Gypsy Law* will depart slightly from the format provided in the *Bluebook*. Thus, initial citation to a chapter will be in the following format: Author (of chapter), *Full Title of Chapter*, in GYPSY LAW (page no.). Subsequent citation to a chapter will be in the following format: Author's last name, *Short Title*, *supra* (note no.), at (page no.).

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1. Professor Weyrauch uses the terms "Gypsy" and "Rom" (adjective Romani) interchangeably to indicate the group because both are used by scholars of this culture, and this Review will do the same. Walter O. Weyrauch, *Romaniya: An Introduction to Gypsy Law*, in GYPSY LAW 1 [hereinafter *Introduction*]. "Rom" means "man" or "person" (plural "Roma") in the Romani language, and thus indicates the group's original name for itself. *Id.* at vii. (Editor's Note on Terminology).

various kinds. His work includes research on the unwritten law of such groups as isolated tribes, the legal profession, university students, and scientists confined in isolation.² He notes a number of principles found in tribal law and in society apart from the written law of states that hold true in Gypsy law.³ In related research, he has considered with care the nature of complaint and resolution likely to determine order in groups geographically and in self-imposed cultural or psychological isolation.⁴ He also has an interest in the disparate rules that often govern individuals according to their gender, an important aspect of Gypsy life.

Undoubtedly, some of Professor Weyrauch's sensitivity to these matters comes from his early exposure to social and political transitions, first as a law student in the barter economy of late Nazi Germany, and then from the social norms of the occupied state. Soon thereafter, the young German lawyer immigrated to the United States.⁵ Throughout his academic career, Weyrauch has sought to discern the unwritten subtext of written law and the meaning of the unwritten laws under which we all live.⁶

With this in mind, this reader finds in *Gypsy Law* a groundbreaking study, of not only a uniquely autonomous body of law, but also many ideas that resonate with on-going conflicts among other groups, both *intra* and *international*. For example, while studying the 2000 presidential election, David Brooks discovered an undeniable divide between "Red America," existing primarily in ex-urban areas and "Blue

2. See, e.g., Walter O. Weyrauch, *The Family on a Small Group* (Univ. of Cal., Berkeley Working Paper No. 54, 1967), in *GROUP DYNAMIC LAW: EXPOSITION AND PRACTICE* 153, 156; Walter O. Weyrauch, *An Anthropological Study of the Legal Profession: Erwin O. Smigel, The Wall Street Lawyer*, 113 U. PA. L. REV. 478 (1965) (book review); Walter O. Weyrauch, *The "Basic Law" or Constitution of a Small Group*, 27 J. SOC. ISSUES 49 (1971); Walter O. Weyrauch, *Unwritten Constitutions, Unwritten Law*, 56 WASH. & LEE L. REV. 1211, 1220-27 (1999) (discussing the law on the isolated island of Tristan da Cunha).

3. Walter O. Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the "Gypsies,"* in *GYPSY LAW* 19 [hereinafter *Autonomous Lawmaking*] (noting "parallels between legal cultures based on oral traditions and the unwritten laws within institutions such as courts, corporations and university faculties.").

4. See Walter O. Weyrauch, *Law in Isolation—The Penthouse Astronauts*, *TRANSACTION*, June 1968, at 39; Weyrauch, *Unwritten Constitutions, Unwritten Law*, *supra* note 2, at 1220-27.

5. See generally Walter O. Weyrauch, *An Immigrant's Encounters with Race in America*, 48 FLA. L. REV. 445 (1996) (noting values regarding race and sexual encounters in these contexts).

6. See, e.g., Walter O. Weyrauch, *Law as Mask—Legal Ritual and Relevance*, 66 CAL. L. REV. 699 (1978); Walter O. Weyrauch, *Aspirations and Reality in American Law*, in *LAW, MORALITY AND RELIGION: GLOBAL PERSPECTIVES* 217 (Alan Watson, ed., 1996).

America," existing primarily in large urban areas.⁷ Red America endorses hardy independence from others and from government, and it places low value on higher education and a high value on faith in the character of similar individuals. Blue America on the other hand, is comprised of a largely urban and more educated population, which views mutual assistance as an obligation at least in part fulfilled by government services, and it values detailed, rational explanation of social and international problems as fundamental to any plan for correction.⁸ Each group in large part views the other as essentially irrational and conforming to confusing and contradictory standards, if any.

Similarly, in international relations, the United States was fundamentally rocked in 2001 by attacks mounted by radical Islamic terrorist groups. Americans ask in dismay what values guide individuals to so hate the United States and Americans. That is to say, the private law of terrorists is incomprehensible to outsiders. Although the laws of the religion of Islam are the subject of much scholarship, explanation is not found there. Thus, the clash of cultures and unwritten rules has become a central issue in the search for stability and peace in the United States and the world.

This clash is a significant issue in the scholarship of Gypsy law: the search to understand the meaning and purpose of a society or community deliberately, sometimes aggressively, set in its separation from the other, perhaps dominant, culture. While the principal purpose of this Review is to examine the knowledge and views disclosed by *Gypsy Law*, this reader will also refer to a few current issues in the hope that specialists dealing with other separate communities may find and consider the observations offered in these works.

This Review proposes that the common thread between Gypsy law and these examples is the presence and threat of the dominant law and culture. It is no secret that the fast-paced, consumer-driven urban American culture (*i.e.*, Blue America) causes many to feel that fundamental societal values are threatened.⁹ Extreme reactions are not

7. David Brooks, *One Nation, Slightly Divisible*, THE ATLANTIC MONTHLY, Dec. 2001, available at <http://www.TheAtlanticMonthly.com> [hereinafter *One Nation*].

8. See generally *id.* (observing different standards of living, patterns of work, and religious beliefs and values in the "red" and the "blue," as well as mutual alienation from one another). "Red" and "blue" refer to the map of election results, with red states going to Bush and blue states going to Gore.

9. *Id.*

limited to small groups of dissidents abroad, but they can occur *within* a culture. Some reactions are more desperate and extreme than others.¹⁰

In the foreword to *Gypsy Law*, Professor Angela Harris of the University of California Berkeley aptly notes that Weyrauch's comparative assessment of the law of Gypsies and their host nations is "a problem of unacknowledged similarities."¹¹ Observations that enlighten the separate world of the Gypsies promise insight into other cultures that seek to preserve themselves within a dominant society.

This Review will first set out the scope of the book, encompassing a number of topics and views on Gypsy law. Next, it will provide an overview of some fundamental values and processes of Gypsy law as set out by Professor Weyrauch. Part III discusses the historical and social reasons for the separate development and function of Gypsy law and culture, and tentatively suggests some generalizations that might apply to other adherents of autonomous bodies of law. Part IV discusses in more detail three specific issues: the search for anonymity and self-protection in Gypsy law culture; the status, power and control of Gypsy women and the meaning or necessity of control of women within the society; and the power of irrationality and ritual to bind together the Gypsy community and, perhaps, any community seeking to perpetuate a cohesive identity.

II. THE SCOPE OF THE VOLUME

Gypsy Law is comprised of eleven chapters, three of which are authored by Walter Weyrauch, including one co-authored with Maureen Anne Bell. Chapter 1 is an introduction briefly describing the various views of the other contributors and significant aspects of Gypsy law: the importance of the human body as a vivid, compelling metaphor; the power of irrational rules; and the criminalization of Gypsies by the dominant society.¹² Chapter 2, by Weyrauch and Bell, is the workhorse of the volume, setting out the fundamentals of the study upon which other scholars may agree, disagree, or build.¹³ In addition, Weyrauch

10. On the other hand, the opposite may be true. See William J. Kole, *Austrians Carp About Santa: American Icon Squeezing Out National Tradition, Group Complains*, MILWAUKEE JOURNAL SENTINEL, Dec. 13, 2002, at 6A (noting that the red-costumed, white-bearded bearer of gifts recently adopted by Austrian commercial forces offends those who seek to sustain traditional Austrian Christmas traditions).

11. Angela Harris, *Foreword* to GYPSY LAW, xix [hereinafter *Foreword*].

12. Walter O. Weyrauch, *Introduction*, *supra* note 1, at 19-26.

13. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 11-87.

discusses his long-term interest in the often-neglected field of private lawmaking, the reasons for the absence of scholarship on Gypsy law, and the difficulties inherent to the study.¹⁴ Chapter 11, the third by Weyrauch, concludes the volume with observations and questions raised by the articles, and discusses some of the "unacknowledged similarities"¹⁵ in United States law.

Chapters 3 and 4 are co-authored by three faculty members in the social sciences at the University of Greenwich. Acton, Caffrey and Mundy take up issues of the theory of Gypsy law, asserting that the group values that Weyrauch identifies differ from those of some Gypsy groups.¹⁶ Chapter 4, by Caffrey and Mundy, examines the formation and evolution of law within Gypsy communities and describes the participation of the entire population in determining justice and carrying out a sentence of *marime*, a sort of "community policing" that encompasses both blame and eventual forgiveness by general agreement.¹⁷

Among the other chapters, three are specifically comparative in nature. Chapter 5 was written by Calum Carmichael of Cornell University. This chapter on Gypsy and Jewish Law finds the apparent ritualistic similarities between these two systems (including the rigorous requirements regarding the avoidance of blood from animals or menstruating women, and mandating extensive, apparently irrational, standards of hygiene) to have less of a common foundation than one might expect. This chapter nonetheless offers insight regarding the effects of ritual behavior on the observant.¹⁸ In chapter 6, Angus Fraser, author of *The Gypsies*,¹⁹ writes on the fifteenth and sixteenth-century origins of the autonomous law of the Gypsies. Chapter 7 by Martti Gonfors, Professor of Sociology at the University of Finland, addresses the denial of the very existence of marriage and reproduction among Finnish Gypsies, apparently because a marital couple's loyalty to one

14. *Id.* at 13–26.

15. Weyrauch, *Introduction*, *supra* note 1, at 19–26.

16. Thomas Acton et al., *Theorizing Gypsy Law*, in GYPSY LAW 88 [hereinafter *Theorizing Gypsy Law*].

17. See Stanley Lubman, *Mao and Mediation: Politics and Dispute Resolution in Communist China*, 55 CAL. L. REV. 1284, 1320–21 (1967); see also Stanley Lubman, *Dispute Resolution in China After Deng Xiao Ping: "Mao and Mediation" Revisited*, 11 COLUM. J. ASIAN L. 229 (1997).

18. See *infra* notes 118–19 and accompanying text (discussing the power of irrationality in Jewish and Gypsy behavior requirements).

19. ANGUS FRASER, *THE GYPSIES* 35 (2d ed. 1995).

another has negative implications for the community.²⁰

Chapters 8 and 9 are notable because they provide first-hand detail about Gypsy law by two authors who are themselves Roma.²¹ Chapter 8 is a glossary of Romani language by Ian Hancock, author of extensive cultural works on the Gypsies, Professor of Linguistics and English, and Director of the Romani Archives and Documentation Center at the University of Texas at Austin. Chapter 9, by Ronald Lee, Executive Director of the Roma Community and Advocacy Center in Toronto, discusses in fascinating detail the *marime* code and the Gypsy courts among the Rom-Vlach, the largest group of Gypsies in the United States and Canada.²²

Finally, Chapter 10, by Anne Sutherland, Professor of Sociology at Georgia State, discusses the process and implications of a specific case in a federal district court in Minnesota where a Gypsy defendant was tried and convicted of using a false Social Security number.²³ In that case, Sutherland was called as an expert witness on the cultural values of the Roma; the details of the interaction of cultures are fascinating.²⁴

III. ROMANI AND ROMANIYA

Weyrauch describes fundamental values and processes, while acknowledging the difficulty of defining "Gypsy law" because of the prolonged separation of various Gypsy groups from one another.²⁵ Establishing some commonality is essential to begin a discussion of the

20. In this culture, the taboos regarding sexuality and procreation are linked to the possibility of blood feud, in which those related by consanguinity must be free of conflicts of loyalty likely to arise if marriage is permitted. Martti Grönfors, *Institutional Non-Marriage in the Finnish Roma Community and Its Relationship to Rom Traditional Law*, in GYPSY LAW 149, 156-61. As a result, marriage and procreation are not acknowledged. *Id.* Instead, a pregnant woman leaves the community, usually with the child's father, to travel the countryside where they are unlikely to meet people they know. *Id.* After a year, they can return with their "found" child. *Id.*

21. Ian Hancock, *A Glossary of Romani Terms*, in GYPSY LAW 170-87; Ronald Lee, *The Rom-Vlach Gypsies and the Kris-Romani*, in GYPSY LAW 188-230 [hereinafter *Rom-Vlach Gypsies*].

22. The Vlach were enslaved in Romania for five-hundred years. See Walter O. Weyrauch, *Oral Legal Traditions of Gypsies and Some American Equivalents*, in GYPSY LAW 247 [hereinafter *Traditions and American Equivalents*].

23. Anne Sutherland, *Complexities of U.S. Law and Gypsy Identity*, in GYPSY LAW 231-42 (citing *U.S. v. Nicholas*, No. 4-91-137-CR (D. Minn. 1991)) [hereinafter *Complexities of U.S. Law*].

24. *Id.* at 233.

25. Weyrauch, *Introduction*, *supra* note 1, at 2.

field, yet is inevitably open to criticism from those with more specific, possibly contradictory experiences.²⁶ This reader can only report that the basic discussion and responding commentary is sufficiently detailed to make a densely packed volume of scholarship; more would be quite daunting for now. Also, the writers, and this Review, most prominently take up the *marime* code that underlies many laws and decisions.

Although Gypsy law exists with regard to property, inheritance, business, and other components of more familiar bodies of law, the rules and decisions are not the focus of this study. Rather, perhaps inevitably, the focus is on more unusual aspects of Gypsy law.²⁷

The general principles of Gypsy law begin with the conviction that purity (*vujo*) and pollution (*marime*) are opposite poles.²⁸ Each adult person has the potential to cause or avoid pollution by their acts, but women of child-bearing age have particular power to pollute.²⁹ *Vujo* and *marime* relate to parts of the body, and much to be understood about Gypsy life and law relates to physical proximity and action.³⁰ The body above the waist is considered pure; the body below the waist is impure and can pollute the pure. Only the hands may move from the pure to the impure, and requirements for purification attach to food preparation, all public and private interaction between the sexes, and living circumstances generally.³¹ For example, it may cause a state of *marime* to be in a room below a woman on the second floor because a man may be polluted by a woman's impure lower body.³² Likewise, bathrooms must be used exclusively by men or women so as to avoid pollution, therefore dwellings with two bathrooms are preferred.³³ Even to discuss matters regarding the lower body could cause pollution and is

26. See, e.g., Acton et al., *Theorizing Gypsy Law*, *supra* note 16, at 88–91 (pointing out that the aspects of legal process available to Weyrauch for study differ among other specific groups, noting especially the use of "blood feud."). Weyrauch notes that Acton has called for a synthesis of the existing Gypsy data because many case studies of Gypsies already exist. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 27 (citing THOMAS A. ACTON, *GYPSY POLITICS AND SOCIAL CHANGE* 2–3 (1974)).

27. Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 262–75 (drawing analogies to American legal procedure).

28. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 29–32.

29. See *infra* notes 91–100 and accompanying text.

30. Weyrauch, *Introduction*, *supra* note 1, at 12.

31. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 30.

32. *Id.* at 33.

33. *Id.* at 33–34.

considered offensive.³⁴

Interaction with *gaje*, or non-Gypsies, is likely to be contaminating because *gaje* are too ignorant to behave according to rules of decency.³⁵ The operating principle again is that the external world may pollute the pure inner person.³⁶ The habits of polluted persons might taint an object's next user, or a dwelling's next inhabitant.³⁷ Thus, some Gypsies may insist on new sinks and toilets upon moving into a dwelling previously occupied by *gaje*.³⁸ Intense discomfort attaches to a jail sentence for a Gypsy not because of criminal stigma but because the inmate will almost certainly be severely polluted.³⁹ Eating is almost impossible because dishes are not purified in accord with Gypsy practices.⁴⁰ Being forced to live with non-Gypsies is therefore intensely miserable.

The rules are enforced by the Gypsy court, or *kris*, which is called at need to deal with serious matters of *marime* or other disruption in the community.⁴¹ Elders are likely to hear the case, and the audience of adults, mostly males, plays a role by expressing their opinion of the case as it is presented. The *kris* is most likely to impose a sentence of expulsion for a period of time.⁴²

Gypsy law is concerned with crime, but almost exclusively only within the community.⁴³ Gypsy crime, which is widely regarded with hostility, typically includes theft and fraud.⁴⁴ Roma generally find

34. Weyrauch, *Introduction*, *supra* note 1, at 4 (noting that attempts at discussion cause the Gypsy listener to dismiss the topic as "trash"). Lee notes that plumbing is a trade prohibited to Gypsies, and among Rom doctors, brain surgery is acceptable but gynecology or proctology are not. *Rom-Vlach Gypsies*, *supra* note 21, at 206. Polite conversation excludes direct references to the need to find a toilet. Men may ask: "Where do you feed the horses?"; women may ask: "Where do the ladies go?" *Id.*

35. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 25.

36. *Id.* at 38.

37. *Id.*

38. *Id.* at 38 n.113.

39. See Lee, *Rom-Vlach Gypsies*, *supra* note 21, at 208; see also Weyrauch, *Introduction*, *supra* note 1, at 12.

40. See Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 37-38.

41. Cf. Acton et al., *Theorizing Gypsy Law*, *supra* note 16, at 88 (describing blood feud as an alternate possibility, because some Gypsies consider it required to go to the aid of kin in a dispute regardless of whether they are in the right).

42. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 47.

43. *Id.* at 52. Weyrauch discusses in some detail the procedure of the *kris* and legal strategies. See Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 269-71.

44. Weyrauch, *Introduction*, *supra* note 1, at 6-9.

violent crime unacceptable,⁴⁵ but swindling the *gaje* may for some Roma be a legitimate source of income because the *gaje* are viewed as "over-indulgent and exploitative."⁴⁶ This is perhaps the single most prevalent impression of Roma held by outsiders.

The matter of fortune telling, a standard business of Gypsy women, provides insight. The court system of the Gypsy community may be invoked to settle matters of competition between fortune-tellers by dividing territory,⁴⁷ but a question of ethics in the business is of no interest because customers are *gaje*. Gypsies do not typically seek guidance from fortune-tellers, not because they think such perception does not exist, but because it is risky to presume to know the future.⁴⁸ Interestingly, the question of whether a person who believes she is clairvoyant commits a crime when she tells fortunes remains uncertain because it may be impossible for such a person to have criminal intent.⁴⁹ Fortune-telling may also be more of a practice of advising on, rather than predicting, the future. In any case, Roma may or may not be aware of state laws, and may tolerate or violate them.⁵⁰

IV. THE DEVELOPMENT OF AUTONOMOUS, PRIVATE LAW AMONG GYPSIES

The Gypsies provide an example of autonomous law and culture that has survived for at least a thousand years. Their origins, and the source of their separate and often nomadic nature, are not well understood.⁵¹ Linguistic and other evidence suggests that Roma left India around 1000 A.D., but the reasons they left have been lost or obscured.⁵² Their language is related to Sanskrit, indicating their roots with the Dravidians,⁵³ a group of peoples in pre-Indo-European India who have 2000 years of written literature.⁵⁴

Though often nomadic, Gypsies were not always complete outsiders.

45. Lee, *Rom-Vlach Gypsies*, *supra* note 21, at 211.

46. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 49.

47. Lee, *Rom-Vlach Gypsies*, *supra* note 21, at 213.

48. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 49.

49. *See id.* at 50-51.

50. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 28.

51. *Id.*

52. *Id.*

53. Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 262.

54. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 28.

In some times and regions, their social structure might be viewed as a source of stability.⁵⁵ In others, the community could be treated as a unit subject to forced labor and persecution. For example, Weyrauch notes that Roma were slaves in Rumania for five-hundred years.⁵⁶ In the Twentieth Century, Gypsies were persecuted and killed in the concentration camps of Nazi Germany.⁵⁷

While *Gypsy Law* offers little historical information (except for the sixth chapter), it is fair to conclude that at significant times and places Gypsies were subject to intense persecution. It is a logical inference that this treatment was both a cause and effect of their separateness. One wishes, however, for a better understanding of the forces and events that led to such a fiercely separate culture.⁵⁸ Perhaps some more recent examples can provide insight into this historical process, even as a study of Gypsy law and culture provides analogies with current issues.

Weyrauch describes the values and rules he discusses as being law, while at the same time he acknowledges that law, ethics, and custom are essentially one in Gypsy beliefs.⁵⁹ He notes that Gypsy beliefs include notions of Christianity and Hinduism, while not necessarily maintaining the original meanings.⁶⁰ Anne Sutherland, author of Chapter 10, attributes the failure to note the legal significance of Gypsy beliefs at least in part to the fact that laws are associated with the landed state not possessed by Roma.⁶¹ She has also observed that the concepts of religion, tradition, and law, as embodied by the term "Romaniya," are interrelated.⁶² However, Weyrauch defends the importance of characterizing this matter as law. He points out that a view of Gypsy law as culture or folklore undervalues the power it exerts on the community and tends to ignore the essentially legal processes of

55. See generally Angus Fraser, *Juridical Autonomy Among Fifteenth and Sixteenth Century Gypsies* 45 AM. J. COMP. L. 291 (1997) (relating that Gypsies in that era might be left autonomous by local rulers).

56. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 25.

57. *Id.* at 23-24.

58. This wish was granted with the publication of Ian Hancock's work, entitled *WE ARE THE ROMANI PEOPLE* (2002).

59. Weyrauch, *Traditions and American Equivalent*, *supra* note 22, at 246.

60. *Id.* at 262.

61. Sutherland, *Complexities of U.S. Law*, *supra* note 23, at 240 (noting that the distinction arises at least in part from the fact that laws are associated with the landed state, though religious requirements could coexist and could be more important to many).

62. ANNE SUTHERLAND, *GYPSIES: THE HIDDEN AMERICANS* 17-18 (Waveland Press 1986) (1975).

evidence-giving and adjudication.⁶³

Weyrauch recognizes an aspect of Gypsy law that differs from much other Western law; it is fundamentally aspirational in nature.⁶⁴ Because it encompasses the society's morality, the law poses for Gypsies the need to seek always better compliance, and higher awareness.⁶⁵ Thus, Gypsy law is not so demanding as it might seem. Minor infractions that are not truly disruptive may be ignored by the parties and the community. In addition, smaller autonomous units, typically families may ease or omit certain rules within their private circle.⁶⁶

Gypsy law has successfully maintained communities through changing fortunes over centuries, including the rapid cultural shifts of twentieth-century technology. However, the means by which Gypsies maintain their intensely separate ideology are largely unknown.⁶⁷

V. THREE ASPECTS OF ROMANIYA AND POSSIBLE ANALOGIES

The following issues are chosen for discussion because of their bearing on current social problems with autonomous groups other than Gypsies but subject to the same social and political pressures, resulting in alienation and sometimes violence. The discussion, beginning and ending in *Gypsy Law*, is in no way intended to displace those of scholars in such diverse studies as the culture of persecuted peoples around the world and over the centuries, cross-cultural women's issues, or the power and effects of shared ritual actions on the people who engage in them. Instead, it is intended to point out the potential insight to be gained by considering other cultures with the same cautious open-mindedness as that found in *Gypsy Law*.

A. *Intentional Invisibility: Conviction, Language and Action*

Weyrauch asserts that an understanding of the enduring culture of the Roma begins with their belief in their own uniqueness.⁶⁸ That conviction is supported by language that excludes the understanding of

63. See Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 62–68.

64. *Id.* at 75.

65. Sutherland, *Complexities of U.S. Law*, *supra* note 23, at 242.

66. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 35.

67. *Id.* at 60.

68. See Weyrauch, *Introduction*, *supra* note 1, at 4 (explaining that Gypsies believe that *gaje* have no sense of justice).

outsiders, and the very way of life that sets Gypsies apart.⁶⁹ The intent is to conceal Gypsy life from the dominant culture within which it exists.

The extent of concealment cannot be overstated since separation from the dominant culture has been fundamental to legal and cultural survival. Despite the facts, many people in the United States believe that Gypsies are extinct. The costs of this "invisibility" to the Roma may be enormous. For example, the traditionally high rate of illiteracy among Gypsies may be an intentional strategy to prevent their cultural integration by means of outsiders' knowledge and understanding.⁷⁰

The use of a separate language is key because noncomprehension is a type of invisibility.⁷¹ Although a group may be recognized to exist, as Gypsies are in Europe, it can maintain its separateness if it cannot be understood. Language plays a large part. Gypsy law has been concealed until the publication of *Gypsy Law* because laws are oral and all legal proceedings must take place in the Gypsy language, which is virtually unknown to others.⁷² Rigid oral rules that determine the requirements of legal speech serve to prevent understanding by outsiders.⁷³

The naming of individuals is also critical, because the ability of outsiders to identify one Gypsy from another can provide great power to outsiders to intervene in the group. Avoiding this pitfall, Gypsies hold that names must be protected because they have magical effectiveness that is lost if uttered to *gaje*.⁷⁴ Gypsies, therefore, follow cultural rules that obscure their names and identities. First, most Gypsies are known only by their first names.⁷⁵ In addition, they take assumed names when dealing with non-Gypsies, including names of other Gypsies and complete pseudonyms.⁷⁶

In Gypsy law and culture, we observe the requirements of a group committed to separateness and self-concealment of membership, values and activities. Analogies might be drawn to Sicilian medieval society which produced the Cosa Nostra, to the Masons' privately chosen brotherhood and rituals, or to the supporters of the Underground

69. *Id.*

70. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 58.

71. Calum Carmichael, *Gypsy Law and Jewish Law*, in *GYPSY LAW* 117, 123.

72. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 44-45.

73. *See id.* at 69 (language effective only if kept from outsiders).

74. *Id.* at 53-54.

75. *Id.*

76. *Id.*

Railroad in the United States Civil War. In current affairs, one could find some similarities with Al Qaeda, the personal supporters of Palestinian or Pakistani suicide bombers, or the inner circle of the George W. Bush administration.⁷⁷

Thus, studies of the history and purposes of self-concealed minority groups strongly suggest that one is on the side of outsiders in some instances, and on the side of insiders in others. Oppression may create separatist groups, but it is not an essential attribute. Rather, it is an often recognized reason for seeking separateness. As Weyrauch observes, the determination of moral values is in large part cultural.⁷⁸

A significant reality of interaction with a self-concealing people is that they will—in fact, they must—reject even benevolent intervention if their culture is to continue significantly unchanged. In particular, attempts to understand fundamental differences must be rebuffed though they might result in needed access to healthcare or safety support from outsiders. It is fundamental to understand that the power of the dominant culture's intention to study or intervene threatens the very existence of different values and lives. Indeed, Weyrauch acknowledges the force his scholarship applies to Roma who remain apart, and the ethical problems it poses.⁷⁹

Another aspect of cohesiveness of such a group is the need for individuals to engage in sacrifice for the good of the group.⁸⁰ This value embodies the necessity of group survival over individual choice or even personal survival. Thus, as Weyrauch reports, a Gypsy might complain of another Gypsy in a *kris* if the defendant's behavior threatens to bring persecution on the community.⁸¹ An individual must not bring unwanted attention or problems on the group. Another example is that of a son of a Romani chief who is designated to stand for conviction in the *gaje* courts for the actions of a father; the father is needed to lead the community, and he is more essential than the son to the group as a

77. See, e.g., Adam Clymer, *Gov't Openness at Issue as Bush Holds on to Records*, N.Y. TIMES, Jan. 3, 2003, at A1. Harris draws an analogy to Native American attempts to survive as a cultural group, engaging in strategies called by one scholar "survivance," a combination of survival and resistance. See *Foreword*, *supra* note 11, at xiii.

78. See generally GYPSY LAW.

79. See, e.g., Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 254–61.

80. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 53 ("[I]f there is a police investigation . . . the son of the actual culprit, will accept blame for the crime.").

81. *Id.* at 52.

whole.⁸²

B. *The Roles of Women in Gypsy Law*

Gypsy law is sharply criticized as violating human rights in that its requirements oppress women by deeming them to be impure—a shameful status.⁸³ No doubt, the obligations and powers of men and women differ significantly among the Gypsies, as they have consistently differed in pre-industrial societies. Women, for example, rarely are leaders, and they are prohibited traditionally from participating in a *kris* unless they are litigants or witnesses.⁸⁴ An elder woman is recognized as the representative of Gypsy women generally in community issues, but may decide matters relating only to women and children.⁸⁵

Matters of impurity among the Roma are complex. Impurity is determined by the rules of *marime*, or defilement, which imposes constraints and some degree of isolation on women during menstruation, post-partum, and sometimes in pregnancy.⁸⁶ These restrictions appear generally similar to those in Jewish law,⁸⁷ in India from where Gypsies dispersed one-thousand years ago, and in some other codes of hygiene and behavior.⁸⁸ The rules define the details of daily interaction. For example, since the lower bodies of women are particularly *marime*, or polluted due to menstruation and childbirth, a woman may not walk close to a seated man because her genitalia will be at the level of his face.⁸⁹ That would cause him to be polluted and to require that he be restored to a pure state by a cleansing ritual. Carmichael, writing on Jewish law, considers such rules to represent life and death, in which menstrual blood is a symbol of a potential life lost, and perhaps a metaphor for other lives lost by the spilling of blood.⁹⁰

More unusual, a central aspect of the Gypsy justice system is the power of a woman of child-bearing age to invoke a state of pollution, or

82. *Id.* at 53.

83. See Michael Reisman, *Autonomy, Interdependence, and Responsibility*, 103 YALE L.J. 401, 416–17 (1993); see also Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 244.

84. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 44.

85. *Id.*

86. *Id.* at 32–35.

87. See Carmichael, *Gypsy and Jewish Law*, *supra* note 71, at 120–23.

88. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 28–30.

89. *Id.* at 32–33.

90. Carmichael, *Gypsy and Jewish Law*, *supra* note 71, at 120.

marime. She does this by lifting or "tossing her skirt[s]" (typically long and wide) to reveal her frontal nudity.⁹¹ By doing so, the woman imposes a serious state of pollution on the men who see her, causing any confrontation to come to a halt and disperse.⁹² This magical power to curse may come to an end at menopause, though elder women attain a different power in the community.⁹³

In response to the human rights criticisms, Weyrauch argues that the power to pollute attests to the great power of the Gypsy woman.⁹⁴ He notes the distressed existence of the Gypsy communities within their host countries and the need to see the status of women subjectively, through the lens of the women's community, rather than that of a dominant industrialized nation.⁹⁵ Distinct cultural roles place constraints on all Gypsies, not only women.⁹⁶

Undoubtedly, the rite of skirt-tossing is itself a form of power. Apparently, the purpose of skirt-tossing, to the extent it can control unfolding events, is to provide a specific power to halt events to women of a given range of age—fertile women—who otherwise seem to have limited opportunity for leadership, ownership of property, and choices of behavior generally.⁹⁷ These women—or even one among them—have a trump card to play when the community is seriously threatened by bad ideas, bad leadership, and bad behavior. Note that this does not confer the powers of leadership or autonomy. It has no application in the event of persecution or natural disaster, events that call for greater community solidarity rather than a change of course by means of dissent. Perhaps this power exists because women are viewed as guaranteeing the population's survival.⁹⁸

This rite of skirt-tossing deserves attention as one of the most troubling aspects of Gypsy law. The power of skirt-tossing is noted by Carmichael and Lee to be in decline.⁹⁹ The change is suggested as a "de-sexing" of ancient customs, leading to a corruption of those customs.

91. Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 263.

92. *Id.* at 263.

93. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 31.

94. Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 244–45.

95. *See id.* at 244–45.

96. *See id.* at 244.

97. *Id.* at 244–45.

98. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 37.

99. Weyrauch, *Introduction*, *supra* note 1, at 37 (citing Carmichael, *Gypsy and Jewish Law*, *supra* note 71, at 135; Lee, *Rom-Vloch Gypsies*, *supra* note 21, at 203).

That is, the ritual of skirt-tossing becomes a source of contamination for the woman and family, when the other participants become skeptical of its meaning.¹⁰⁰ The attempt to use a discredited rite for its traditional purpose reflects on the one who invokes it, rather than the target persons.

Sorting out the likely meaning of the ritual itself is problematic, but particularly so when some observers report it to be a relic of past belief.¹⁰¹ This reader observes that much about past cultural belief is a sort of proverb or parable about what society's values should be. To use an example from past studies of the ancient Near East, perhaps relevant to the Indian roots of the Gypsies, the status and roles of women always seem to have fallen when compared to past eras. That is, genuine power vested in women by temporal or magical means always seems to predate immediately the available records, whether in pre-empirical Rome or back to the earliest recorded laws of Sumer in 2450 BCE.¹⁰² Perhaps the exercise of women's power is more mythical than actual, or it exists only as an informal parallel to male power to rule and defend the community.

On the other hand, recent news suggests a very practical power of Nigerian women that bears an apparent relation to Gypsy skirt-tossing. In July of 2002, Nigerian women took over the Chevron and Shell refinery facilities and refused to vacate until they received assurances of better living standards.¹⁰³ Upon any attempt to make them leave the premises, the women—characterized as wives and mothers, assuring

100. See *infra* Part II.C. (on the power of irrational action).

101. The source for the most extreme assertions about the power of skirt-tossing comes from a relatively early source: Miller, *American Rom and the Ideology of Defilement, in GYPSIES, TINKERS AND OTHER TRAVELLERS* 41–54 (Farnham Rehfisch ed., 1975). Miller also suggested a practice that seems unlikely to be carried out: that a woman go unattended to give birth in the woods rather than acknowledge, and cause the community to acknowledge, that procreation has taken place. This seems a very high risk strategy for a community concerned with its very existence. In any case, wouldn't the woman's mother, sisters, or women friends participate to seek to assure that the mother avoid the mishaps of human birth? To suggest otherwise is to suggest that this young, fertile woman and her child are more dispensable to the community than its animals. See Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 256.

102. This date marks the earliest written records of law of the Sumerian city states. See, e.g., *THE ANCIENT NEAR EAST* (James B. Pritchard, ed., 1958) (explaining the myths and ethics of Sumerians, Akkadians, Hittites, and others of the Near East); MILTON COVENSKY, *THE ANCIENT NEAR EASTERN TRADITION* (1966) (explaining the sources and smaller nations of this area and era).

103. See Norimitsu Onishi, *Left Behind; As Oil Riches Flow, Poor Village Cries Out*, *THE N.Y. TIMES NEWS ARCHIVE*, Dec. 22, 2002, available at <http://query.nytimes.com/gst/abstract.html?res=F00E14F73D580C718EDDAB0994DA404482>.

their status as respectable women—would take off their clothes and stand naked.¹⁰⁴ The report states: "The women had no guns, but they did have a powerful weapon: they threatened to disrobe in front of the oilmen. Showing nudity, especially by older women, is a weapon of last resort, considered an act of deep shame here and a great curse directed at men."¹⁰⁵

However, the larger Nigerian story suggests corruption and deep divisions in the tribal culture, rather than the manifestation of power that might be useful to women in ordinary times. Rather, the women and most of the husbands and sons were shut out of work from the refineries and left to idleness and extreme poverty while a few young men of their tribe reaped extraordinary profits.¹⁰⁶ The insult to the traditional order was not only economic.¹⁰⁷ Western workers from the refineries patronized the local bars and paid large fees for young women as prostitutes, depriving the young men of their women's interest.¹⁰⁸ Even the price structure (four times the price for foreigners) subordinated the local men, who experienced shame but were ineffective in response.¹⁰⁹

Thus, the plan to hijack the ferry and take the refinery was concealed from men in general. The several hundred participating women "from young mothers with babies on their backs to 90-year-old great-grandmothers" nevertheless set out to confront outsiders who threatened their community.¹¹⁰ Women, too numerous to get on the ferry, came after in their own boats.¹¹¹

Apparently, the confrontation made clear to all, directly or by translation, the desperate seriousness of the women's purpose. Company officials reached an agreement to employ some men of the community, improve the infrastructure in the villages, and abate pollution on the waterway the people shared with the refinery.

This story suggests to this reader that no assessment of the status of women is easily understood, but some generalizations should form a basis for assessment. To the extent that the depictions of such

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

demonstrations by women are valid, Gypsy and Nigerian women have means to effect change in their respective societies that are not recognized in dominant groups in Western nations. Indeed, it is difficult to predict what would develop from any similar protest. One might imagine a similar demonstration in the 1990s in the course of the women's protests on the Capitol Mall in Washington D.C.

On the other hand, there may be analogies to be found in the willingness of suffragettes to be jailed and physically assaulted with force feeding. The common element may be the willingness to experience personally reduced status, and possibly credibility, in order to raise one's cause to serious consideration. If this is so, the jailing of black South Africans and Chinese dissidents, for example, may resonate with the exposure of women in order to shame their communities.

The conflict over the appropriate role of women reappears in many cultures. This is particularly true in the underdeveloped world where strength and stamina (on average significantly superior in men) are a qualification for desirable work. The overlay of culture may further complicate an understanding of the issues of women's status. The Islamic East has a widely discussed conflict of values over the appropriate roles and behavior of women.¹¹² In traditional Islamic societies, men and women do not take part in any public events or meetings together, including taking a walk with a spouse or eating in a restaurant.

The stigma of impurity summons analogies to clitoridectomy to purge women of sexual pleasure, of the need in some Islamic countries for women to cover every inch and outline in voluminous clothing, and to blaming victims of rape for the "shame" they bring their male relatives.¹¹³

The literature on women's roles and contributions in cultures is far too rich and varied to provide a ready answer to the question: what is the meaning of the ability of Gypsy women to pollute men, both

112. See, e.g., Raid Quisti, *Saudis must face up to their 'female problem'*, MILWAUKEE JOURNAL SENTINEL, July 15, 2002, at 11A. See generally GERALDINE BROOKS, *NINE PARTS OF DESIRE: THE HIDDEN WORLD OF ISLAMIC WOMEN* (1995) (recounting the various ways women celebrate or disparage their experience of the constraints placed on them in Islamic cultures).

113. See Munir Ahmad, *Women Killed for 'Honor,' Group Says*, MILWAUKEE JOURNAL SENTINEL, Dec. 12, 2002, at 10A (noting that an estimated 461 women in Pakistan were killed to date in 2002 "for immoral behavior including sex outside marriage, dating, talking to men, being raped and even cooking poorly," a figure that far exceeded the total of 372 for the previous year).

voluntarily and involuntarily? Surely, it reflects the positive role of women in establishing the stability of society when they use this ability to support productivity and the stability of young men. Are women, as they have been depicted in the past year, cultural "whistleblowers"?¹¹⁴ Professor Holleman of the University of Leiden has considered the evolution of autonomous law in the context of cultural breakdown.¹¹⁵ It is quite possible that this is an appropriate lens through which to consider the seeming importance of skirt-tossing among the Roma.

C. "Obviousness" of Values and the Strength of the Irrational

A striking observation in *Gypsy Law* is of the immense strength and durability of the values of *marime*. These values are basic to the life of the Roma. Weyrauch notes that unquestioning acceptance is essential for inclusion in the group.¹¹⁶ Even raising a discussion of the rightness of *marime* is in bad taste. For example, upon hearing that the researcher seeks to talk about sex, hygiene, or other matters governed by established social law, a Gypsy listener might well cut short the conversation by deeming the answers "obvious."¹¹⁷

In Gypsy law, adherence to values must be demonstrated by compliance with the rituals that support those values. Other non-dominant or persecuted groups similarly demonstrate patterns of shared behavior that tend to bind them together as believers. For example, Dr. Carmichael, writing on Jewish law, discusses the power of "mindless" rule minutiae that can create shared experience for the community. He mentions the times and events of the day which an Orthodox Jew must pray in blessing.¹¹⁸ As anyone who has experienced life in an Islamic country or a Catholic monastery will attest, the demands of routine ritual from predawn to dark create powerful forces in human behavior. Such law musters belief despite opposition and is supported by the routines of the day and the lifetime.

In the view of the outsider, the adherent to belief and ritual may seem intransigent or superstitious. Again, interesting commentary is available from Dr. Carmichael who draws many observations from the

114. Richard Lacayo & Amanda Ripley, *Persons of the Year: The Whistleblowers*, TIME MAGAZINE, Dec. 2002, at 31 (People of the Year for 2002 are three female whistleblowers in corporate America).

115. See generally Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3.

116. *Id.* at 27 n.48 (citing SUTHERLAND, *supra* note 62).

117. Weyrauch, *Introduction*, *supra* note 1, at 4.

118. Carmichael, *Gypsy Law and Jewish Law*, *supra* note 71, at 24.

long written tradition of Jewish law. He discusses the entrenched power of "avoidance of enlightenment," noting that apparent irrationality may instead relate to matters that are so sensitive and so firmly grounded within the members of the community that there is no sense in talking about them.¹¹⁹

Scholarship on the nature of rituals provides support. The power of unquestioning belief and recurring ritual for believers is a connection to something purer, stronger, and more permanent than themselves.¹²⁰ The messages and meanings of rituals transcend the weaknesses of an individual's performance and belief. The individual and those who see and hear are included in the collective regard of the community, and their doubts may be transformed or set aside by the power of the ritual itself.¹²¹ Thus, the outsider's attempt to discuss the requirements unique to Gypsy law or other rituals connected with belief are likely to be repugnant to adherents who are convinced of their truth.

It is the inclination of those in European and American culture to believe that the strongest tools in thought and speech, and, therefore, human motivation and action, are rational in nature. The example of the Gypsies, maintained over centuries, tends to show that a cultural explanation is less powerful if it is rational, because the rational is vulnerable to the hazards of discussion.¹²² The very attempt to explain is the beginning of disbelief.

Weyrauch suggests that a source of the dissonance between typical insider groups and the paradigm of Western law lies in reliance by Western law on the form of abstract principles.¹²³ Abstract legal rules, he suggests, are necessary to govern diverse cultures,¹²⁴ so that all can have access to the meaning the laws convey. Such a statement of the laws, it might be inferred, provides a greatly reduced comprehension to individuals seeking to comply with them. That is, rational rules are quite limited in effect because they muster only the power of an individual's rational mind.

The effect of the abstract principle of law, therefore, may be

119. *Id.* at 125.

120. ROY RAPPAPORT, *RITUAL AND RELIGION IN THE MAKING OF HUMANITY* 51 (Cambridge Univ. Press 1999).

121. *Id.* at 113 (noting that the impact of participation in ritual as principal or audience may include chemical and neural signals).

122. Lee, *Rom-Vlach Gypsies*, *supra* note 21, at 188, 197 n.2.

123. Weyrauch, *Introduction*, *supra* note 1, at 3-6.

124. *Id.* at 3-4.

analogous to the power play, in that the decisionmaker effects a change that is time specific and may appear to be far-reaching. However, to the extent that it bears little relationship to the convictions and perceptions of justice among the governed, the law will be ineffective. That is, people will think and talk about the law, and make choices about whether and how to comply. Therefore, it is likely that the law is partly or temporarily effective, and ultimately weak. It engages too limited a range of human belief and motivation.

V. THE UNFOLDING TALE OF GYPSY LAW AND CULTURE

Weyrauch observes that the clash of legal systems produces subtle interactions—each powerfully influencing the other.¹²⁵ Similarly, the clash of ethnic values can produce ethnic pride or, if more desperate, ethnic fanaticism.

A lesson from the long history of the Gypsies and their law is that a society will fiercely conceal itself rather than voluntarily self-destruct. The loss of individuals in service to the community is an affirmation of the community. In a society seeking to remain closed, "irrational" values that bind a community together must be maintained or the community in significant part ceases to be. The price of survival is not only unwavering loyalty within the group, but also avoidance of exposure to conflicting loyalties.¹²⁶ The other options are acceptance of, and inclusion in, the dominant group,¹²⁷ or (an interesting possibility) imposing the insular minority values on unwilling others. In either case, the small group must become to some extent more accepting and accommodating of others or the society breaks down into war or perhaps isolated factions.

Gypsy law and culture remains separate, but it is on the cusp of perception by the dominant culture. The very fact that *Gypsy Law* includes two Roma scholars, and others who have non-casual and non-exploitative relationships with Roma, indicates that a trend did not begin with this volume, but is recognized in it. As the United States recognizes Gypsy culture, it also participates in a world in which

125. Weyrauch & Bell, *Anonymous Lawmaking*, *supra* note 3, at 12.

126. *Id.* at 83.

127. One might say that inclusion in the dominant society is not so bad, illustrated by the examples of many European Americans, including Irish, Germans, and Scandinavians. In such cases, the "dominant" culture (being young and quite undefined) was arguably as much affected by the immigrants as the immigrants were by the culture of their new land.

significant actors newly recognized on the world scene are not nations, and cannot be treated as nations. Thus, they have rules, largely unwritten, that we do not acknowledge as law.

Those rules may appear to be irrational. This does not suggest that adherents experience a different path of thinking from many in this Western culture. Weyrauch observes that many, although within a legal system, find legal reasoning in support of a point to be "irritating."¹²⁸ This may reflect the fact that such reasoning is intended to be persuasive, but does not necessarily leave the listener convinced. This appears to be true of many in Red America and of the current national administration, who endorse loyalty and adherence to a few precepts as central to thought and relationship.¹²⁹

Weyrauch observes that private law prevails over state law because it is stronger.¹³⁰ In the context of this Review, perhaps it is more succinct to say: Law that musters all the aspects of human thought and energy, not only the rational, is likely to be more powerful because it captures the loyalty of the many and acknowledges no power in reasoned dissent. We may observe systems of law that adhere to this view, and others that utilize the stuff of reason—which is hard work to read and kind of a yawn. In any case, we return to Professor Weyrauch's defining purpose: to cause American readers to examine their own legal and social cultures. Such a task is, he notes, infinitely more complex than a study of another.¹³¹

128. Weyrauch, *Introduction*, *supra* note 1, at 2.

129. *See supra* note 7 and accompanying text.

130. Weyrauch & Bell, *Autonomous Lawmaking*, *supra* note 3, at 13–19.

131. Weyrauch, *Traditions and American Equivalents*, *supra* note 22, at 255.