

## **Anthropology of Law**

Anthropology 256  
U.C. Riverside  
Fall 2012  
Watkins 1347  
8:30 AM-11:30 AM

Derick Fay  
Derick.Fay@ucr.edu  
Office Hours: W 2-3 PM  
or by appointment

### **Course Overview**

This course is a graduate-level seminar on anthropology and law. The course is oriented around several overarching and overlapping sets of questions. The first set concerns the emergence and transformation of legal anthropology in relation to the larger history of the discipline. The second concerns the relations between different legal and normative systems, including such topics as the relation of customary law to colonial and postcolonial legal orders, and universalist human rights. The third concerns the degrees to which law is both embedded in—and relatively autonomous from—culture, society, and processes of historical change. The fourth concerns the question of how to study law anthropologically: readings for the course will include a number of classic texts in anthropology and social and legal theory, as well as contemporary ethnography, history and theory; these reflect a range of approaches, from archival studies of legal decisions and cases to ethnographies of courtroom proceedings. Finally we will consider the claim that politics are increasingly being conducted through legal means in the neoliberal era, examining the use of the law by a range of historically marginalized actors.

### **Requirements**

This class will be run as a graduate-level reading-intensive research seminar. Preparation for class discussion by careful reading of the week's readings is required. This seminar relies upon the participants' capacity to participate in a fruitful discussion in the seminar meeting. This means that each student should be familiar with the central arguments of the required readings, and be able to develop thoughts on the connections/disconnections in the larger body of readings for the week and across the term.

Additionally, each student will be expected to:

- 1) Prepare a one page critical commentary on the week's readings to be circulated electronically via iLearn by 1 PM on the Tuesday before each class. In iLearn, click on Weekly Commentaries > Week # > Create Blog Entry . These are meant to jump-start discussion, to flag critical issues and concerns, and to highlight any crosscutting themes or connections that you may want to bring in.
- 2) Co-lead/co-chair at least one class discussion. (The exact number will depend on the number of students in the class). This involves three things: 1) using other materials to locate the key authors and arguments for the week in one or more debates or to show something of their intellectual genealogy; 2) a short presentation of the key arguments made in the readings; and 3)

leading the class discussion on the readings. Again, the presentation should be **no more than ten minutes**.

3) Write. There are two options for the writing component of this course. I have no preference for either choice; I expect you to choose the option that is more useful to you at the current stage of your graduate career. For both options, you will submit draft papers, receive comments, and rewrite for the final version of the paper.

Option one: Two papers of 9 to 12 pages, in which you develop your thoughts on a theme, topic or debate in a well-crafted and concise analysis that relates readings to each other within a given week or across sessions. You may submit the papers at any point during the term; however, you should submit the first one by 5 PM on Monday of week six (November 5), and the last by 5 PM on Monday of week ten (December 3). Final versions will be due two weeks after the original submission, no later than 10 AM Tuesday December 11.

Option two: submit a paper or research proposal of 18-25 pages, with a first draft due by 5 PM Monday November 26. Papers or proposals should use readings from the class (probably in theoretical, contextual or comparative sections) to engage with your dissertation topic or a closely-related area, and should not include material submitted as papers or proposals for other classes. The final version will be due 10 AM Tuesday December 11.

### **Auditors**

Auditors are welcome in this class on two conditions: they need to come to most (preferably all) of the classes and they should be prepared to do all the readings and fulfill qualification (i) above, i.e. prepare a weekly commentary. Auditors can add a great deal to the discussion in the class but only if they prepare in the same way as students taking the class for credit.

### **Grading**

Participation (including commentaries and discussion leading): 50 points

(Attendance is required, and an unexcused absence will result in the loss of 5 points per absence).

Paper(s) : 50 points

### **Required Texts** (all ordered at UCR bookstore)

Benton, L., *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900*

Darian-Smith, E., *Religion, race, rights: landmarks in the history of modern Anglo-American law*

Donovan, J., *Legal Anthropology*

Englund, H., *Prisoners of Freedom: Human Rights and the African Poor*

Latour, B., *The Making of Law: An Ethnography of the Conseil D'Etat*

Malinowski, B., *Crime and Custom in Savage Society*

Merry, S. E., *Colonizing Hawai'i: The Cultural Power of Law*

Moore, S. F. (ed). *Law and anthropology: a reader*

Ng, Kwai Hang, *The Common Law in Two Voices: Language, Law, and the Postcolonial Dilemma in Hong Kong*

We will also read most of Julia Eckert et al., eds., *Law Against the State: Ethnographic Forays into Law's Transformation*. This text is available as an eBook from UCR Rivera Library, but

has not been ordered at the bookstore. Amazon lists the Kindle edition for \$50+ and the hardcover for \$80+.

## **Class Schedule**

### **Week 1 - October 3: Foundations of Legal Anthropology**

#### **Required Reading**

Donovan Intro, ch. 1-4

Moore Part I (63 pp.)

EP Thompson, *Whigs and Hunters* - Introduction and "Consequences and Conclusions" parts iii and iv (iLearn)

Malinowski, B., *Crime and Custom in Savage Society* (entire)

#### **Additional Reading**

Maine, H., *Ancient Law* (free eBook on Google Books)

Pospisil, L. J.

1974 *Anthropology of law: a comparative theory*. New York: Harper & Row. ch. 5: "Change of Legal Systems" [includes a much more thorough treatment of law in the works of Montesquieu, Maine, Marx and Durkheim than either Moore or Donovan's text].

Spitzer, S.

1983 Marxist perspectives in the sociology of law. *Annual Review of Sociology* 9:103--124.

Cain, M.

1974 The Main Themes of Marx' and Engels' Sociology of Law. *British Journal of Law and Society* 1(2): 136-148.

Kennedy, D.

2004 The Disenchantment of Logically Formal Legal Rationality or Max Weber's Sociology in the Genealogy of the Contemporary Mode of Western Legal Thought. *Hastings Law Journal* 55:1031-1076.

Kennedy, D.

1991 The Stakes of Law, or Hale and Foucault. *Legal Studies Forum* 15:327.

Conley, J. M. and O'Barr, W. M.

2002 Back to the Trobriands: The Enduring Influence of Malinowski's Crime and Custom in Savage Society. *Law and Social Inquiry* 27:847-874.

### **Week 2 - October 10: Comparative Legal Anthropology**

#### **Required Reading**

Moore, part II (except ch. 8 and 10)

Donovan, part III, ch 13

Gluckman, M., *The judicial process among the Barotse of Northern Rhodesia*, pp. 1-64, 80-144, 159-160, ch. 6

Starr, J. and Yngvesson, B.

1975 Scarcity and Disputing: Zeroing-in on Compromise Decisions. *American Ethnologist* 2(3):553--566. (iLearn)

Galanter, M.

1974 Why the haves come out ahead: Speculations on the limits of legal change. *Law and Society Review* 9:95-160. (iLearn)

### ***Additional Reading***

Colson, E.

1974 *Tradition and contract: The problem of order*. Aldine Publishing Company.

Comaroff, J. and Roberts, S.

1981 *Rules and Process: The Cultural Logic of Dispute in an African Context*. Chicago: University of Chicago Press.

Nader, L. and Todd, H., eds.

1978 *The Disputing Process: Law in Ten Societies*. New York, NY: Columbia University Press.

Strathern, M.

1985 Discovering 'Social Control'. *Journal of Law and Society* 12(2): 111-134. (iLearn)

Bohannan, P.

1957 *Justice and Judgment among the Tiv*. Oxford: Oxford University Press.

Songer, D. R., Sheehan, R. S., and Haire, S. B.

1999 Do the Haves Come out ahead over Time-Applying Galanter's Framework to Decisions of the US Courts of Appeals, 1925-1988. *Law and Society Review* 33:811.

### **Week 3 - October 17: History and Ethnography of Anglo-American Law**

#### ***Required Reading***

Darian-Smith, E., *Religion, race, rights: landmarks in the history of modern Anglo-American law*

Donovan ch 12

Conley, J. M. and O'Barr, W. M.

1988 Hearing the Hidden Agenda: The Ethnographic Investigation of Procedure. *Law and Contemporary Problems* 51(4):pp. 181-197. (iLearn)

Lazarus-Black, M.

1997 The Rites of Domination: Practice, Process, and Structure in Lower Courts. *American Ethnologist* 24(3):628-651. (iLearn)

#### ***Additional Reading***

Fitzpatrick, P.

1992 *The mythology of modern law*. London: Routledge.

### **Week 4 - October 24: Law, Space and Sovereignty**

#### ***Required Reading***

Benton, *A Search for Sovereignty*

Donovan ch 15

Moore ch 17 (Clifford, "Identity in Mashpee") and 18 (Darian-Smith, "Locating a Reinvigorated Kentish Identity"), ch 27 (Nader, "Civilization and Its Discontents")

#### ***Additional Reading***

Ong, A.

2000 Graduated Sovereignty in South-East Asia. *Theory, Culture & Society* 17(4):55-75.

Ong, A.

2006 *Neoliberalism As Exception: Mutations in Citizenship And Sovereignty*. Durham, NC: Duke University Press.

Guillet, D.

1998 Rethinking Legal Pluralism: Local Law and State Law in the Evolution of Water Property Rights in Northwestern Spain. *Comparative Studies in Society and History* 40(1):42-70.

von Benda-Beckmann, F.

2002 Who's afraid of legal pluralism. *Journal of Legal Pluralism & Unofficial Law* 47:37.

## **Week 5 - October 31: Law, Colonialism and Legal Change**

### **Required Reading**

Merry, S. E., *Colonizing Hawai'i: The Cultural Power of Law*

Chanock, M.

1991 A Peculiar Sharpness: An Essay on Property in the History of Customary Law in Colonial Africa. *The Journal of African History* 32(1):pp. 65-88. (iLearn)

Comaroff, J. and Comaroff, J.

1997 *Of Revelation and Revolution: The Dialectics of Modernity on a South African Frontier*. Chicago: University of Chicago Press. ch. 8: "New Persons, Old Subjects" (iLearn)

### **Additional Reading**

Pospisil, L. *Anthropology of Law: A Comparative Theory* ch. 6: "Change of Laws"

Chanock, M.

1998 *Law, custom, and social order: the Colonial Experience in Malawi and Zambia*. Cambridge: Cambridge University Press.

Moore, S. F.

1986 *Social facts and fabrications" Customary" law on Kilimanjaro, 1880-1980*. Cambridge: Cambridge University Press.

Cheater, A. P.

1987 Fighting over property: the articulation of dominant and subordinate legal systems governing the inheritance of immovable property among blacks in Zimbabwe. *Africa* 57(2):173--195.

Costa, A.

2000 Chieftaincy and Civilisation: African Structures of Government and Colonial Administration in South Africa. *African Studies* 59(1):13--43.

Alden Wily, L.

2012 Looking back to see forward: the legal niceties of land theft in land rushes. *Journal of Peasant Studies* 39(3-4):751--775.

## **Week 6 - November 7: Law and Language**

### **Required Reading**

Bourdieu, P.

1986 The Force of Law: Toward a Sociology of the Juridical Field. *Hastings Law Journal* 38:805-853 (iLearn - be sure to read the translator's introduction)

Mertz, E., *The Language of Law School: Learning to "Think Like a Lawyer"*: "Entering the World of U.S. Law" (iLearn)

Ng, Kwai Hang, *The Common Law in Two Voices: Language, Law, and the Postcolonial Dilemma in Hong Kong*

### ***Additional Reading***

Mertz, E.

1994 Legal Language: Pragmatics, Poetics, and Social Power. *Annual Review of Anthropology* 23(1):435--455.

Conley, J. M. and O'Barr, W. M.

2005 *Just words: Law, language, and power*. Chicago: University of Chicago Press.

Conley, J. M. and O'barr, W. M.

1990 *Rules versus relationships: The ethnography of legal discourse*. Chicago: University of Chicago Press.

### **Week 7: The Making of Law**

**This week will need to be rescheduled to accommodate the AAA meetings in San Francisco.**

### ***Required Reading***

Rosen, *Law as Culture*, ch. 2: "Creating Facts" (iLearn)

Moore ch. 24 (Gilboy, "Deciding Who Gets In")

Latour, B. *Science in Action: How to Follow Scientists and Engineers through Society*, introduction (iLearn - required if you haven't read it before)

Latour, B. *The Making of Law*

### ***Additional Reading***

Faulkner, A., Lange, B., and Lawless, C.

2012 Introduction: Material Worlds: Intersections of Law, Science, Technology, and Society. *Journal of Law and Society* 39(1):1--19. [and the entire special issue]

Jasanoff, S.

2005 *Designs on nature: Science and democracy in Europe and the United States*. Princeton: Princeton University Press.

### **Week 8 - November 21: Law, Land and Property**

### ***Required Reading***

Moore Part III A (entire)

Bohannan, P.

1963 Land, Tenure and Land Tenure. In *African Agrarian Systems*. Biebuyck, D., eds. . Oxford: Oxford University Press. (iLearn)

Nadasdy, P.

2002 "Property" and Aboriginal Land Claims in the Canadian Subarctic: Some Theoretical Considerations. *American Anthropologist* 104(1):247--261. (iLearn)

Tsing, A.

2002 Land as Law: Negotiating the Meaning of Property in Indonesia. In *Land, Property, and the Environment*. Richards, F., eds. Pp. 94-137. Oakland, CA: Institute for Contemporary Studies. (iLearn)

Riles, A.

- 2004 Property as Legal Knowledge: Means and Ends. *Journal of the Royal Anthropological Institute* 10(4):775--796. (iLearn)

### **Additional Reading**

- Burton, L.  
2000 Wild Sacred Icon or Woolly Cow? Culture and the Legal Reconstruction of the American Bison. *PoLAR: Political and Legal Anthropology Review* 23(2):21--36.
- .Coombe, R. J.  
2005 Legal Claims to Culture in and Against the Market: Neoliberalism and the Global Proliferation of Meaningful Difference. *Law, Culture and the Humanities* 1:35-52.
- von Benda-Beckmann, K.  
2009 Anthropological Perspectives on Law and Geography. *PoLAR: Political and Legal Anthropology Review* 32(2):265--278.
- Cheater, A. P.  
1987 Fighting over property: the articulation of dominant and subordinate legal systems governing the inheritance of immovable property among blacks in Zimbabwe. *Africa* 57(2):173--195.
- Riles, A.  
2004 Property as Legal Knowledge: Means and Ends.. *Journal of the royal anthropological institute* 10(4):775--796.
- Abramson, A. and Theodossopoulos, D.  
2000 *Land, law and environment: mythical land, legal boundaries*. Pluto Press.
- Blomley, N.  
2003 Law, property, and the geography of violence: the frontier, the survey, and the grid. *Annals of the Association of American Geographers* 93(1):121--141.
- Coombe, R. J.  
1998 *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*. Durham, NC: Duke University Press Books.

## **Week 9 - November 28: Human Rights**

### **Required Reading**

- Moore ch. 20 (Wilson, "Human Rights and Nation Building") and 21 (Merry, "Rights, Religion and Community")
- Levitt, P. and Merry, S.  
2009 Vernacularization on the ground: Local uses of global women's rights in Peru, China, India and the United States. *Global Networks* 9(4):441--461. (iLearn)
- Englund, H., *Prisoners of Freedom: Human Rights and the African Poor*

### **Additional Reading**

- Merry, S. E.  
2006 *Human Rights And Gender Violence: Translating International Law Into Local Justice*. Chicago: University of Chicago Press.
- Clarke, K. M.  
2009 *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. Cambridge: Cambridge Univ Press.

## **Week 10 - December 5: Legalism from Below and Above**

### ***Required Readings***

Eckert, J.

2006 From Subjects to Citizens: Legalism from below and the Homogenisation of the Legal Sphere. *Journal of Legal Pluralism & Unofficial Law* 53-54:45-75.

Comaroff, J. L. and Comaroff, J.

2009 Reflections on the Anthropology of Law, Governance and Sovereignty. In *Rules of Law and Laws of Ruling: On the Governance of Law*. von Benda-Beckmann, F., von Benda-Beckmann, K., and Eckert, J., eds. Pp. 31-59. Farnham: Ashgate Publishing. (iLearn)

Idrus, R.

2010 From Wards to Citizens: Indigenous Rights and Citizenship in Malaysia. *PoLAR: Political and Legal Anthropology Review* 33(1):89-108. (iLearn)

from Julia Eckert et al., eds., *Law Against the State: Ethnographic Forays into Law's Transformation:*

Eckert et al., "Introduction: law's travels and transformations"

Kirsch, "Juridification of indigenous politics"

Donahoe, "Naming, claiming, proving?"

Zenker, "The juridification of political protest"

Baviskar, "Public interest and private compromises"

Baxi, "Epilogue"

### ***Additional Readings***

von Benda-Beckmann, F., von Benda-Beckmann, K., and Eckert, J.

2009 *Rules of Law and Laws of Ruling: On the Governance of Law*. Farnham: Ashgate. (UCR Rivera eBooks)

Scheingold, S. A.

2004 *The politics of rights: Lawyers, public policy, and political change*. Ann Arbor: Univ of Michigan Press.

McCann, M.

2006 Law and Social Movements: Contemporary Perspectives. *Annual Review of Law and Social Science* 2(1):17-38.

Blichner, L. C. and Molander, A.

2008 Mapping Juridification. *European Law Journal* 14(1):36--54.

Duschinski, H. and Hoffman, B.

2011 On the frontlines of the law: Legal advocacy and political protest by lawyers in contested Kashmir. *Anthropology Today* 27(5):8--12.